

# Platform Failures

**How short-term rental platforms like Airbnb fail to cooperate with cities and the need for strong regulations to protect housing.**

By Murray Cox and Kenneth Haar

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Study commissioned by members of the IMCO committee  
of the GUE/NGL group in the European Parliament

# Platform Failures – How Short-Term Rental Platforms Like Airbnb Fail Cities

**T**his report looks at how short-term rental platforms like Airbnb fail to cooperate with cities, fail to self regulate and the need for strong regulations to protect housing.

We also look at what is needed in the forthcoming Digital Services Act to support cities' right to housing.

## **Impact on housing from short-term rentals is real and proven:**

- **Amsterdam:** 1 in 9 units rented on Airbnb in some neighborhoods
- **Barcelona:** Rents increase by 7% and property prices 19% from presence of Airbnb (even after controlling for gentrification)
- **New York City:** 15,000 apartments removed from housing, all renters paid US\$616m in 2016 due to Airbnb
- **Paris:** 15,000-25,000 apartments removed from housing
- **Prague:** 15,000 apartments lost

## **Market Failures: Housing Market + Tourism Market ≠ Home Sharing**

Combining the Housing and Tourism Markets results in massive commercial use, with very little home sharing:

- **Amsterdam:** 87% of revenue estimated to be commercial (full-time short-term rentals and property portfolios)
- **Barcelona:** Commercial use on Airbnb estimated to be 75% of listings
- **Prague:** More than half of apartments listed on Airbnb are by hosts with more than one

## **Platform Failures: Failed Cooperation, Failed Self Regulation**

Platforms refuse to cooperate with cities and profit from illegal listings:

- **Amsterdam:** Airbnb withdrew ability to enforce 60 day cap after city tightened regulations
- **Barcelona:** Airbnb provides data but 60-70% addresses are missing or incorrect
- **Berlin:** 80% of Airbnb listings are still illegal; Platforms refuse to provide data
- **Paris:** 60% of Airbnb listings are illegal.
- **New York City:** 85% of Airbnb active listings are illegal
- **Vienna:** Airbnb refuses to remove listings in Social Housing

Platforms want to appear to be cooperating and to be regulated: to appease their investors; reduce the likelihood of further regulation; including preserving shielding laws in the EU.

## **The many ways platforms have failed cities:**

- Hiding identities of hosts and locations of illegal listings
- Systematically fail to verify host identities and locations

- Refuse to follow local laws like displaying registration numbers or removing illegal listings
- Threatening legal action over new regulations and filing abusive lawsuits
- Refusing to provide data for enforcement
- Failing to disclose activity for taxes collected
- Using taxes to avoid housing regulations
- Offering negotiation to avoid regulations (spoiler, most negotiations fail)
- Withdrawing negotiated agreements in retaliation
- Self regulation tools: trivial to bypass (yearly caps and “one host one home”)
- Proposing ineffective regulations to delay and block better regulations

### **Recommended Regulations**

Cities continue the work to strengthen their regulations, and these three components have proven essential:

1. Mandatory Registration System
2. Platform Accountability
3. Platform Data Disclosure

### **The forthcoming Digital Services Act (DSA)**

In the European Union, ancient laws such as the e-Commerce Directive have led to legal uncertainty and confusion, including many court cases, over the right for cities to regulate short-term rental platforms

The e-Commerce Directive will be updated, in the form of the Digital Services Act that is to be proposed by the European Commission shortly after the release of this report on December 15.

### **What is needed from a Digital Services Act to equip cities with the tools needed to deal with the impact on affordable housing from short-term rental platforms?**

To achieve the maximum room to manoeuvre, **the best option is for short-term rental platforms to be excluded from the Digital Services Act** — much like Uber following decisions by the European Court of Justice in December 2017.

If short-term rental platforms are to be included in the Digital Services Act, there are **six elements which are needed for cities**:

1. Access to non-aggregate data
2. Obligation to provide valid data
3. Acceptance of authorisation schemes for both hosts and platforms
4. Full cooperation on illegal listings
5. Full liability where platforms operate
6. No obstruction from the Commission

### **COVID-19: Are short-term rentals immune?**

While tragic for city residents, short-term rentals have proven immune to COVID-19. The pandemic has reduced short-term rental activity but hasn't returned lost housing units back to long-term rentals.

Continued regulation and enforcement is needed to incentivise the return of short-term rentals to long-term residents during and post COVID-19.

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**T**ravelling using services like Airbnb, the dominant short-term rental platform, have become popular for many tourists throughout the world. At the same time the platforms make it easy for residents and property owners to offer their homes to tourists. Many say it's too easy.

With a few clicks of a mouse, or taps on an app, any type of residential housing can be posted on the internet, mostly without any type of verification, except for those required for tourist dollars to flow.

The ease and incentive for short-term rental “hosts” to profit, have dangerously intertwined the tourism and housing markets, and a slew of commercial hosts now dominate Airbnb and other platforms, creating virtual full time hotels and hostels out of residential and social housing.

Any city or town on the tourist route now has to balance the housing needs of their residents against increased tourism, and most have turned to their housing laws, old and new, to protect communities and valuable housing for their residents.

While tourism has a very public face to it, the task of regulating a commercial activity like short-term rentals in residential homes, behind closed doors, is challenging.

Governments that expected cooperation from the platforms were met with opposition — a denial of any responsibility, or even that any issues existed. At the same time, platforms lobbied for no rules, ignored regulations, rejected demands and negotiations, sued cities in court, and most importantly, protected their data and the identity of their “hosts” and the location of the short-term properties, many of which were illegal.

Now a large number of cities are responding with innovative, proven regulations and enforcement, including those that successfully and **legally require the cooperation of platforms**. Platforms have responded, ironically claiming that they are voluntarily cooperating, and argue that cities should now negotiate with them, in the hopes of compromising or delaying regulations; or they claim that laws making them accountable are not even required.

Cities are all in agreement, platforms have failed to cooperate, and regulations are required.

**This report shows how short-term rental platforms fail to cooperate with cities — by ignoring or blocking regulations, threatening to and engaging in excessive litigation, withholding data and knowingly shielding illegal activity.**

We also show how cities are responding with innovative regulations, and how, in Europe, a supportive Digital Services Act could ensure that cities can prevent the attacks on their most valuable social resources both offline and online.

# The Myth of Cooperation

## Platforms want to appear to be cooperating

If we read press releases and news articles, you quickly see two faces to short-term rental platforms. The public relations side, where they are cooperating with cities, and the other, real side, when they are constantly resisting and fighting cities.

### Airbnb: Cooperative

*"We are eager to work with our host community as well as city and state government on clear and fair regulations for short term rentals in New York"*

**Airbnb**, June 2019<sup>1</sup>

*"As we move forward, we want to continue to be good partners to everyone in Catalonia and work together to ensure everyone benefits from home sharing on Airbnb based on our experience of working with more than 500 governments and organizations around the world."*

**Airbnb**, August 2020<sup>2</sup>

### Airbnb: Uncooperative

*"The Airbnb community — consisting of 19,000 Amsterdam landlords — is disappointed in your intention to have large hotels prevail over Amsterdam families who occasionally share their homes"*

**Airbnb**, January 2018<sup>3</sup>

*"We remain convinced that Paris' broken and disproportionate STR rules breaks EU rules and have a negative impact on the 1 in 5 Parisians that use Airbnb; we look forward to making our case in court"*

**Airbnb**, February 2019<sup>4</sup>

Why would platforms want to appear to be cooperating with cities when in reality they are fighting them tooth and nail?

For Airbnb, they need to appear to be cooperating, and to appear to be regulated so their current and potential investors believe that there are no significant risks from regulations in the future.

At stake is US\$38 Billion, the valuation given to Airbnb pre-COVID<sup>5</sup>, the personal fortunes of its founders, employees with stock options, and early investors.

In addition, the idea that platforms are cooperating, either with self-regulation, or negotiated agreements, regardless of the outcomes, makes it less likely for regulation.

More importantly, in the EU, laws like the e-Commerce Directive, are crucial for platforms to reduce their liability and risk of regulation. The appearance of cooperation and self regulation reduces the risk that these shielding laws will be changed to reduce or remove their platform immunity.

# Impact on Cities

## The Impact on housing from short-term rentals is real and proven

**T**he key question about the impact of short-term rentals on cities has been its impacts on housing and in particular, affordable housing.

One of the challenges for housing researchers was the unavailability of data, with platforms refusing to release data unless it was for their own commissioned, biased reports.

Researchers started collecting data from the platforms' website directly, by "web scraping", and from 2014 onwards, resources, such as Tom Slee, Inside Airbnb and Airdna became available, which offered easy to download platform data.

Data has allowed researchers and cities to quantify the impact on their housing and residents.

There are two generally accepted methods of measuring impact on housing:

1. Comparing the number of units of housing lost, which, through market dynamics increase the cost of housing by a quantifiable amount
2. Tracking rents or housing costs over a period of time, compared to the presence of short-term rentals, while controlling for other variables, like tourist attractions, transport, or gentrification

The first method allows one to generalise by concluding that **where housing is lost to short-term rentals, the cost of housing will rise.**

### Where housing is lost to short-term rentals, the cost of housing will rise.

The second method is more technical and requires more data, especially over time.

Independent researchers have increasingly been producing analysis using both methods, which show us significant impacts on housing loss and housing costs.

- **Amsterdam:** 1 in 9 units rented on Airbnb in some neighborhoods
- **Paris:** 15,000-25,000 apartments removed from housing market
- **Prague:** 15,000 apartments lost

Specifically on housing cost:

- **Barcelona:** Rents increase by 7% and property prices 19% from presence of Airbnb (even after controlling for gentrification)
- **New York City**
  - 15,000 apartments removed from housing
  - all renters paid US\$616m in one year due to Airbnb

In addition to housing lost and housing cost, short-term rentals have been shown to be involved in direct and indirect displacement, and allow hosts to ignore protections for social housing, rent regulation and zoning.



# Market Failures

## Housing Market + Tourism Market ≠ Home Sharing

**M**uch has been written, or claimed about the “Sharing Economy”, “Home Sharing” and “renting a spare room to tourists to help you pay the rent or mortgage”.

However when we consider that short-term rentals combine two distinct markets, the residential housing market, and the tourism market, with financial incentives to convert residential properties or spaces to tourist accommodation, it's obvious that short-rentals create the opportunity for commercial exploitation, at

the cost of housing, and platforms amplify both this opportunity and cost.

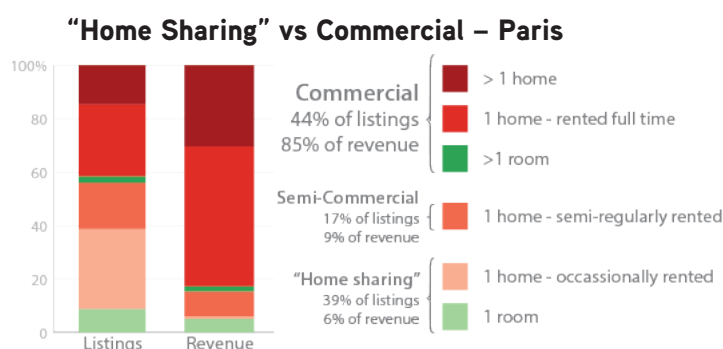
Using publicly available data, we classify Airbnb activity in a number of cities, and find that, as at February 2020 (pre-COVID), **commercial use dominates Airbnb in every city, with as much as 72% of listings and 94% of revenue (Prague) classified as commercial.**

“Home Sharing” activity is occurring, but it generates very little revenue, an average of 12.5% of short-term rental revenue across the 8 cities.

City	Home Sharing		Semi-Commercial		Commercial	
	A single room; or a single home rented less than 30 days per year		A single home rented between 30 and 90 days per year		A single home rented more than 90 days per year; or multiple homes or rooms	
	Listings	Revenue	Listings	Revenue	Listings	Revenue
<b>Amsterdam</b>	47.3%	26.6%	27.7%	24.3%	25.0%	49.0%
<b>Barcelona</b>	33.3%	9.7%	1.5%	1.2%	65.1%	89.1%
<b>Berlin</b>	58.5%	20.7%	8.6%	5.4%	32.9%	73.8%
<b>New York City</b>	47.4%	13.5%	7.5%	4.1%	45.1%	82.4%
<b>Paris</b>	38.7%	6.1%	17.3%	9.3%	44.0%	84.6%
<b>Prague</b>	20.5%	2.5%	7.2%	3.3%	72.3%	94.2%
<b>San Francisco</b>	22.4%	15.1%	7.8%	4.9%	69.8%	80.0%
<b>Vienna</b>	31.2%	5.5%	9.7%	7.2%	59.2%	87.3%

Table 1: “Home Sharing” vs Commercial.  
Commercial use dominates over home sharing, both by numbers and revenue.

Source: Inside Airbnb, February 2020.



Researchers have confirmed this overwhelming commercial use of Airbnb, in cities such as Barcelona, Berlin, Paris, and Warsaw<sup>6</sup>; Madrid<sup>7</sup>; New York City<sup>8</sup>; and Toronto<sup>9</sup>.

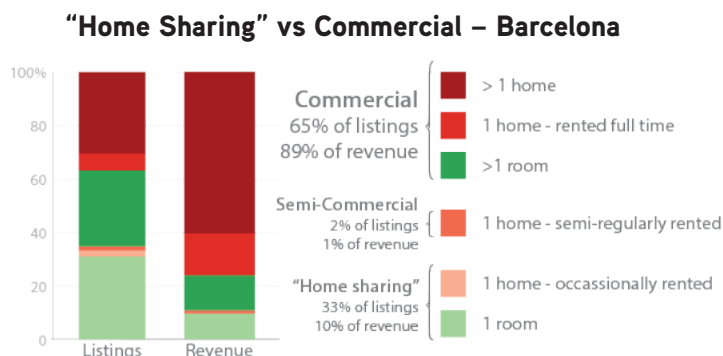
Even Airbnb admits to its investors that “historically, we have seen an increase in the number of, and revenue from, professional hosts on our platform”<sup>10</sup>, but they fail to quantify the scale of commercial use, or quantify the risk of regulation.

**If we overlay the large scale of commercial use, against a city’s laws designed to protect housing, which allow “Home Sharing” but prohibit commercial use, we can conclude that the majority of short-term rental use is illegal, and almost certainly by revenue.**

This is confirmed by cities such as Paris, which estimates that 60% of Airbnb listings are illegal, and New York City, where 85% of active listings are presumed illegal.

The large scale of commercial and illegal use, justify continued efforts by cities to regulate and enforce their laws, and should concern proponents of self-regulation, deregulation and the protection of platforms.

**At the same time we can clearly understand that motivations behind platforms’ resistance to regulation are completely profit-driven.**



# If You Can't Find Us, You Can't Fine Us

## Platforms rely on it making it harder to find those breaking local laws

In the past, hospitality providers, including traditional Bed and Breakfasts, relied on physical signs in and around town; listings in local real-estate offices; accommodation registries coordinated with local, regional or national tourism agencies; or listings in well known guide books.

It made it easy for local authorities to determine whether commercial activity was occurring in legitimate locations, zoned appropriately, and that any permits, permission or other rules were being followed.

When short-term rental platforms arrived, the only public face of a short-term rental property became an anonymous digital listing with only an approximate location of the property with an unverified first name of the host.

The anonymous nature of a digital short-term rental listing makes it extremely difficult for local agencies to enforce their local zoning, building, tourist and housing laws.

This is compounded by the exponential increase of demand for short-term rental properties, including aggressive marketing to potential hosts or property investors, resulting in hundreds or thousands of new properties entering the short-term rental market, many without going through the steps to verify if the activity is allowed, or notifying the city.

Even in cities that have been battling the impacts of short-term rentals for years still have major issues with compliance because they can't locate who is responsible for illegal listings.

**In Paris, 60% of Airbnb listings do not have a registration number<sup>11</sup>, required since 2017<sup>12</sup>, and in Berlin 80% of Airbnb listings<sup>13</sup> do not have the registration number, a requirement since August 2018. In New York City, up to 85% of Airbnb's active listings are illegal<sup>14</sup>.**

These non-compliant listings would likely be shut-down and revenue lost to platforms if cities were better able to enforce their short-term rental laws. Platforms have a vested interest and incentive in continuing to shield the identity of their hosts or the locations of illegally rented properties, and due to the majority of their revenue coming from illegal activity, it's not a stretch to say that the business model of short-term rental platforms like Airbnb rely on shielding illegal listings.

The opaqueness of location and identity by platforms which makes enforcement so challenging is not just an unintended consequence of the establishment of digital marketplaces, it has been planned, designed and built into their platforms.

In the case of Airbnb, the exact location of a listing is withheld until a booking is made, and only revealed to a new guest. In practice, this means that the location for a listing on a map, or in data scraped from a listing, could be anywhere from 0 to 150 meters from the actual address.

Listings in the same building, by the same host, are anonymised by Airbnb individually, and therefore may appear "scattered" in the area surrounding the actual address, even though the entire building could have been turned into a de facto, unregistered hotel.

While arguably protecting the privacy of hosts the anonymisation of a listing's location is oxymoronic given that they are offering "public" short-term accommodation.

Over time, Airbnb has changed their platform to make enforcement even more difficult by further anonymising addresses.

In 2015, Airbnb provided the street name in the public data for each listing. Multiple cities, including New York City, San Francisco, and Paris were using the street name to aid with compliance and the enforcement of their housing laws.



Near the end of 2017, Airbnb removed the street name from the public information available for a listing. As the street name might be useful for prospective guests, the only conclusion is that **Airbnb removed the street name solely to hide illegal activity on its platform and thwart compliance and enforcement efforts.**

Other measures used by Airbnb to evade scrutiny have been to reduce the number of search results from 1,000 to 300 listings. Airbnb searches previously returned 1,000 results, but after journalists and enforcement agencies started using searches to measure compliance and impact, in 2015 the number of search results were reduced to 300, making it much more difficult to manually survey the Airbnb supply in a city.

And at various times Airbnb has removed permit numbers from listings in jurisdictions that required the public posting them, a regulatory feature that allows the city to match an advertisement with the registration details including an identity and precise location.

San Francisco's ordinance required the posting of the city's short-term rental permit number with any public advertisement. Airbnb originally included this field clearly in the web-page for each listing, however after activists used this to reveal low compliance rates (less than 20%), in 2016 Airbnb removed the field from the listing page<sup>15</sup>.

After the City of New Orleans announced in 2018<sup>16</sup> a 9 month moratorium on new licenses in some parts of the city, in retaliation, Airbnb hid registration numbers which were previously displayed and were required by law.

In spite of these efforts by platforms, cities are responding to the challenges of identifying short-term rental actors and increasing the efficacy of their housing laws by introducing mandatory registration systems, data disclosure by hosts and/or platforms and a requirement for platforms to only post listings that have been registered.

# What's Illegal Offline, is Legal Online?

## Should short-term rental platforms be legally responsible for illegal listings on their sites?

**W**ithout the responsibility of short-term rental platforms, it's almost impossible for a city to enforce its housing laws. As we've seen, the challenge of knowing who owns and the location of a short-term rental listing leads to illegal "content" on platforms as high as 85%.

Yet platforms have claimed they are not responsible for policing their sites, citing privacy laws, claiming advertisements are "speech", and used shielding laws designed to promote and protect digital networks and markets, like the EU's e-Commerce Directive or the U.S. Communications Decency Act.

In practice, this has meant that platforms:

- Claim that only hosts should be responsible for illegal listings
- Refuse to supply detailed data on hosts, locations and short-term rental activity
- Accept listings that break the laws of where they're located
- Ignore requests to take down identified illegal listings

Platforms argue that they should not be required to ensure that the listings on their sites are complying with the complex housing laws which differ across the hundreds of thousands of cities and towns the platforms operate in.

In some cities, the laws are simple, for example in Berlin between May 2016 and August 2018<sup>17</sup>, and Santa Monica since June 2015<sup>18</sup>, when both cities enacted an outright ban on unhosted listings.

Unhosted short-term rentals are the antithesis of "home sharing" and are the most likely type of rental to impact residential communities because it's likely that no-one lives there, and a unit of housing has been removed from the long-term residential market, displacing families, and impacting housing prices. It was this reason that both cities cited when they enacted their laws.

Airbnb and other platforms refused to follow the law and continued to list unhosted Entire home listings and refused demands from those cities to remove listings which were clearly violating their laws<sup>19</sup>.

Platforms say that asking it to police their own listings is an attack on free speech<sup>20</sup>, using arguments that an e-mail service or social media platform might rightly use if the government asked them to examine and censor emails, social media posts or private messages.

**Whether a listing is hosted or not, is the second question Airbnb asks** when they sign up a host, and is a fundamental characteristic of the service they facilitate and their business model. Determining whether a listing was illegal or not would be a simple matter of using this property of their listings, in the exact same way they allow a potential guest search for an Entire home or a Private room. **In these cases Platforms are knowingly advertising illegal listings**, there is no other interpretation.

Other cities that have or had effective bans on short-term rentals include New York City (Entire home listings since 2010) and Barcelona (Private room listings between 2010 and 2020), yet thousands of those listings are displayed on platforms like Airbnb.

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**Private room**  
Guests have their own private room for sleeping. Other areas could be shared.

**Shared room**  
Guests sleep in a bedroom or a common area that could be shared with others.

Figure 1: Whether a property is hosted (“Private room”) or Unhosted (“Entire place” or “Entire home”) is the second question Airbnb asks a host when they signup.

In cases where the laws are more complex, for example:

- verifying that a host is the primary resident of a property
- ensuring that the host has the legal right to rent the property, that does not violate their lease, property title, insurance, building by-laws, a city’s social housing laws, caps on permits or zoning
- yearly caps, which might span platforms

Cities respond to the concerns and realities of adjudicating the legality of renting, usually with a registration or permit system, which puts the onus on the city to verify each short-term rental.

Verifying that a short-term rental is legal or not, is then just a simple matter for the platform to ask for a permit number, and usually cities make this a requirement in their laws.

Platforms responded to this new regulatory requirement by adding a registration number field to the hosts’ signup process.

The registration system is an elegant solution, which does not require the platforms to understand or verify the complex laws of each market, however platforms still allow unregistered listings to appear on their site, and refuse demands by cities to remove them, even when the registration number is available on platforms for hosts to fill out.

We cited Berlin, which now has a permit system, although 80% of Airbnb listings do not have a permit number<sup>21</sup>, in Paris the level of illegal listings without registration numbers on Airbnb is more than 60%<sup>22</sup>, and in San Francisco, prior to the adoption of laws which make platforms legally responsible for displaying only registered listings, 80% of Airbnb listings did not have the required permit<sup>23</sup>.

**Displaying listings without mandatory registration numbers is another example of short-term rental platforms knowingly and flagrantly advertising illegal services at rates that are commonly 80% or more.**

The scale of illegal listings and the systematic lack of compliance of hosts and platforms is staggering and many would say criminal.

