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European Commission
DG Internal Market, Industry, Entrepreneurship and SMEs
Avenue d'Auderghem 45
1040 Brussels
Belgium

Subject: Short-term rental initiative

Dear members of the Commission,

The association Amsterdam Gastvrij (Netherlands) represents the interests of private ('peer-to-peer') short-term rental (STR) hosts in Amsterdam. Amsterdam Gastvrij would like to take this opportunity to express our views on your initiative to facilitate a fair and reliable common market for STRs. We wholeheartedly support this initiative and endorse the need for an unambiguous and transparent regulatory framework. We would like to explain this based on the situation in Amsterdam.

1. Background - private tourist rental in Amsterdam

The municipality of Amsterdam makes a clear distinction between accommodation provided by professional parties and peer-to-peer STRs. The first category includes licensed hotels, hostels, campsites and serviced apartments/apart'hotels. For the second category, there are two permitted forms:

- "Bed & Breakfast (B&B)" - This concerns STR of a subordinate (<40%) part of the principal residence;
- "Holiday letting" ("Vakantieverhuur") - this concerns STR of a main residence up to a maximum number of nights per year.

The first category (licensed hotels, hostels, aparthotels, etc.) is regulated through a zoning plan by the Spatial Planning Department. Peer-to-peer STRs are regulated by the Building & Housing department, which focuses on the use of the existing housing stock. Permanent short-term rental of regular residences is not permitted in Amsterdam.

Both categories of accommodation are subject to a permit requirement, with

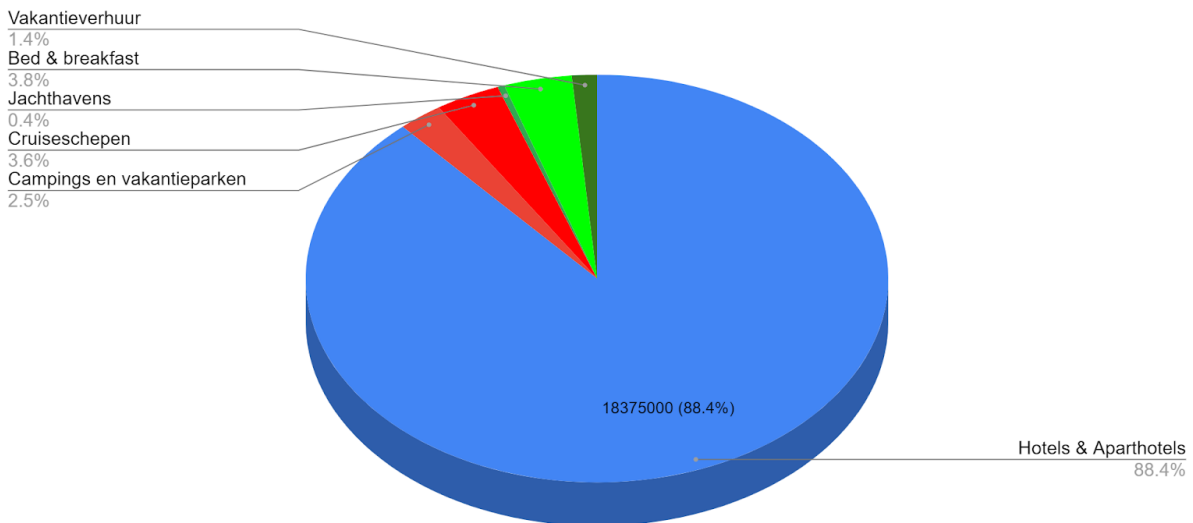
particularly strict restrictions for peer-to-peer STRs in Amsterdam, especially compared to other major European cities [1] [2]. For example, all STR hosts must register, include a valid national registration number with each advertisement, obtain an authorisation, the number of guests is limited to 4, and the property may not be owned by a housing corporation (i.e. social housing, which accounts for approximately 50% of the housing stock).

“Holiday letting” may not exceed 30 days per year and each stay must be digitally reported to the municipality in advance.

B&B owners must be present every night and keep a night register of their guests. They may not rent out more than 40% of their home, whereby shared spaces within their home also count for half. The space reserved for the B&B may not be larger than 61 m².

Of all types of accommodation, the professional sector (hotels/hostels/campgrounds) provides by far the most overnight stays. In the last representative year of 2019 before the corona crisis, it was responsible for more than 90% of the approximately 20 million tourist nights [3][4] in Amsterdam. Peer-to-peer STRs (B&B and holiday rentals combined) accounted for 5.2% of the total number of overnight stays [4].

