
On-demand Economy & Hospitality Services : Economic & Legal Issues

Auteur : Gilson, Julie

Promoteur(s) : Petit, Nicolas

Faculté : Faculté de Droit, de Science Politique et de Criminologie

Diplôme : Master en droit, à finalité spécialisée en gestion

Année académique : 2015-2016

URI/URL : <http://hdl.handle.net/2268.2/1685>

Avertissement à l'attention des usagers :

Tous les documents placés en accès ouvert sur le site le site MatheO sont protégés par le droit d'auteur. Conformément aux principes énoncés par la "Budapest Open Access Initiative"(BOAI, 2002), l'utilisateur du site peut lire, télécharger, copier, transmettre, imprimer, chercher ou faire un lien vers le texte intégral de ces documents, les disséquer pour les indexer, s'en servir de données pour un logiciel, ou s'en servir à toute autre fin légale (ou prévue par la réglementation relative au droit d'auteur). Toute utilisation du document à des fins commerciales est strictement interdite.

Par ailleurs, l'utilisateur s'engage à respecter les droits moraux de l'auteur, principalement le droit à l'intégrité de l'oeuvre et le droit de paternité et ce dans toute utilisation que l'utilisateur entreprend. Ainsi, à titre d'exemple, lorsqu'il reproduira un document par extrait ou dans son intégralité, l'utilisateur citera de manière complète les sources telles que mentionnées ci-dessus. Toute utilisation non explicitement autorisée ci-avant (telle que par exemple, la modification du document ou son résumé) nécessite l'autorisation préalable et expresse des auteurs ou de leurs ayants droit.

On-demand Economy & Hospitality Services: Economic & Legal Issues

**Is the local Brussels regulation compatible with European
law?**

Julie GILSON

Jury

Supervisor:

Nicolas PETIT, Professor of Law,
University of Liège

Academic year 2015-2016

Readers:

Jacques DEFOURNY, Professor of
Economy, HEC-Ecole de Gestion de l'Ulg

Charles GUEUR, Director of the Brussels
School of Competition

Thesis master for the Master of
Law, with management orientation

ACKNOWLEDGEMENTS

I want to express my appreciation to the people who helped me in the achievement of this master thesis. First, I would like to thank Mister Nicolas Petit, Professor of Law at the University of Liège. As a supervisor of this master thesis, he helped me by providing both remarks and paths for reflection in a field where he is an expert.

I would also like to express all my gratitude to the members of my jury, Professor Jacques Defourny and Charles Gueur. I am grateful to them for their very valuable tips and wise opinions.

My thanks go equally to the experts who accepted to meet me in order to enlighten the practical side of this new economy.

Finally, I must express my very profound gratitude to the members of my family for providing me with unfailing support and continuous encouragement throughout my years of study and through the process of writing this thesis. This accomplishment would not have been possible without them.

ABSTRACT

Over past decades, the concept of on-demand economy has surrounded a broad range of fields such as tourism, hospitality, and transportation... This economic model is a real substantive phenomenon and should no longer be considered a passing fad. Therefore, it is interesting to highlight its opportunities but also to study its impacts on removed the legal and economic grounds.

In the following paper, we will focus on tourism and hospitality. Short-term rentals are growing but at the expense of multiple European legal issues. Indeed, the compatibility of regulation with the European Treaty can be questioned. The aim will be to study the relevant literature and to collect information about this new economy. We believe that key to success, and more particularly its durability, depends on solutions from public authorities.

We hope that our paper will arouse interest and provide elements to stimulate future research on the sustainability of short-term rentals in Belgium.

TABLE OF CONTENT

I.- INTRODUCTION	8
II.- THE ON-DEMAND ECONOMY IN CONTEXT	9
A.- THE “ON-DEMAND ECONOMY”	9
1) <i>Introduction</i>	9
2) <i>Controversy About Terminology</i>	10
3) <i>Drivers Of On-Demand Economy</i>	11
a) Technologic Innovations.....	11
b) Economic Realities.....	12
c) Values Shift.....	13
d) Environmental Pressures	14
4) <i>Concerns Of On-Demand Economy</i>	15
a) Employment.....	15
b) Disruptive Competition	16
c) Tax Evasion	16
d) Could Regulation Be Seen As A Remedy?	17
B.- HOSPITALITY AND AIRBNB.....	17
1) <i>History</i>	18
2) <i>Success: Authenticity, Originality & Attractive Prices</i>	18
3) <i>Strategy Of Two-Sided Markets</i>	19
a) Definition.....	19
b) Pricing The Platform	20
4) <i>“Sharing” Economy Or Big Business: Incidence On The Brussels Market</i>	21
III.- HOSPITALITY REGULATION.....	23
A.- GUIDELINES: A EUROPEAN AGENDA FOR THE COLLABORATIVE ECONOMY	23
B.- BRIEF OVERVIEW OF EUROPEAN APPROACH.....	23
1) <i>Barcelona</i>	24
2) <i>Berlin</i>	24
3) <i>Paris</i>	25
4) <i>Amsterdam & London</i>	26
C.- SPECIFIC CASE: ANALYSIS OF THE LOCAL LEGAL STANDARDS OF THE BRUSSELS’ MARKET	27
1) <i>Legislative Context: Source Of The “Grey Zone”</i>	28
2) <i>Arguments For The Ordonnance Of May 2014</i>	28
a) Ruling N° 45/2012 Of The Constitutional Court	29
b) Sixth Reform Of The State	30
c) Transposition Of The European Services Directive.....	30
3) <i>Ordonnance Of May 2014: Innovations</i>	31
4) <i>Comparison With The Proposal Of The Walloon Decree Amending The Walloon Code On Tourism And Private Accommodation Set Tourist Rental Via Community Platforms</i>	32
D.- ANALYSIS OF THE EUROPEAN LAW: MARKET OPENING RULES.....	33

1)	<i>Free Movement: Freedom To Provide Services And Freedom Of Establishment</i>	33
a)	Scope Of European Law	35
1.	Is it a trans frontier situation?	35
2.	Does it concern the freedom of providing services or the freedom of establishment?	35
b)	Scope Of Application Of Services Directive 2006/123	36
c)	Closer Analysis Of Service Directive Linked To The Brussels <i>Ordonnance</i>	37
2)	<i>Competition Law</i>	41
a)	Insight Of Disruptive Competition In Belgian Law	41
b)	European Competition Law	42
1.	Leading role of European Competition Law	42
2.	On-demand model and European Competition law	43
3.	Tools of European competition law	43
E.-	DISRUPTIVE COMPETITION OR A TOOL TO KEEP MARKET'S CLOSED?	48
IV.-	EFFECTS OF GOVERNEMENT REGULATION IN ON-DEMAND SERVICES - CONCLUSION	49
A.-	ADAPTATION TO ON-DEMAND ECONOMY: REGULATORY INTERVENTION	49
1)	<i>Difficulties Of Determining How To Regulate Airbnb</i>	49
2)	<i>Reason For Regulatory Intervention: Market Failure</i>	50
3)	<i>Crucial Role Of Lobbying</i>	52
4)	<i>Stimulate Or Accompany And Secure?</i>	53
a)	Defensive Strategy	53
b)	Idle Strategy	55
c)	Progressive Strategy	57
5)	<i>Conclusion: Which Initiatives Have To Be Slowed Down And Which Ones Have To Be Sustained?</i>	58
V.-	CONCLUSION	60

« Mais il sentait que s'ils avaient toujours agi raisonnablement, les hommes depuis le début des âges n'auraient rien tenté. Et que vient un jour où, pour faire un pas en avant, il faut franchir la limite logique. »

J. KESSEL, *Mermoz*, 1939.

I.- INTRODUCTION

With the arrival of internet and the growth of consumers making use of new technologies, tourism has been going through an upheaval of its traditional custom; becoming the e-tourism. We no longer go to our travel agency; rather, we compare and reserve online. Nowadays, staying in a hotel is far from the only option when travelling: welcome to the “Era of the sharing economy”¹.

Different actors such as online travel agencies (e.g., Expedia), reservation platforms (e.g., Booking), comparators (e.g., Edreams) or lodging platforms (e.g., Airbnb) made e-tourism possible. They allowed consumers to benefit from wiser access to offers (in terms of pricing and originality for example²).

As a consequence, innovation automatically brings confusion and disorder in the legal sector. Indeed, innovation is a difficult phenomenon that needs to be understood, promoted and regulated within and beyond the on-demand economy³.

A legal uncertainty has occurred in the segment of Brussels local law. This grey area leads to regulations implementation. Over the last months, critiques from the hotel industry have filled papers with articles because of Airbnb’s entry into the market⁴.

Is there really an imbalance between both sectors? If that’s so, do governments have to be more involved in regulating the relative newcomers? Is regulating the best option? If they regulate, are these regulations all right under European law perspectives?

In order to answer these questions, we will first introduce the sharing economy, its promises and its challenges, and focus on the Airbnb case. With the aim of determining if the *Ordonnance* of 8th May 2014 is compatible with the provisions of the European Treaty, we will provide an outline dealing with the Directive Services and European competition law regarding Brussels frameworks. Finally, we will then consider the government weight in this kind of economy in the form of a synthesis of what is the best way of regulating this new economic model.

¹ Term that originates from C. GIORGI,, member of OuiShare.

² For example, you can spend a night in a hut or a castle (www.airbnb.com).

³ S. RANCHORDAS, “Does Sharing Mean Caring? Regulating Innovation in The Sharing Economy”, *Minnesota Journal of Law, Science and technology*, 2015, p. 422, available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2492798

⁴ E.g., A. GABOULAUD, “Non à l’hotellerie déguisée”, *Paris Match*, 22 June 2015, available at <http://www.parismatch.com/Actu/Economie/Interview-de-Laurent-Duc-de-l-UMIH-les-hotels-face-a-Airbnb-789450>.

II.- THE ON-DEMAND ECONOMY IN CONTEXT

A.- THE “ON-DEMAND ECONOMY”

1) *Introduction*

Sharing economy, term used by Rachel Botsman, is defined as an “economic model based on sharing, swapping, trading or renting products and services enabling access over ownership. It is reinventing not only what we consume but how we consume”.⁵

This is a model which use outweighs property; everybody shares access to products or services rather than having an individual ownership⁶. In this way, we can optimize the use of goods and services. This is essentially a new way of consumption: we try to develop the community aspect of property.

Rachel Botsman suggests structuring collaborative consumption into three types: product service systems, redistribution markets and collaborative lifestyles. The type that we will be interested into is the last one which could be defined as sharing fewer tangible assets such as time, space, skills or money⁷.

One of the main factors of success of this new economy is trust. We now prefer to trust people over corporations or government. As Chesky said in a video on the Airbnb website: “At a time when we’ve been told to look at each other with suspicion and fear, you’re telling the world it’s O.K. to trust again”⁸.

As it will thoroughly be explained later in the paper, technology is the main tool to build trust between people sharing their goods or services. Indeed, Airbnb introduced a Verified ID program. In that way, you can have information about your local host or lodger.

⁵ R. BOTSMAN, « The Sharing Economy lacks a shared definition », *Collaborative Consumption*, 13 November 2013, available at <http://www.collaborativeconsumption.com/2013/11/22/the-sharing-economy-lacks-a-shared-definition/>.

⁶ J. HAMARI, M. SJÖKLINT, A. UKKONEN, "The Sharing Economy: Why People Participate in Collaborative Consumption", *Journal of the Association for Information Science and Technology*, 2015, DOI: 10.1002/asi.23552, available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2271971.

⁷ R. BOTSMAN & R. ROGERS, *What's mine is yours: the rise of collaborative consumption*, p.73, 2010, New York, HarperBusiness.

⁸ PwC, *Consumer intelligence series: The sharing economy*, 2015, available at <https://www.pwc.com/us/en/industry/entertainment-media/publications/consumer-intelligence-series/assets/pwc-cis-sharing-economy.pdf>.

2) *Controversy About Terminology*

During our readings, we observed that many terms were being used to describe models that use digital technologies in a directly way match services and goods providers with consumers. Indeed, the terms "sharing economy", "peer-to-peer economy", "collaborative economy", "on-demand economy" and "collaborative consumption" are often being used interchangeably. The term "collaborative economy" is a rapid evolving phenomenon and its definition may evolve accordingly.

« For some, the word "sharing" was a misnomer, a savvy-but-disingenuous spin on an industry by them which felt was more about monetary opportunism than altruism. For others, more apt titles included the Trust Economy, Collaborative Consumption, the On-Demand or sharing Economy. »⁹ As a matter of fact, several people affirm that this kind of economy is not at all about sharing but that its aim is to make a profit¹⁰. Indeed, are you really sharing something if you charge money for it?

Additionally, we will not use the term « peer-to-peer economy » because we think that phenomenon does not match with the definition: « a Peer-to-Peer Economy is a broad term which refers to « consumers-to-consumers » transactions, that is, contrary to our traditional economic and legal models which distinguish between professionals and consumers, in the P2P model, consumers engage in the sporadic provision of services, further developing their underused talents or time »¹¹. This definition does not enough bring out the important role of platforms intermediaries such as Airbnb.

Therefore, for the purpose of consistency, we will use the label "on-demand economy" (or « on-demand services ») to broadly define this emergent economic model that connects consumers to services providers. This term refers to « the immediate availability of services through digital platforms. This is a very broad term which includes a wide array of both professional and amateur services which are provided through digital platforms on a sporadic

⁹ PwC, *Consumer intelligence series: The sharing economy*, 2015, available at <https://www.pwc.com/us/en/industry/entertainment-media/publications/consumer-intelligence-series/assets/pwc-cis-sharing-economy.pdf>.