**The high proportion of illegal content on platforms, the resulting impacts on residential housing and the failure of platforms to be responsible justify the need to regulate short-term rental platforms.**

**Platforms have failed to and refuse to police their own sites, and must be held responsible.**

# I'll See You in Court

## How platforms use the courts to block housing regulations.

**T**he fight for our cities and housing has moved from our streets and city hall to the courts, and sometimes courts of a distant and foreign land.

As residential properties are converted to tourist accommodation and both hosts and platforms ignore existing housing laws, the struggle to limit the impact of short-term rentals turned to stronger, more specific and enforceable regulations, and the courts play an important arbitrator and at times a roadblock in this battle.

Platforms have used all of the following legal strategies in order to remain deregulated:

- Refusing to follow laws
- Challenging regulations in courts
- Threatening to sue
- Funding host court cases
- Claiming country of origin
- Lobbying for new shielding laws

### Refusing to follow laws

While not an obvious legal strategy, it is if you consider that not following the law allows short-term rental platforms to continue to profit from the illegal properties on their sites and it forces a city to either try to enforce penalties; or ask the courts to issue a legal judgement to stop facilitating the illegal activity. In many cases, either or both are defended vigorously by platforms in court.

After Airbnb refused to remove unregistered listings from their platform, in February 2019, Paris initiated legal proceedings to fine the platform €12.5 million for 1,010 unregistered listings the city found on their platform.

This is an example of a city, that made a huge effort to identify illegal listings 'manually', ie. one by one. An effort that would have been superfluous if the platforms would accept simple digital solutions to remove unauthorised rentals. Still, even in this case, Airbnb

has found a way to delay and resist.

Airbnb has defended the fines, claiming that the french national ELAN law, passed in November 2018, which allowed the fines, should have been notified to the European Commission and was not, so is unenforceable. They also claim that the same laws are incompatible with the E-Commerce Directive, because it does not respect the freedom to provide services, and because it imposes a "general monitoring obligation" on operators of digital platforms, which is expressly prohibited by Article 15 of the E-Commerce Directive.

These claims by Airbnb are, unfortunately, not completely without merit. The e-Commerce Directive was adopted to provide platforms with a favourable regulatory environment. The space left for public authorities to adopt and enforce regulation in the public interest, on the other hand, is relegated to second place.

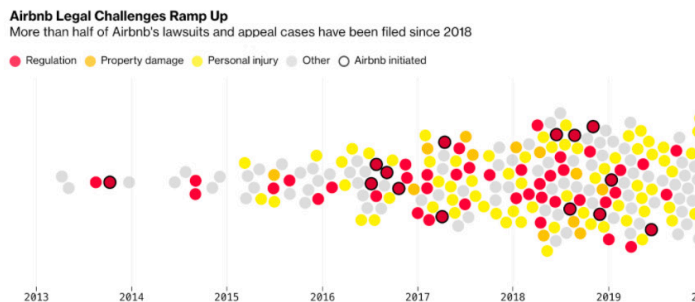
The case has still not been resolved and in the meantime the city of Paris estimates that "approximately 15,000 to 25,000 entire housing units are rented throughout the year, diverted from the traditional rental market" and that "more than 60% of the listings on Airbnb do not have a registration number", and illegal under their laws.

### Challenging regulations in courts

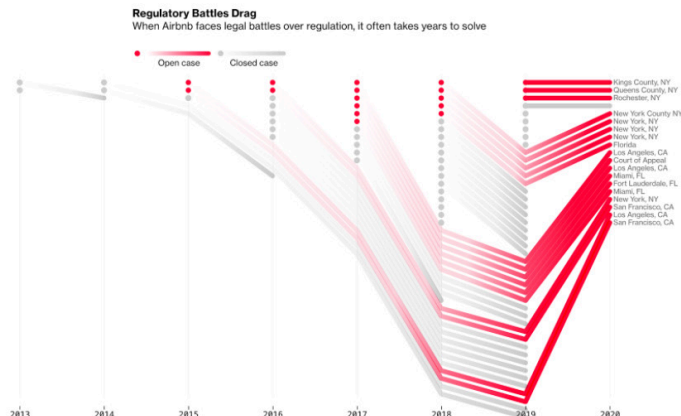
As regulations which limit short-term rentals have passed, platforms challenge them in court, sometimes even on the same day they are signed into law.

In the United States, Airbnb has sued Santa Monica<sup>24</sup>, San Francisco<sup>25</sup> and New York City<sup>26</sup> over their cities' regulations, which were all settled leaving the regulations intact.

While the cities triumphed, they were forced to expend significant legal resources and their regulations or enforcement were on hold until a decision was made. At the same time, the platforms continued to profit from the activity the laws were attempting to curtail.



Source: Bloomberg News Staff reporting, Bloomberg Law



## Threatening to sue

The litigious nature of Airbnb has been studied by Bloomberg news<sup>27</sup>, who found that “Airbnb has filed at least 11 lawsuits against an American city or state government since its founding in 2008 and has appealed an adverse decision at least three times. Half of these legal challenges have come in the past two years alone.” They also found that “it can draw on an in-house army of 120 lawyers and a legal budget that was about \$60 million in 2018.”

Cities, or their lawyers, can be reluctant to enact new regulations, for fear of the expected legal challenges, regardless of whether they have merit.

Even the Governor of New York State was threatened in a public letter by Airbnb<sup>28</sup>, which said:

***“As this unlawful bill would impose real harm on our community, out of respect for the process and to inform your considerations, we want to formally notify the state that if it is signed into law by Governor Cuomo, Airbnb would have no choice but to immediately file suit against the State of New York and ask a court to declare the statute invalid and unenforceable as well as to award any damages and fees as appropriate.”***

Smaller cities, without the legal resources of big cities or states can be understandably more cautious.

Many of the legal cases mentioned in this report initiated by the platforms have been unsuccessful, and could therefore be thought of as abusive of the courts.

Cities such as Barcelona, Paris and Vienna who were interviewed for this report cited ongoing court cases as reasons they had not proposed new regulations or continued enforcement.

## Claiming country of origin

In Europe, Airbnb has used the EU’s country of origin principle, to force European cities to appeal to the Irish courts, the headquarters of many software platforms, for the right to fine platforms, request data, or to defend the regulations in their own city.

Berlin said that while their laws allow the city to ask platforms about the name and address of hosts, Airbnb has stated that they only have to obey Ireland’s data laws. Vienna reported that efforts to protect their valuable social housing must be adjudicated by Irish courts against Irish law. Requests for tax records of short-term rental hosts operating in their countries by France, Germany, the Republic of Korea and Iceland, a seemingly normal occurrence, had to be heard by the Republic of Ireland’s High Court<sup>29</sup>, a process which took several years<sup>30</sup>.

European cities far away from Ireland make the point that while continental Europe courts share many similarities, and their lawyers are familiar with their processes, the Irish courts whose current legal system is modelled after English common law, are unfamiliar and challenging to navigate.

With short-term rentals, the country of origin makes little sense. The problems surrounding the effect on housing are often specific to the cities concerned, and so are the solutions. To leave European cities at the mercy of Irish law is a misunderstood form of lawmaking. And indeed, when the country-of-origin principle was made the basis of platform regulation in the European Union in June 2000, there was nothing that resembled the short-term rental platform economy we know today.

## **Lobbying for new shielding laws**

In the EU, legal challenges have increasingly used shielding laws and concepts in the European Commission's The Single Market, their e-Commerce Directive and Services Directive, in both local, regional, national courts, and the European Court of Justice.

At the same time platforms use these arguments they are also lobbying Members of the European Parliament (MEPs), and European Commissioners and Committees responsible for the interpretation, redesign of these laws.

This topic is discussed further in "In the EU, Platforms Enjoy a Safe Haven".



# If We Have data, Let's Look at Data. If All We Have are Opinions, Let's Go with Mine<sup>31</sup>

**Platforms defend their data to hide their true nature, their impact on housing, and block enforcement.**

**S**ome of the earliest battles by the cities against platforms were about data, and they are still waging.

Cutting to the chase, data has shown the following truths about short-term rentals:

- **The majority of listings in most cities are for entire homes, not spare rooms**  
In Paris<sup>32</sup>, 86% of Airbnb listings are for entire homes
- **Many “hosts” manage multiple listings**  
In Barcelona<sup>33</sup> 76% of entire homes and 50% of private rooms are in a portfolio of properties or rooms.
- **“Commercial” listings and revenue outnumber “home sharers”**  
In Barcelona approx 65% of listings and 89% of revenue can be attributed to “commercial” activity, not “home sharing”
- **The presence of Airbnb in a neighbourhood contributes to higher rents**  
In Barcelona, rents increase by 7% and property prices 19% in some neighbourhoods, after controlling for other factors like gentrification<sup>34</sup>
- **In cities with mandatory registration or permit systems, compliance rates are as low as 20%**  
In Paris, 60% of Airbnb listings do not have a registration number<sup>35</sup>, required since 2017<sup>36</sup>, and in Berlin 80% of Airbnb listings<sup>37</sup> do not have the registration number, a requirement since August 2018.

These facts are all vigorously disputed by the platforms, but no alternative data or compelling analysis is ever provided.

Considering what can be accomplished with data, it's no surprise that platforms have defended their data.

Based on interviews with a number of cities<sup>38</sup>, **access to detailed short-term rental data, down to the address level, is required by cities to create appropriate policies and enforce regulations**, and to-date, they list access to data as the major barrier to achieving their objectives of protecting housing from short-term rentals.

Apart from a few exceptions, platforms have never voluntarily shared detailed data with cities to help them enforce their housing laws, except where legally required by court issued subpoenas or data sharing regulations.

The major exception is data shared with tax authorities, either through regulations or agreements, however in most countries, the tax agencies are not able to share the data with other agencies, like housing ministries, or city governments.

**Apart from a few exceptions, platforms have never voluntarily shared detailed data with cities to help them enforce their housing laws, except where legally required.**

The one outlier is the City of Barcelona, which in August 2018, signed a Memorandum of Understanding with Airbnb, and earlier with other platforms, for the supply of monthly detailed platform data. Perhaps the high-profile nature of the fight against tourism in Barcelona and the publicity from protests against Airbnb, including the occupation of an Airbnb unit by community activists, was a reason that compromises were made in Barcelona.



Ironically, in the one city where detailed data is voluntarily provided, Barcelona reports that 60-70% of addresses are missing or incorrect, and they rely on other measures to enforce their regulations which include matching registration numbers, scraped data and complaints from neighbours.

Other cities, like Amsterdam, also had Memorandums of Understanding with platforms for the supply of data, however they were for aggregated data, and the city described them as essentially useless.

The platforms most frequently cite privacy concerns when refusing to provide data, however even well constructed privacy regulations like the EU's GDPR allow for the provision of private customer data where there is a regulatory need (GDPR Art. 6 Lawfulness of processing).

The most encouraging development for the supply of short-term rental platform data are laws that make it a regular legal obligation. The notable examples have been San Francisco (passed in 2016, survived lawsuit in 2017 and came into effect 2018), French cities (under the national ELAN law, signed by decree November 2018, came into effect late 2019), and New York City (passed in 2018, survived legal challenge in 2020, and due to come into effect January 2021).

Based on the lack of cooperation from platforms, cities are encouraged to create laws which require platforms to supply data, rather than demanding or negotiating with platforms. It is also important that the EU's new Digital Services Act includes the ability for cities to request data from platforms where there is a public interest, such as the removal of housing by short-term rentals.

Cities that have obtained direct access to platform data, either through legal processes like subpoenas (New York City), through Memorandums of Understanding (Barcelona), or through the strength of their national laws (Paris) have also made the following observations:

- Hosts create multiple accounts and multiple listings to avoid detection
- The addresses are unverified, and there can be a significant amount of misleading information. Paris reports approx 7% missing data in files provided by Airbnb; Barcelona reports that approximately 60-70% of listings have missing or incorrect addresses. It's extremely likely that the more scrutiny there is on the data, the more hosts are likely to enter bad data to avoid detection.

## KEY EXAMPLES OF DATA SHARING

2014	2015	2016	2018	2019	2019-2021
NYC: New York State Attorney General subpoenas Airbnb for data	NYC: Airbnb voluntarily provides data in a carefully orchestrated farce in an office in a New York City with data that could only be copied using analog methods	Amsterdam: Aggregate data provided under MoU	Barcelona: under MoU data sharing, 60-70% of addresses are missing or invalid	French ELAN laws require the disclosure of detailed data	NYC law passed for the supply of data, survived legal challenge and set to go into effect January 2021. City estimates that 85% of active listings are illegal.

# Data Sharing Partnership with the European Commission

In March 2020, the European Commission announced<sup>39</sup> that it had reached an agreement with collaborative economy platforms to publish key data on tourism accommodation.

The Commission said that the agreement, which was signed by Airbnb, Booking, Expedia Group and Tripadvisor will:

*“contribute to more complete statistics on tourist accommodation around Europe, allow public authorities to better understand the development of the collaborative economy and support evidence-based policies.”*

The non-legally binding agreement establishes an obligation for these platforms to share data on the number of guests staying and number of nights booked, aggregated at the level of municipalities.

While this announcement may be a step forward for tourism data, for policy decisions, cities require detailed data at least at the neighbourhood level, breakdowns on the different types of short-term rentals — hosted or unhosted, and occupancy data. This data is required to assess the impacts of short-term rentals on residential neighbourhoods and housing, and this can only be determined with detailed data.

Aggregated data will not help cities with enforcement against short-term rental use in social housing, registration compliance, use by property speculators instead of residents, nor the collection of taxes and duty.

**This data will only allow cities to know that the “fire hose” is turned on, not where it is pointing nor the damage that is being done.**

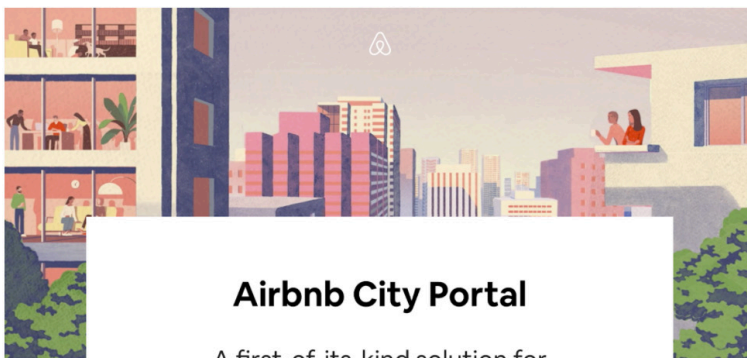
# The Airbnb City Portal

In September 2020, via a media blitz<sup>40</sup>, Airbnb announced<sup>41</sup> its “City Portal”<sup>42</sup> and said that it would allow for “Insights into local Airbnb activity” and provide “tools for enforcing regulations”.

Ideally timed only a few months before its long-awaited IPO, slated for December, it appeared that Airbnb was finally showing the world how it was cooperating with cities.

The reality was disappointing.

The Airbnb City Portal would only be available as a pilot for 15 cities, and many of its valuable features, would only be available if the local regulations allowed it.



## Airbnb City Portal

A first-of-its-kind solution for communities partnering with Airbnb



### Insights into local Airbnb activity

A dashboard with economic activity data and travel trends helps cities understand Airbnb's footprint in their communities.



### Tools for enforcing regulations

Industry-first compliance tools help cities develop and manage fair short-term rental policies.



### Direct communication and support

One-to-one support from Airbnb and centralized resources—such as our Neighborhood Support—enable more collaborative relationships.

Airbnb says that the Portal would provide:

*“Industry-first compliance tools to help governments develop and manage fair short-term rental policies and regulations.*

*Governments with applicable short-term rental laws will be able to utilize City Portal to view Airbnb listings within their registration systems.”*

It's not clear from this statement, whether Airbnb will offer these tools only to governments that Airbnb feels have “fair” short-term rental policies and regulations, but what is clear, is that they will only get these tools if they have regulations like data sharing.

Currently, only a handful of cities have regulations which demand data sharing, so effectively the tools would only be useful for tourism planning.

Ironically this tool could be an impetus for cities to pass strong regulations that include data sharing and mandatory registration, to unlock the benefits of the portal, but until then, this appears to be another way for Airbnb's Policy and Communications team to send sanitised data and market the positive benefits of “home sharing” directly to governments.

# To Negotiate or Regulate? Cities Say Regulate

## Platforms want cities to negotiate not regulate.

**C**ities and platforms in many cases have competing objectives. While tourism and economic development interests may be aligned, cities' concerns about sustainability, the impact on housing and residential livability, which may only be achieved with restrictions on short-term rentals, conflict with the platform's desire of unlimited market and revenue growth.

In cities where the scale of short-term rentals have already exceeded the limits on social resources and introducing regulations, or enforcement, would not just limit growth, but significantly reduce the current revenue for platforms.

**Platforms are quite simply, afraid of regulations, and will do anything to avoid them, including offering to negotiate.**

The first negotiation strategy from platforms is to offer something that they can afford to give up, and is valuable for cities. For many, that is the collection and payment of taxes.

Offering to pay taxes, is designed to provide an immediate benefit for cities, create a reliance on tax revenue, and forestall further discussions about a city's demands.

We talk about this strategy more in the section "Take this Big Bag of Money".

When cities were asked about negotiations with platforms<sup>43</sup>, some reported some success at asking platforms to collect taxes, **but almost all said they had no success, or their demands were compromised on their other objectives**, such as:

- removing illegal listings
- removing or refusing listings without mandatory registration numbers
- displaying registration numbers
- providing detailed data for enforcement
- limiting bookings that exceed yearly caps

In the very few cases where platforms did agree to these additional demands, they are often withdrawn by the platform when the city discusses tightening short-term rental restrictions.

A good example is Amsterdam where the city and Airbnb had negotiated and signed an agreement that covered 2017-2018 which included the obligation for Airbnb to implement within their platform the city's 60 night yearly cap. When the City Council announced in 2018 to reduce their 60 night yearly cap down to 30 nights, Airbnb refused to implement it. When the agreement expired at the end of 2018, it was not renewed.

Other issues that cities report with negotiations:

- Failure to agree on restrictions
- Take significant resources and time
- Delay the implementation of city policy objectives
- Agreements are not a legal obligation and can (and have) been broken
- Negotiations need to be replicated/repeated with every platform

**For this reason, every city surveyed and interviewed for this report recommended regulations over negotiations.**

The final word on negotiations can be summed up by Airbnb:

*if we enter an agreement with a government..., the terms of such agreement will likely be publicly available and could create a precedent that may put us in a weaker bargaining position in future disputes with other governments.*

Airbnb, 2020<sup>44</sup>

# Platforms: We Want to be Regulated

**The appearance of being regulated is better than being well regulated.**

In the last section, we discussed how platforms would prefer to negotiate with a city than face restrictive regulations. When that fails, platforms commonly propose to be regulated.

In the early days of the regulatory journey for cities, platforms aggressively resisted any type of regulation, with legal action, million dollar marketing campaigns and lobbying which included mobilising their host community via “community organisers”.

The resistance to regulations from platforms was mostly unsuccessful, and cities have started to prove that they can successfully pass fair, enforceable and effective regulations whether the platforms like it or not.

**Platforms have now decided that the appearance of being regulated is better than being well regulated.**

To appear to be regulated is better for the platform’s story. A well functioning market with efficient regulations and cooperating actors makes politicians and even economists happy.

For platforms like Airbnb, who are still proving that their business model, the threat of unknown or impending regulation is a threat to their current and future investors.

The early attempts at regulating short-term rentals included regulations or demands which were negotiated, which were simply ineffective, or difficult to enforce.

These include:

- Aggregate data disclosure
- Large yearly caps that are impossible to enforce
- Registration systems with no platform accountability

**With first-hand experience of what regulations don’t work, platforms suggest these same regulations, knowing that they won’t materially impact their business.**

A perfect example is the case in New York City, where Airbnb literally provided the written text of a law for state legislators to introduce<sup>45</sup>.

The legislation included a “mandatory” registration system, but no requirement for platforms to be accountable for ensuring that hosts register, or for removing listings without a registration number, without which, a registration system is now well known to have compliance levels as low as 10-20%.

The legislation proposes to change the housing laws which apply to New York City by allowing an entire apartment to be rented out full time by each host, a major change from the current laws which expressly prohibit unhosted short-term rentals.

Even more concerning in this example was the display of clear political interference and “pay to play” politics, the state senator who was a co-sponsor of the law in 2019 had received a donation from Airbnb of US\$500k for their election campaign<sup>46</sup>.

Fortunately, even though Airbnb’s legislation has been introduced in 2017, 2018 and 2019, it has never made it out of the housing committee. It doesn’t deter Airbnb from claiming they are working with the city and state on regulating the industry at every opportunity.

In addition to compromising a city’s policy objectives, bad regulations proposed by platforms delay and confuse the debate about the most effective way to regulate short-term rentals, and if passed, could lock a city into bad regulations for years.

# Take This Big Bag of Money

## Platforms selectively offer to collect taxes, but cooperate no further

**W**hile this report focuses on the impact on housing from short-term rentals and city and platform responses to regulate this activity, taxes play an indirect role in the discussion about housing.

Namely, where platforms offer to collect and pay taxes, they provide an immediate incentive to cities, who then may be reluctant to regulate or restrict short-term rental activities to protect housing if it means reducing their tax revenue.

Of course, **some cities have refused to accept taxes while there remains significant illegal short-term rental activity and impacts on their housing.**

New York City refuses to change their tax laws to allow platforms to collect tax while up to 85% of listings are breaking housing and other city laws.

Airbnb has tried to shame the city for not supporting the company's set of proposed, ineffective regulations, which did include tax collection, by donating US\$10m dollars to charity as representative of a "small part of the US\$100 million in annual tax revenue the state could receive if lawmakers were to approve the bill".<sup>47</sup>

**Collecting and paying taxes by platforms also displays what seems like cooperation to observers.** For example, Airbnb claims that it has "500 regulatory partnerships with local governments and organizations around the world"<sup>48</sup>. While it's difficult to audit statements like this, most research suggests that **almost all of these agreements are for tax collection, and almost none are for following housing laws.**

The offer by platforms to pay taxes, while it has optical advantages, locks cities into tax revenue, and forestalls other regulations, is not extended to every city.

This may be because the **additional scrutiny or disclosure required by tax agencies may be discouraging for hosts operating illegally or in a gray tax market.** Platforms, who we know, operate in many cities with substantial illegal content, are also wary of giving cities tax data that then may be used for enforcement purposes.

This is one of the reasons why, when platforms offer to collect taxes, they routinely refuse to disclose the personal details of the hosts they are collecting taxes for.