Overnachtingen in Amsterdam, 2019



After decades of generous licensing of hotels, a ban on new hotel development was introduced for some neighbourhoods in Amsterdam in 2017 [5]. Nevertheless, outside these districts, which are concentrated around the city centre, the development of hotels, hostels and aparthotels remains possible under certain conditions. Moreover, established zoning plans allow new hotels to be established even within the districts where this hotel ban is in force. Taking into account developments in the metropolitan region, an estimated 14,000 new hotel beds will be created [6]. This is more than five times the accommodation capacity that peer-to-peer STRs currently offer.

In the past ten years, the number of tourist overnight stays spent in Amsterdam hotels and hostels has more than doubled from 9.4 million [7] to around 20 million [3] by 2019. Moreover, the number of day visitors in Amsterdam has increased to over 11 million [8].

In the past decade, peer-to-peer STRs have also gained prominence. B&Bs had existed for much longer, but with the rise of platforms such as Airbnb, holiday rentals (STR of a main residence up to a maximum number of nights per year) have also been facilitated. Due to inadequate municipal enforcement in the first few years, this also led to the emergence of "illegal hotels", whereby an uninhabited second home, rather than the owner's principal residence, was permanently rented out for tourists without a permit. Although these illegal hotels have since been disbanded through more intensive enforcement and deterrent fines, they have contributed significantly to the negative image of peer-to-peer STRs.

2. Political-societal pressure

The greatly increased touristic pressure, particularly in the inner city of Amsterdam, a part of the central Amsterdam district, has led to understandable social indignation. This indignation is focused on the excessive tourist crowdedness in that area, the accompanying nuisance, the impoverishment of the local shops that are only aimed at tourists ("nutella shops"), waste problems and misbehaviour of visitors. This tourist nuisance is concentrated in two of the 99 neighbourhoods: Burgwallen Oude-Zijde and Burgwallen Nieuwe-Zijde ("the inner city"). In these two districts, as a result of the generous licensing policy mentioned earlier, there are currently 14988 hotel beds [10] on a population of 8595. Moreover, this area has a high concentration of "coffeeshops" and "window prostitution".

Various political parties have sought solutions to this political-societal pressure. In the 2018 coalition agreement of the current city administration [9], the following was included:

"In neighbourhoods where the balance is disturbed, we want more far-reaching measures, such as a ban on holiday rentals. To this end, we consult with the relevant district and the neighbourhood;".

This agreement further included:

"We are going to review and reconsider the hotel policy integrally (hotels, holiday rentals, B&Bs, cruise ships) whereby we will limit the growth of the number of beds."

A restriction on hotels in districts where there is an imbalance between the number of licensed hotel beds and the number of inhabitants, as in the above-mentioned districts, was not included. Nor does this coalition agreement include any other concrete measures to reduce the tourist pressure in these districts.

In our opinion, the current city administration has found a scapegoat in the peer-to-peer STR sector, with which they can publicly demonstrate, with less financial consequences than, for example, the withdrawal of permits for (future) hostels or hotels, that they are responding to the aforementioned social pressure. However, in reality, the blame for the negative side effects of increased tourism is placed on the residents themselves.

3. Proliferation of regulations and "legal experiments" in Amsterdam

Especially in recent years, regulatory changes for STRs have followed each other in rapid succession. In the past two years alone, for example, an authorisation scheme has been introduced for B&Bs and holiday rentals, the obligation to report holiday rental stays in advance has been abolished and later reintroduced, a prohibition on holiday rentals in 3 neighbourhoods have been introduced and then abolished, and a licensing system with quota has been introduced for B&Bs, with countless unclear additional rules. Since April of this year, there has also been a registration requirement for all peer-to-peer STRs. In the attached annex, we provide a complete overview of the policy changes in recent years.

For each of the new rules, there is no concrete quantitative objective or a clear exploration of less drastic alternatives, as required by the Services Directive. The Amsterdamse Rekenkamer (a supervisory body verifying local policy) also notes [16] that the municipality has little regard for the practical enforceability of the rules: "It seems that the tightening of the rules is mainly prompted by political-societal pressure and that [the department of] Supervision and Enforcement must then come up with solutions to make enforcement of the rules possible."

Under this political pressure, measures have also been taken of which the municipality had previously firmly stated that were legally untenable. One example is the introduction of a total ban on holiday rentals in the three aforementioned neighbourhoods. The responsible alderman has repeatedly stated that this was not legally possible up and until the end of 2017 [17] [18], after consultation with the Minister of Interior Affairs. Nevertheless, this total ban was introduced because of the 2018 coalition agreement on 1-7-2021 under the guise of self-proclaimed "legal pioneering" [19].

The same applies to restricting holiday rentals to just 30 nights per year, which the alderman has stated [19] is *"legally tricky, because the municipality has to demonstrate that it is concerned with withdrawing housing from the housing supply."* The latter has been shown to be unproven and is contrary to the position of the European Court of Justice (ECLI:EU:C:2020:743, at 72).