¹⁰ M.G. ECKHARDT, F. BERDHI, "The Sharing Economy isn't about sharing at all", *Harvard Business Review Online*, 29 January 2015, available at <http://hbr.org/2015/01/the-sharing-economy-isnt-about-sharing-at-all>: "Sharing is a form of social exchange that takes place among people known to each other, without any profit. Sharing is an established practice, and dominates particular aspects of our life, such as within the family. By sharing and collectively consuming the household space of the home, family members establish a communal identity. When 'sharing' is market-mediated – when a company is an intermediary between consumers who do not know each other – it is no longer sharing at all. Rather, consumers are paying to access someone else's goods or services for a particular period of time. It is an economic exchange, and consumers are after utilitarian, rather than social, value".

¹¹ S. RANCHORDAS, *Home-Sharing in the Digital Economy: The Cases of Brussels, Stockholm, and Budapest*, 2016, p. 19, available at <http://ec.europa.eu>.

basis, when the consumer need them and not based on a longstanding or continuous business relationship »¹².

3) *Drivers Of On-Demand Economy*

Numerous promises are associated with the on-demand services concept: these practices would be, among others, an answer to the growth model crisis, environmental crisis and a means to refund a social link.

a) **Technologic Innovations**

These exchanges of goods are taking place on a local and even worldwide level due to the development of internet. Indeed, the internet generally gives people a lot of choices for their purchases, and this is specifically true as far as travels are concerned. Our access to information has never been greater or more tailored to specific needs. With new techniques, it is easier for people to get in touch with each other to match their respective requests.

First, *social networking* easily links consumers around the world. Obviously, to make this happen, a high degree of trust is needed. Deborah Schultz, innovation strategist, said: “our hyper-connected world impacts the scale and speed of everything and is driving radical changes to supply and demand”¹³. Social networks as Facebook facilitate this; different features help to build trust between users and suppliers. For example, Airbnb uses the Facebook’s open graph so that users can identify ratings and rankings from their Facebook friends. Indeed, the measure of your trust is the reputation you have on social networks¹⁴. Regarding recent events (see terrorism issues), people may be influenced and convinced to stay in a place where they know about the host.

Social networking also allows bypassing traditional companies by reaching a private individual directly, without an intermediate vehicle for contact¹⁵.

Additionally, *mobile devices and platforms* facilitate the organisation of on-demand economy: they create opportunities in real time. Digital platforms connect spare capacity and demand:

¹² S. RANCHORDAS, *Analytical paper on market access requirements in the short-term accommodation rental sector in Stockholm, Budapest and Brussels*, 2016, p.19, available at <http://ec.europa.eu>.

¹³ J. OWYANG, « A Market Definition Report: the Collaborative Economy », *Altimeter Research Theme: Digital Economies*, 4 June 2013, available at <http://fr.slideshare.net/Altimeter/the-collaborative-economy>.

¹⁴ See Airbnb’s website, in the support section, <https://fr.airbnb.be/help/article/113/how-do-i-connect-my-facebook-and-airbnb-accounts>

¹⁵ G. GAGNE, « Economie collaborative, culture du partage et guerre des brevets: nouveaux regards sur l’innovation numérique », *Organisation internationale de la francophonie*, vol. 10, n7, 7 September 2015, available at http://www.ieim.uqam.ca/IMG/pdf/oif-volume10-numero7septembre-2015ceim_vf.pdf.

Airbnb matches unused rooms and flats with travellers in need of lodging for example. Every platform has now developed an app so that you can easily, and almost from everywhere in the world (due to 4G), provide your rental room on Airbnb or bid for a journey on Blablacar for instance. These platforms also help trust increase by posting information about users via feedback and ratings¹⁶.

Indeed, it is through these platforms (and not through traditional sales channels) that consumers come into contact to share idle resources for low transaction costs. Initially conceived for file sharing and exchange of goods, they now allow exchange of services.

Lastly, *payment system* is useful to gain consumers' confidence thanks to its security. We believe that good security increases trust, and that the consequence of good security and trust perception is the rise of electronic commerce¹⁷. A person can pay the bill to someone who lives on the other side of the world.

We know now that the web has provided collaborative tools. However, the goal is to materialize collaborative logics into the real life; R. Botsman has summed up this thought in her book: "using the internet to get off the internet"¹⁸ (see values shift).

b) Economic Realities

While the economic crisis that we have endured for more than seven years in our European countries has given birth to an economic liberal model limit based strongly on profit to the detriment of human beings, this emergence of sharing economy is full of hope. The economic crisis has had an impact on on-demand economy: some people were obliged to become consumers of this economic model because of their limited budget (to face the decline in their purchasing power). Collaboration seems to be for some people an anti-crisis plan¹⁹. Through on-demand economy, you can save costs by borrowing and recycling items; you just have to reduce the number of idle resources by sharing and monetizing them.

Thanks to these platforms, it is now possible to get richer that way. Before, if you were eager to rent your room, getting in touch with a potential lodger cost money. So, in some cases,

¹⁶ A. LAMPINEN, V. BELLOTTI, A. MONROY-HERNANDEZ, C. CHESHIRE, *Studying the "Sharing Economy: Perspectives to Peer-to-Peer Exchange*, New York, 2015, available at <http://dl.acm.org/citation.cfm?id=2699339>.

¹⁷ C. KIM, W. TAO, N. SHIN, K-S. KIM, « An empirical study of customers' perceptions of security and trust in e-payment systems », *Electronic Commerce Research and Applications*, 28 April 2009, p. 1, available at www.elsevier.com/locate/ecra.

¹⁸ R. BOTSMAN & R. ROGERS, *What's mine is yours: the rise of collaborative consumption*, p.73, 2010, New York, HarperBusiness.

¹⁹ See Airbnb's website, in the support of this section <https://fr.airbnb.be/economic-impact>.

renting your room, might not bring much money. Presently, these platforms enable us to have immediate profits (estimated income per month: 451 euros)²⁰.

In 2011, a journalist wrote in the Times: "one day, we will look back in the past, into the 20th century and we will ask ourselves why we owned so much"²¹. As we noted earlier, the transition from owning to using is one of the most important aspects of this new economy. Lisa Gansky, author of *The Mesh: why the Future of Business is Sharing*, said "we're moving from a world where ownership was something we aspired to, to a world where access to goods services, and talent triumphs ownership"²².

According to the "economy of functionality (economic model where services are sold instead of goods) and circular economy", the value of one-product no longer lies into the items or its possession but in its utilisation benefit.²³ As presented by R. Botsman and R. Roo: "you need a hole and not a drill, you need a projection and not a DVD, you need mobility and not a car"²⁴.

We are coming from the 20th century where hyper consumption controlled people with credit, advertising and individual ownership. Today, we are entering the 21st century synonym of collaborative consumption (reputation, community and shared access).

As seen before, the economic argument leads to be part of this new economy but it can become secondary compared to the pleasure in being together.

c) Values Shift

On-demand economy is not just valuable for the money saved and earned. It is also a purveyor of positive values as collaborative spirit: it builds a stronger community and inevitably rescues the decline in social capital²⁵.

Through the ages, people have generally limited sharing within their own family or close acquaintances. Today, on-demand platforms facilitate people's involvement although they do

²⁰ See data from the InsideAirbnb's website, in the support of this section <http://insideairbnb.com/brussels/>.

²¹ B. WALSH, "Today's smart choice: don't own. Share", *Times*, 17 March 2011, available at content.time.com:ti.me/19YTeQY.

²² L. GANSKY, *The Mesh: why the Future of Business is Sharing*, 28 September 2012, p. 134, Portfolio

²³ D. MASSE, « Comprendre l'économie collaborative et ses promesses à travers ses fondements théoriques », working paper n°05/2015, *IDDRI*, 2015, available at <http://www.iddri.org/Publications/Comprendre-l-economie-collaborative-et-ses-promesses-a-travers-ses-fondements-theoriques>.

²⁴ R. BOTSMAN & R. ROGERS, *What's mine is yours: the rise of collaborative consumption*, p.145, 2010, New York, HarperBusiness.

²⁵ R. BOTSMAN & R. ROGERS, *What's mine is yours: the rise of collaborative consumption*, p.43 & 81, 2010, New York, HarperBusiness.

not know each other and do not have common friends or connections. Indeed, as a tourist or a traveller, you can connect with local people and explore neighbourhoods off the beaten track.

Previously, it has never been possible to share your home or a journey with strangers. It demands a high degree of trust. Consequently, after an incident, Airbnb created the *Trust and Safety Department*²⁶.

Nowadays, staying in a stranger's home, hitching a ride from someone you have never met or "colunching" with strangers is possible and it often happens. For example, Airbnb makes possible an interaction between the tourist and the local host who can suggest travel tips concerning places you must see, restaurants you have to taste in a much more tailored way than tourist guides do. On-demand economy involves deeper social interactions than traditional methods of exchange. This represents a reintroduction of conviviality and former values as exchange, which had been somewhat lost because of capitalism economy.

Previously, our society was based on exchanging goods and services. 10, 000 years ago, people hunted in packs. Then, they shared in small villages. Then, they built city community structures. Today, there are online social groups.

d) Environmental Pressures

As consumers come out gradually against property, this new method of consumption seems to bring a pertinent answer to the ecology crisis.

Definitely, there is a recent growing awareness about the environmental impact of our consumption, habits. Look at Leonardo Di Caprio at the Academy Awards ceremony²⁷. Increasing numbers of people are concerned about reducing the carbon footprint and consumption of resources. They are desirous of being part of a greener economy.

In the future, due to ecologic crises, sharing may not be only a choice but it can also be seen as a necessity²⁸. The best example of this concern about environmental impact is carpooling²⁹. European cities (as London, Copenhagen, Brussels, Dublin and many more) are on their way

²⁶ See Airbnb's website, in the support of this section <https://www.airbnb.com/careers/departments/trust-and-safety>.

²⁷ « Le discours inattendu et engagé de Leonardo DiCaprio après son premier Oscar », *Le Huffington Post*, 29 February 2016, available at http://www.huffingtonpost.fr/2016/02/29/leonardo-dicaprio-discours-oscars-meilleur-acteur-environnement_n_9346574.html.

²⁸ R. BOTSMAN & R. ROGERS, *What's mine is yours: the rise of collaborative consumption*, p.74, 2010, New York, HarperBusiness.

²⁹ E.g., Blablacar.

to banishing cars from the city centres because of pollution³⁰. Therefore, the starting point to reduce CO2 is maybe to “abolish” the notion of individual car ownership. Car-sharing services could be a starting point so that less cars would be driven in the centres (car is one of the five components of the on-demand economy)³¹.

Though these benefits must be taken into account, they arouse many reservations and must be analysed with a critical eye by the public decision-makers.

On the one hand, regulating bodies must be concerned with the kinds of support measures and the incitement for on-demand practices to be made use of after having integrated the borders. On the other hand, the public (political) power must apprehend the demands, changing or maintained those which come to light about prescribed and fiscal bounds that the on-demand practices destabilize and provoke at least an adaptation if not a change.

This public power reaction facing the on-demand economy promises will be analysed subsequently in this paper.

4) Concerns Of On-Demand Economy

After a first step of common enthusiasm for on-demand economy, here we are in the predictable period of disillusionment because of its unregulated expansion: structural destruction of paid work, foul play of traditional players, tax evasion and desertification from city centres by national residents in favour of tourists.

a) Employment

We are observing a structural destruction of paid work instead of independent work³².

Growth of part-time and flexible jobs has, as a dramatic consequence, work insecurity. Indeed, while flexibility seduces people, they still have to endure the costs synonymous with flexibility. This may create uncertainty as to applicable rights and the level of social protection³³. Two main problems can happen to workers of the on-demand economy: no

³⁰« Les villes européennes qui ont ou vont bannir les voitures du centre ville », *Le Monde*, 23 October 2015, available at http://www.lemonde.fr/pollution/article/2015/10/22/tour-d-europe-des-futurs-et-actuels-centres-ville-sans-voiture_4795189_1652666.html.

³¹ PwC, *Consumer intelligence series: The sharing economy*, 2015, available at <https://www.pwc.com/us/en/industry/entertainment-media/publications/consumer-intelligence-series/assets/pwc-cis-sharing-economy.pdf>.

³²See the interview of A. CASILLI, “L’uberisme est un tchatchérisme”, *Kaléidoscope*, January 2015, available at <http://www.kaleidoscopemag.fr/luberisme-est-un-tchatcheurisme>.

³³Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *A Digital Single Market Strategy for Europe* (COM(2015) 192 final), Brussels, 2015, p. 11.

protection of their income in case of health problems and no rights if their situation is suddenly withdrawn.

Independent work is attractive to more companies because independent contractors aren't subject to minimum wages or overtime laws, aren't entitled to disability or unemployment insurance, and are exempted from other benefits; thus independent work is cheaper than hiring wage earners. That's why we are noticing a misclassification of these workers and denying them benefits.³⁴

As a result, we see an economy shifted from a private or public sector enjoying social protections and a pension scheme and a health insurance scheme towards a private sector consisting of freelance workers with no social security coverage, no health insurance and moreover with unspecified statutes.

b) Disruptive Competition

According to existing market operators, there is an inequality of charges handling between both sectors. Indeed, hotels, Bed and Breakfasts, and other lodgings claim that they have to register, pay taxes and comply with a lot of regulations while consumers who rent their spaces via platforms do not³⁵. They claim that Airbnb engages "unfair competition" by failing to comply with the regulatory requirements that burden traditional hospitality providers.