In a study of tax agreements made by Airbnb, it was found that "the agreements Airbnb is getting states and cities to sign do not require Airbnb to disclose all information relevant to its tax status, and they consciously shield with secrecy the identity and addresses of local lodging operators...They do not contain actual tax information. In short, they do not do what normal tax agreements do."<sup>49</sup>

Vienna is an example where almost all major platforms are following the city's (who is a city and a province under Austria's constitutional provisions) mandated tax collection and reporting law, but Airbnb has refused to conclude an agreement (based on the reporting law) with proper control mechanisms installed. Airbnb has also refused to remove listings in social housing, also banned by national law.

Housing activists argue that even if short-term rentals hosts and platforms do pay tax, it only addresses tax equity. Taxes may somewhat "level the playing field" with other hospitality providers, and help to pay for some of the social services they consume, but **taxes do not compensate a city for the destruction of housing, the displacement of families and the rising cost of housing,** all of which are common negative externalities caused by short-term rentals.



# How Cities Are Regulating Short-Term Rentals

**A**irbnb reports that approximately 70% of the top 200 cities they are active in have “some form of regulation”.<sup>50</sup> It’s fair to say that **most cities are choosing to regulate short-term rentals.**

A regulatory system needs to answer the following questions in a clear, transparent and efficient way:

1. Defining what is permitted vs restricted
2. Ensuring effective enforcement and managing compliance

## Defining what is permitted vs restricted

Defining what short-term rental activity is allowed varies incredibly city to city, town to town and neighbourhood to neighbourhood. Every city has different housing characteristics and needs, and different intersections with the tourism market.

\*Note, we don’t discuss here consumer protection, health and safety or quality of life regulations, which are important, but we limit our discussion to regulations designed to protect housing and residential communities.

The most common approaches taken by cities can include:

- Bans on hosted or unhosted short-term rentals
- Bans in particular neighbourhoods
- Use only by the legal primary resident of a home
- Occasional unhosted rentals when the primary resident is away (usually implemented by yearly caps ranging from 30 nights per year to 180)
- Limiting hosted rentals to a % of a home (either by number of guests, rooms or floor space)
- Limiting the activity to a % or number of apartments in a building or neighborhood
- Restrictions in social housing

Most of the above measures can be summarised as attempts for each city to restrict short-term rental activity to their idea of legitimate “Home Sharing” and not to allow destructive commercial activity.



## Ensuring effective enforcement and managing compliance

Without an effective enforcement and compliance strategy for short-term rental laws, most cities report very low compliance rates, commonly as low as 10-20%. This is because platforms provide a screen for illegal hosts to hide behind — hiding their identity, location and activity.

The most common approaches to enforcement and managing compliance include:

### For hosts:

- Mandatory registration or permits  
Evidence is usually supplied to ensure each applicant/property is consistent with allowed use
- Limits to the number of permits issued
- Host reporting requirements, either after each booking, or regularly

### For platforms:

- Only allowed to display or accept transactions for permitted listings
- Process for removing unpermitted listings
- Data disclosure  
usually including name, address and if used, a registration number, and commonly booking summaries (number of guests, number of nights, fees)

## EXAMPLES OF CITY REGULATIONS

City	Permit or Registration System	Platform Data Disclosure	Platform Accountability	Unhosted Limits
Amsterdam	Yes	Yes from Jan 2021	Yes from Jan 2021	30 days/yr Ban in some neighbourhoods No social housing
Berlin	Yes	No	No	Primary resident or 90 days/yr for verified 2nd home owner
Barcelona	Yes	Yes	Yes	Number of permits No social housing
New York City	No	Yes from Jan 2021	No	Existing laws prohibit No social housing
Prague	No	Yes	No	
Paris	Yes	Yes	Yes	120 days/yr Primary resident No social housing
San Francisco	Yes	Yes	Yes	90 days/ yr Primary resident No social housing
Vienna	No	Yes, For taxes, Airbnb refuses to comply	No	100% agreement from neighbours No more than 20% of building No social housing

# Recommended Regulatory Approaches

**T**hree regulatory features are recommended based on the experience of cities who have adopted these measures, or are moving in their direction.

## Mandatory Registration System

A mandatory registration system involves requiring hosts to apply for a permit, license or registration, usually from the city. The city determines if the host and property meets the permitted use and the issued number must be displayed with all advertisements.

A mandatory registration system alone does not enforce itself. Early adopters of mandatory registration systems (Barcelona; San Francisco and Portland, both in the United States) discovered that hosts ignored the registration requirement and platforms continued to advertise listings without permits. It was not uncommon to see compliance rates as low as 20%. Famously, even Brian Chesky, the CEO of Airbnb listed his apartment on Airbnb, without a permit, publicly breaking the city's law<sup>51</sup>.

## Platform Accountability

A complementary policy to a mandatory registration system is platform accountability.

Under platform accountability, a platform can only accept advertisements or transactions from hosts that have registered their short-term rental property.

The permit number must be displayed in advertisements, and most laws require that platforms must make a field available in their systems for hosts to enter a permit number when they create a listing and for it to be prominently displayed.

Cities such as Amsterdam, Barcelona, Paris, San Francisco; with platform accountability regulations, have processes in place for notifying platforms that a short-term rental listing doesn't have a permit number, it is invalid, or it has been denied or revoked. Platforms must respond, usually within a set period of time, by removing the illegal listing.

Without laws that require platform accountability, platforms usually just ignore requests to remove illegal listings.

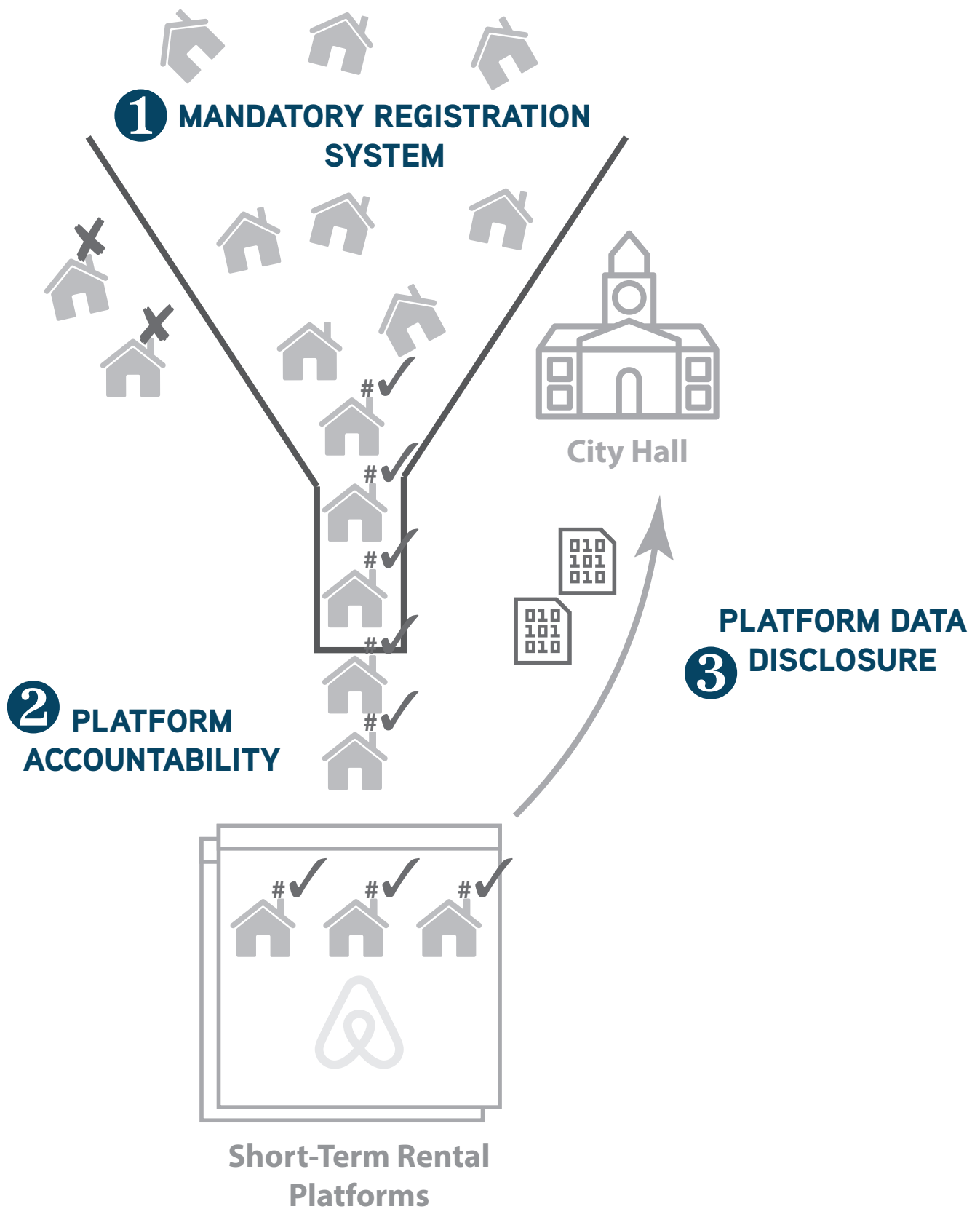
**What is elegant about a mandatory registration system with platform accountability is that platforms do not have to police their platforms to ensure that a city's sometimes complex housing laws have been followed.**

## Platform Data Disclosure

For cities adopting mandatory registration systems, platforms must be monitored to ensure hosts are going through the registration, and that platforms are not listing unregistered listings.

Cities such as Amsterdam, Paris and San Francisco have, via their local, regional or national laws, adopted platform data disclosure regulations that legally require platforms to send regularly, mostly monthly, files containing all of the active listings on their platform.

The information most often required is the registration number, a platform identifier or URL, the name or other details of the host and property address. For some cities, details about bookings during the period are also required.



# City Case Studies

To understand the impact of short-term rentals on cities, their progressively restrictive regulatory measures, amidst a failure to work with platforms, it is necessary to examine each city's experience and timeline in detail.

The following section includes case studies from a number of high-profile and representative cities, primarily in Europe, and key cities in the United States, including the birthplace of Airbnb, San Francisco, which has had the greatest success in regulating short-term rentals including strict rules for platforms.

The Authors would like to thank the participation of the cities of Amsterdam, Berlin, Barcelona, New York City, Paris, Prague, San Francisco and Vienna.



# Amsterdam

## KEY REGULATORY FEATURES

- Mandatory permits, which will be boosted by national registration laws, including requirements for platforms to follow them (in force January 1, 2021)
- Restriction to 30 nights/year for entire homes
- Ban in social housing
- Ban in 3 central neighbourhoods

## PLATFORM / MARKET FAILURES

- Airbnb withdrew tools to enforce yearly caps in retaliation after the city council reduced the cap from 60 to 30 days per year
- Data provided to city by platforms was aggregated and essentially useless
- Still extensive illegal use, with €6m in fines issued in 2019

**A**msterdam has been on a successively more restrictive regulatory journey against short-term rentals since 2014 when they introduced regulations that banned the activity in social housing (about 45% of Amsterdam's housing stock); limited it to occasional use by the primary resident - no more than 60 nights per year; and restrictions on renting rooms, for example, no more than 4 guests at a time.

On January 1, 2019, the city further strengthened regulations and reduced the 60 nights per year limit down to 30 nights a year.

Regulations were tightened again, when on July 1, 2020, it became compulsory to obtain a permit to short-term rent a property, and the activity in three central districts was prohibited entirely.

The ban in the three districts, Burgwallen-Oude Zijde; Burgwallen-Nieuwe Zijde and Canal Belt-South, were instituted after research had shown that their residents had been under serious pressure from the extraordinary number of tourists staying in their area. 75% of surveyed residents were in favour of bans, but felt that they didn't go far enough.

The city of Amsterdam signed one of the world's first Memorandum of Understandings (MOU) with Airbnb in December 2014 which covered the years 2015-2016, and practically concerned the collection of taxes.

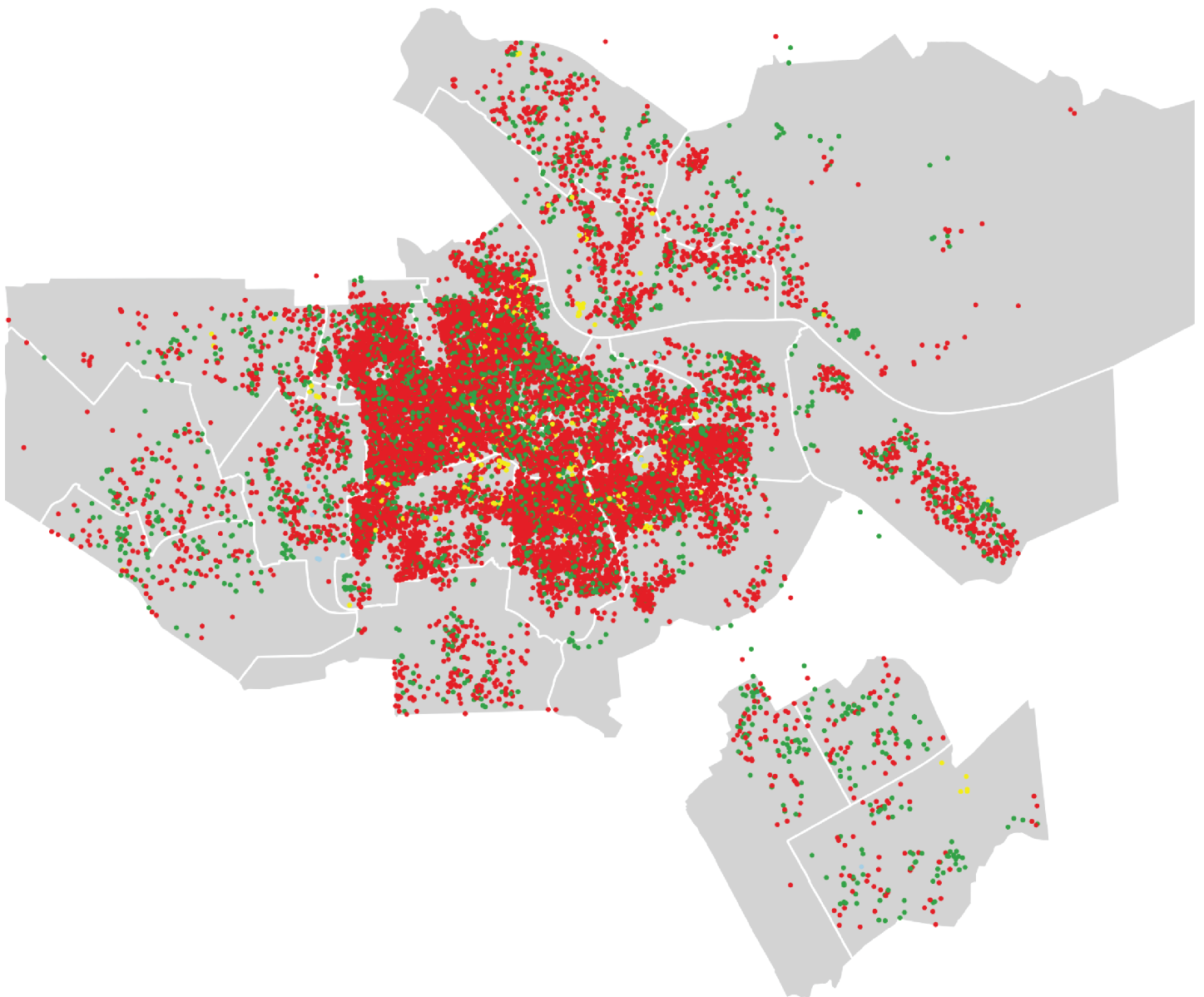
Another MOU was signed with Airbnb in December 2016<sup>52</sup> covering 2017-2018 and provided a voluntary agreement by Airbnb to enforce automated limits to ensure entire home listings are not shared for more than 60 nights; and to share aggregated information on the impacts of home sharing.

The aggregated data, provided 6-monthly, was not useful to the city, as they required more detailed data for their continued policy analysis and enforcement.

After Amsterdam's City Council decided to reduce their 60 night yearly cap down to 30 nights, Airbnb retaliated and refused to implement the new 30 night yearly cap in their platform, something they had done for the 60 night yearly cap.

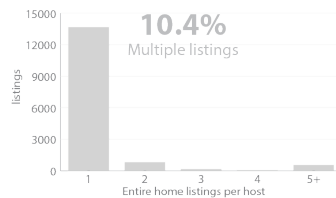
The city has not pursued any additional agreements with platforms after their expiration and considers that regulations and enforcement are more effective and appropriate than non-legally binding agreements not backed up by laws.

Even despite Amsterdam's current set of restrictive regulations, they have only been able to stop the growth. Illegal short-term rental activity persists, with the city issuing €6 million of fines in 2019. The impacts of Short-Term Rentals, particularly the removal of housing stock and the erosion of a peaceful living environment in residential neighbourhoods, are still acknowledged by the city,

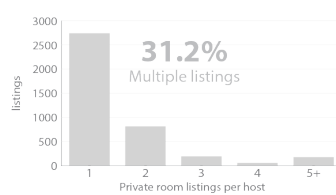


## Multiple listings

### Entire homes

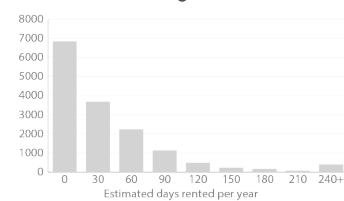


### Private rooms

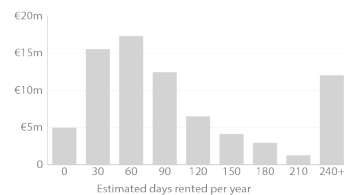


## Occupancy

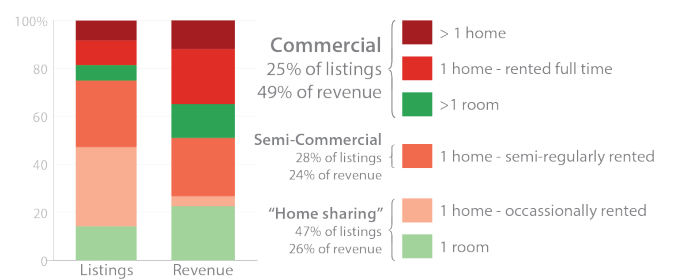
### Entire home listings



### Entire home revenue



## “Home Sharing” vs Commercial



The city estimates that about 1 in 15 apartments are listed on Airbnb and in some neighborhoods it is as much as 1 in 9. Surveys of residents found that in 16 of 99 neighborhoods, short-term rentals are the most mentioned nuisance factor.

Some indirect impacts on residential neighborhoods with high concentrations of short-term rentals, include the reconfiguration of the commercial business, with many more offering services, some exclusively, that are applicable to tourists.

The city says that it has been successful at regulating the activity in social housing, mainly because much of Amsterdam's social housing was built away from the older picturesque city centre, in locations that are not as desirable to tourists. The city also said that neighbours of social housing are much more likely to report illegal hotels.

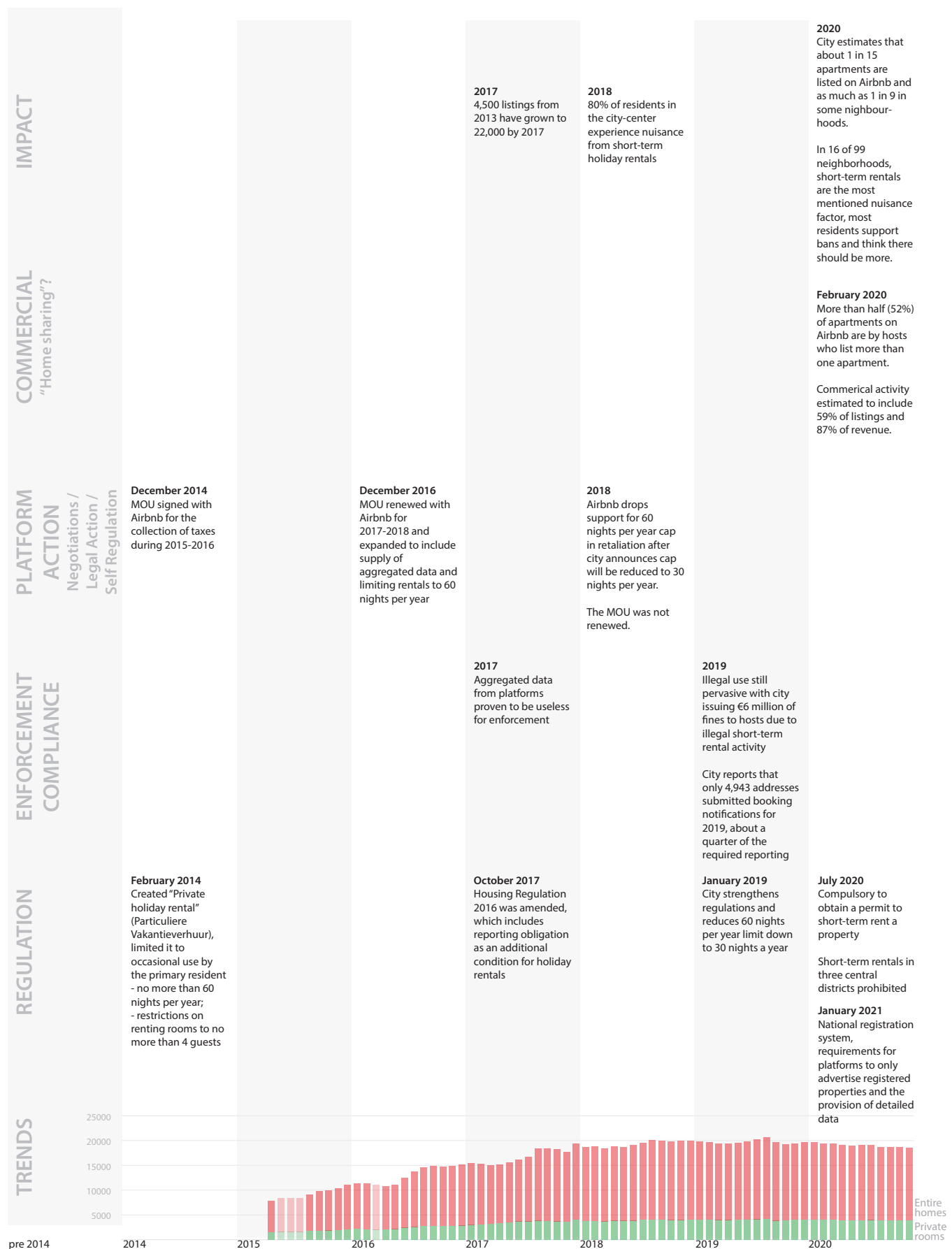
It has been more difficult to enforce regulations in the city centre, with older housing which is privately owned. The private housing market is unregulated, and much more susceptible to disruption from short-term rentals, and the increased cost of housing due to the loss of supply.