A few quotes by the alderman from an opinion piece [19] prior to the ban on holiday rentals are demonstrative of the municipality's approach to EU law:

"Amsterdam is testing the boundaries of this Services Directive by banning holiday rentals in a number of neighbourhoods."

"But it remains a permanent battle in which we test legal and regulatory boundaries"

"Let's challenge that system of laws and regulations and the ideas behind them itself."

It should therefore come as no surprise that the (highest) Dutch administrative court has repeatedly ruled against the municipality of Amsterdam for exceeding its powers or for lack of proportionality of regulation.

In a first example, the Council of State (the highest court for administrative law) ruled (ECLI:NL:RVS:2020:261) that there was no legal basis for the introduction of the 30 night limit on holiday rentals, with an corresponding obligation to report any tourist stays in advance, outside of a framework of a licensing system.

In a second example, the Council of State considered the undifferentiated system of fines, whereby fines of €20,500 were imposed regardless of the circumstances and nature of the violation, to be disproportionate and ordered the municipality to better differentiate the fine system (ECLI:NL:RVS:2020:2850).

The aforementioned ban on holiday rentals in the three districts was also overturned by the court (ECLI:NL:RBAMS:2021:1017) because the municipality had no legal authority to do so.

A clear regulatory framework from the Commission could prevent such costly legal proceedings and prevent municipalities from engaging in legal experiments out of political expediency, at the expense of STR hosts, with legislation that is contrary to the Services Directive.

4. Comments on the view of the European Cities Alliance

The view of the European Cities Alliance (ECA), submitted by Mr Boekwijt of the municipality of Amsterdam, repeatedly refers to the Amsterdam situation. However, this opinion deserves comments on these points.

It is stated that the number of listings (on Airbnb, presumably) in Amsterdam grew from

4700 in 2013 to 22000 in 2017. It should be noted that after the introduction of the registration system and the removal by the major platforms of inactive, unregistered listings on 4 October 2021, only 4128 listings remained. Therefore, since the number of listings (which includes licensed hotels and apart'hotels) is not a good measure of the extent of actual private tourist rental, it cannot be used to determine the impact of STRs, as the ECA falsely claims.

It is also noteworthy that the ECA claims not to be against private tourist rental, while the municipality of Amsterdam had banned holiday rentals in part of the city, until this was judged illegal by the court. Moreover, the ECA does not discuss the many advantages that tourist rental offers, which are rightly identified in the Impact Assessment.

The ECA refers to a resolution of the European Parliament, in which it is stated that tourist rentals lead to a reduction of the housing supply and to an increase in house prices. In Amsterdam, however, neither is the case: houses can be rented out for up to 30 nights only. For tourist rentals of principal residences of up to 120 nights per year, however, the European Court of Justice has found (ECLI:EU:C:2020:743, under 72) that such rentals "have no impact on the long-term rental market, since the landlord does not have to establish his principal residence elsewhere". Moreover, with such a strict maximum of nights, the possible price-increasing effects (displacement, higher return for investors), which could lead to an average price increase of 3.5% for permanent tourist rentals of entire dwellings, are absent [11]. Recent research, commissioned by the European Commission, shows there is not any clear effect on house prices due to STRs in Amsterdam [12].

Finally, it is mentioned that STRs have a negative impact on liveability. The ECA feedback mentions that during a neighbourhood survey in 2018, 80% of the residents in the centre of Amsterdam said they experienced nuisance from holiday rentals in their neighbourhood. However, a more detailed study [10] commissioned by the municipality of Amsterdam itself paints a different picture. There is a positive correlation between the number of STRs and the quality of life in the neighbourhood. Moreover, there appeared to be no connection between the perceived nuisance (from such subjective neighbourhood surveys) in the immediate area and the actual number of STRs in the relevant area [10]. It has long been known that B&Bs, given the high degree of social control, do not lead to reports of nuisance from the neighbourhood [13]. Given the very limited share (1.4% in the whole of Amsterdam, but only about 0.4% in the inner city) that holiday rentals contribute to tourist overnight stays, it is also not likely that they contribute significantly to tourist nuisance.

ECA also questions the fragmentation and lack of clarity of the rules that you observed. However, we ourselves have experienced in Amsterdam that many hosts are not aware of the ever-changing regulations (see annex). For example, some hosts confuse the registration system with the licensing system and assume that registration is sufficient, resulting in administrative errors. Excessive fines of at least 8700 euros are imposed for

such administrative errors [14]. It should be noted that the Council of State has repeatedly judged such fines to be disproportionate [15] and has moderated or overturned them.

In view of the aforementioned history of the past few years, in which the municipality of Amsterdam, under the guise of self-proclaimed "legal experiments", has repeatedly sought and exceeded the limits of its powers, it is not surprising that they oppose the harmonisation proposed by you. However, the reasons given, such as differences in the nature of the housing market or the local social impact of tourism, do not stand in the way of a transparent and uniform regulatory framework.