This abuse will be more deeply analysed in subsequent sections of this paper.

c) Tax Evasion

This is an issue that touches every internet economy. Because of the immaterial characteristic of a large part of their activities and the difficulties encountered by the tax department to define the territory concerned by the production operations, internet companies succeed in taking advantages of these flaws in a more important way than standard industries. For example, Airbnb chose Ireland³⁶ for its European seat (where there is only a 12,5% corporate tax rate as opposed to 33,99% in Belgium) and Delaware³⁷ for America while its parent

³⁴ C. RAMPPELL, « The dark side of sharing economy jobs », *The Washington Post*, 26 January 2015, available at https://www.washingtonpost.com/opinions/catherine-rampell-the-dark-side-of-sharing-economy-jobs/2015/01/26/4e05daec-a59f-11e4-a7c2-03d37af98440_story.html.

³⁵ In order to have more information about the impact of Airbnb on the Hotel Industry in the US, see: G. ZERVAS AND D. PROSERPIO, "The Rise of the Sharing Economy: Estimating the Impact of Airbnb on the Hotel Industry", *Boston U. School of Management Research*, Paper No. 2013-16, 9 June 2016, available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2366898.

³⁶ See Airbnb's website, in the support section <https://www.airbnb.fr/terms> : "Si vous résidez en dehors des Etats-Unis, vous concluez un contrat avec Airbnb Ireland en ce qui concerne l'utilisation du Site, de l'Application ou des Services Airbnb".

³⁷ Delaware has been seen as the Luxembourg of the United States.

company is located in San Francisco. As a consequence, an important part of the public authorities' fiscal basis disappeared into digital meanders of those platforms wherein the tax offices have no access. There is a real loss of income receipt for governments because companies are able to subvert the standard taxation procedures.

Moreover, other issues are in relation to tax compliance and enforcement: "difficulties of identifying the taxpayers and the taxable income, lack of information on service providers, aggressive corporate tax planning exacerbated in the digital sector, differences in tax practices across the EU and insufficient exchange of information"³⁸.

d) Could Regulation Be Seen As A Remedy?

We believe regulation can be a strong weapon to overcome challenges specific to the on-demand services, if it is done in order to balance the different interests involved. In other words law can act as a driver of innovation.

To ensure fair working conditions, member states have the duty to assess the adequacy of their social protection system to the needs of workers of this new economy and adapt it if necessary.

In addition, we will see that the member states also have the duty to legislate when unequal situations may occur under the competition law in order to create a level playing field.

Finally, Member States have to keep on making efforts concerning the simplification of the tax rules and persevering with the desire of transparency about transactions³⁹.

B.- HOSPITALITY AND AIRBNB

To have an accurate analysis of this phenomenon, we have decided to limit ourselves to the hospitality sector based upon an exemplary case Airbnb.

³⁸ Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *A Digital Single Market Strategy for Europe* (COM(2015) 192 final), Brussels, 2015, p. 7.

³⁹I. DYKMANS, « Nouveaux cadre fiscal pour l'économie collaborative: des critères stricts pour profiter de la fiscalité light de l'économie de partage », *L'Echo*, 13 May 2016, available at http://monargent.lecho.be/imp%F4ts/Nouveau_cadre_fiscal_pour_l_economie_collaborative.9765902-1785.art.

1) *History*

It all started in San Francisco in 2007 when B. Chesky and J. Gebbia could not afford to pay rent so they had a pretty brilliant idea. They decided to turn their loft into a lodging space with three airbeds on the floor, and promises of home cooked breakfast in the morning. They set up a simple website and got three renters. In 2008, they coordinated the launch of the company “Airbed & Breakfast” with their former roommate and engineer N. Blecharczyk. In 2009, Airbnb was born.

From nothing to something, with only but an idea, you can create a worldwide organization.

Today, Airbnb is an international and communal platform of rental and accommodation reservations peer-to-peer. Airbnb hosts on average of 425 000 guests per night, i.e. 22% more than the Hilton hotel chain, even though Airbnb doesn’t own any real property.⁴⁰ While Hilton worldwide (610 000 rooms, 88 countries) has taken 93 years to build, Airbnb (650 000 rooms, 192 countries) has needed only 4 years to amass. This is the really big difference.⁴¹

Moreover, contrary to hotel chains, Airbnb expansion implies almost zero cost: it just needs more space added to the platform⁴².

2) *Success: Authenticity, Originality & Attractive Prices*

On our opinion, the two key elements of the Airbnb success are authenticity of travels and attractive prices.

Nowadays, travellers need to feel like home, wherever they are. They want to be Parisians when they visit Paris and New Yorkers when they are in New York: we are in the era where everything needs to be local⁴³. Consumers are actually looking for local authenticity when they travel and a platform like Airbnb delivers it⁴⁴ because living in a home setting makes a stay in another place feel more like a home in that place than a hotel or other transient type of accommodation.

⁴⁰G. GAGNE, « Economie collaborative, culture du partage et guerre des brevets: nouveaux regards sur l’innovation numérique », *Organisation internationale de la francophonie*, vol. 10, n7, 7 September 2015, available at http://www.ieim.uqam.ca/IMG/pdf/oif-volume10-numero7septembre-2015ceim_vf.pdf.

⁴¹Funding Transports, *Highlights of the Internal Transport Forum: session summaries*, 2013, OECD, p. 23.

⁴²P. GOUDIN, « The Cost of Non-Europe in the Sharing Economy: Economic, Social and Legal Challenges and Opportunities », *European Parliament Research Service*, January 2016, p. 150, available at <http://www.europarl.europa.eu>.

⁴³N. FERRARY, « Les nouvelles formes de tourisme collaboratif: une demande en pleine expansion », *Cairn*, August 2015, vol. 3, ISSN 1148-7941, available at <https://www.cairn.info/revue-realites-industrielles-2015-3-page-50.htm>.

⁴⁴See Airbnb’s website, in the support section <https://fr.airbnb.be/economic-impact>: 91% des voyageurs veulent découvrir leur destination “comme un habitant lambda”.

Shelby Clark, CEO of Peers.org said: “Having that local flavour is something that is very difficult for any major brand to match, so I think that’s going to be a big challenge for the incumbents to deal with”⁴⁵.

In addition, the originality of Airbnb globally positions it ahead in the competition. Indeed, you can presently rent a tree house⁴⁶, boats⁴⁷, even spend a night in a Van Gogh’s painting⁴⁸. Surely, the discerning traveller looking for an authentically local experience would see this as an attractive alternative to a hotel room which could have an exact twin anywhere in the world.

Finally, we can say without fear of contradiction that Airbnb offers much more advantageous prices than traditional hospitality industry. Airbnb hosts are able to have very competitive prices because its primary fixed costs, such as rent and electricity, are already covered⁴⁹. For example, if you want to rent a room in the city centre of Brussels, you will pay only 50 euros, opposed to a traditional hotel room that will cost you more or less twice the price⁵⁰.

3) Strategy Of Two-Sided Markets

a) Definition

Home-sharing platforms are intermediaries, they do not provide accommodation but they match supply and demand: travellers and hosts.

In this type of market, there are two sets of consumers for the company. In our case, we have guests and hosts. Some of its accounting value derives from its ability to put through these two sides together, which would not meet so easily without digital technology.

Rochet and Tirole have proposed a formal definition: “A market is two sided if the platform can affect the volume of transactions by charging more to one side of the market and reducing

⁴⁵ PwC, *Consumer intelligence series: The sharing economy*, 2015, available at <https://www.pwc.com/us/en/industry/entertainment-media/publications/consumer-intelligence-series/assets/pwc-cis-sharing-economy.pdf>.

⁴⁶ See Airbnb’s website, in the support section <https://www.airbnb.com/rooms/5633>.

⁴⁷ See Airbnb’s website, in the support section <https://www.airbnb.com/wishlists/stay-on-a-boat>.

⁴⁸ See Airbnb’s website, in the support section <https://www.airbnb.fr/rooms/10981658>.

⁴⁹ D. GUTENTAG, *Airbnb: disruptive innovation and the rise of an informal tourism accommodation sector*, *Current issues in Tourism*, 2015, available at <http://dx.doi.org/10.1080/13683500.2013.827159>; See Appendix 5 for the reflexion of low costs of Airbnb accommodation in six destinations.

⁵⁰ Personal comparison made for the rooms of the same standard in March 2016.

the price paid by the other side by an equal amount; in other words, the price structure matters, and platforms must design it so as to bring both sides on board.”⁵¹

This definition applies for every on-demand platform and not only Airbnb. However, in this paper, we will explain this concept linked to Airbnb.

In order for these platforms to be successful, both sides of the market need to be convinced of the value that the proposition offers.

On the demand side, Airbnb offers a platform to find a lodging, which can be a real alternative to hotels opposed to other companies. Regarding the supply side, the value proposition is for hosts to rent space with a lower budget in the beginning before scaling and opening up.

Obviously, more demands from one user group stimulate more answers from the other one⁵². Once they have reached a critical mass, the popularity of this network increases owing to a “snowball effect”. Actually, if tourism expands in Brussels, on one hand more hosts will put their room on Airbnb platform; on the other hand, more guests will register in the platform.

Moreover, the relative proportion of host and guest matters and pricing is one way to reach the right balance.

b) Pricing The Platform

The key decision is pricing the platform right. It will try to get both sides “on board” by pricing suitably each side. Traditionally, price is determined between a minimum that is the marginal cost per unit and a maximum that is the consumer’s willingness to pay⁵³.

Therefore, Airbnb providers had to choose a price for each side: there are a “subsidy side” (hosts) and a “money side” (guests). In a two-sided market, the more price sensitive side tends to receive a subsidy to stimulate response from the other side. If Airbnb attracts enough hosts, guests will pay generously to be part of it.

Here are some signs, which help us to determine who is on which side and is the reflection of having more guests than hosts on the platform. Hosts are charged 3% fee for every

⁵¹ J-C. ROCHET, J. TIROLE, “Two-sided Markets: A Progress Report”, *RAND J. Econ.*, Autumn 2006, available at https://www.jstor.org/stable/25046265?seq=1#page_scan_tab_contents.

⁵² T. EISENMANN, G. PARKER, M. VAN ALSTYNE, “Strategies for two-sided markets”, *Harvard Business Review*, October 2006, available at <http://hbr.org>.

⁵³ L. FILISTRUCCHI, D. GERADIN, E. VAN DAMME, « Identifying Two-Sided Markets », *TILEC Discussion Paper No. 2012-008*, 21 February 2012, available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2008661.

reservation⁵⁴ but as Airbnb states on its website, this fee is to cover the cost of processing customer payments. Guests pay a fee between 6 and 12% of the total nightly price (basic price and cleaning fees)⁵⁵. Airbnb subsidizes the host side because hosts are more price sensitive because there are free listing services in the market, which creates a barrier for hosts to pay Airbnb high listing rates.

4) “Sharing” Economy Or Big Business: Incidence On The Brussels Market

The term “sharing economy” is now in the Oxford Dictionary and is defined as “an economic system in which assets or service are shared between private individuals either free of for a fee, typically by means of the internet”.

At the beginning, sharing economy has to be based on exchanges without any money transactions. However, the more people are persuaded by this new model, the more giant platforms try to take advantage of this trend.

Platforms, in situations of market dominance, will rely on a commercial logic: an offer, a demand, and a transaction. For example, the Blablacar platform was free at the beginning and now you have to pay booking fees (which depend on the price and the length of the journey⁵⁶).

The citizen initiative of sharing economy has been exploited by the private sector, which sees in each collaborative innovation the opportunity of a new market. It was the tragedy of the cooperative stores in the last century. As soon as something works, firms which have got enough money will buy to take advantages of them.

Since the business of renting out tourist apartments and rooms is getting more and more lucrative, part of the offerings of Airbnb comes from companies that manage many apartments at the same time.

To follow the trend and not be left behind, some individuals have even gone so far as rethinking the value exchange: “a prospective homebuyer may look into purchasing a 3-bedroom home rather than a 2-bedroom one, mindful that rental income from a spare room can cover the additional mortgage payment.”⁵⁷

⁵⁴ See Airbnb’s website, in the support section <https://www.airbnb.com/help/article/63/what-are-host-service-fees>.

⁵⁵ See Airbnb’s website, in the support section <https://www.airbnb.com/help/article/104/what-are-guest-service-fees>.

⁵⁶ See Blablacar’s website, in the support section <https://www.blablacar.fr/faq/question/a-quoi-correspondent-les-frais-prelevés-sur-chaque-reservation>.

⁵⁷ PwC, *Consumer intelligence series: The sharing economy*, 2015, available at <https://www.pwc.com/us/en/industry/entertainment-media/publications/consumer-intelligence-series/assets/pwc-cis-sharing-economy.pdf>.

An examination of some different numbers⁵⁸ will show us how Airbnb is being used in and affecting Brussels.

First, two thirds of the *room type* consist of entire homes or apartments (64,8%). An entire home provides all the facilities and comfort just like in a hotel room. It shows that flats or homes are more and more frequently rented on a commercial level since hosts can make higher profits with short-term rentals than with regular tenants.

Moreover, very little is left of the platform's original concept (with only 0,9% shared rooms) in which residents share vacant spaces with visitors or tourists and create a personal connection with their clients.

Then, to show Airbnb *activity* in Brussels, it can be relevant to analyse the number of reviews according to the guest's stay. 83 nights mean a rent during a quarter of a year probably more during the holidays and chiefly in summer. In addition, a host can earn 451 euros per month which is quite relevant.