The city is looking forward to new regulations, which include a national registration system, which goes into effect on January 1, 2021. The legislation includes requirements for platforms to only advertise registered properties and for the provision of detailed data, essential for the city and never delivered through negotiations with the platforms.

It remains to be seen whether Amsterdam's new requirements will be respected by Airbnb, and whether Airbnb will take the issue to court with EU law in hand. It would not be the first time that the e-Commerce Directive could be brought in to argue that a national law is in breach of EU law.



# Amsterdam – timeline



# Barcelona

## KEY REGULATORY FEATURES

- Mandatory Registration
- Fixed number of Licenses, by “Zone”
- Mandatory display of license numbers (by hosts and platforms)

## PLATFORM / MARKET FAILURES

- Until 2017, platforms refused to remove listings without a registration number
- Platforms now remove listings after being notified by the city, but platforms allow them to relist
- Data provided by platforms have 60-70% of addresses missing or not accurate
- Cost of long-term rentals increase by 7% and property prices up to 19% due to Airbnb
- Majority of short-term rental activity is commercial not “home sharing”

Overtourism became a visible issue in Barcelona in recent history when demonstrations were held in 2012 and again in the summer of 2014 with complaints that tourism was disturbing residents’ daily life and was also increasing housing costs.

By this time, a regional Catalan law had been in place since 2012, allowing short-term rentals for less than 31 days at a time, as long as a registration number was displayed. At the same time, hosted short-term rentals, in private rooms, were illegal.

Both unhosted rooms and entire apartments without authorisation proliferated sites like Airbnb, and the platform was fined €30,000 in 2014 and a massive €600,000 in 2016 for accepting listings without the required registration number.

Researchers also observed property portfolios being built on short-term rental platforms finding that 55% of hosts offered more than one listing on the Airbnb website, and the average host had 5.2 listings<sup>53</sup>.

In 2015, with the election of activist mayor, Ada Colau, who ran on a platform of regulating tourism and addressing the housing crisis, a massive enforcement effort, the “Shock Plan” was created in 2016 to address

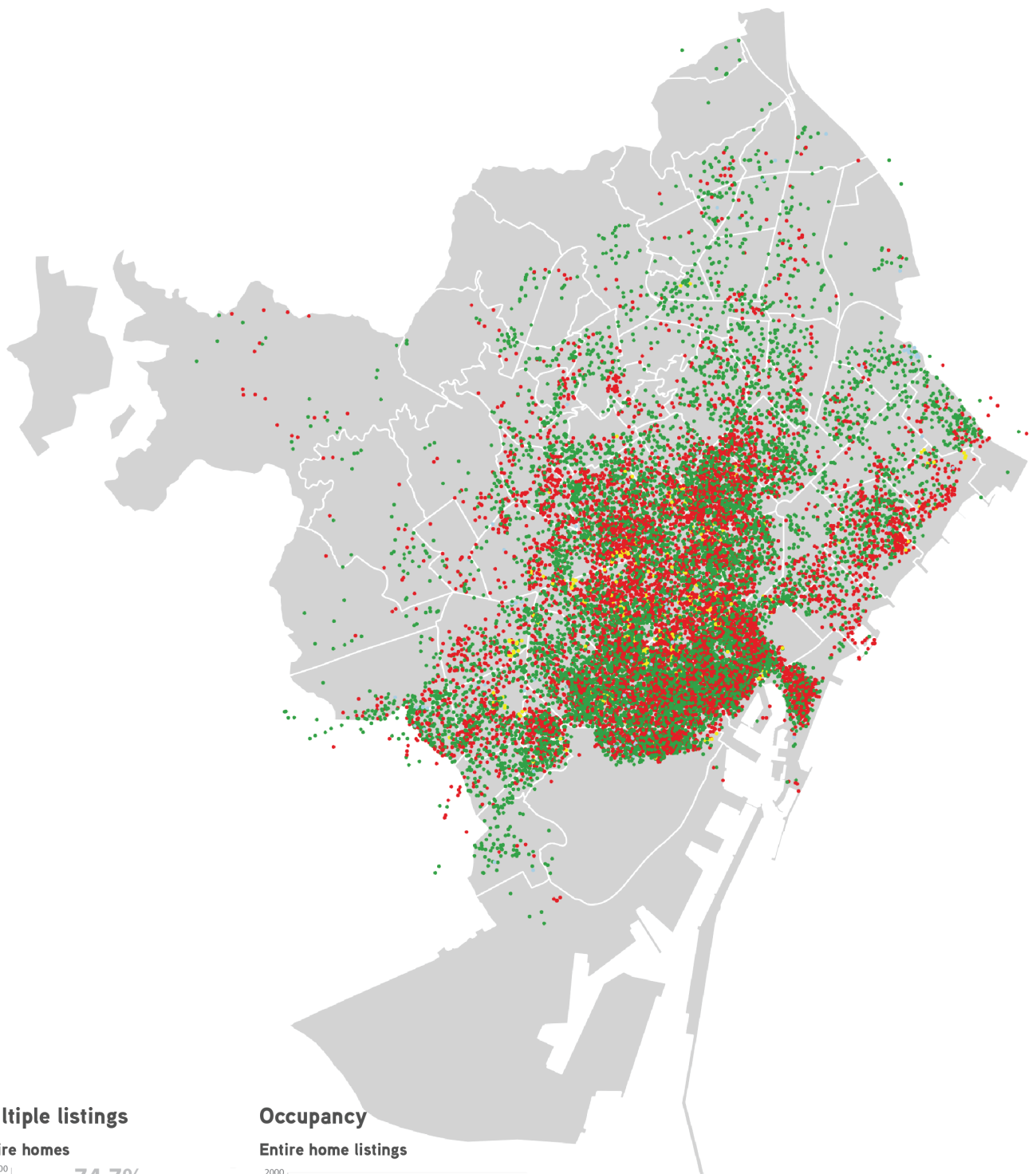
illegal short-term activity. Under the plan, the city issued cease orders to 615 illegal apartments and opened a total of 1,290 investigations into illegal activity. Data from the city suggested that about 40% of the supply of homes for tourist use was not registered.

In 2017, PEAUT (Plan Especial Urbanístico de Alojamiento Turístico) was created and signed into law, which froze the number of permits for homes for touristic use, at 9,600, and monitored their distribution across the city.

At the same time, as a result of the high publicity of the enforcement efforts against illegal short-term activity, including fining the platforms directly, the city was able to negotiate and sign agreements in 2017 with Booking.com, HomeAway, Niumba, Rentalia and TripAdvisor and later with Airbnb to establish procedures to remove illegal listings from those platforms. These agreements were consistent with the regional laws.

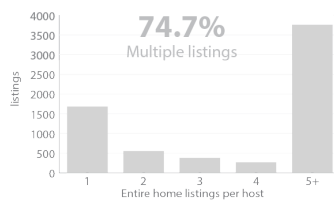
Another agreement was signed with Airbnb in August 2018, the first of its kind in the world, for the provision of detailed data of listings on their platform.

This agreement for the supply of detailed data from a short-term rental platform, has never been repeated,

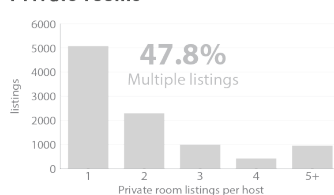


## Multiple listings

### Entire homes

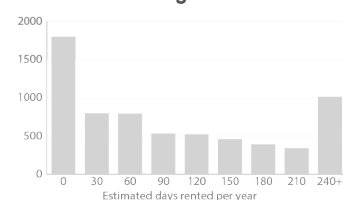


### Private rooms

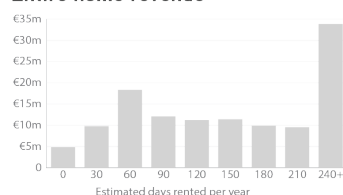


## Occupancy

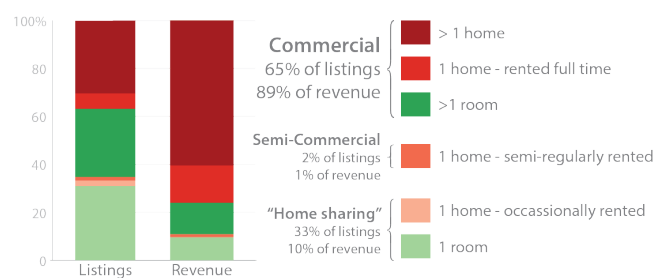
### Entire home listings



### Entire home revenue



## "Home Sharing" vs Commercial



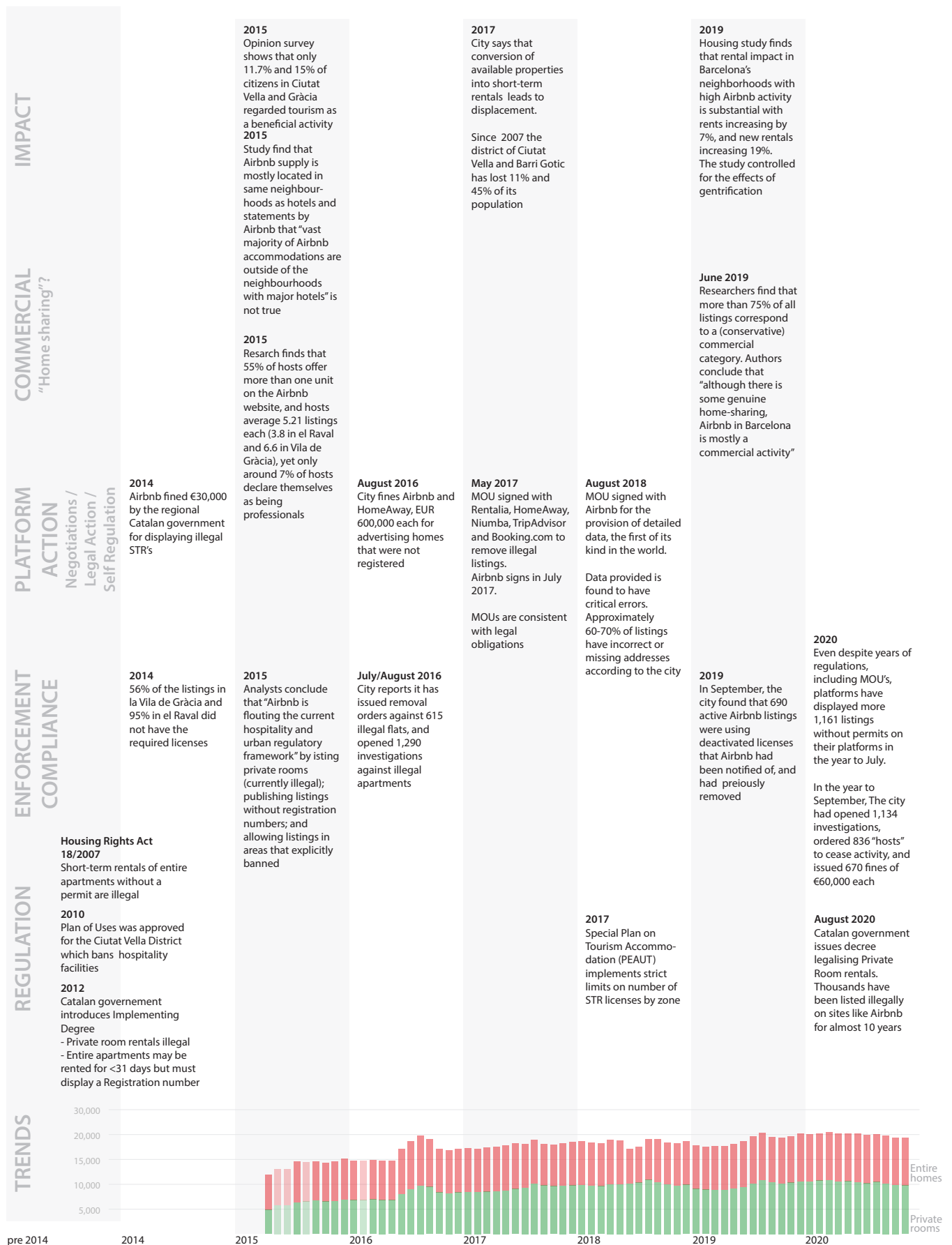
except where platforms were legally required to provide data, for example in San Francisco or Paris.

In any case, the data has proven almost worthless to the city, they report that 60-70% of listings in the data provided by Airbnb has addresses that are missing, or incorrect, making it difficult to cross-check illegal listings with their registration system.

The lack of quality of address data could be a result of the adaptive behaviour of hosts, who knowing their data would be disclosed to the city, alter it, or it could be a testimony to the lack of quality of Airbnb's verification processes and their "trust" systems.

A new PEAUT law is now being considered which could include the expiration of authorisations to rent entire apartments (holiday tourist units), for example after 5 years. Currently an authorization does not expire, and is only lost if an apartment ceases to be used for touristic purposes. This new measure could force tourist accommodation back to residential use. Another measure being considered includes introducing limits on the number of rooms offered in "hosted" rooms, similar to the limits on entire apartments. And because of the unique circumstances of COVID-19 which has dramatically impacted tourism demand, the city is exploring ways to incentivise hotels and short-term rental operators to convert their properties back to residential use.

# Barcelona – timeline



## KEY REGULATORY FEATURES

- For unhosted rentals, primary residents are automatically given authorisation, second home owners apply for authorisation for no more than 90 nights per year
- Mandatory display of authorisation number
- For hosted rentals, no more than 50% of floor space

## PLATFORM / MARKET FAILURES

- In 2013, around 12,000 apartments were taken off the long-term rental market by short-term rentals
- In 2016 in some neighbourhoods, Airbnb make up 7% of housing, or 1 in 15 apartments
- During the apartment ban from May 2016 to May 2018, platforms refused to remove thousands of unauthorized apartment listings
- After the ban with more liberal authorisations 80% of Berlin Airbnb listings are still illegal
- Platforms refuse to give data, citing Irish data laws using the EU's country of origin protections

**T**he conditions for establishing a ban on entire home short-term rentals in Berlin began in 2013, with the passing of a law which **provides the option to impose a ban** on the conversion of apartments from long-term rental use in areas in Berlin where a sufficient supply of housing is at risk.

In March 2014, the city took the next step by declaring that the **supply of housing was at risk across the entire city of Berlin** and, therefore, a ban on the conversion of apartments took effect in May 2014.

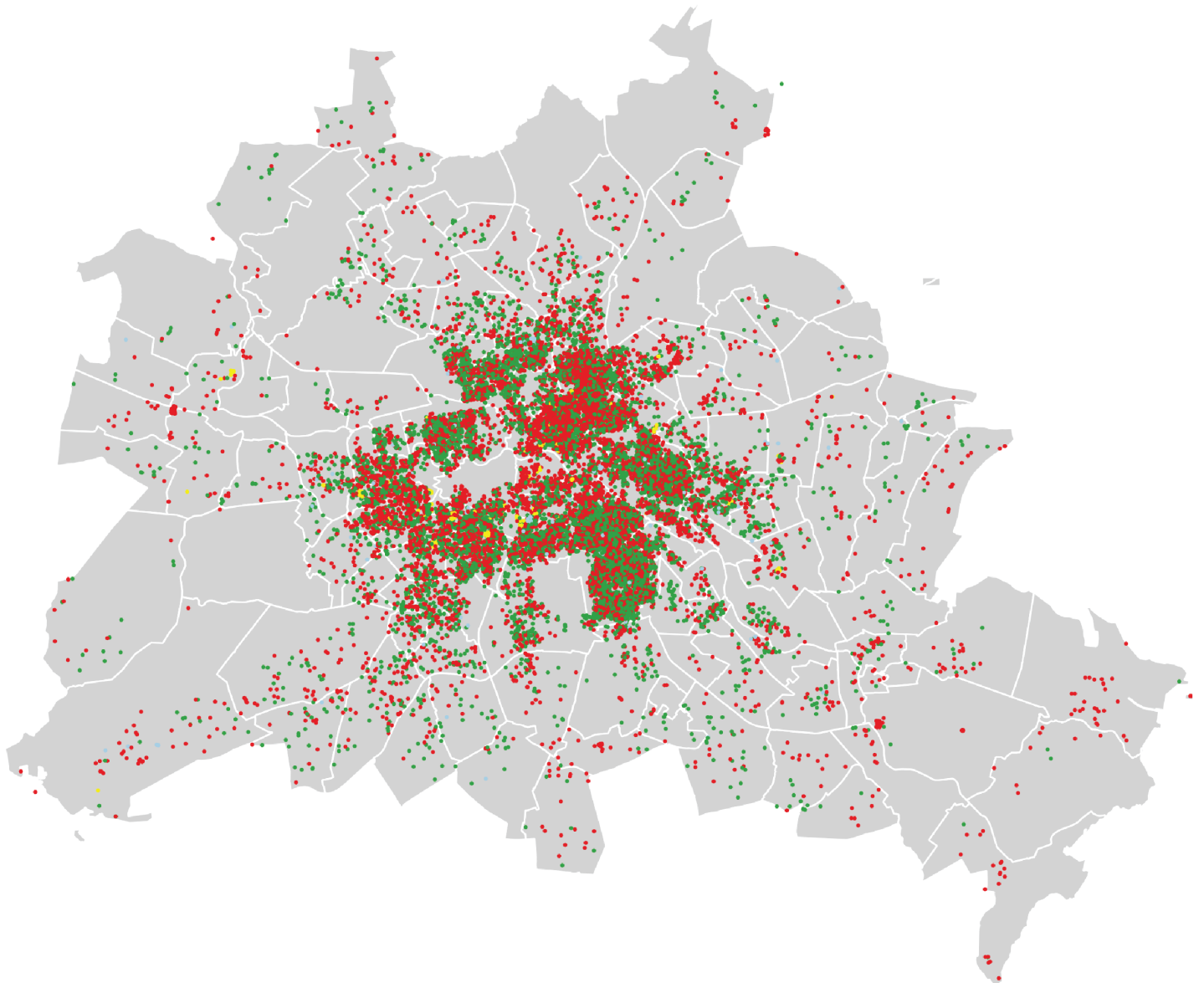
There was a two-year transition period, after which short-term renting would only be allowed by authorisation, from the district the apartment was located in, which was rarely given.

When the transition period ended in May 2016, it was expected that unauthorized apartments would be removed from short-term rental platforms. From a high of 10,690 entire apartments rented on Airbnb in January 2016, the numbers dropped to 7,054 in May 2016, in advance of the ban, a significant drop of more than

3,600 apartments or 34%, however this still meant that **thousands of unauthorized apartments were still appearing on, and being rented from short-term rental platforms.**

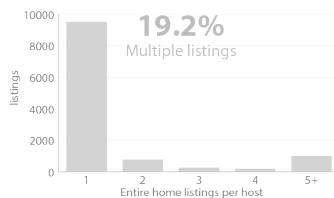
The city confirmed that there had been some successes from the ban, by putting 2,500 former vacation apartments back into the regular rental market<sup>54</sup>, however immediately after the ban, numbers of apartment listings started to grow again and just 12 months later, in June 2017, had reached a new-time high of 10,697 apartment listings, higher than before the ban. It was obvious there were severe compliance issues even with 60 public officials policing Berlin's ban.

The city did not just have compliance issues: legal challenges by apartment residents (ruling in September 2017); and separately, 2nd-home owners who lived elsewhere but stayed in Berlin occasionally (ruling in August 2016), had successfully challenged the assertion that their short-term renting while they were away from their apartments, actually removed homes from Berlin's housing market.

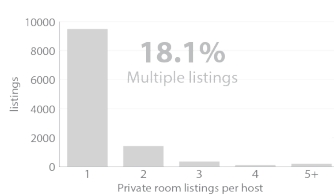


## Multiple listings

### Entire homes

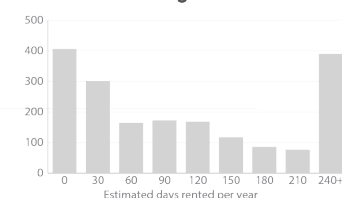


### Private rooms

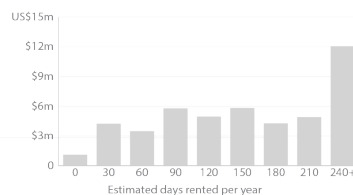


## Occupancy

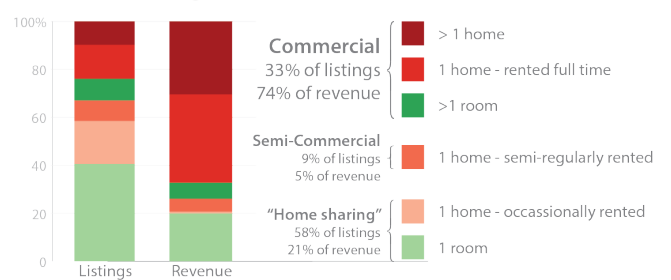
### Entire home listings



### Entire home revenue



## "Home Sharing" vs Commercial





In March 2018, it was announced that the ban on short-term renting apartments was lifted, by a law which went into effect on May 1, 2018. While large parts of the ban were still in effect, the authorisation system allowed primary residents to automatically apply for a permit; and second home owners with properties in Berlin, were allowed to apply for authorisation which granted them the right to short-term rent their apartments for no more than 90 nights per year. Also, to improve compliance, the law made the display of the authorisation number compulsory.

It's not clear whether this new law was a compromise for short-term renters; an attempt to make the law consistent with the successful legal challengers; or an attempt to further tighten restrictions by introducing a cap on rentals which were obviously taking place in reality.

City officials report that since 2018 only 5.300 registration numbers have been given out. In February 2020 (pre COVID), just on Airbnb, there were approximately 12,837 entire home rentals available, exceeding the number of licenses by 242%. Public broadcaster RBB reported<sup>55</sup> that by analysing Airbnb listings and how many had registrations that 80% of Berlin Airbnb listings are still illegal.