5. Conclusions and recommendations

In summary, it can be concluded that the municipality of Amsterdam, out of political expediency, has wrongly sought a solution to the increased touristic pressure and the related nuisance predominantly with limitations to peer-to-peer STRs. In the measures it has taken, the municipality of Amsterdam has repeatedly exceeded the limits of Dutch and EU law under the guise of deliberate "legal experiments", which are costly for STR hosts as they can only overturn such measures through legal proceedings.

We therefore consider it of great importance that the European Commission provides clarity to municipalities about possible regulations that can be considered in line with the Services Directive and property law. In doing so, we endorse the effectiveness of making a clear distinction between professional and peer-to-peer STRs. In our opinion, minimum rights should also be formulated for the latter group, so that they are protected from excessively burdensome restrictions that are in conflict with European free market principles (in particular: actual necessity, proportionality, non-discrimination and subsidiarity).

This can be done on the basis of three objectives:

- Protection of housing stock

In municipalities with significant scarcity of housing and high pressure on the housing market, it can be justified to limit tourist rental to the entire principal residence ("holiday rental") or a subordinate part of the principal residence ("B&B"). Only "holiday rentals" may additionally be limited to a maximum number of nights, which may not be less than 60. For a B&B the municipality may require that the rented part is smaller (<50 %) than the rest of the principal residence and that the owner (or a designated temporary substitute) actually stays in the house. If a prior substantive assessment is required for B&Bs, a licensing system may be introduced whereby licences are in principle issued for an indefinite period or are tacitly extended.

- Tourist pressure and nuisance

In the event of excessive tourist pressure in a neighbourhood, and only if peer-to-peer STRs contribute significantly (>20% of the total number of overnight stays) to this total touristic pressure in a neighbourhood, the municipality may consider introducing a authorisation scheme with quota for peer-to-peer STRs, with permits for a fixed period and a maximum number of permits per neighbourhood. To prevent possible nuisance, a maximum of 4 (not counting children under 4) can be set on the number of guests staying in the house at the same time.

- Transparency and enforcement

In order to be able to check compliance with the rules, the introduction of a (national) registration system is justified, where advertisements have to show this registration number. It should be possible to apply for a registration number easily, free of charge and digitally. If a maximum number of nights per year is introduced for holiday rentals, a municipality may require that overnight stays be reported beforehand (with the possibility of correcting omissions).

Amsterdam Gastvrij sees these possible measures as the ultimate ones that governments can impose on peer-to-peer STRs. In our opinion, a further restriction of the freedom to provide services for tourists is not readily justifiable. Of course, governments are free to draw up less restrictive measures.

We hope that the European Commission will guarantee the rights of peer-to-peer STR letters by formulating such minimum rights in a regulatory framework. It could prevent very costly legal proceedings.

Yours sincerely,

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Sources:

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[2] <https://www.amsterdam.nl/wonen-leefomgeving/wonen/vakantieverhuur/melden/>

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[4] Gemeente Amsterdam, "Toeristische verhuur van woonruimte", Rapportage 1 januari 2020 – 31 december 2020.

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[6] <https://nos.nl/artikel/2318021-ondanks-bouwstop-groeit-het-aantal-hotels-in-amsterdam-explosief>

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[9] https://assets.amsterdam.nl/publish/pages/887342/coalitieakkoord_amsterdam_2018.pdf

[10] Gemeente Amsterdam, Dienst Onderzoek, Informatie en Statistiek, "Toeristische draagkracht van wijken, meting 2019"

[11] Hans R.A. Koster, Jos van Ommeren, Nicolas Volkhausen, "Short-term rentals and the housing market: Quasi-experimental evidence from Airbnb in Los Angeles", Journal of Urban Economics (2021), doi: <https://doi.org/10.1016/j.jue.2021.103356>
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[13] Gemeente Amsterdam, Evaluatie toeristische verhuur van woningen 2016, pagina 22, 23.

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[17] Het Parool, 22 november 2017, "Wethouder Ivens: verbod op vakantieverhuur onmogelijk",

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[18] Raadsvergadering commissie Wonen en Bouwen 7-9-2016, citaat wethouder Ivens: *"Ja, elk onderzoek wijst hetzelfde uit: het verhuren van je eigen woning aan toeristen als je even op vakantie bent mag, als maar primair je woning nog je woning is. Dat is wat het juridisch verhaal is."*

[19] De Volkskrant, Laurens Ivens (wethouder Wonen & Bouwen Amsterdam), "Opinie: Brussel ligt dwars bij Amsterdamse aanpak toerisme", 4 Augustus 2020,

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