The third element that can show us that spaces are rented at a commercial level and can be considered as illegal is the *availability*. There are 80,7% of listings with high availability opposed to 19,3% listings with low availability. Entire homes or apartments are available the whole year for tourists; owners probably don't live in the property and are displacing residents from the centre.

Finally, the number of *listings per host* is a good indicator to demonstrate whether apartments are commercially rented and disrupting hotel industry. One third of the hosts (34,8%) own two or three places and therefore these people are probably running businesses, and doing so in order to make money.

These numbers might be relevant to determine whether these rentals are professional or not. Therefore, some of the national restrictions have been in place to avoid professional use of the platform economy.

Thus, we will not quarrel on the fact that the intermediation platform will very often be for profit, it can be without profit but very often it will be for profit and then you have a new business model and the problems we will discuss.

⁵⁸ See data from the InsideAirbnb's website, in the support of this section <http://insideairbnb.com/brussels/>.

III.- HOSPITALITY REGULATION

On-demand economy activities do not fit in traditional legal niches, involving legislative work of regulation and law adaptation.

A.- GUIDELINES: A EUROPEAN AGENDA FOR THE COLLABORATIVE ECONOMY

On May 16, 2016, the European Commission published guidance on collaborative economy⁵⁹. It calls on European states to ban as a last resort only services like Airbnb or Uber and gives a set of instructions to encourage its development. Member states will have to rethink their rules in force according to these recommendations and abolish rules that are not necessary in the eyes of this new model.

The Commission asks them not to impose disproportionate obligations, while ensuring adequate protection of consumers (example of public interest) and invites to impose licenses or trade permits in strictly necessary cases⁶⁰.

It is within the responsibility of the member states to legislate, they have their jurisdiction to control. Everyone will have to review, simplify and modernize the market access requirements applicable to market participants⁶¹.

B.- BRIEF OVERVIEW OF EUROPEAN APPROACH

Like Belgium, many States have already looked for legal solutions in response to the growth of the on-demand economy. Lately, they have been looking for a balance between technological innovations and ensuring of respect for public interest⁶². As we will examine, the situation ranges from outright prohibition to a more friendly approach.

⁵⁹ Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *An European Agenda for the Collaborative Economy* (COM(2015) 184 final), Brussels, 2015.

⁶⁰ J-Y. KLEIN, « La Commission européenne prend la défense d'Uber et de Airbnb », *L'Echo*, 2 June 2016, available at http://www.lecho.be/economie_politique/europe_economie/La_Commission_europeenne_prend_la_defense_d_Uber_et_Airbnb.9773330-3167.art.

⁶¹ Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *A Digital Single Market Strategy for Europe* (COM(2015) 192 final), Brussels, 2015, p. 7.

⁶² These are the reasons often invoked by Member State to restrict short-term rentals : the need for supervision to ensure quality of service, the need to ensure availability of rental housing accommodation in markets where demand exceeds supply, preventing the abusive subletting of social housing, maintaining a level playing field,

1) *Barcelona*

The city of Barcelona tries to crack down on uncontrolled tourism. Many regulations have been actually adopted in Spain in reaction to Airbnb platform.

Jurisdictions of the city of Barcelona levied heavy fines against Airbnb (600,000 euros) because of “serious” breaches of local laws (that state any flat rented to tourists must be registered with the Tourism Registry of Catalonia)⁶³. Indeed, anybody letting a property through Airbnb is required to register his or her activity with the local authorities, which then undertake safety and security checks. Also, any earning must be declared to the tax department: several regulations need to be applied such as licence fee for hotels and tourist apartments⁶⁴, prohibition of the renting out of rooms in private residences⁶⁵.

As a consequence, a set of rules is being prepared by the Catalan Government: apartment owners will have to comply in order to rent their space legally⁶⁶.

2) *Berlin*

In Berlin, the main argument is giving back to the local inhabitants habitations in which they could not live anymore because the housing had been transformed into full time tourist lodgings⁶⁷.

In fact, one of the Airbnb consequences is to dry up the rental market and to provoke rent increases⁶⁸. Consequently, since the 1st May 2016 Berlin has forbidden tourist hiring via platforms such as Airbnb. “Only a hiring of a room on a inhabited flat will be possible”, said

to control the character of neighborhoods in cases where housing is being converted in response to growing inflows of tourists.

⁶³A. KASSAM, « Airbnb fined 30,000 for illegal tourist lets in Barcelona », *The Guardian*, 7 July 2014, available at <http://www.theguardian.com/technology/2014/jul/07/airbnb-fined-illegal-tourist-lets-barcelona-catalonia>; J-Y. KLEIN, « Barcelone hausse le ton face à Airbnb », *L'Echo*, 28 June 2016, available at http://www.lecho.be/entreprises/tourisme/Barcelone_hausse_le_ton_face_a_Airbnb.9782946-3009.art?highlight=airbnb.

⁶⁴Ley 13/2002, de 21 de junio, de turismo de Cataluña, DOGCno3739, 14/10/2002; ley 18/2007, de 28 diciembre, del derecho a la vivienda, DOGC no5044, 09/01/2008; Decreto 159/2012, de 20 de noviembre, de establecimientos de alojamiento turístico y de viviendas de uso turístico, DOGC no6268, 05/12/2012. See: http://empresaiocupacio.gencat.cat/es/treb_departament/emo_normativa/emo_normativa_turisme/.

⁶⁵Decreto 159/2012, de 20 de noviembre, de establecimientos de alojamiento turístico y de viviendas de uso turístico, DOGC no6268, 05/12/2012, article 66(2).

⁶⁶P. GOUDIN, « The Cost of Non-Europe in the Sharing Economy: Economic, Social and Legal Challenges and Opportunities », *European Parliament Research Service*, p. 156, January 2016, available at <http://www.europarl.europa.eu>.

⁶⁷T. SERAFINI, « A Berlin, Airbnb se heurte à un mur », *Libération*, 25 April 2016, available at http://www.liberation.fr/france/2016/04/25/a-berlin-airbnb-se-heurte-a-un-mur_1448595.

⁶⁸J-Y. KLEIN, « Après Berlin, New York près de bannir Airbnb », *L'Echo*, 20 June 2016, available at http://www.lecho.be/entreprises/immobilier/Apres_Berlin_New_York_pres_de_bannir_Airbnb.9779712-3064.art.

the housing State Secretary⁶⁹. Renters may still put their properties if they stay in the apartment at the time of the hire, announced the Secretary of State for Housing in Berlin⁷⁰. Moreover, an authorization system has been created so that the owners could go on with their profitable activities.

The city of Berlin is appealing to neighbours' collaboration to oppose the ones that would keep up. This step was made easier thanks to an online form on the site of the city of Berlin⁷¹.

3) Paris

Paris is currently Airbnb's most popular vacation destination, with an estimated 40,000 listings⁷². In France, there were many interventions through the adoption of the "ALUR law"⁷³ to retaliate against the creation of platforms such as Airbnb.

In that case, we have to distinguish principal and secondary residences. Occasional users who want to rent a room do not need to request an authorisation (to be considered as an economic activity) from the City Council for principal residences⁷⁴ but they still need to declare charged rents and to pay the tourist tax⁷⁵. Concerning the flat renting period, a main home may not be rented more than four mouths a year and must be occupied by its owner at least eight months a year.

When the furnished space (room, house or flat) is not the lessor's main home, it demands a prior permission to get a use change with compensation in the same city district when you want to convert a short period renting housing into periods lasting less than one year (or nine months for a student). This compensation aims at protecting areas intended to be lived in the city district and the balance preservation between housing and economic activities⁷⁶.

⁶⁹C. ARSENAULT, « Airbnb hors-la-loi à Berlin, d'autres villes tentent de mettre le holà », *RFI*, 23 April 2016, available at <http://www.rfi.fr/ameriques/20160423-airbnb-hors-loi-berlin-autres-villes-tentent-mettre-le-hola-amende-taxe>.

⁷⁰S. GODARD, « Berlin ne veut plus d'Airbnb dans sa ville », *L'Echo*, 26 April 2016, available at http://www.lecho.be/actualite/archive/Berlin_ne_veut_plus_d_Airbnb_dans_sa_ville.9758811-1802.art?highlight=airbnb.

⁷¹Form available on this website: https://ssl.stadtentwicklung.berlin.de/wohnen/zweckentfremdung_wohnraum/formular/adresswahl.shtml

⁷²W. COLDWELL, « Paris become Airbnb's top home-sharing city destination », *The Guardian*, 27 February 2015, available at <https://www.theguardian.com/travel/2015/feb/27/paris-becomes-airbnbs-top-home-sharing-city-destination>.

⁷³Law n°2014-366 of March 24, 2014 on the access to housing and renewed urbanism (ALUR).

⁷⁴Article 2 of the Act of 06/07/1989 (amended by Act of ALUR 24/03/2014) states that « the principal residence is understood as the dwelling occupied at last eight months a year, except professional obligation either health of force majeure, or by the lessee or his spouse, or by a dependent within the meaning of code of the construction ».

⁷⁵See Legifrance website, in the support section https://www.legifrance.gouv.fr/affichCode.do;jsessionid=71184677A3BD3DA018EC1EF295838E2C.tpdjo11v_2?idSectionTA=LEGISCTA000019286917&cidTexte=LEGITEXT000006074096&dateTexte=20140409.

⁷⁶See the city of Paris website, in the support section http://www.paris.fr/services-et-infos-pratiques/urbanisme-et-architecture/demandes-d-autorisations/exercer-une-activite-dans-un-logement-172#locations-meubles-touristiques-ce-qu-il-faut-savoir_12.

Airbnb faced legal challenges in France for failure of local hospitality regulations, like in Barcelona. On February 2014, the lower court of the 9th arrondissement of Paris⁷⁷ condemned the tenant, because sublease was forbidden in France.

4) Amsterdam & London

These two cities have implemented a more receptive approach to Airbnb than the other European destinations. They have joined the list of cities of the world which are accepting the home sharing and more generally, the on-demand economy.

The city of Amsterdam has always been dealing with controversial issues in a more progressive way than others (for example, drugs and prostitution), regulating instead of forbidding. As a consequence, in February 2014, Amsterdam became the first European city to approve an Airbnb-friendly law that allows residents to rent out their homes for up to two months of the year to up to four people at a time. The Amsterdam City Council created a new category of: “private rental”, which allows residents to rent their homes to tourists for limited periods of time. Owners and tourists still apply some rules⁷⁸.

However, the city has recently reviewed its position in light of recent research in March 2016 showing that Amsterdam residents were displeased with the expansion of Airbnb⁷⁹. As a result of this event, Amsterdam has signed a Memorandum of Understanding with Airbnb defining the terms of cooperation with the city. However, existing rules will be reviewed to limit the amount of days’ hosts to rent their apartment or their house⁸⁰. Because of this, Amsterdam no longer belongs to “friendly” cities.

In March 2015, the UK Parliament enacted new home sharing law. It allows Londoners to share their home for up to 90 days without permission or registration⁸¹. It was not possible to do this previously because of the permission provided for the Greater London Council Act 1973.

⁷⁷ Tribunal d’instance de Paris 9^e Jugement du 13 février 2014, available at http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=4140.

⁷⁸ Memorandum of Understanding (MOU), 12 February 2014.

⁷⁹ European Commission, *Impulse Paper on the Business Authorisation/Licensing Requirements imposed both on Peer-providers and platforms: Barcelona, Berlin and Amsterdam*, May 2016, p.10, available at <http://ec.europa.eu>.

⁸⁰ European Commission, *Impulse Paper on the Business Authorisation/Licensing Requirements imposed both on Peer-providers and platforms: Barcelona, Berlin and Amsterdam*, May 2016, p.10, available at <http://ec.europa.eu>.

⁸¹ See Airbnb’s website, in the support section <http://publicpolicy.airbnb.com/wp-content/uploads/2015/03/Airbnb-London-legislation-press-release.pdf>; Section 44 of Deregulation Act 2015 c.20.

Brian Chesky, Airbnb cofounder and CEO said: "London has a long history of supporting innovation, which continues today with the signing of this progressive law. Under these new rules, more Londoners will be able to **make ends** meet by opening up their homes to visitors from around the world, and allowing their guests to feel like locals in one of the greatest cities in the world.⁸²"

C.- SPECIFIC CASE: ANALYSIS OF THE LOCAL LEGAL STANDARDS OF THE BRUSSELS' MARKET

In order to analyse this issue in the light of European law, it is first necessary to study the Brussels hospitality industry regulation and the goals that it pursues. Specifically, we will offer a timeline of local regulation to understand the different issues because of the latest evolution in this field.

As we saw earlier, the industry sector, as other ones, is undergoing tremendous change. As a result, an updating of rules to regulate the tourist profession has to be made according to different types of accommodations: Bed & Breakfast, hotels, short-term rental...

Lastly, Parliament of Brussels-Capital Region has amended, concerning tourist hospitality, unanimously the *ordonnance* of May 2014⁸³, which the entry into force was settled on April 24, 2016 (*Arrêté du Gouvernement de la Région de Bruxelles-Capitale portant exécution de l'ordonnance du 8 mai 2014 relative à l'hébergement touristique*⁸⁴). The Government of Brussels-Capital Region voted in favour of the Implementation Decree (*arrêté d'exécution*) in July 2015, which regulates and implements the cited *ordonnance*.