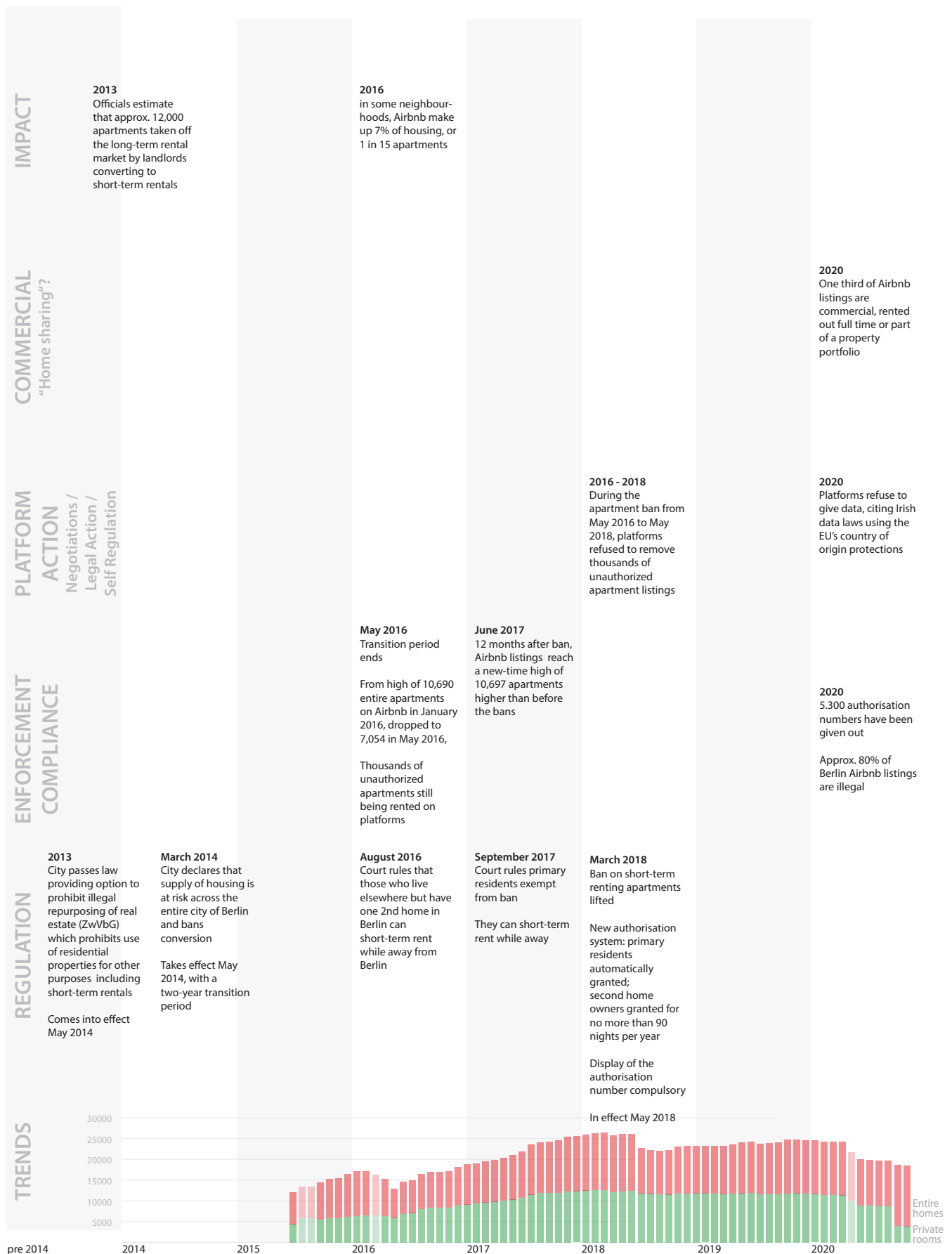
In addition, there is no way to verify the 90 day cap for second home owners. Platforms are not asked to enforce the limit nor provide any data to the city, and hosts are not asked to provide any evidence they are not exceeding the cap.

The city has the right to ask the platforms about the data of the hosts (name, address), however Airbnb, as an example, refuses to deliver this data, claiming that they only have to obey Ireland's data law, referring to the EU's country of origin concept.

The city is planning on strengthening its current set of laws with the obligation for platforms to remove listings without a registration number, and to be able to fine platforms if they refuse.



# Berlin – timeline



# New York City

## KEY REGULATORY FEATURES

- Existing laws prohibit unhosted short-term rentals
- “Home sharing” limited to no more than 2 guests
- From Jan 2021 platforms required to provide data on active rentals

## PLATFORM / MARKET FAILURES

- Platforms have ignored unhosted ban
- 15,000 units of housing lost
- Self-regulation via data releases and limiting commercial activity have failed
- Approximately 85% of active short-term rental listings presumed illegal

**T**he fight between New York City and short-term rental platforms can best be described as challenging.

The city has not compromised on its laws which protect residential housing during a statutory affordable housing crisis, and continue to prohibit “unhosted” short-term rentals which remove an entire apartment from its precious rental market. More than two-thirds of New Yorkers are renters.

The current laws are more permissive for private room rentals, with the primary resident permitted to “host” no more than two paying guests, as long as the apartment is not subject to the city’s rent-regulation laws.

Short-term rental platforms, and in particular Airbnb, want to redefine “home-sharing” to include the lucrative renting of entire apartments, and have refused to remove apartments from their platform that clearly violate New York City’s laws.

**Various housing researchers have concluded that a successively higher number of apartments have been converted illegally to hotel accommodation by short-term rentals, with 8,058 in 2016<sup>56</sup>, and 13,500 units of housing lost in 2018<sup>57</sup>.**

Beyond those displaced directly or indirectly by the converted apartments, researchers have estimated that **the cost to every New York renter has been US\$616m in 2016 alone<sup>58</sup>, or \$470 for each renter, estimated in 2018<sup>59</sup>.**

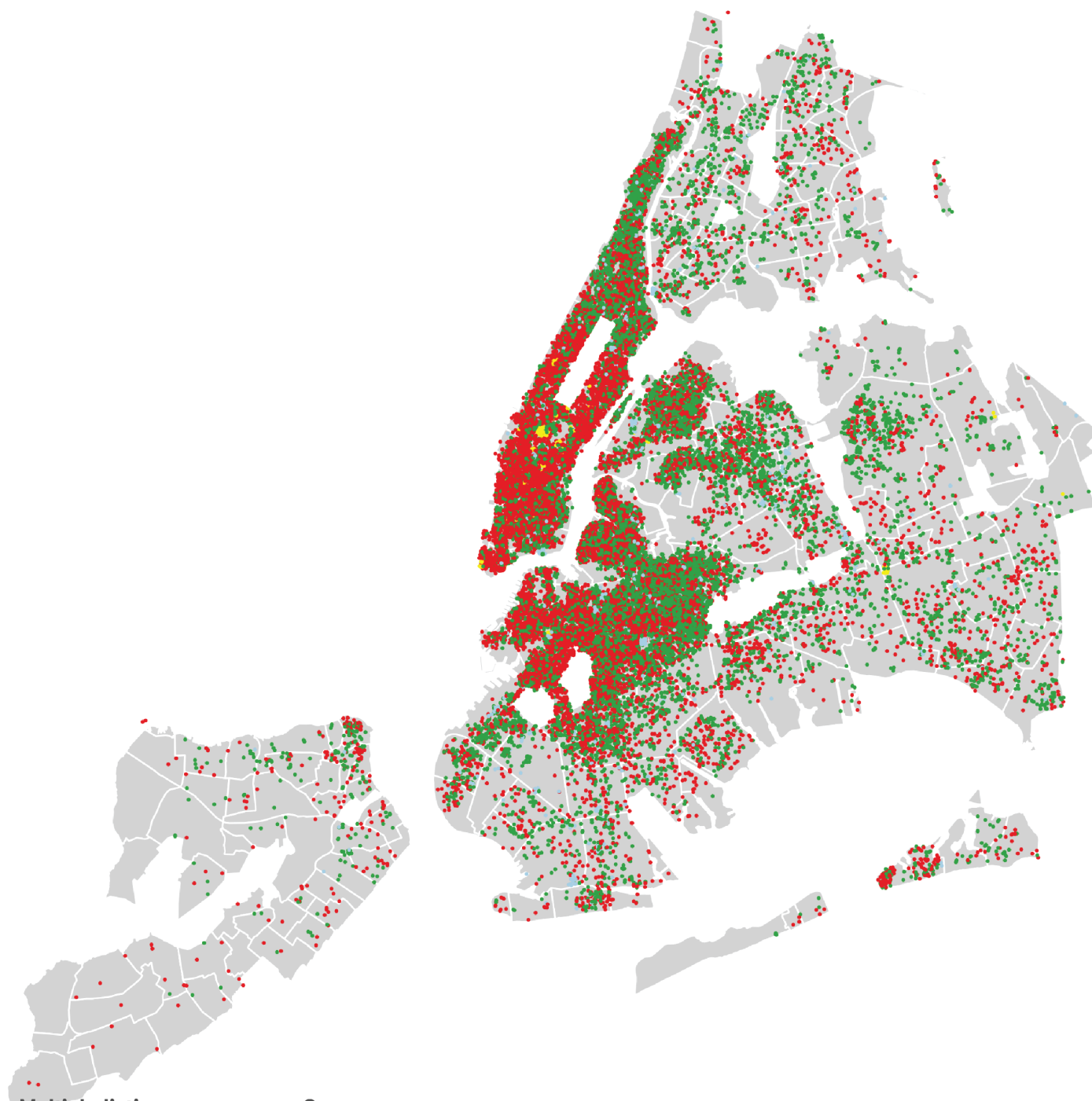
By the city’s own estimate, approximately 15,000 units of housing have been taken off the market by the cumulative effect of individual hosts renting entire apartments or rooms; and the creation of large syndicates with multiple properties.

The city estimates, based on available data sources prior to the pandemic, that the percentage of active listings that are illegal likely exceeds 85%.

Instead of following the city’s regulations, platforms have fought them in the courts, like the state’s October 2016 Anti-Advertising law, which Airbnb threatened to sue while it was being considered, and then following through with a federal district court filing hours after it was signed into law<sup>60</sup>.

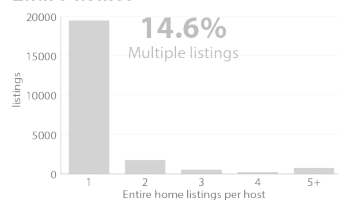
**Efforts by the platforms to appear to self-regulate have been cynical, or back-fired**, like the public data disclosure by Airbnb of December 2015, in an isolated room in Manhattan, where escorted guests were allowed only to “view” the data or copy it manually by making notes. The data was revealed<sup>61</sup> to have been manipulated by Airbnb prior to the release, when they had quietly removed 1,500 commercial listings from their platform to attempt to claim that commercial use was a diminishing trend. Airbnb has since admitted that they have “seen an increase in the number of, and revenue from, professional hosts on our platform.”<sup>62</sup>

The policy that Airbnb created after this data fiasco, the “one host, one home” policy, went against New York City’s unhosted law, and in Federal Court in 2020,

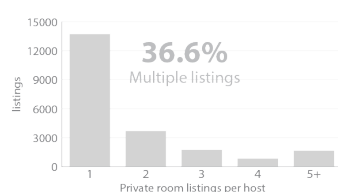


## Multiple listings

### Entire homes

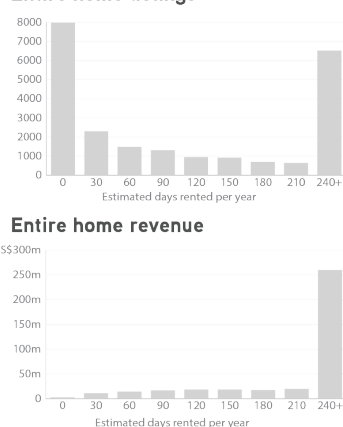


### Private rooms

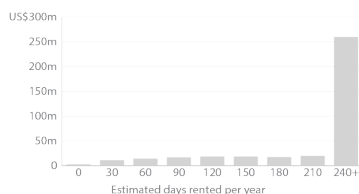


## Occupancy

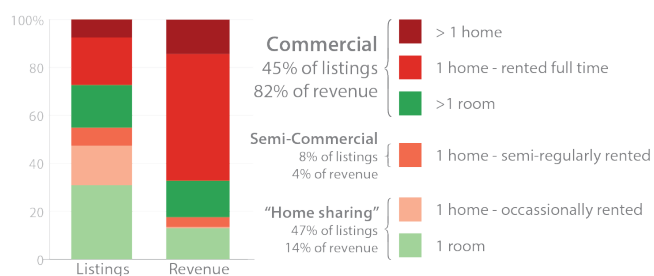
### Entire home listings



### Entire home revenue



## "Home Sharing" vs Commercial



were forced to withdraw this policy from evidence as an example of self-regulation after it became obvious that they would be forced to disclose how easy it was for commercial operators to bypass, as showcased by the US\$21m lawsuit filed by city against a group who used 130 apartments across 35 buildings and 100 Airbnb accounts to run a massive illegal hotel network.

Recent improvements to the city's short-term rental laws were made in July 2018, when New York City Council unanimously passed a law which requires platforms to provide data on active short-term rental transactions on their platforms. The city said that the law "provides the city with the critical data it needs to preserve our housing stock".

Airbnb and later HomeAway sued the city in August 2018 and the presiding federal judge issued an injunction stopping the law in January 2019. In June 2020, 22 months after the platforms' lawsuit, a settlement agreement was announced with the city, which effectively allowed the law, with some slight modifications, to go ahead.

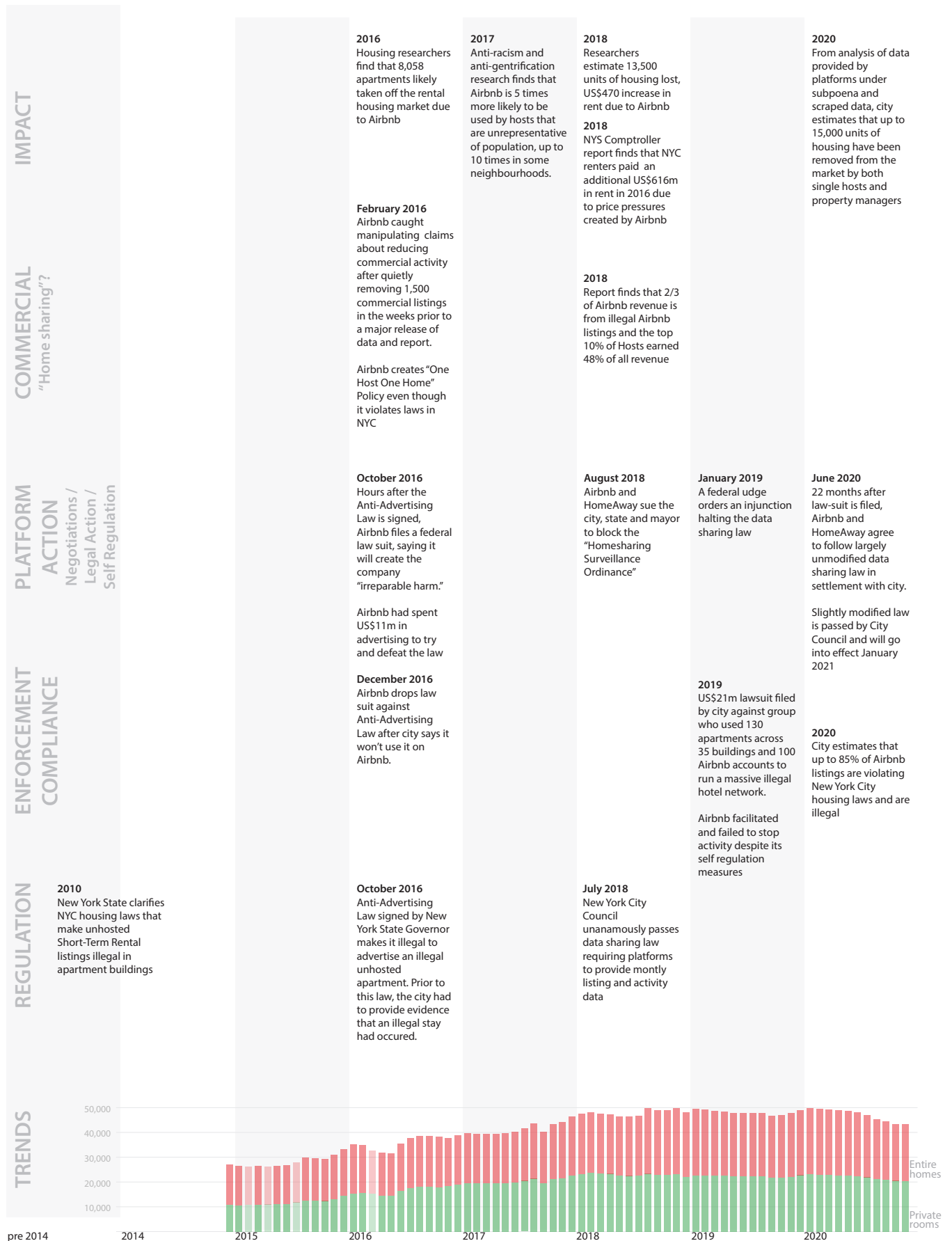
The data sharing law goes into effect January 2021, and the city said it will request January-March data to be delivered in May 2021. With the high proportion of presumed illegal listings, even Airbnb themselves have suggested<sup>63</sup> that many hosts could decide to stop hosting in New York City:

***"when new regulations requiring us to share host data with the city are implemented, our revenue from listings there may be substantially reduced due to the departure from our platform of hosts who do not wish to share their data with the city"***

Other possibilities are that hosts will simply enter fake addresses or fake identities into the platforms, making the data useless. This is the experience for Barcelona where 60-70% of the data they receive from platforms have missing or incorrect addresses.

Housing activists in New York City are currently advocating for a registration system which requires that hosts seek permission before using residential properties for short-term tourist rentals, which would allow the city to verify that all of their current laws are being followed, and that the identity of hosts and locations of properties is verified, a simple measure which the platforms have been unable or unwilling to do.

# New York City – timeline



## KEY REGULATORY FEATURES

- 120 night/year limit for primary residence
- Prohibited to rent secondary or non-primary residence
- Mandatory registration system
- Platforms liable for listing unregistered rentals
- Data disclosure down to the address
- Platforms must freeze listings when they have been booked 120 days in the year

## PLATFORM / MARKET FAILURES

- Agreement by Airbnb to limit listings in their platform to 120 nights per year
  - Only in the central city, but law is universal
  - Trivial for hosts to opt-out
  - Easy for hosts to create additional listings for the same property
- 15,000 to 25,000 residential housing units lost to short-term rentals
- More than 60% of the listings on Airbnb do not have the mandatory registration number

**P**rior to the arrival of short-term rental platforms in Paris, the laws of the city required a landlord to apply for a “change of use” (changement d’usage) and compensate the city if they convert an apartment into commercial use, defined as commercial activity for more than 120 days/year.

**In 2014, the French ALUR Law defined short-term rentals as commercial use which require a “change of use” if conducted for more than 120 days per year.**

A key court case in this period involved two full-time Airbnb hosts in Paris who were sentenced on appeal in **May 2017** by the French justice system for illegal change of use without authorisation.

On appeal, the French Court of Cassation referred the matter to the European Court of Justice (ECJ) on 15th of November, 2018 to rule on the compatibility of the national legislation to the Services Directive. A stay of proceedings was issued and no other fines of hosts had been possible.

On 22nd of September, 2020, more than four years after the initial case, the ECJ ruled that the French authorisation system was “adequate” for preserving and maintaining affordable housing. It also ruled that combating the long-term rental housing shortage” was

a valid reason in the “public interest”, key requirements for local regulations according to the Services Directive.

A hearing of the national Court (Court of Cassation) is scheduled for mid-January 2021 to determine whether Paris’ implementation of the “change of use” is proportionate, in particular the compensation method.

350 cases of illegal short-term rental use have been on hold since the beginning of 2019. They will not be released before February 2021 and the decision of the Court of Cassation.

While the outcome is positive for the city, it is a classic example of how difficult and time consuming it is to navigate European Laws.

Building on the ALUR Law, passed in 2014, the **October 2016 Law for a Digital Republic**, which came into effect on **1st of December 2017**, requires platforms to display registration numbers, block listings that are booked more than 120 nights a year, and provide the yearly number of booked nights to city.

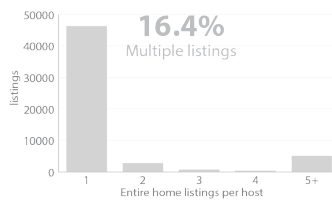
In July 2017, the Paris City Council passed a law which required mandatory permits for all short-term rental property, starting in October 2017 and becoming mandatory on the 1st of December 2017.



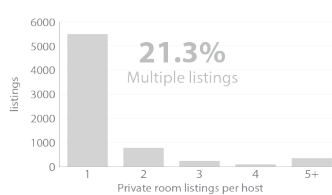


## Multiple listings

### Entire homes

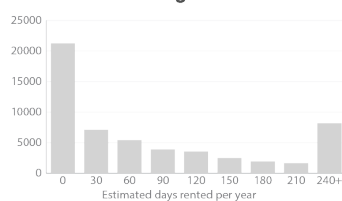


### Private rooms



## Occupancy

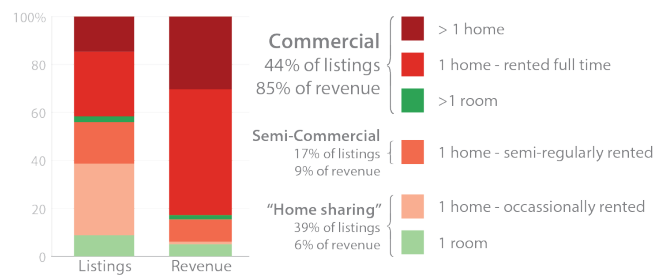
### Entire home listings



### Entire home revenue



## “Home Sharing” vs Commercial



Building on the ALUR Law, passed in 2014, the **ELAN (Evolution of Housing, Development and the Internet) Act<sup>64</sup>** was passed in November 2018.

**The ELAN Law included much needed platform accountability including fines for failing to remove unregistered listings and increased fines for displaying short-term rentals that have been booked for more than 120 nights a year.**

In response to the ELAN Act, in **January 2019, Airbnb made an agreement with the National Housing Minister to implement the 120 night booking cap in Paris, however only in the 1st, 2nd, 3rd and 4th Arrondissements**, which was inconsistent with the law, and no doubt a ploy to protect their commercial hosts across the city, yet appear to be cooperating, or rather, appear to be following the law.

More critical is that the platform feature that Airbnb implemented to block listings that had more than 120 nights allowed the host to claim an exemption (for a mobility lease<sup>65</sup>) without any verification, create another listing for the same property, allowing them to continue renting, again without any verification. This failed effort at self regulation was also offered temporarily to Amsterdam and is still running in London.

With the ELAN Act now creating more platform accountability, after Airbnb refused to remove unregistered listings from their platform, in February 2019, Paris initiated legal proceedings to fine the platform €12.5 million for 1,010 unregistered listings the city found on their platform. In response, Airbnb argues they are protected by E-Commerce Directive

Also, under the ELAN Law, the City of Paris was able to request data from short-term rental platforms, and they did so in December 2019, including details which include the Address of the listing, registration number and the number of nights the property was booked in the current and previous calendar year.

The requests were sent to 200 platforms, and data was received from 76 platforms.

Airbnb was reportedly the only large platform that sent data, the other platforms claimed GDPR immunity, and the city was making preparations to fine them, with a maximum fine of €50,000.