This regulation has been taken in response to critics from Brussels incumbents and the Belgian Hotel Association. The purpose of this regulation is to guarantee security and quality of the accommodation offers proposed to tourists, but also to prevent from disruptive competition⁸⁵.

⁸² D. DE PECOL, "Her Majesty gives Airbnb Blessing", *Premier Traveler Worldwide*, 30 March 2015, available at https://www.ptwonline.com/Her_Majesty_Gives_Airbnb_Blessing/76/2540.aspx.

⁸³ Ordonnance du 8 mai 2014 relative à l'hébergement touristique, *M.B.* 17 June 2014, available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2014050850&table_name=loi

⁸⁴ This implementation decree establishes a number of specific rules for the "authorization" procedure, fire safety certification, quality of the unit and even type and number of furniture and amenities required.

⁸⁵ Avis sur l'Arrêté du Gouvernement de la Région de Bruxelles-Capitale portant exécution de l'ordonnance du 8 mai 2014 relative à l'hébergement touristique, 17 septembre 2015, Conseil Economique et Social de la Région de Bruxelles-Capitale, available at <http://ces.irisnet.be/avis/avis-du-conseil/par-date/2015/a-2015-056-ces>

1) Legislative Context: Source Of The “Grey Zone”

Since the institutional reform of 1970-1971, communities have been declared competent for cultural matters, including tourism. This has been confirmed by the special law of 9 August 1980⁸⁶.

The Constitution’s modification of 5 May 1993⁸⁷ added the article 59 quinquies (now article 138 of the coordinate Constitution). Thanks to this article, the French community was enabled to transfer competences (including tourism) to the Walloon Region (territory of Walloon Region) and to the COCOF (territory of Brussels) by a decree of 19 July 1993⁸⁸.

Regarding the Brussels’ situation, for a long time, the COCOF and Flemish Community have been the two competent authorities on tourism⁸⁹.

During this time, the COCOF had maintained the legislation enacted by the French community⁹⁰. However, through the sixth reform of the State, this tourism competence has been transferred to the three Regions.

To summarize, the Brussels’ regulation was scattered in too many texts, and some of them were more than twenty years old. Therefore, the emergence of new types of tourist accommodation (as Airbnb platforms of course) took place outside of applicable regulations, which made the regulation obsolete.⁹¹

2) Arguments For The Ordonnance Of May 2014

In this section, we will see the main reasons that the public authorities were prompted to

⁸⁶ M.B., 15 of August 1980.

⁸⁷ M.B., 8 May 1993.

⁸⁸ M.B., 10 September 1993.

⁸⁹ S. MILLER, « Les hébergements touristiques en Belgique: Examen dans les 3 Régions », p. 319, *Revue pratique de l’immobilier* 2/2010.

⁹⁰ Here was the relevant legislation concerning tourism hospitality: decree of 16 June 1981 (décret organisant les gîtes ruraux, les gîtes à ferme, les meublés de tourisme et les chambres d’hôtes et son arrêté d’exécution du 12 juillet 1982, M.B., 11 July 1981), decree of 9 November 1990 (décret de la Communauté française du 9 novembre 1990 relatif aux conditions d’exploitation des établissements d’hébergement et des établissements hôteliers, M.B., 11 January 1991), decree of 14 January 1999 (décret de la COCOF du 14 janvier 1999 relatif à l’agrément des chambres d’hôtes et à l’autorisation de faire usage de la dénomination « chambre d’hôtes », M.B., 3 February 1999), arrêté de l’Exécutif of the French Community of 24 December 1990 (Arrêté de l’Exécutif de la Communauté Française du 24 décembre 1990 déterminant les modalités de la procédure d’obtention de l’attestation de sécurité des établissements d’hébergement existants au 1er janvier 1991 et fixant les normes de sécurité en matière de protection contre l’incendie spécifique à ces établissements d’hébergement («arrêté incendie »), M.B., 21 June 1991, p. 13999).

⁹¹ S. MILLER, « Les hébergements touristiques en Belgique: Examen dans les 3 Régions », p. 321, *Revue pratique de l’immobilier* 2/2010.

adopt this new *ordonnance*.

In the specific case of Brussels and the housing issue, the uncertainties at the legislative reside in competence problems specific to Belgium and especially (we shall see later) the emergence of this new economy of platforms.

a) Ruling N° 45/2012 Of The Constitutional Court

According to the Constitutional Court, the COCOF has exceeded its competences with the adoption of the decree of 9 July 2010 (about the B2B assent and the permission of using the name) that amended the decree of 14 January 1999. As a consequence, it was annulled (and as a result, the decree of 14 January too). We point out that the Court has decided to maintain its effects for the sake of providing legal stability.

The law of 16 July 1993⁹² had already bestowed the responsibility to legislate and to deal with the access management to the profession as far as tourism is concerned according to art. 6, §1st, line 5th, 6° of the 9 August 1980 special law about institutional reform. This competence transfer was justified in preliminary documents, the federal competence concerning the requirements for the profession as a whole puts and obstacle in having an economic policy as far as tourism is concerned⁹³.

However, in fact, the access management to the profession concerning the tourist hospitality has been run, in Brussels-Capital Region and since the nineties by the COCOF, which has dealt with the authorization issues to B2B institutions (hotels), B2B accommodation and youth accommodation within the social tourism context.

It is the Flemish Government which took the initiative for this appeal in nullification. Though it is only aimed at a few articles, the Court decided to annul the decree in its whole and in that way accepted the government's main argument: the questioned text set access conditions to the profession concerning tourism, which is a competence depending exclusively on the Regions.

The principal effect of this ruling is to invalidate the French community commission's regulation relating to access conditions to the profession of tourist hospitality sector because of the reasons written before.

⁹² Article 2§5 LS 16 juillet 1993 qui vise à achever la structure fédérale de l'Etat a octroyé compétence aux Régions pour régler l'accès à la profession en matière de tourisme dans le cadre de la loi spéciale du 8 août 1980 de réformes institutionnelles.

⁹³Projet d'ordonnance relative à l'hébergement touristique, Doc. Parl., Ch. Repr., sess. ord., 2013-2014, n°501/1, 7 February 2014.

Parallel to this, the *ordonnance* result is indeed to annul, though implicitly, the COCOF regulations connected with the requirements for the profession as regards tourism. Consequently, the *ordonnance* area of application covers, logically and in accordance with the aforementioned decision the entire tourist hospitality field concerning the requirements for the profession.

This effect leads to a legal insecurity because there is no more relevant and constitutionally valid regulation regarding tourism hospitality. Indeed, through article 159 of the Belgian Constitution⁹⁴, judges will have the power to exclude from administrative decision on the basis of this ruling. Therefore, the aim is to avoid the rise of an informal tourism hospitality sector.

b) Sixth Reform Of The State

The institutional agreement on the sixth reform of the state provides many changes in many fields. As we said before, the tourism competence has been transferred to the three Regions. As a consequence, the COCOF is no longer qualified.

c) Transposition Of The European Services Directive

The text is a vertical adaptation in a determined economic activities sector and sticks to its main objective: the promotion of a social and economic progress – stable and durable- in improving namely the choice and the quality of the provided services. Moreover, this directive aims at getting procedure simplification and applicable formalities to have a services activity (see registration uniform procedure).

As we have just observed, this grey area is the consequence of regulation overlap and competences. After this analysis, we understand that this legal limbo is much more complex

⁹⁴ Article 159 of the Constitution indeed obliges the judiciary not to apply in the case of a dispute submitted to it, illegal regulatory act. Non-compliance with the law is interpreted broadly in that it also covers non-compliance with the Constitution. In other words, through the exception of illegality, any judge can refuse no time limit to apply a regulatory act which is contrary to the Constitution. This constitutional prerogative, however, allows the judicial court to determine, incidentally, the constitutionality of a regulatory act, that is to say that on the occasion of a dispute concerning an individual right during a criminal prosecution. In addition, it has no effect, unlike a judgment annulling, to remove the regulatory act ruled unconstitutional of the internal legal organisation. This declaration of unconstitutionality therefore has value *inter partes*. It is coated with a relative authority of res judicata, available at: <http://www.const-court.be/public/stet/n/Le-Contrôle-Constitutionnel-des-Règlements-en-Belgique-oral.pdf>.

than we thought. Obviously, the emergence of this new economic model is added to these three reasons specific to Belgium.

3) *Ordonnance Of May 2014: Innovations*

To remove the legal uncertainty and to face the tourism mutation, the Brussels parliament put this *ordonnance* of the 8 May 2014 concerning the tourism hospitality sector. The scope of this regulation will be extended from hotels to “homestay accommodation”; it demands prior declarations followed by a procedure for the registration with the local municipality. This *ordonnance* is mainly aimed at legislating in an effective and concrete way in a field suffering from an obvious insecurity.

All individuals and businesses that operate or wish to operate a lodging located in one of the 19 municipalities of Brussels are affected by this *ordonnance*, offers for consideration for a minimum period of one night and up to 90 days for people travelling for private reasons or professional⁹⁵.

There are surely novelties about this *ordonnance*.

First, the establishment of a unique registration process for each type of tourist accommodation⁹⁶; they have to register in one of the preliminary categories⁹⁷. This new legislation is liable to evolve, therefore the list is not exhaustive: the government has the possibility to define new categories in order to adjust to new accommodation in the future.

Moreover, people who intend to rent a tourist accommodation need to make a notification to the competent authorities. They will have to add the several documents⁹⁸ to the notification, so that authorities can verify whether they meet all the conditions.

Once they have received an official registration number, the *ordonnance* plans a tourism exploitation inspection, an ex-post control by competent officials who will check whether they really comply with all the legal requirements, within 12 months of registration⁹⁹.

⁹⁵Wallonie Bruxelles Tourisme, *Nouvelle réglementation relative aux hébergements touristiques bruxellois*, 30 March 2016, available at <http://pro.walloniebruxellestourisme.be/fr/30-03-2016-nouvelle-reglementation-relative-aux-hebergements-touristiques-bruxellois.html?IDC=14&IDD=8096>.

⁹⁶ See Article 4 of the cited 2014 *ordonnance*.

⁹⁷ Tourist accommodation, hotel, apart-hotel, tourist residences, homestay, shelter social tourism, campground.

⁹⁸ A copy of proof of ownership, an excerpt from the criminal record, an insurance contract, a certificate of fire safety and a plan of the property (see Appendix 3); P. GOUDIN, « The Cost of Non-Europe in the Sharing Economy: Economic, Social and Legal Challenges and Opportunities », *European Parliament Research Service*, p. 158, January 2016, available at <http://www.europarl.europa.eu>.

⁹⁹ See Article 24 of the cited 2014 *ordonnance*.

One of the purposes of this regulation was also to gather all the different rules of this sector which we saw earlier (see “legislative context: sources of the grey zone”).

According to the Brussels authorities, this new regulation can be regarded as a victory for traditional hospitality sector. Indeed, it is a body of rules applicable to new economic actors, under the category "tourist accommodation". Since April 24, 2016, they must satisfy the conditions they do not specifically met before¹⁰⁰, since then enjoying this grey zone offered by the legal system in force.

4) Comparison With The Proposal Of The Walloon Decree Amending The Walloon Code On Tourism And Private Accommodation Set Tourist Rental Via Community Platforms¹⁰¹

Like in Brussels, the housing rental between individuals has spread in Wallonia. Truly, while there were only 300 units available in early 2015, Wallonia counted over 2000 homes available on the Airbnb platform early 2016¹⁰². Consequently, the Walloon Region is preparing to frame this new economy.

The authors of this decree proposal, which will amend the Walloon Code of Tourism, intend to set a lightweight framework to develop the supply while ensuring fair competition in relation to the offer tourist accommodation and which are framed by the Walloon legislation.

After comparing these two laws¹⁰³, it is possible to state that the proposed Walloon decree has a more "friendly" attitude to the emergence of platforms such as Airbnb.

Although some obligations must be fulfilled within the framework of the two sets of rules (liability insurance, criminal records, certificate of safety and obligations concerning the general state of cleanliness and maintenance of the facility), some requirements are more flexible or even non-existent for the Walloon regulation.

Firstly, the residential exchange for private purposes for periods not exceeding thirty days are excluded; the new provisions of the Walloon Tourism Code does not apply.

Secondly, while the basic rules have been determined for all tourist accommodation in the proposed *ordonnance*, it provides a heavier system with general and specific conditions to the

¹⁰⁰ See Subsection 4 of the cited 2014 *ordonnance* (specific dispositions applicable to home-sharing practices with the duration of up to 90 days).

¹⁰¹ Proposition de Décret modifiant le Code wallon du tourisme et relative aux hébergements particuliers mis en location touristique via des plateformes communautaires, *Doc. Parl.*, Ch. Repr., sess. ord., 2015-2016, n°445 du 24 March 2016.

¹⁰² S. NESBA, « La Wallonie aura aussi son cadre légal pour Airbnb », *L'Echo*, 31 March 2016, available at http://www.lecho.be/economie_politique/belgique_wallonie/La_Wallonie_aura_aussi_son_cadre_legal_pour_le_Airbnb.9749877-3156.art?highlight=airbnb%20wallonie.

¹⁰³ See Appendix 2.

different categories.

Then, sanctions are different and are heavier in the *ordonnance* (to suspension or withdrawal of registration as opposed to a simple administration fine for the proposal of the decree).

Finally, and certainly the heaviest item, the procedure laid down by the *ordonnance* is significant. Actually, a statement record and a record number are provided, while for the proposed decree, people who want their properties must simply meet the various conditions mentioned above. The file provided by the Brussels legislation includes a large number of administrative steps to fulfil.