Talking about the data quality received from Airbnb, the city reported many examples of multiple listings using the same registration numbers, including some where duplicate listings all had been rented for the year suspiciously below the 120 night cap, e.g. 119 nights, and others where listings were active in one year, but not in the next, indicating hosts creating another listing for the same property.

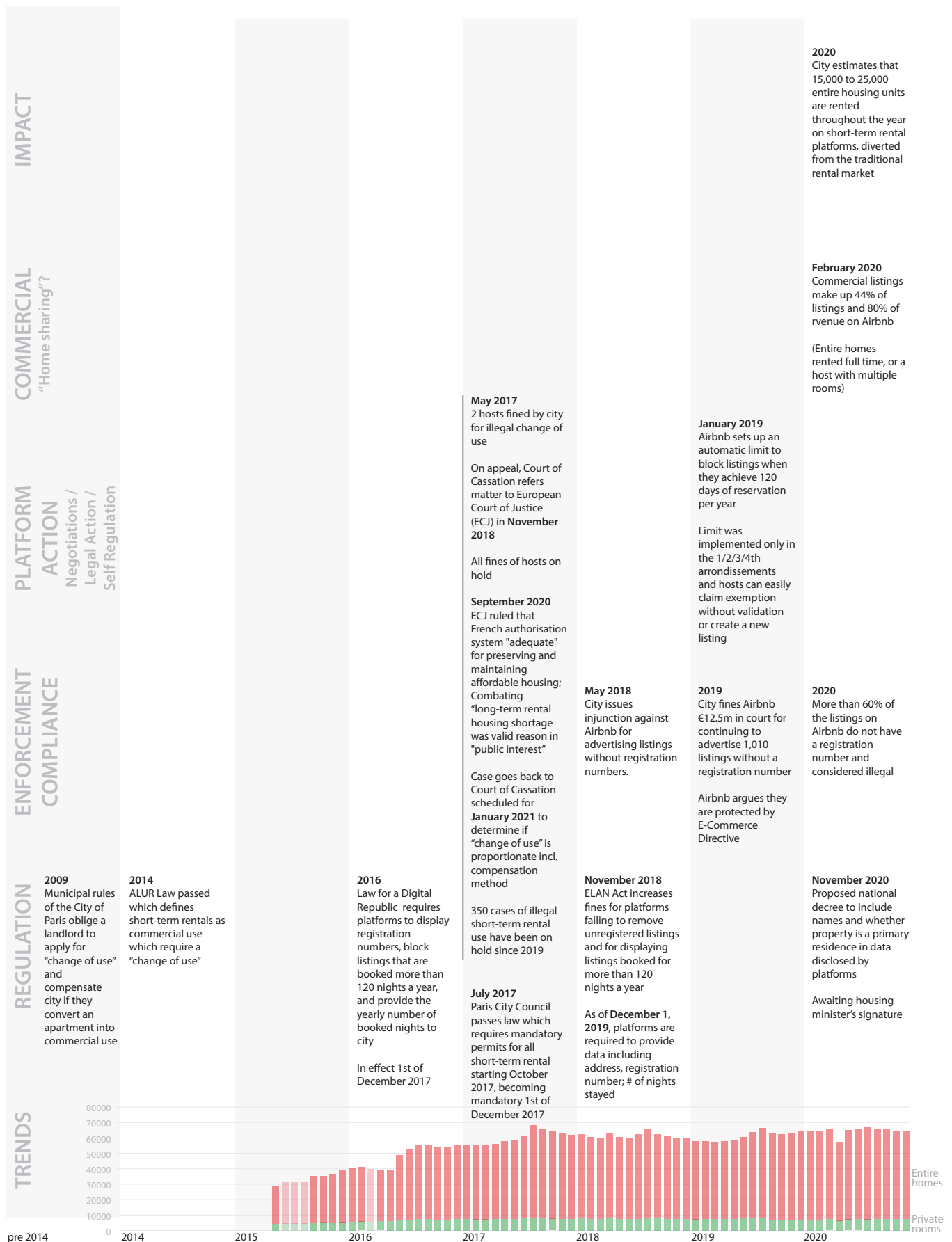
Almost 7% of listings in the 2018/2019 file received from Airbnb had no addresses or number of nights data, as required by law.

Challenges with compliance, both with hosts not registering and platforms continuing to list unregistered properties have continued, with only 37% of listings had registration numbers in 2018, and 44% in 2019.

Based on the data the city has received from the platform, it estimates that approximately 15,000 to 25,000 entire housing units are rented throughout the year, diverted from the traditional rental market without a “change of use” authorisation, and that more than 60% of the listings on Airbnb do not have the required mandatory registration number.



# Paris – timeline



# Prague

## KEY REGULATORY FEATURES

- Platforms required to provide data on hosts, addresses, fees and the number of nights for each booking

## PLATFORM / MARKET FAILURES

- Negotiations with Airbnb on tax collection broke down after Airbnb refused to provide tax data, incorrectly citing lack of tools and GDPR concerns

In some parts of the city, the number of Airbnb listings accounts for 20% of the housing<sup>66</sup>, and there are estimates that about 15,000 apartments have disappeared from the housing market due to short-term rentals, housing for almost 40,000 residents<sup>67</sup>.

Based on the share of the housing market, Prague is one of the most affected cities in Europe, exceeding the share of housing in Berlin, Vienna, Budapest, Munich or Bratislava<sup>68</sup>.

One priority of the city has been the collection of taxes, and in 2018, the city commenced negotiations with Airbnb with the aim of signing a Memorandum of Cooperation for the voluntary collection and remittance of taxes.

In order to accept taxes, authorities required information about the Airbnb hosts, however Airbnb claimed they did not have the tools to provide this information and they could not because of the privacy protections of GDPR.

Both of these reasons from Airbnb appear to be false based on other regulations, or tax agreements signed with Airbnb, within the EU.

Airbnb instead proposed to collect and provide data in aggregate, however it was not possible for the tax authorities to accept taxes in this way, and the city refused.

Due to Airbnb's refusal to cooperate, negotiations broke down in late 2019 and have not recommenced.

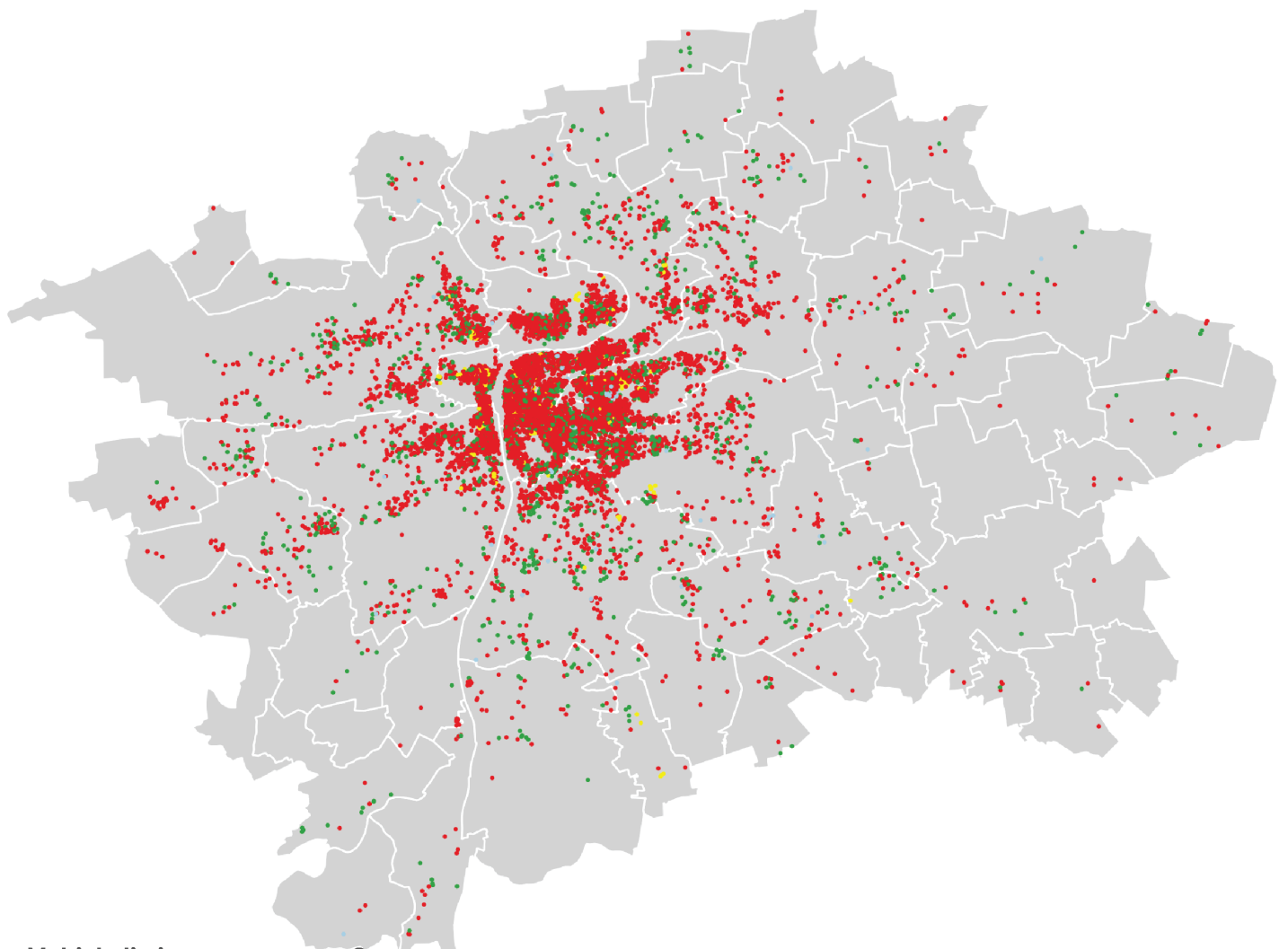
From a regulatory point of view, in the Czech Republic, most laws which affect housing and tourism are formed at the national level. This presents a challenge for Prague as negative impacts have mainly been experienced in Prague and the UNESCO listed town of Český Krumlov.

The first law passed by the state to regulate short-term rentals, came with the crisis of COVID-19, but will remain in effect afterwards. In April 2020, a law was passed in the Czech parliament<sup>69</sup> which requires short-term rental platforms to share information about hosts, address, fees and the number of nights for each booking.

The same law also requires hosts to supply data on their address and basic information about their guests.

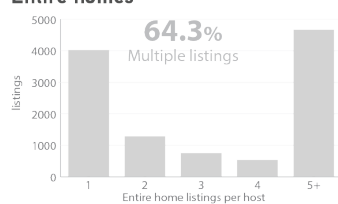
In July 2020, Prague members of the Czech parliament proposed legislation<sup>70</sup> which included limits to the number of nights a housing unit could be rented, number of guests, in some cases limited prohibition of short-term rentals. The proposals had not yet been discussed, and it is not clear whether they will become law.

Community activists in Prague argue that the current housing laws do not even allow tourist accommodation to exist in residential housing, and that accepting taxes or allowing short-term rentals, even with limits, legitimises them.<sup>71</sup>

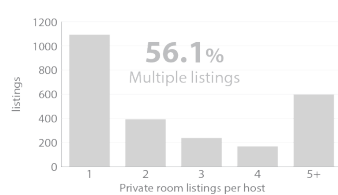


## Multiple listings

### Entire homes

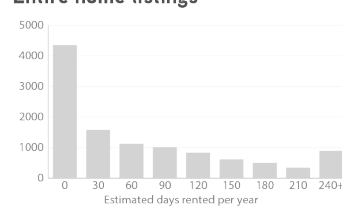


### Private rooms

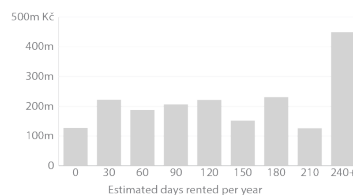


## Occupancy

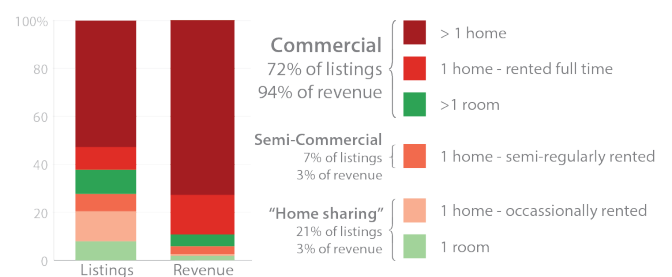
### Entire home listings



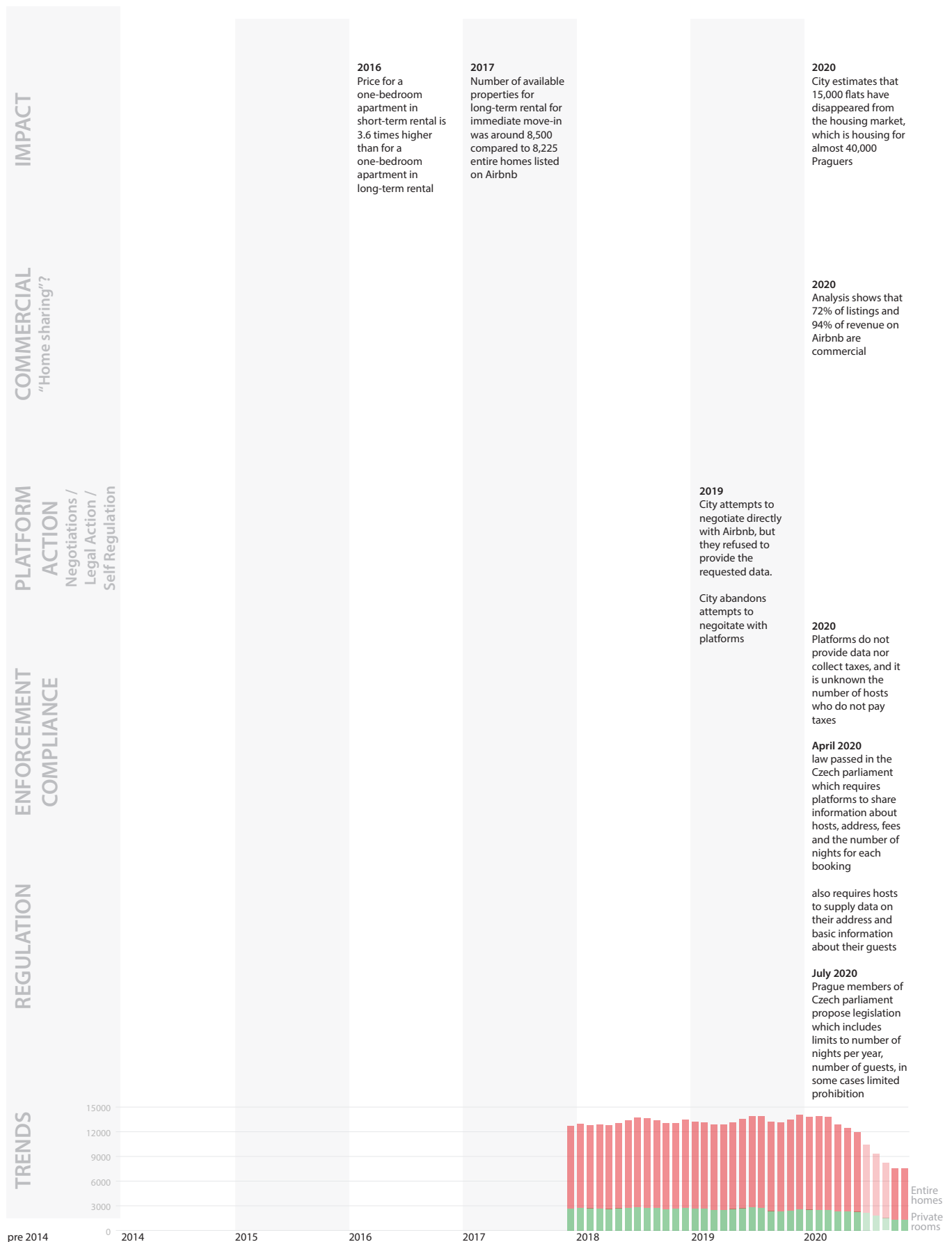
### Entire home revenue



## “Home Sharing” vs Commercial



# Prague – timeline





# San Francisco

## KEY REGULATORY FEATURES

- Mandatory permit system
- Proof of primary residence
- 90 days per year cap (resident must live at least 275 nights per year)
- Platforms are liable for only accepting permitted listings
- Platforms submit a monthly report with all active listings
- Hosts submit quarterly reports and during the permit process may be asked for copies of their booking calendars

## PLATFORM / MARKET FAILURES

- Prior to strong platform accountability laws, compliance levels were only 20%
- Platforms unsuccessfully sued current regulations

**S**an Francisco is the literal home of the short-term rental platform Airbnb, where the founders first rented air mattresses in their apartment, and later set up the company's global headquarters.

As a city, San Francisco also has suffered the impact of short-term rentals, and been responsible for regulating it.

San Francisco's first short-term rental ordinance was enacted and became effective on February 1, 2015, which for the first time legalised short-term rentals in the city<sup>72</sup>. Before this, San Francisco's laws banned residential rentals of less than 30 days in multi-unit buildings which made most Airbnb-type rentals illegal (although enforcement was rare). Less than 30 day rentals were seen as "Hotel" uses and typically required Conditional Use authorization from the Planning Commission or were prohibited, depending on the zoning district in which the activity occurred.

This new ordinance required a business license and permit and applicants must be the primary resident, defined as living there at least 275 nights per year. For unhosted rentals, this means a 90 days per year cap. Hosts were required to post their permit numbers on all advertisements.

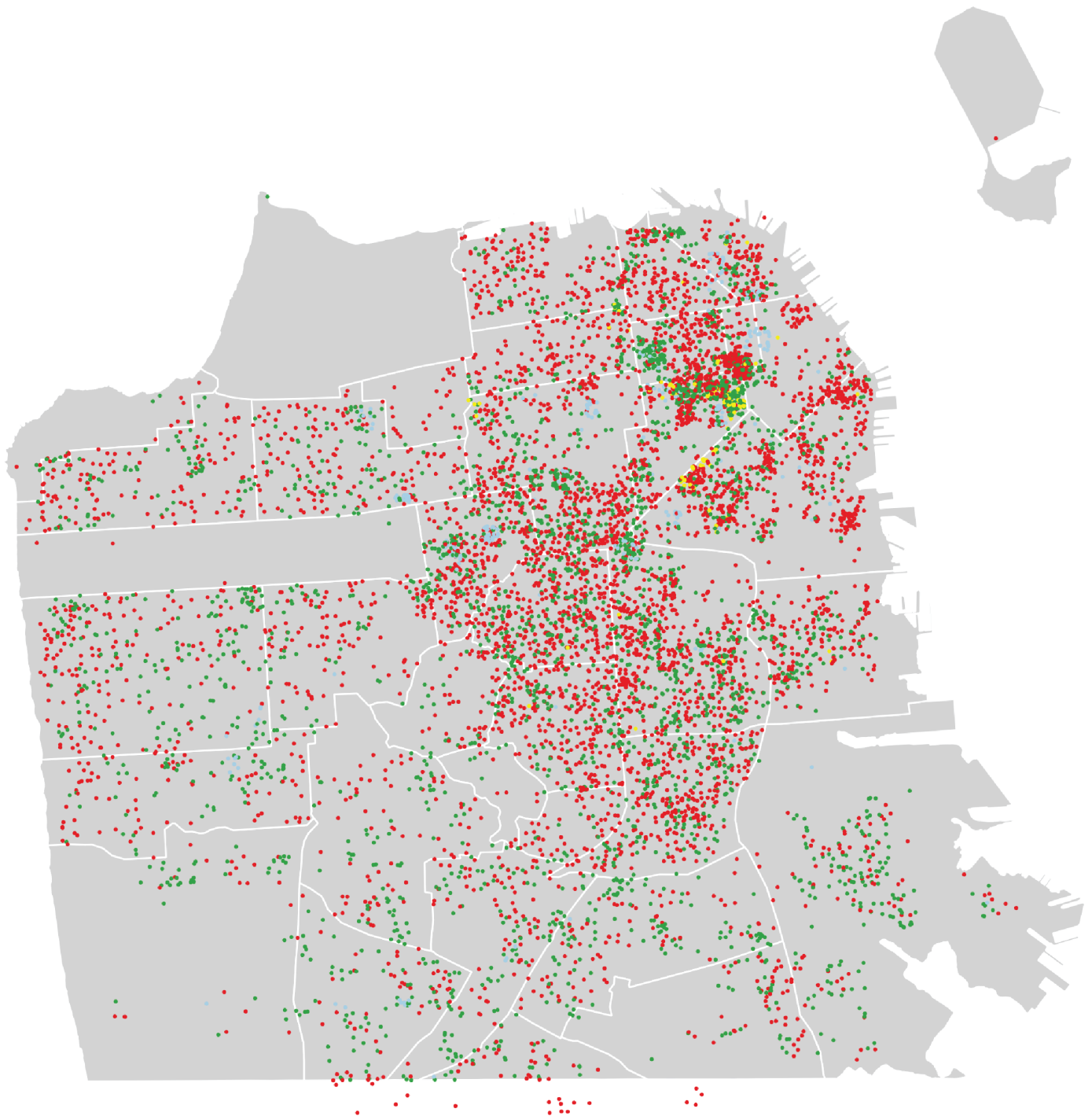
In May 2015, city analysts found that **"between 925 and 1,960 units citywide have been removed from the housing market from just Airbnb listings"**<sup>73</sup>.

Although the total number of units was small, when compared to the low number of units available for rent, the units lost were estimated to be 11.0 and 23.2 percent of the rental market. In addition, they found that **on average, hosts earned more in the short-term rental market than they would in the long-term rental market, thus incentivizing short-term over long-term rentals.**

In July 2015<sup>74</sup>, the city's Board of Supervisors failed to pass a tighter bill reducing the 90 days per year cap to 60 days per year, and instead passed a compromise bill, which made no meaningful changes to restrictions, but did establish a dedicated office, the Office of Short-Term Rentals.

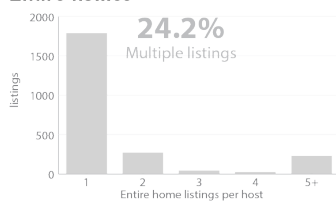
In response community activists initiated a "Ballot Initiative" to strengthen San Francisco's regulations themselves in a "City of San Francisco Initiative to Restrict Short-Term Rentals" or "Proposition F", as it would be labelled on the ballot, set for November 3, 2015.