These differences highlighted, we can say that the change of the Walloon Code of Tourism better meets the considerations made by the European Commission that we will now see.

D.- ANALYSIS OF THE EUROPEAN LAW: MARKET OPENING RULES

We have just analysed the local regulation that could serve as an argument for the traditional hospitality sector. Indeed, they can invoke the *ordonnance* of May 2014 that enforces the respect of different criteria, such as security and quality.

However, it appears to us that new competitors can usefully invoke European law, such as principle of free competition: freedom of movement or freedom of establishment. These principles are contained in the TFEU so they take precedence over national law.

The legislator is sometimes used by the oldest active operators in the market in order to defend their rent. European law offers new entering operator (namely new candidates coming from digital economy) opportunities to retort.

This new economy has nearly two important impacts. First, it challenges the adequacy of existing rules of market access. Second, it calls into the question of the necessity of competition enforcement. This section will be analysing these two issues.

1) Free Movement: Freedom To Provide Services And Freedom Of Establishment

In this section, we will analyse if the *ordonnance* of 8 May 2014 is compatible with European law. First, if it can be qualified as a restriction to the freedoms contained in the TFEU, and if so, whether it can be justified by public interest and be proportionate.

The Court holds member states responsible for any obstacles to the free movement.

As foreseen in the Treaty concerning the EU working and reinforced by the EU Court of Justice, case law, the liberty of establishment and the liberty of provision of services protect companies and liberal professions mobility. To go on putting these two liberties into practice, expectations in relation to the Services Directive, carried in 2006, are grand, since it is taking on significant importance as far as the inside market completion is concerned¹⁰⁴.

To counter regulation against online platforms, Airbnb could use different arguments such as free movement of services (art. 56 TFUE)¹⁰⁵ and the freedom of establishment (art. 49 TFUE)¹⁰⁶ close to European Commission (which seems to be the most obvious form of protection). We note that, in this case, Airbnb can become established in another member state, but local regulations, as the *ordonnance* of 8 May 2014, seem to discourage individuals to rent their lodgings on these platforms by enforcing too many requirements.

While there is no real national interdiction regarding directly the establishment of short-rental platforms, to have a broader view, we need to refer to EU case law *Centros*¹⁰⁷. The court stated, even a few years after, that “the right of establishment covers all measures which permit or even merely facilitate access to another Member State and the pursuit of an economic activity in that State by allowing the persons concerned to participate in the economic life of the country effectively and under the same conditions as national operators”¹⁰⁸.

The aim of the establishment right is to eliminate the resistance to the entrance of non wage-earning jobs, concerning the individual and legal entities installation as well as services provisions. It is obvious that the admission conditions to be a hotelkeeper in a reception state (that is to say Belgium, and more particularly Brussels as far as we are concerned) represent, on principle, interferences with practices, by the extraction state citizen, of any activity depending on hostel field¹⁰⁹.

It is within this supposition that we are going to have a closer look.

¹⁰⁴ Parlement européen, « Fiches techniques sur l’Union européenne : la liberté d’établissement et la liberté de prestation de services », available at http://www.europarl.europa.eu/atyourservice/fr/displayFtu.html?ftuId=FTU_3.1.4.html.

¹⁰⁵ The freedom of provision of services is the guarantee of crossing a temporary basis border to provide a service or receive a service in another Member State.

¹⁰⁶ The freedom of establishment is defined as the freedom of establishment in another Member State to engage in professional activities.

¹⁰⁷ CJEU, C-212/1999, *Centros Ltd v. Erhervs- og Selskabsstyrelsen*, 9 March 1999, ECR-I-1459.

¹⁰⁸ CJEU, C-411/03, *SEVIC Systems AG*. (§18), 13 December 2005, ECR-I-10805.

¹⁰⁹ N. THIRION, « Droit de l’entreprise », *Collection de la Faculté de droit de l’Université de Liège*, Larcier, Bruxelles, 2013, p.350-351.

a) Scope Of European Law

1. *Is it a trans frontier situation?*

The Union Right only deals with trans frontier situations, it must not deal with a situation being only internal. In this very case, the re-attachment factor is totally fulfilled because a provider (Airbnb) gives its services on a territory of a country being part of Europe (Belgium) different from the one where it is settled. In fact, it is a company which suffers (according to it) from difficulties concerning the establishment freedom and services providing because admission conditions to the tourist housing have just been elaborated by Belgium.

2. *Does it concern the freedom of providing services or the freedom of establishment?*

Now that the re-attachment factor is fulfilled, it seems opportune to know which freedom we find ourselves. The freedom which could be implied seems to be the one dealing with setting up and services providing.

The services concept covers a lot of very different activities sectors. A service is normally a work done with payment (art. 5 Services Directive)¹¹⁰. This means that any economic activity could be captured by the rules of this Directive regardless of the frequency it is offered and without requiring that the provider necessarily act as “professional”¹¹¹.

We are concerned with a tourist service where the provision implies a consumer’s moving on a beneficiary’s one.

In the scheme of the developed argument in the EU law, we can see that in fact, both liberties are considered as one as far as the juridical analysis is concerned. However, we will still try to classify the analysed activity because it takes an importance in order to determine the applying of the specific provisions of the derived law, as the Services Directive 2006/123.

Although these two regimes are very much alike, the *Gebhard* judgement¹¹² is stating that you must have a look at the duration, regularity, periodicity and continuity of the activity to

¹¹⁰ We will not detail the concept of compensation in this paper.

¹¹¹ Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *An European Agenda for the Collaborative Economy*, (COM(2015) 184 final), Brussels, 2015, p. 5.

¹¹² The ECJ defines the concept of establishment as “(...) a very broad concept, allowing a Community national to participate, on a stable and continuous basis, in the economic life of a Member State other than his State of origin and to profit therefrom (...)” (§ 25). It defines the service transaction stating that “(...) the fact that the provision of services is temporary does not mean that the provider of services within the meaning of the Treaty may no equip himself with some form of infrastructure in the host Member State (including an office, chambers or consulting rooms) in so far as such infrastructure is necessary for the purposes of performing the services in question” (§27). The Court defined the criteria to be considered to determine whether an activity is permanent or temporary: “The temporary nature of the provision of services, envisaged in the third paragraph of Article 60 of the EC Treaty, is to be determined in the light of its duration, regularity, periodicity and continuity.” (...) “a national of a Member State who pursues a professional activity on a stable and continuous basis in another

determine the temporary nature of the provision of services. If the activity has a rather temporary characteristic, it is going to be considered as a service but if it has a permanent one, the liberty of establishment will be applied.

We consider that the analysed case has the characteristic of being more permanent than temporary. As a matter of fact, the hostel activity is practised durably, frequently and in a continuous way. So, we will apply the provisions of the guideline concerning the liberty of establishment (Articles 9 to 15).

However, we note that on-demand services can be related to both freedoms. If you have a taxi regulation saying that you need a licence to operate a taxi service, than you will have possibly an obstacle to the freedom of establishment. If you have the impossibility to provide your services as a platform to local operators, than this will potentially be an obstacle to the freedom to provide services¹¹³.

b) Scope Of Application Of Services Directive 2006/123

We must ask ourselves the question of the relevance of the Services Directive 2006/123, which concerns the service as well as the establishment. In fact, we have to check whether the tourist hospitality activity is included in the practice field of the Directive.

Indeed, this Directive works with expulsions. Since this activity is not in the expulsions list, it is a service that is in the practice field of the Directive. At the time the case is falling in the scope of the Directive, it must be resolved exclusively by the Directive.

The European Parliament 2006/123/CE Directive allows the states to submit an economic activity to authorization only for situations that satisfy three cumulative conditions:

- The authorization regime is not discriminating;
- The necessity of an authorization regime is justified by a pressing reason of general interest;
- The work towards the end cannot be achieved by a less restricting action namely because on a posteriori control would occur too belatedly to have a real efficiency. The regime must be commensurate with the accomplishment of this general interest pressing reason¹¹⁴.

Member State where he holds himself out from an established professional base to, amongst others, nationals or that State comes under the provisions of the chapter relating to the right of establishment and not those of the chapter relating to services" (§39), 30th November 1995; C-55/94 Rec. P. I-4186.

¹¹³ See the video of the Conference on « The Peer-to-Peer Economy: Competition « IN » and « FOR » the market? », 16 February 2016, Brussels, available at <https://www.youtube.com/watch?v=r7vB67NyPyI>.

¹¹⁴ P. VAN CLEYNENBREUGEL, « Notes de cours personnelles: Droit européen », *Université de Liège*, 2015-2016, p 186.

The concept of registration regime by way of a previous declaration (scheme established under the *ordonnance* of 8 May 2014) describes in its third chapter the establishment freedom for the services providers in an interior market and the banning for the member states, save specific conditions, to dictate an authorization regime which could limit this setting up freedom. This would implement a regime which would not be an authorization regime but at the same time offering a sufficient protection to the services addresser proved difficult.

According to some authorities, an immediate recording regime could not have brought an adequate security, on *ex-post* control would be liable to occur too belatedly to have an actual efficiency and it was necessary to protect sufficiently the services addressee seeing the risks he could bring upon himself by booking an uncertified accommodation, namely as far as security and healthiness are concerned¹¹⁵.

Consequently, with a former notification regime with registration and ex post control, it is possible to get regulations which authorize a strict examination of the tourist housings accordance regarding the guideline and its enforcement measures, a putting into practice of severe conditions but also to stick to the European regulations regarding the freedom of establishment.

c) Closer Analysis Of Service Directive Linked To The Brussels *Ordonnance*

Although the pre-registration system seems apparently to be compatible with European law, isn't still there a national restriction?

Restrictions can only be accepted if they are proportionate and justified by public utility. Certainly, some of the terms of the *ordonnance* of 8 May 2014 can be justified by an objective of public interest (safety and consumer health), however it appears that a number of requirements are excessive (e.g., the daily cleaning requirement by the host without possibility of providing an alternative); they could not therefore be justified. Actually, demands for decoration or furnishing of the establishment (e.g., prescribed number of hangers, tables and chairs¹¹⁶) are not related with the public interest.

This idea reflects the opinion of the European Commission on the matter: « Although the Brussels model is called « declaration » (which would mean that this formality would not fall within the rules on « authorization schemes »), the procedure implies ex ante and ex post controls and appears to involve the adoption of administrative decisions that exceed the mere acknowledgement of facts that declarations usually entail »¹¹⁷.

¹¹⁵ Projet d'ordonnance relative à l'hébergement touristique, *Doc. Parl.*, Ch. Repr., sess. ord., 2013-2014, n°501/1, 7 February 2014.

¹¹⁶ See section 4 of the Implementation Decree, July 2015.

¹¹⁷ S. RANCHORDAS, *Home-Sharing in the Digital Economy: The Cases of Brussels, Stockholm, and Budapest*, 2016, p.92, available at <http://ec.europa.eu>.

Restrictions. Some of the conditions to obtain a prior notification¹¹⁸ file can be associated with certain restrictions¹¹⁹. These must be clear, unambiguous, non-discriminatory, justified by overriding reasons of general interest, proportionate, made public in advance, transparent and accessible¹²⁰. Again, the view of the Commission demonstrates its commitment to supporting the development of this new economy.

Sofia Ranchordas, an assistant professor of Constitutional and Administrative law in Tilburg law school in the Netherlands, supports this assumption too: « In the case of Brussels, the 2014 *ordonnance* and the 2016 Implementation Decree appear to impose on the hosts (« hébergement chez l’habitant ») onerous requirements, which bring them too close to hotels or other forms of professional tourist hospitality. The extremely detailed requirements also show a misperception of the collaborative economy. In addition, not all of these detailed prescriptions are justified by the public interest. An example is the number of available towels, tables, clothes hangers or chairs. While Brussels requires hosts to offer one towel per guest, it is now uncommon for guests sharing or swapping houses to bring their own linens. Other examples of unreasonable conditions are the requirement to display prices, offer a personalized welcome (many hosts are on vacation and often arrange the key to be delivered by friends or neighbours), and the inadmissibility of renting couches in studios and in a living room more exotic forms of accommodation (e.g., a sleeping place in a treehouse-available on Airbnb-would hardly fulfil the requirements imposed by the government of Brussels-Capital). While the underlying privacy reasons of some of these provisions are clear, it is worth nothing that hostels also offer shared-dorms with shared bathrooms with minimal amenities and privacy. Staying at a hostel also implies in some cases sharing bedroom and bathroom with strangers.»¹²¹

Justifications. What about justifications advanced by the public authorities? Certainly, restrictions are accepted if they are justified by the protection of public order (which obviously requires the existence of a significant threat to society¹²²), specifically the protection and safety of consumers in our case.

¹¹⁸ See Appendix 3 for more details about the stringent requirements.

¹¹⁹ See Article 10 of the Services Directive.

¹²⁰ This was confirmed by the European Commission: Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *A Digital Single Market Strategy for Europe* (COM(2015) 192 final), Brussels, 2015, p. 11.

¹²¹ S. RANCHORDAS, *Home-Sharing in the Digital Economy: The Cases of Brussels, Stockholm, and Budapest*, 2016, p.92, available at <http://ec.europa.eu>.

¹²² CJEU, C-36/02, *Omega Spielhallen- und Automatenaufstellungs-GmbH v. Oberbürgermeisterin der Bundesstadt Bonn*, 14 October 2004, ECR-I-09609.