The key measures for Proposition F included reducing the yearly cap to 75 nights per year, payment of hotel taxes, and to assist in compliance, reports from hosts

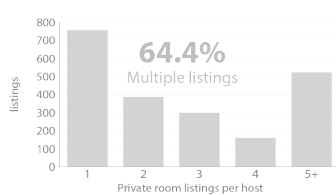


## Multiple listings

### Entire homes

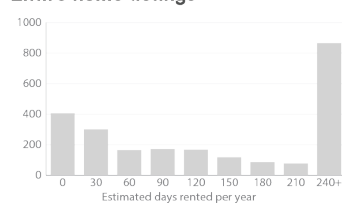


### Private rooms

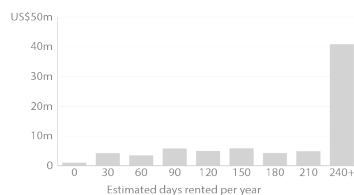


## Occupancy

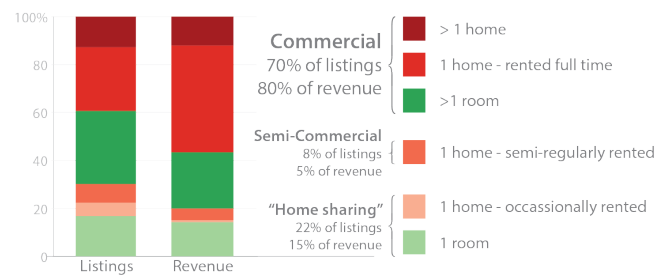
### Entire home listings



### Entire home revenue



## "Home Sharing" vs Commercial



and platforms every three months, and importantly, responsibility for platforms to enforce the cap and the compulsory permits.

The battle for Proposition F was fierce, with Airbnb spending US\$8m to fight the measure, against US\$800k from supporters, a disparity of 10 times.

A month before the ballot, in October 2015, Airbnb launched a billboard ad campaign centered around the approximately \$12 million in hotel tax revenue they had paid the city in 2014-2015. With messages like

Dear Public Library System,

We hope you use some of the \$12 million in hotel taxes to keep the library open later.

Love, Airbnb

Many residents were offended by the arrogance of the campaign<sup>75</sup> and Airbnb eventually withdrew and apologised for them.

Proposition F was ultimately defeated in November 2015, by 56% to 44%, and the city was left with poorly enforced regulations.

In another city report released in April 2016, it found that **“most short-term rental hosts are out of compliance”, with more than 80% of listings without a registration number.**

They also found that more than a quarter of unhosted short-term rentals appeared to be rented for more than 90 days per year.

**In June 2016, the city again passed amendments to its short-term rental laws, this time finally making platforms accountable for the illegal listings on their site, to go into effect August 2016.**

Airbnb and HomeAway sued in Federal Court, citing Section 230 of the Communications Decency Act of 1996, a federal law which shielded publishers from policing content on their site.

While initial legal arguments with the judge were positive for the city, to remove any doubts about the legality of their ordinance, the city quickly amended its laws again, to make the focus on illegal transactions, rather than advertising illegal listings, thus meeting the same objective but removing any legal risk.

Airbnb and HomeAway ultimately settled, upholding the law, and when it was implemented completely in January 2018, the number of listings dropped by at least 50% across the major platforms, and short-term rental activity moved closer to “home sharing”.

The city manages compliance through adjudicating new permit applications; using data from other agencies; analyzing data directly from platforms, third-parties like Inside Airbnb; investigating complaints, and inspections.

The city reported in 2019 that they deny 30 to 40% of applications for short-term rental permits up front, and refuse another 7-15% after regular review or in response to complaints or inspections.

The only weakness in San Francisco’s otherwise precise response in regulating Short-Term Rentals, was an agreement to allow hosts to operate while the city was still adjudicating a permit application.

Officials said in November 2020, that it was taking an average of 115 days to make a decision about a permit, and there were currently 800 applications under review. They also said that some hosts, in order to “game” the system, were submitting a new application after a previous application was denied in order to once again operate under a pending license.

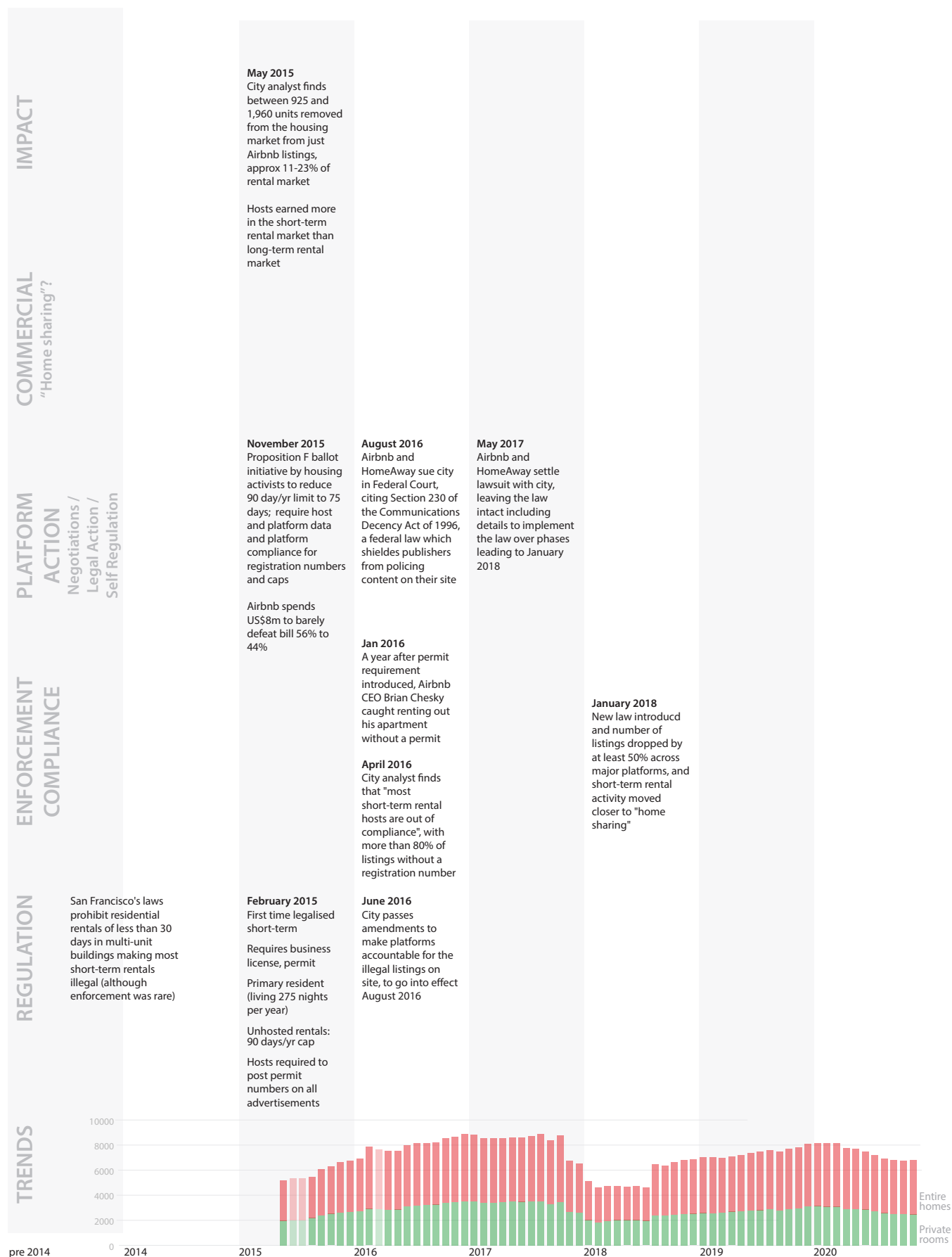
Relationships with the platforms are smooth, as required by law, they submitted monthly lists of active listings on their platforms, and responded to take-down notices, usually issued by the city weekly.

In a typical month, the city issues about 100 take-down notices, some are clearly listings with fake/wrong license numbers or no pending application, others are routine matters, such as a denied application or where a license hadn’t been renewed.

The city reported that in 2020 applications for permits (385 received to date) were down about one third, most probably due to COVID-19. The team at the city’s Office of Short-Term Rentals had been reduced by 50% due to reassignments, retirements, and some staff were working on COVID-19 response projects.



# San Francisco – timeline



## KEY REGULATORY FEATURES

- Ban in social housing
- In parts of the city, no more than 20% of a building can be used for short-term rentals
- Permission from all neighbors
- Hosts and Platforms required to report each booking
- Platforms required to submit detailed tax information

## PLATFORM / MARKET FAILURES

- Airbnb refused to remove social housing from platform
- Detailed tax data refused by Airbnb (12 other platforms comply)

**V**ienna has experienced high growth with its population increasing by more than 10 percent, from around 1.7 million in 2010 to over 1.9 million in 2020. The number of houses also increased by around 10% in the same period, with a high proportion of new housing consisting of cooperative housing. The population growth has still led to an increased pressure on the housing market and debates on housing issues have increased.

Tourism has also increased, with an increase of around 80 percent in arrivals and overnight stays in Vienna between 2009 and 2019<sup>76</sup>. In all of Austria, tourism has been growing but urban tourism in larger cities like Vienna have been even stronger.

Vienna has an impressive supply of social housing made up of community and cooperative housing, with more than 45% of social homes housing 60% of Vienna's residents.

Short-term rentals are banned in social housing, and **Airbnb refused to cooperate with the city to have them removed.**

The city had sent Airbnb a list of social housing addresses to remove, and in 2020 the city took the platform to court for failure to meet its legal obligations.<sup>77</sup>

**In its refusal, Airbnb has referred to the e-commerce directive and the country of origin principle.**

Owner occupiers make up only 20% of homes and about a third of the housing market is in the private rental market.

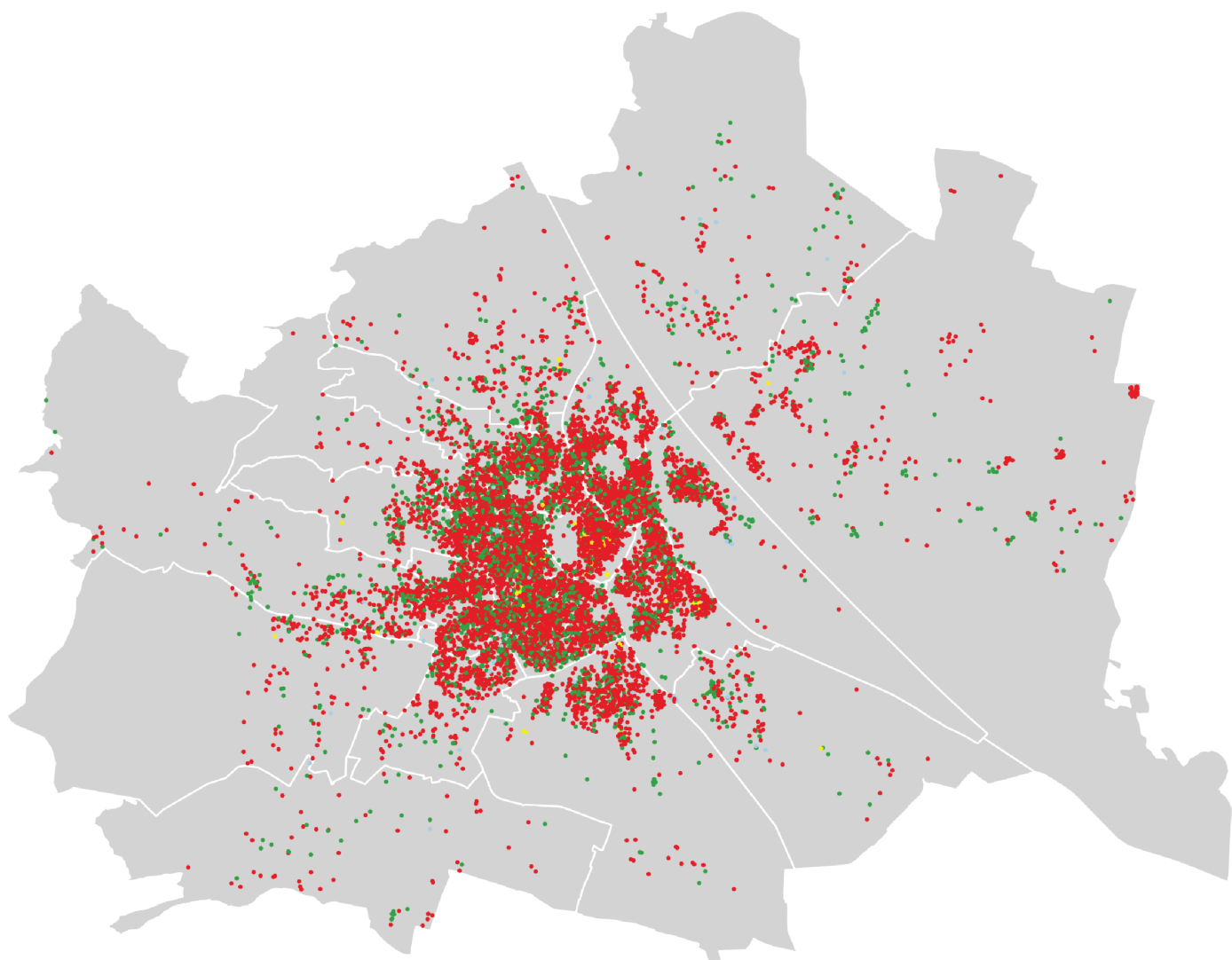
In the private housing market, in order to participate in short-term rental activity, the consent of all other apartment owners in the building is required, and in inner city areas no more than 20% of the building's living space can be converted to tourist apartments.

Research that was released in 2017<sup>78</sup> found that Airbnb was predominantly a platform for professional hosts and the majority of income comes from a small number of large hosts. There is also a strong economic incentive in Vienna, as in most cities, to convert regular housing to short-term rentals.

The city estimates that around 2,000 apartments have been permanently withdrawn from the housing market<sup>79</sup>.

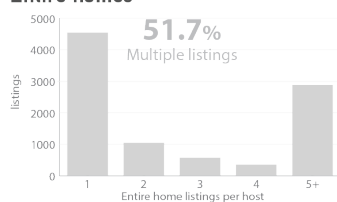
Hosts are obliged under regional law to report each stay to the city on a monthly basis and this legal obligation is extended to online platforms.

**Airbnb refused to supply the required booking data to the City, citing EU laws which they say exempt them, despite other platforms complying.**

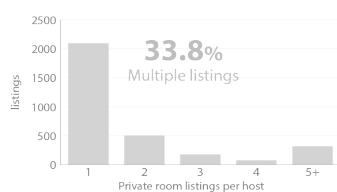


## Multiple listings

### Entire homes

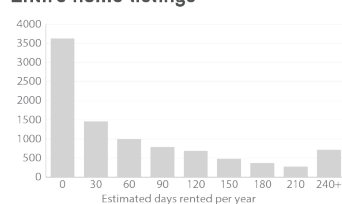


### Private rooms

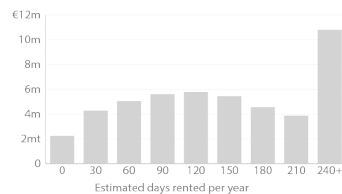


## Occupancy

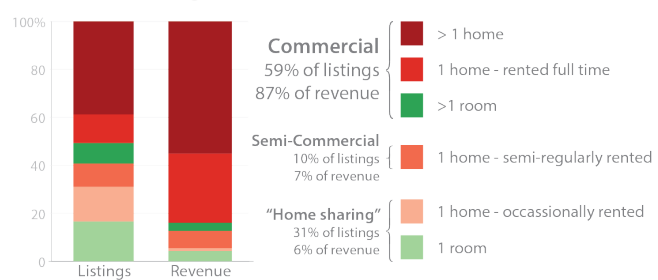
### Entire home listings



### Entire home revenue



## "Home Sharing" vs Commercial



Since August 2017, platforms have also had the legal obligation to either collect and remit taxes on behalf of their hosts; or provide tax information to the city. In both cases, the platforms are required, by regional law, to provide detailed information of the tax collected.

As at October 2020, 12 tourist accommodation platforms were reporting data including HomeAway which also collected and remitted tax, based on the Viennese Tourism Promotion Act to the tax authority of the City of Vienna.

**Airbnb refused to provide detailed tax information to the city, claiming once again exemption under the country of origin principle in the e-Commerce Directive.**

**The City of Vienna's negotiation with Airbnb, which started in 2017 was halted on 31 October 2018 after Airbnb refused to accept national or local laws.**

Officials said that its main barrier to enforcement is data, with little access to reliable and complete data for the whole market which is necessary to treat all market participants equally.

**The country of origin principle of the e-Commerce Directive was cited as a barrier which allowed platforms to ignore the need to submit to local rules and regulations.**

More so, the city argued that certain legal procedures and standards may be well established in a country of destination, but may fail to exist in the country of origin, producing a gap that hinders efficient enforcement across borders.

Finally, the city observed that legal procedures under the current e-commerce-directive regime take a long time.

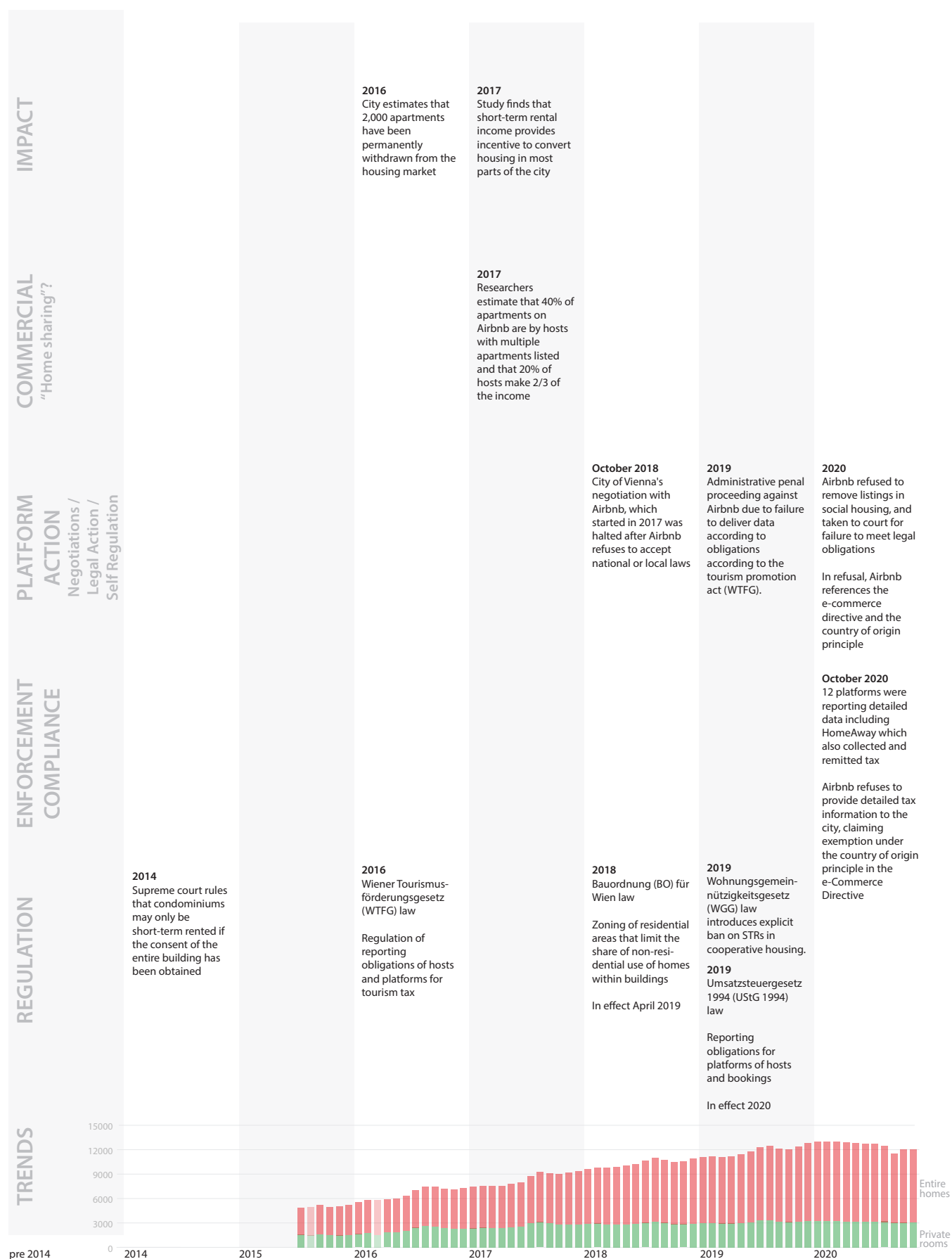
***“There is a growing gap between the increasing speed of the market and the time between initial legal conflict at the local level and a final decision on a European level”.***

With a reluctance to take political decisions, even more cases were being pushed to the courts and some platforms were profiting from a lack of clear regulation, which could be used as a motive to prolong legal procedures as long as possible.

In terms of the upcoming proposals for the Digital Services Act, the city hoped to see:

- More responsibilities for platforms as co-actors on a local level;
- Access to data for effective enforcement for all levels of government;
- Clarification and major improvements of the country of origin principle regarding the rights of authorities in countries of destination; clear timeframes for supervisory bodies and courts in countries of origin; support for competent authorities, users etc. in countries of origin;
- Strong supervision for Digital Services on the EU level combined with supervision on the national level.

# Vienna – timeline



# In the EU, Platforms Enjoy a Safe Haven

## Airbnb was at the forefront when short-term rental platforms gained privileges under EU law

**A**s already explained, there are many obstacles to the regulation of short-term rental platforms to help secure affordable housing. For a start, most platforms, and Airbnb in particular, show no inclination to join hands with cities to implement policies that work. And then there are the legal constraints.

In the European Union, cities, municipalities and regional governments began developing their response to the exponential increase in the use of the platforms 7-8 years ago, and it soon became obvious that EU rules posed other obstacles to efficient regulation. One EU law in particular, the so-called e-Commerce Directive, could set severe limits to requirements to platforms for cooperation on data — information on who rents to who, for how long, and where.

### The DSA: challenge and opportunity

It was not obvious from the outset that the law even covered short-term rental platforms, in that the directive was adopted 20 years ago, well before these platforms played any significant role. Consequently, the wording of the directive was clearly intended for information platforms. The ancient directive — with the fast development of the digital sector in mind — has led to legal uncertainty and confusion over the years, and plenty of court cases. But now finally, it has been fully acknowledged that the law needs to be updated.

**That is the essence of the Digital Services Act that is to be proposed by the European Commission shortly after the release of this report — a new version of the e-Commerce Directive.**

There is no guarantee for success. There are forces in Europe who would be prepared to use the occasion to consolidate or even expand the current privileges

enjoyed by the platforms. For a start, the drafters of the new law, the European Commission, have been so keen on developing the so-called ‘**Digital Single Market**’, a concept that includes favourable conditions for platforms of all sorts to facilitate ‘**growth and innovation**’, that the European executive comes across as very hostile to regulation an lenient to demands of platforms even in the face of dire consequences of their operations.