The Commission states that through the rating systems, some legislations are no longer appropriate or even necessary¹²³, and would therefore no longer be justified. Regulating definitely makes sense if the goal is to correct "market failures" but no longer makes sense when they have been rectified by these systems. This "e-reputation" would therefore allow travellers to avoid bad surprises regarding their safety; for example, an opinion given on the platform by a previous traveller about a radiator which does not work.

The city of Brussels justifies such restrictions by the need to ensure housing security (e.g. in terms of fire safety) and privacy for hosts and travellers. As seen above, it hardly seems conceivable that requirements like the amount of hangers is really useful for the safety and privacy of users¹²⁴. We believe that the restrictions could therefore not be justified and would be incompatible with European law.

Proportionality. Although these restrictions are supposed to be justified, we must analyse the proportionality of the measures. Regarding the disclosure system (justified by public safety, dignity and privacy of two speakers), the notice of the Commission seems again interesting and appropriate. Obviously, we understand the importance of the protection afforded to the consumer and the fact that these rules have the primary objective of pursuing a legitimate aim. However, the pursuit of this objective should not come to the result of too heavy requirements for the individual (which seems to be the case for that statement in light of all the required certificates). Indeed, « the Brussels authorization procedure is very detailed and might seem onerous for hosts that only wish to lease a spare room while on vacation. In Brussels, home-sharing and home-exchange appear to be treated like hotels, although this goes against the general objectives of the collaborative economy »¹²⁵.

The question is therefore whether, through these requirements, the legitimate objective is in practice actually reached. We believe that the disclosure system contributes at least a little, to the pursuit of consumer protection. The requirements, however, are too numerous and detailed. For an individual who intends to rent his apartment when he goes on holiday, that is to say twice a year, the system is complicated. Are these measures really necessary and appropriate? Aren't there any alternatives, less intrusive and easier solutions? For example, is the host really obliged to accommodate his host? Could he not work out with his neighbour to give the keys to the traveller? This kind of agreement is certainly very common in practice.

We wonder if the balance between the benefits of this legislation and the interests of individuals is really reached. In other words, "does the end justify the means?" is the question. Aren't these laws too excessive? Do not they discourage people to put their property for rent

¹²³ Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *Upgrading the Single Market: more opportunities for people and business*, (COM(2015) 550 final), Brussels, 2015, p. 7.

¹²⁴ S. RANCHORDAS, *Home-Sharing in the Digital Economy: The Cases of Brussels, Stockholm, and Budapest*, 2016, p. 101, available at <http://ec.europa.eu>.

¹²⁵ S. RANCHORDAS, *Home-Sharing in the Digital Economy: The Cases of Brussels, Stockholm, and Budapest*, 2016, p.104-105, available at <http://ec.europa.eu>.

on these platforms? With a lot of requirements to file the statement in order to obtain a registration number, this seems to be a compromise.

As an alternative, the Commission states that options were found by the platforms themselves. Indeed, « many of these platforms already exert a certain amount of control on the services provided by the hosts and appeal to be keen on self-regulating or trying to find their own solutions »¹²⁶.

We must not forget that the goal is still to find rules that match this new economy. It is a pity to see that similar rules apply to traditional players and those of the on-demand economy (see the basic conditions of the 2014 *ordonnance*).

So we can observe that the newly adopted regulation by the city of Brussels, which foresees a prior declaration system (being similar to a disguised authorization by the Commission) imposes detailed and onerous requirements for the host (category “hébergement chez l’habitant”).

Firstly, some requirements are justified by consumer protection (e.g. the provision of a first-aid kit); secondly, some seem excessive in accordance with the nature and expectations of consumers of the on-demand economy (the amount of certifications to be provided to fill that statement and get the registration number).

Once again, Sofia Ranchordas sums up perfectly our view: « while some national and local restrictions that primarily serve the maintenance of a level-playing field between home-sharing accommodation and hotels might be difficult to justify in light of the public interest and the principle of proportionality; other existing or forthcoming measures that seek to protect hosts, neighbours, and tourists against unsafe living conditions appear to be justified by a public interest, as long as the criteria imposed are not too onerous for the hosts and do not discourage users to embrace the benefits of the collaborative economy »¹²⁷.

We believe therefore that Brussels legislation could be struck down or at least modified, as it constitutes a barrier to freedom of establishment under the Directive Services. Actually, some of the conditions which seem to be difficult to justify, may deter individuals to rent their properties on leasing platforms.

¹²⁶ S. RANCHORDAS, *Home-Sharing in the Digital Economy: The Cases of Brussels, Stockholm, and Budapest*, 2016, p.108, available at <http://ec.europa.eu>.

¹²⁷ S. RANCHORDAS, *Home-Sharing in the Digital Economy: The Cases of Brussels, Stockholm, and Budapest*, 2016, p.109, available at <http://ec.europa.eu>.

2) *Competition Law*

In this section, we will go back briefly to Belgian law to address this idea of action under disruptive competition often defended by the traditional players in the media. Then, we continue the analysis of the Brussels *ordonnance*, this time under European competition law (articles 102 and 106 TFEU).

a) **Insight Of Disruptive Competition In Belgian Law**

The disruptive competition notion is often put forward during different media debates concerning the confrontation between collaborative platforms and the traditional activities which are challenged by the previous ones. The main argument of the traditional actors is that those platforms cast off the rules which are applied to the sector professionals.

So, it is quite interesting to wonder why up to now no major actor of this collaborative economy hasn't been condemned for disruptive competition.

The judicial concept of disruptive competition is issued from trade freedom which allow any professional to attract other traders' clients if done to a point.

The action in disruptive competition is an action in civil liability¹²⁸, based on the article number 1382 of the civil code, by which a professional gets a compensation for the loss caused by another professional's incorrect deeds.

In order to establish this disruptive competition, it is important to look for an offence (unfairness deed), a damage and a causality link¹²⁹.

The disruptive competition deed can be defined as “any behaviour which diverts from a normal behaviour of a sensible professional and which, distorting the balance into competitive relationships, calls off the chances equality which must exist between competitors in a free economy system”¹³⁰. Applied to collaborative economy, this definition reflects what traditional actors say¹³¹. As far as the hostels sector is concerned, the hotelkeepers affirm that the Airbnb service casts off the yoke applying to the hotel sector. Indeed, according to them, Airbnb offers a service which is competitive only by the fact that it takes liberties with some applied rules. Their competitive advantage or economy viability would disappear if it respected the legislative limits.

¹²⁸ This action does not fall under criminal law since no sentence to a fine or a prison sentence can result.

¹²⁹ D. MAINGUY, J-L. RESPAUD, M. DEPINCE, “Droit de la concurrence”, 2^e édition, June 2015, *Lexis Nexis*, p.75.

¹³⁰ J. PASSA, « Le domaine de l'action en concurrence déloyale », n°9, *JurisClasseur Concurrence-Consommation*, fascicule 240, 1998, p. 115, n°99.

¹³¹ A. GABOULEAUD, « Non à l'hôtellerie déguisée », *Paris Match*, 27 June 2015, available at <http://www.parismatch.com/Actu/Economie/Interview-de-Laurent-Duc-de-l-UMIH-les-hotels-face-a-Airbnb-789450>.

Nevertheless, we will see that there is a true difficulty in applying disruptive competition to platforms such as Airbnb for one reason: the collaborative models are structured around a platform which plays the role of a mere go-between linking the users (see Strategy of two-sided markets). In that way, Airbnb would not directly be the source of the provided services. Consequently, it could not be accused, personally, not to respect the law and to constitute a disruptive competition since, in the facts, those who commit deeds liable to lead to disruptive competition would be people and not the platform.

The disruptive competition in relation to the hotelkeepers would not come from Airbnb which only links people, but from thousands of Airbnb guests individually considered. The activity which consists of making a flat available to somebody and being paid for that is not new and has never posed a judicial problem up to now. Our question today is to consider whether it is right to facilitate this activity as a go-between on a large scale.

In this way, the Paris Trade Court has judged that a platform linking non-professional drivers and private individuals for short distance distances is not “itself transports provider but acts as a go-between”. Therefore, the court has decided the transports code regulation “is not directly applied”¹³².

b) European Competition Law

1. Leading role of European Competition Law

Competition is an essential policy for the realisation and the maintenance of the common market. This policy prevents that contingent anti-competitive practices from companies or national authorities may affect the competition created by the realisation of the common market. Indeed, the common market’s purpose is to permit the competition between companies with equal conditions.

Competition can be distorted by corporate acts, but also by States intervention. The arguments of governments are numerous to intervene into political life¹³³. Companies that know economic difficulties try to raise public awareness and public authorities, traditional activities such as tourism for instance.

¹³² Tribunal de commerce de Paris, 1^{er} August 2014, RG n°2014/031828.

¹³³ These are the reasons often invoked by Member State to restrict short-term rentals : the need for supervision to ensure quality of service, the need to ensure availability of rental housing accommodation in markets where demand exceeds supply, preventing the abusive subletting of social housing, maintaining a level playing field, to control the character of neighborhoods in cases where housing is being converted in response to growing inflows of tourists.

The only question is whether it is good to set against changes that occur naturally. Is a State support necessary? Because this support can also prejudice the interests of industries established in other European countries.

It seems obvious that state intervention can imply a conflict of interest between economic actors who take advantage of this intervention and those who do not.

Citizens wonder if these regulatory answers to these innovative services are motivated by concerns about good regulation of hospitality sector and consumers' security or if the function of these regulations is to protect traditional tourism actors. That is why, when national legislator passes a law that limits competition, these regulations have to be examined under competition law perspectives. Competition law can be invoked to protect the development of this new business model.

2. On-demand model and European Competition law

Within a few years, innovative new companies become competitors capable of disrupting a market in any sector. Indeed, everyone should be aware that there is a real growing threat from new actors in the digital economy.

Can the various conditions of the new Brussels *ordonnance* that regulates tourist accommodation be described as special and exclusive rights? If so, are the benefitting companies dominant under the law of the European competition? And finally, do they abuse it?

We will try to answer these questions in this section.

3. Tools of European competition law

We will analyse whether legislative restrictions preventing Airbnb to compete can be challenged under EU law. A possibility for Airbnb would be to invoke Article 102 TFEU in conjunction with Article 106 TFEU¹³⁴.

Stating the problem. National laws may favour certain companies and disadvantage others. So they are likely to create or enhance market power. We can globally evoke any limit set by standards for public safety, public health, environmental protection or any other consideration of public interest. The operating permits that limit the number of operators are a traditional

¹³⁴ See J.L. BUENDIA SIERRA, "State Intervention and EU Competition Law, Exclusive Rights and State Monopoly under EC Law", *Oxford University Press*, 2000. For more updated summary see J.L. BUENDIA SIERRA, "Article 106 – Exclusive or Special Rights and other anticompetitive State Measures" in Faull & Nikpay, *The EU Law of Competition* (3rd ed.), 2014, p.809-879.

example of barriers to market entry, to the extent that they place the recipients in a situation of non- contestability of their positions (see Uber and licenses taxis).

Scope of Article 106 TFEU. Article 106(1) relates to special and exclusive rights; it provides that « In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109 ». Note that this prohibition is tempered when the provisions relate to companies entrusted with the management of general economic interest¹³⁵.

If we want to rescind the *ordonnance* based on Article 106 TFEU, it must first be determined whether this regulation falls within its scope.

First, the measure must be linked to " undertakings", defined by European law as an entity that engages in an economic activity. It seems that the "short -term rentals " may be considered as an economic activity because the Court defines this concept as follows in its judgement *Höfner*¹³⁶: « an activity consisting in offering goods and services on a given market is an economic activity, regardless of its legal status and the way in which it is financed ».

Then the company or companies subjected to the measure must be public businesses or should benefit from special or exclusive rights. There is no precise definition of the concept of special rights. We can presume from European legislation that these "special rights" concern rights that have been granted by a Member State with two or more companies within a given geographical area¹³⁷. In the *Glöckner* judgment¹³⁸, indeed, the European Court of Justice ruled saying that there was a special or exclusive right when «protection is conferred by a legislative measure on a limited number of undertakings which may substantially affect the ability of other undertakings to exercise the economic activity in question in the same geographical area under substantially equivalent conditions ».

In the issue of tourist accommodation sector, the standard that creates or enhances market power would be the Brussels *ordonnance* quoted above. This regulation provides the general conditions applicable to all and specific conditions in each housing category. According to the authorities, these conditions were adopted for a purpose of general interest (safety and consumer protection). In the previous section, we have concluded that certain requirements

¹³⁵ See Article 106(2) TFEU.

¹³⁶ CJEU, C-41/90, *Klaus Höfner and Fritz Elser v Macrotron GmbH*, 21 April 1993, ECR-I-01979.

¹³⁷ See, e.g., Article 1.4 of Directive 2008/63 on competition in the markets in telecommunications terminal equipment, O.J. 2008, L 162/20.

¹³⁸ Case C-41/90, *Kaus Höfner and Fritz Elser v Macrotron GmbH*, 21 April 1993, ECR-I-01979, §22.

were too heavy for the "individual" who wants to rent his apartment twice a year. Thus this could discourage and constitute therefore an obstacle to the opening of the competition. In this assumption, hotels would benefit from exclusive and special rights through that *ordonnance*. The situation must be analysed in the following comparison: those who, in practice, would meet the new legal requirements with difficulties and would be adversely affected by the measure (also know as individuals, platform users, even if it is not explicit) and those who would manage more easily and thus would benefit from the measure (e.g., hotels).