It is not that the platforms have not come out victorious on all fronts. A recent judgment of the European Court of Justice decided that attempts to secure affordable housing constitutes a policy in the public interest, and that gives leeway for public bodies to adopt rules that restrict the use of the platforms.<sup>80</sup> The judgment may not answer all questions in that regard, but for now **the main problem does not seem to be whether restrictions are allowed under EU law or not — it is about whether cities can adopt measures to enforce them.** If that is not the case, then the value of the acknowledgment of affordable housing as a public interest with legal weight, is very limited.

That is why the final form of the Digital Services Act is crucial. While the first draft may not deliver the necessary flexibility for cities to regulate platforms, there is a chance that the ensuing political debate in the European Parliament and between governments in the Council, will put an end to the absurdities of recent years. At the moment, the platforms enjoy a ‘safe haven’ from regulation that enables them to escape regulation. They can do that because of the past five years, the short-term rental platforms have broadly won the battle of interpretation of the e-Commerce Directive.

## Wins in the EU

At the end of 2014, Airbnb went to Brussels and initiated a long lobbying effort. In the face of an almost vertical spike in the number of apartments and houses rented out via the platforms in European cities, municipalities had begun taking measures to restrict the spread in order to protect access to affordable housing for locals. The company's countermove was to go to Brussels to seek help from the EU institutions to use European law to roll back the wave of restrictions falling on the company in big cities across Europe.

The biggest win was about data. When a city adopts a restriction, the first thing required to enforce it, is information. Without evidence, no enforcement. And Airbnb was successful in making access to data about the activities of the platform and its hosts hard to access for public authorities. An old EU law, the e-Commerce Directive, was brought in by the platforms that argued that under those rules, they were only obliged to work with authorities if specific evidence in individual cases were brought to them, so-called 'notice-and-take down'. In no way were they compelled to hand over data systematically. Airbnb won over the European Commission on this and many other points. In the following years, the Commission would play a supportive role in most of Airbnb's strifes with cities.<sup>81</sup>

**Winning the Commission over has proved tremendously important to Airbnb and the other platforms.** The Commission launched complaint procedures against four cities, and its interpretation of European law that was broadly favourable to the platforms was helpful to the platforms both in courts and in disputes with politicians and civil servants.

## Winning the Commission over has proved tremendously important to Airbnb and the other platforms.

It is broadly acknowledged that the e-Commerce Directive is outdated and that a new rulebook on platforms, based on experiences from the last two decades, needs to be written. This has reignited the lobbying machine of the platforms, and there is no guarantee for success. They have received first class treatment by the European executive, the European Commission, so far. And they will in large part only have to defend the status quo.

## A safe haven of immunity

The e-Commerce Directive was adopted two decades ago in June 2000 on the back of the growing importance of the internet and the rapid emergence of major information platforms. A public debate on what can be allowed to be posted or not, led to demands for legal clarity, and European lawmakers acted quickly: a Directive was adopted with an unusual speed, in that a major directive that would normally take perhaps a year to adopt, was pushed through in three months. The European Parliament, for instance, had only one discussion of the text, and not the usual two.

For platforms, the main achievements were, that for many issues, they would only have to abide by rules in the 'country-of-origin', which in the case of Airbnb and giants like Facebook and Google, is Ireland. As for their obligations to monitor their sites for illegal content, the directive was inspired by the US approach in the so-called Communications Decency Act, Section 230 of 1996, which granted immunity to platforms for illegal content posted on their site. The European version was to become slightly different, in that a 'notice-and-take down' clause was added, which obliged the platforms to cooperate with authorities when a specific illegal activity could be substantiated. But on the other hand, the platforms could not be obliged to monitor their sites systematically for illegal activities.

This approach was to become crucial for short-term rental platforms. It seemed to provide ample space for platforms to refuse to cooperate with public authorities.

Obviously, something here doesn't sound quite right. The notion of 'illegal content' was – when the Directive was discussed and adopted – directed towards 'information platforms', and not for example platforms in the service economy. The internet of 2000 was very different from the internet of 2020. For a start, the Airbnb phenomenon was hardly visible on the horizon at the time. It was not until 12-13 years later that short-term rental platforms made such an impact locally, that the limitations of the e-Commerce Directive became obvious. While public authorities in Europe can ask the platforms for the removal of specific, substantiated illegal postings, such an approach is highly inadequate when it comes to potentially thousands of illegal listings in any city. To cope with that, some kind of systematic transfer of data is necessary.



But still, these few sentences in the directive were to become the main point of contention, when the issue of short-term rental platforms became politically loaded some 12-13 years later.

### **Airbnb secures a safe haven**

With the e-Commerce Directive in hand, then, the only challenge for Airbnb when it arrived in Brussels in late 2014, was to make sure the company was covered, and then to get help from the EU institutions to enforce its rights under that EU law.

As the e-Commerce Directive was written in another era, and developed to regulate information platforms, not service economy platforms, it was not clear if Airbnb and other short-term rental platforms were even covered by the Directive. But the European Commission turned out to be an important and powerful ally. Only a year and a half after Airbnb's first encounter with the Commission, the European executive had produced an interpretation of the two laws most relevant to the platforms – the e-Commerce Directive and the Services Directive – and as far as the former is concerned, Airbnb could not ask for more. A set of criteria, including a novel one whereby the platform must own the 'underlying service', left little doubt that Airbnb could enjoy the safe haven of the e-Commerce Directive, according to the Commission.<sup>82</sup>

In the following years, the Commission would act in several ways to protect the interests of Airbnb, including the initiation of formal complaint procedures against Berlin, Brussels, Paris and Barcelona about local regulation of Airbnb. Also, the Commission ran a series of workshops to identify the appropriate regulation at local level – with massive industry participation and only sporadic contributions from municipalities.

Still, while the Commission's interpretation of EU law can have immediate consequences, the authoritative voice in that regard, is the European Court of Justice (ECJ). For Airbnb, then, the stakes were high when a case regarding the requirement to hold an estate licence in France was presented to the ECJ. Among the questions, the Court would have to answer, was if Airbnb is to be considered 'an information society services provider' covered by the Directive or not.

The ultimate interpretation of EU law comes from the European Court of Justice (ECJ), not the Commission. For the platforms to feel sure in the longer term, they would need the court's assurance that they were considered mere intermediaries and not straight out rental businesses. To enjoy the privileges under the e-Commerce Directive, they would need to be defined as 'information society services providers' by the ECJ. This was brought to the fore when a case in a French court was sent to the ECJ for consideration. With help from the European Commission, which argued before the court to the favour of the platforms<sup>83</sup>, Airbnb took a valuable win.<sup>84</sup> From then on, Airbnb has had a strong hand in squabbles with cities in that there is no doubt the company enjoys the protection of the e-Commerce Directive.

### **EU law: a very concrete obstacle**

There is no shortage of examples of just how crippling the e-Commerce Directive has turned out to be for the cities' attempt to bring the Airbnb phenomenon under some control. Both municipalities, regional governments and national governments have lost cases over access to data in court on numerous occasions, and Airbnb has come out triumphant and even gloating. In connection with a court case between Berlin and an Airbnb host, the court made a special mention of the e-Commerce Directive's limitations to the transfer of data, and the monitoring obligations of platforms, asserting that Member States are prevented from imposing monitoring obligations of a general nature.<sup>85</sup>

The message was not lost on Patrick Robinson, the head of Airbnb in Europe: **"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."**<sup>86</sup> In other words, Airbnb reserves the right to refuse to cooperate with public authorities, if they dislike the regulation they are trying to enforce.

**"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*



And for now, Airbnb has scored a win in one court after the other. To name but a few recent examples:

- **In Munich**, the city council has decided that citizens cannot rent out to tourists for more than eight weeks per year, and to enforce the measure, platforms have been asked to provide the names of the hosts that pass this limit. This was contested by Airbnb, and after examining the e-Commerce Directive and the German law that implemented the directive, the court, the Bayerische Verwaltungsgericht, decided against the city.<sup>87</sup>
- **On the Balearic Islands, including Mallorca**, restrictions have been adopted that prohibits renting out in some areas in the cities. This came on the back of studies that showed the number of apartments rented out in Palma de Mallorca alone had gone up by 50 percent from 2015 to 2017 affecting 20,000 apartments. The rent in Palma had soared by 40 percent over five years, and short-term rentals were one of the factors.<sup>88</sup> To enforce the new rules, the local authorities focused on requiring the ads on the platforms carry the registration number of the host. Airbnb refused, and won in court, because an obligation to abide by the local rules “does not apply to information society service providers included in Directive 2000/31/EC on e-Commerce.”<sup>89</sup>
- **Finally, there is Vienna**, a city world famous for its considerable stock of social housing with deep historic roots that date about 100 years back. Viennese with a moderate income can live in apartments in the city on a manageable rent, low by most European standards. And in Vienna, it is outright forbidden to rent out an apartment owned by the social housing branch of the city — but enforcement is difficult when it comes to Airbnb. While other platforms have been willing to remove those apartments from their websites, Airbnb refused and proposed a less comprehensive approach.<sup>90</sup>
- In response, the city has threatened to sue. At the time of writing, that has not happened yet. Airbnb on its part believes it is well protected from such demands by European law, and indeed the City of Vienna may not come out a winner. It is hardly a

coincidence that Vienna figures prominently among those who are now making an effort to use the Digital Services Act to carve out a new space for cities to not only regulate the platforms, but to be able to enforce regulations as well.

# The DSA: What Platforms Want

**With Airbnb as a protagonist, the platforms have their demands for the Digital Services Act. Something completely different is needed.**

**T**he process to create the Digital Services Act has been underway for more than a year. The Commission has conducted several consultations, and it has been debated in the European Parliament. Even so, the specifics of the proposal will only become known when it is published shortly after the release of this report. Following the debate in the media, and the documents of the Commission, it is clear that most of the attention is going into the question of how to deal with the big information platforms, such as Google and Facebook. The Commission has already been engaged in various debates on that issue, and some of the stakes in that area are becoming clear. When it comes to short-term rental platforms, very little is known. What is clear, though, is that in the course of the procedures on the road to the final adoption of the EU law, there will be a clash between opposing views.

The platforms, for their part, are first and foremost interested in two things: to have their rights under the e-Commerce Directive repeated, consolidated, and perhaps even expanded under the new Digital Services Act - and to have elements in the new law to ensure that EU member states stay in line and refrain from actions that restrict the operations of the platforms.

This agenda is reflected in several letters from Airbnb to the European Commission, in which the company lays out its preferences for the Digital Services Act. The most comprehensive one is dated March 2020, and the brunt of the document concerns the limits to its obligations to cooperate with cities about data. For a start, the company underlines that following the rights obtained under the e-Commerce Directive, that it has “no general monitoring obligations”. But it takes the argument further than that.

In the document, the company claims that it has entered into a series of data-sharing agreements

with cities on a voluntary basis, and claims that these “address many of the concerns of local and national regulators”, which seems to imply a preference for voluntary agreements<sup>91</sup>. The limitations of the few agreements concluded between the platform and European cities — Amsterdam and Barcelona — are explained above: at no point has Airbnb agreed to deliver the data a city would need to enforce regulation.

As for the legal requirements, Airbnb wants to limit its obligations even further, for instance when Airbnb suggests “a cautious approach to regulating harmful content”. **At the moment, the regulation of harmful content puts severe restrictions on cities when they approach platforms to have them remove illegal listings. To have the regulatory space reduced even further would render the exercise fully inefficient.**

Finally, they claim that due to data privacy rules in the EU, the General Data Protection Regulation (GDPR), there are legal restrictions on how they “share such data with governments and local authorities”.<sup>92</sup> This argument is a recurrent one in Airbnb’s lobbying document, but not a very strong one. Provided there is a specific purpose for collection of data, public authorities are not prevented from asking Airbnb for sharing information if it is in the public interest, as clearly stated in article 6 of the GDPR.<sup>93</sup>

In sum, what we see is a company fighting tooth and nail to retain and expand the privileges it has come to enjoy under the e-Commerce Directive, and while the company does make attempts to limit the space open to cities to regulate the platforms and their activities in the first place, its main focus seems to be to escape obligations to handle the data crucial to enforcement.

What Airbnb hopes to see is a Digital Services Act that consolidates the ‘safe haven’ privileges of the

e-Commerce Directive, and then to add an extra layer of enforcement: an “EU level regulatory or oversight authority for platforms”. This idea of the Commission could serve the purpose of keeping cities on an even tighter leash, depending on what will be in the Digital Services Act.

**At the moment, the regulation of harmful content puts severe restrictions on cities when they approach platforms to have them remove illegal listings. To have the regulatory space reduced even further would render the exercise fully inefficient.**

### **The cities and the right to regulate**

Notwithstanding what is in the Commission’s proposal, the position of Airbnb is a sign that the battle over the Digital Services Act could be a bitter one. For on the other side, we find housing groups as well as municipalities who will be vying for a move in the opposite direction with the new law.

In the run up to the publication of the draft directive, many cities have reiterated that there is a need to adopt a different approach on data collection, than the one in the e-Commerce Directive. In March 2020, 22 cities issued a common statement, in which they present three main demands: an obligation for platforms to “share relevant data with city administrations”, an obligation for platforms to “publish the registration numbers of their listings” (where applicable), and finally for the platforms to be “liable for fulfilling their obligations according to national and local legislation.”

Were this to become reality, it would mark a clear break from the past two decades of platform regulation. And the stakes are clear. According to the 22 city leaderships if “city administrations do not have access to relevant rental data from the online platforms, we will see further unplanned growth of short-term rentals, to the detriment of the availability of affordable housing and the social cohesion in our cities.”<sup>94</sup>

This issue is not reserved for a select group of cities, in fact they appear only to be the tip of the iceberg. In the European Committee of Regions, a body representing regional authorities, an unusually strong statement on platform regulation was adopted in December 2019. On the question of data, for instance, the Committee said it believes “that the European framework must require platforms to provide public authorities with the data necessary to enforce the rules applicable to the platform and/or its sector of activity on a legal basis... Public authorities should not have to rely on the willingness of platforms to share data with them, as experience gathered in several European cities shows that where platforms claimed they were willing to cooperate, ‘in practice they don’t, or only do so on a voluntary basis.’”<sup>95</sup>

# The DSA: What is Needed?

This brings us to the question of what would be needed from a Digital Services Act to equip public authorities with the tools needed to deal with the negative effects of the emergence of short-term rental platforms, or more specifically: how to deal with the effect on affordable housing.

To begin with, it is worth noting, that what is demanded by cities and municipalities is essentially the right and the possibility to take the matter into their own hands. To achieve the maximum room of manoeuvre, then, could be considered the best option, and that would be for the short-term rental platforms to be excluded from the scope of the Digital Services Act – much like Uber and similar companies are, following a decision of the European Court of Justice in December 2017.<sup>96</sup>

The Digital Services Act is set to become a law that will mainly be to enable the short-term rental platforms to avoid particular forms of regulation, like the e-Commerce Directive. There will likely be leeway here and there for public authorities, but as with its predecessor, the DSA, the purpose of the act is to limit regulation. It would make matters straight forward to simply exclude short-term rental platforms.

Looking at the measures taken by cities across Europe, it is worth noting, that they differ a lot. In some places a residency requirement is at the core, in others it is permits with caps on total numbers, others again have bans in particular neighbourhoods or in social housing. And conversely, the methods used to enforce restrictions are different from one city to the other. This reflects the different social realities, the nature of the problem that takes different shapes according to local circumstances. Having platforms excluded from the law set to replace the e-Commerce Directive would guarantee a bigger political space so as to accommodate the differing needs locally.

Should that prove politically unrealistic, though, there are five elements that — if they were to be written into the Digital Services Act — would take us very far towards a scenario where cities are able to address both the effect on the accessibility to affordable housing and related negative effects of short-term rental platform operations. They can all be deducted from the walkthrough of the cities' experiences above — they can be deducted from the legal problems cities have been faced with, which in turn has — in many cases — led to lawsuits and endless, fruitless negotiations with reluctant platform companies, Airbnb in particular.

## 1. Access to non-aggregate data

If public authorities are to enforce restrictions, they need access to data on renting via the platforms. It needs to be data at a granular level, not just the aggregated data that can inform policies, but data that can be used to identify eg. what hosts rent out and for how long. Currently, the platforms are in a good position to refuse cooperation with authorities. The limitations of current rules are felt by all cities investigated in this report. The Digital Services Act must put an end to that, not just by improving 'notice-and-take down provisions', but by obligating them to respond to public authorities requests for the data needed.

## 2. Obligation to provide valid data

It is essential that the data received by public authorities meet their criteria, which is data that lends itself to efficient enforcement. In the experience of the city of Barcelona, that cannot be taken for granted (pages 35-36). One of the few data-sharing agreements in Europe, and the only one that required complete cooperation on data, turned out to be of little use when 60-70 percent of the listings in the data had missing or incorrect addresses (page 40). To prevent this, it is necessary to obligate the platforms to deliver the data needed, if necessary by adjusting data-collection with hosts.

### **3. Acceptance of authorisation schemes for both hosts and platforms**

Authorisation schemes, including simple registration procedures, for hosts are already widespread, it is a tool used by many cities, though not all. So far, the authorization schemes for hosts have not been called successfully into question in the EU, but the DSA needs to include clear language for such schemes. And more, as one step towards enabling public authorities to make the platforms fully liable, the DSA must explicitly allow for public authorities to introduce authorisation schemes for platforms. This would enable member states to ban platforms that refuse to follow local, national or regional rules.

### **4. Full cooperation on illegal listings**

Clearly, the existing ‘notice-and-takedown’ provisions of the e-Commerce Directive are ineffective. Several cities, including Vienna (page 62) and Paris (page 52) have asked Airbnb to remove illegal offers from the website, listings that are in breach of local rules. Yet, it has proved almost impossible to get Airbnb to act on even this timid obligation. In a new law in the area, platforms should not only have a clear obligation to act on requests to remove illegal listings, they should have an obligation to remove illegal listings automatically, when the rules allow for simple measures. If, for instance, a particular neighbourhood is off limits to short-term rental, or if an authorisation is required, filters can be easily introduced to prevent the problem from occurring in the first place. When rules are more complex, the cities will have to identify illegal listings themselves on the basis of data from the platforms.

### **5. Full liability where platforms operate**

One of the unfortunate outcomes of the ‘country of origin principle’ in the e-Commerce Directive, is that authorities are forced to pursue some of the most important issues with the platforms in courts of another member state. For instance, the German government had to go to court in Ireland to get the data from Airbnb to secure taxation of hosts (page 17) — a mission that would be very difficult for most cities to

pull off. This is one of many grotesque outcomes of the ‘country-of-origin principle’ in the e-Commerce Directive. For platforms to be held legally liable for their actions, when they are in breach of local rules, the right place is a national court.

### **6. No obstruction from the Commission**

As explained on page 16 concerning a conflict between Airbnb and Paris, the so-called ‘notification procedure’ in the e-Commerce Directive can represent a problem for a municipality. According to Airbnb, the French government had not notified the Commission about new measures in place, and in principle that could render them null and void under European law. In this area, the Commission has made it clear over the past couple of years, that it prefers to have notification procedures in place that allows the Commission to stop new rules, even before they are actually adopted. Such a proposal was tabled by the Commission when reviewing the Services Directive.<sup>97</sup> Especially in the light of the role the Commission has played so far in this area, it would be highly risky to go beyond the standard notification procedure in the services area: to inform the Commission when the rules have been adopted. The Commission should not have a mandate to either prevent new rules from being adopted, or have them overturned once they are.

In light of how the Commission has dealt with what it calls ‘the collaborative economy’, including the short-term rental platforms, the draft Digital Services Act will hardly meet any of these criteria. The good news, then, is that for the first time the European approach to these platforms will be taken out of the corridors and courts and into elected assemblies and the public debate. It will be up to member state governments and the European Parliament what the future will look like for short-term rental platforms, and not least for cities and the local citizens who have been seeing their prospect for a place to live in the city at an affordable price vanish, in part because of the growing incidence of the platform rental business.

# COVID-19: Are Short-Term Rentals Immune?

**M**uch could be written about the global pandemic and tragedy of COVID-19, which hit most of the world in February and March 2020.

The impact of COVID on tourism has been profound, with cancellations, reduced travel, lockdowns, travel bans and forced quarantines.

Most data analysts, including Airbnb's own reporting, make the following conclusions about COVID-19 and short-term rentals

- despite initial cancellations March-May, short-term rental activity continued at low levels, even during the worst of the pandemic
- as cities and towns opened up, short-term rental activity resumed — especially in regional or locations accessible via shorter trips
- there is some anecdotal evidence that short-term rental hosts have returned homes to the long-term rental markets, however reports are isolated and there is little data to support this
- the number of short-term rental listings has still remained high, in most cities the number of listings have only retreated by 10 or 20%. Airbnb reports globally, that the number of listings have remained constant.<sup>98</sup>

Based on the conclusions above, short-term rentals that were a threat to city's housing still remain a threat, during and post-COVID.

It has been reported that COVID has “created an opportunity”<sup>99</sup> for cities like Lisbon, Barcelona and Toronto, who have created or are considering financial incentives for hosts to return their short-term rentals back into homes.

Critics of these arrangements argue that public funds should not be used to reward hosts, many of whom illegally converted their homes in the first place, and that regulations and the enforcement need to continue.

So far the incentive programs have not proven successful, in Lisbon only 177 apartment owners expressed an interest out of the more than 15,000 entire home listings still available on Airbnb (as at November 2020).

**While tragic for city residents, short-term rentals have proven immune to COVID-19. The pandemic has reduced short-term rental activity but hasn't returned the thousands of lost housing units back to long-term rentals.**

**Continued regulation and enforcement is needed to return short-term rentals back to long-term residents during and post COVID-19.**





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# Notes

Unless otherwise mentioned, all information attributed to cities or city officials were discussed during interviews with officials or representatives from the cities of Amsterdam, Barcelona, Berlin, New York City, Paris, Prague, San Francisco and Vienna.

**All data unless mentioned is from Inside Airbnb**, <http://insideairbnb.com/get-the-data.html>.

Unless mentioned, all data is from February 2020, chosen to remove the impact of COVID-19

In the commercial classification calculations:

- “Rented full-time”: Rented more than 90 days in the last year
- “Semi-regularly rented”: Rented more than 30 days and less than or equal to 90 days in the last year
- “Occasionally rented”: Rented less than or equal to 30 days in the last year
- Listings with a minimum nights setting greater than 30 days have been excluded
- Revenue estimate is for the previous 12 months