Articulation of Articles 102 and 106 TFEU. Once a measure falls within the scope of Article 106(1) TFEU, its validity must be evaluated with regards to the Treaty provisions on competition. Indeed, there is a highly developed case law analysing and often striking down, on the basis of Article 106 TFEU combined with other Treaty provisions (as articles 101 and 102 TFEU)¹³⁹. We will limit ourselves to the Article 102 TFEU which deals with abusive behaviour by dominant undertakings.

Article 106(1), applied in combination with Article 102 TFEU “would prohibit State measures related to public or privileged undertakings when the following conditions are met:

- a) The undertaking holds a dominant position in a market that is relevant from an economic point of view and which embraces a substantial part of the internal market;
- b) The measure:
 - i. Leads the undertaking to behave in such a way as to abuse its dominant position; or
 - ii. Has the potential to lead the undertaking to behave in such a way as to abuse its dominant position; or
 - iii. Produces similar effects to those of an abusive behaviour; and
- c) The effects of the abuse of the effects of the State measure are capable of affecting intra-Union trade.”¹⁴⁰

Need to demonstrate abuse. The granting of an exclusive right can certainly create a dominant position (condition a)), but that does not mean that abuse is made¹⁴¹. As for the Court, a

¹³⁹ See, e.g., Case C-41/90, *Höfner v. Macroton*, (1991) ECR I-1979 (challenge of the exclusive rights of the Federal Office for Employment to put prospective employees and employers in contact with one another); Case C-260/89, *ERT v. EDP*, (1991) ECR I-2925 (challenge of ERT’s exclusive rights to broadcasting and retransmitting television programmes in Greece); Case C-179/90, *Merci Convenzionali Porto di Genova v. Siderurgica Gabrielli SpA*, (1991) ECR I-5889 (challenge of a company’s exclusive right to organize the loading, unloading and other handling of goods within the Port of Genova); Case c-554/12 P, *Commission v. DEI*, (2014) ECR I-0000 (challenged of the Greek state-owned electricity company DEI’s exclusive right to mine for lignite (brown coal)).

¹⁴⁰ See the King’s Student Law review Blog on European Law, J.M. PANERO RIVAS, « Article 106(1) TFEU ready for duty again; the CJEU’s judgment in the DEI case », 13 October 2014, available at <https://blogs.kcl.ac.uk/kslreuropeanlawblog/?p=753#.V6MXIRQ00Us>.

Member State does violate the prohibitions contained in those two provisions when the undertaking in question is caused by the mere exercise of special or exclusive rights conferred upon it, to exploit its dominant position abusively or when such rights are liable to create a situation in which that undertaking is led to commit such abuses (condition b)). In the application of section 102 to exclusive rights, the only difficulty of assessment relates to the abuse, not the existence of a dominant position¹⁴².

Regarding the first condition, the CJEU defined in *United Brands*¹⁴³ dominant position covered by Item 102 TFEU. The European authorities however have tried to find a closer definition of economic theory and say that the company in question “must hold significant market power”¹⁴⁴.

It is important first to define the market because you have to know the size of the market in which it operates to appreciate how this company is important relative to the market. We believe we are in the market for tourist accommodation.

After defining the market, we believe that those who meet the requirements of the *ordonnance* are likely to have a dominant position in the market of tourist accommodation. We hypothesize that the hotels will have more facilities compared to individuals to meet these obligations (deemed too heavy for individuals).

In order to establish a dominant position, one element is, for example, the market share of hotels compared with the market of tourist accommodation. Nevertheless, market shares have to be extremely important in determining dominance¹⁴⁵. If an undertaking has between 25 and 50 % of the market, we must examine other factors¹⁴⁶. To determine the part of the hotel market, divide the hotel sector in the tourist accommodation sector; the result will give us a percentage that is their market share¹⁴⁷.

¹⁴¹ N. PETIT, “Droit européen de la concurrence”, *Lextenso*, 2013, p. 266; see CJEU, C-27/76, *United Brands v. Commission*, 14 February 1978, §113; CJEU, C-85/76, *Hoffmann-La Roche v. Commission*, 13 February 1979, §70.

¹⁴² D. BOSCO and C. PRIETO, «Droit européen de la concurrence: ententes et abus de position dominante», Collection droit de l’Union européenne-Manuels t.4, *Bruylant*, 16 October 2013, p. 352; See CJEU, C-18/88 *RTT*, 13 December 1991, ECR I-5941 and CJEU, C-49/07 *MOTOE*, 6 March 2008, ECR I-4863.

¹⁴³ See CJEU, C-27/76, *United Brands Company and United Brands Continentaal BV vs. Commission*, 14 February 1978, Rec. 1978, p.207, §65.

¹⁴⁴ European Commission, “DG Competition, Discussion paper on the application of Article 82 of Treaty to exclusionary abuses”, December 2005, Brussels, §23: “For dominance to exist it (the firm under inquiry) must have substantial market power”.

¹⁴⁵ See CJEU, C-61/86, *AKZO v. Commission*, 3 January 1991, ECR I-3359, §60.

¹⁴⁶ See Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings which assumes that dominance is unlikely if market shares are below 40% (§14), 2009/C45/02; Case law *Hoffman-La-Roche* (1978); Case law *United Brands* (1978); N. PETIT, “Droit européen de la concurrence”, *Lextenso*, 2013, p. 289.

¹⁴⁷ To know that percentage, an economic analysis is necessary.

The Court, in its case law¹⁴⁸, considered that the following factors could indicate a dominant status: commercial advantages of the concerned undertaking (e.g., branding), technical advantages (e.g., license taxi drivers), and barriers to entry in the market. The last factor interests us the most. The conditions adopted by the *ordonnance* put significant barriers to competition smaller players, such as individuals and allow hotels to have a dominant position.

For the second condition, especially condition b) iii), the combination of Articles 102 and 106 TFEU prohibits state measures “*having similar effects to those of an abusive behaviour*”, even if there is no real or potential behaviour¹⁴⁹.

We may remember that the Brussels government adopted the necessary implementing measures on April 24, 2016 to make the *ordonnance* applicable. We can talk then of potential abuse because it is difficult to accept any abuse conclusively, since the very short time between the applicability of the rules and this dissertation.

Potentially, the undertakings that satisfy these conditions will, thanks to their dominant position (including the fact that other players are blocked by barriers to entry the market) abuse their position to harm consumers. We believe, for example, with raising their prices, not to feel threatened by the other competitors and thus not try to make their products/services more competitive.

In conclusion, there is a violation of Article 106 (1) read with Article 102 TFEU, when, by the simple exercise of special or exclusive rights conferred upon it, a company is allowed to operate its dominant position improperly or when such rights are liable to create a situation in which that undertaking is led to commit such abuses. To use the wording of the General Court: “*the prohibitions laid down by Article [106(1) TFEU] are addressed to Member States, whereas Article [102 TFEU] is addressed to undertakings, prohibiting them from abusing a dominant position. In the case of the combined application of those two provisions, infringement of Article [106(1) TFEU] by a Member State cannot be established unless the State measure is contrary to [102 TFEU]. The question therefore arises as to the extent to which an abuse, even if only potential, of the dominant position by an undertaking must be identified, that abuse having a link with the State measure.*”¹⁵⁰

We are aware that this analysis on developments in Article 102 TFEU is brief; we believe however it could be a subject of memory. So we have tried to draw the broad strokes and assumptions that may be developed in the future. We believe that these developments could be continued in further work with a deeper economic analysis.

¹⁴⁸ See Case law *Hoffman-La-Roche* (1978); Case law *United Brands* (1978).

¹⁴⁹ See CJEU, C-18/88, *RTT*, 13 December 1991, ECR I-5941; CJEU, C-271, *Telecommunication Services*, 17 November 1992, ECR I-5868.

¹⁵⁰ See CJEU, T-169/08, *DEI v. European Commission*, 20 September 2012, §86.

Due to lack of information brought to our knowledge and the size of this work, we cannot conclude eloquently that the activation of Article 106 TFEU in combination with Article 102 TFEU, would strike down Brussels *ordonnance*. But we think this is an interesting avenue to explore further for stakeholders in the collaborative economy.

E.- DISRUPTIVE COMPETITION OR A TOOL TO KEEP MARKETS CLOSED?

In conclusion, after analysing the situation in terms of the Services Directive and European competition law, it seems that it is rather a way to prevent new entrants to enter the market and thus prevent the opening of competition to platforms of the economy actors. The strict conditions specific to the Brussels *ordonnance* could prevent certainly smaller players, such as individuals, to enter the market of tourist accommodation.

IV.- EFFECTS OF GOVERNEMENT REGULATION IN ON-DEMAND SERVICES – CONCLUSION

A.- ADAPTATION TO ON-DEMAND ECONOMY: REGULATORY INTERVENTION

A rebuilding of the legal and economic landscapes results from the explosion of this new economy around the world. As we have just seen, concerns escort this evolution, as other innovations.

In front of these uncertainties, however, we think we should maximize the profits of peer-to-peer economy on the contrary of the picture given by authorities. Maybe we should be more pro-active than conservative.

Nevertheless, it is clear that we cannot totally deny the pressures created by this new economic model (mobilization of hospitality sector) but we need to keep in mind the economic profits in the long-term.

1) Difficulties Of Determining How To Regulate Airbnb

We think that there are two main difficulties concerning the way to legislate on this new economic model.

To begin with, difficulties connected with the innovative characteristic of this economy can appear. The question is to know whether it is really an innovation. Our answer must be nuanced. In fact, Airbnb is only providing a comfort service, that is to say housings rentals. It is nevertheless true that Airbnb will trim this service with new provisions such as direct communication between the host and his tenant. However, this sharing service seems more efficient than innovative.

You only need to compare it to Booking which has existed since 1996¹⁵¹. According to Tarik Hennen, co-founder of Smartflats, these two platforms look very similar¹⁵².

In fact, both are platforms (consequently two-sided markets) which are proposing a housing rental service; they are developing the same activity. Many people justify the need for Airbnb to be regulated by saying that it has turned into an economic activity because there is more than a hotel room, and so it is no sharing any more and rules must then be applied. Booking as well, does not let but only one room and it would appear, to some people, that there should not be any special difference to make between both¹⁵³.

¹⁵¹ See Booking's website, in the support section <http://www.booking.com/content/about.fr.html>

¹⁵² According to T. HENNEN, cofounder of Smartflats, there is not difference that would justify a different processing.

¹⁵³ Interview with T. HENNEN, cofounder of Smartflats.

Since 2010, we note that the “booking.com saga” has been going on¹⁵⁴. The CMA investigated suspected breaches of competition law relating to discounting restrictions in arrangements between hotels and online travel agents¹⁵⁵. According to us, Airbnb issues should be read in continuation of this EU case law.

In the second place, a trying difficulty is lying on the way these new companies can be defined. As a matter of fact, they do not consider themselves as commercial companies. They are situated in a grey economy area between hotels and houses, between cabs and private cars... between professional and private spaces. There lies the problem of how to regulate them. They do not work in the strict sense and traditionally as commercial companies such as hotels or cabs companies.

« We have lived in a world where there was this clear line between picking your friend up at the airport – you clearly do not need a permit for that – or lending your apartment to a cousin when he or she visits, and running a hotel”, says Arun Sundararajan, a professor at the NYU Stern School of Business¹⁵⁶. So, it is undeniable to acknowledge that the frontier which clearly separated earlier hobbies from business is nowadays very thin.

Seeing this, what is the most optimum regulation for these “fringe” platforms? If we consider that this new economy is favourable to the society (see Drivers of on-demand economy), aren’t we going to dishearten people to join in this new phenomenon if they have to fill in tens of pages to rent legally their flat twice a month?

2) Reason For Regulatory Intervention: Market Failure

In the absence of technological self-regulation or regulators’ intervention, on-demand model is likely to three distinctive forms of market failure: information asymmetry, externalities, and the blurring of boundaries between the personal and the professional.

Information asymmetry. In the short-term industry, a host knows more about the quality of his short-term accommodation than the potential traveller, who will know more about his own

¹⁵⁴ For more information about OTA and the (French) Booking.com case, see H. BONNET, “Internet Platforms: to regulate or not to regulate?”, Autorité de la concurrence, July 2015, available at http://www.cullen-international.com/asset/?location=/content/assets/training--conferences/conferences/2015/bits_20150716_helene-bonnet_the-french-booking.com-case.pdf/bits_20150716_helene-bonnet_the-french-booking.com-case.pdf; M. STARKOV, “End of the OTA merchant model – this time for real”, HeBS digital, 2010, available at http://d1ii7wqrofor4z.cloudfront.net/1492126425/cms/pressroom/11_hotelsmag_end_of_the_ota_merchant_model.pdf.

¹⁵⁵ A. PARTRIDGE, « Hotel online booking investigation », *Competition and Markets Authority case* (CE/9320-10), 16 September 2015, available at <https://www.gov.uk/cma-cases/hotel-online-booking-sector-investigation>

¹⁵⁶ E. BADGER, « Why we can’t figure out how to regulate Airbnb », *The Washington Post*, 23 April 2014, available at <https://www.washingtonpost.com/news/wonk/wp/2014/04/23/why-we-cant-figure-out-how-to-regulate-airbnb/>.

reliability and hygiene¹⁵⁷. This information asymmetry can lead people to be less careful (for instance, reckless about his level of cleanliness). Further exploration will demonstrate that it can be solved with ratings system or governmental intervention (see Idle Strategy).

Externalities. In the context of short-term rentals, the most significant negative externalities are the disturbing behaviour of noisy Airbnb guests for the neighbourhood¹⁵⁸. Private self-ordering appears to be a solution in apartment buildings. However, the need of regulatory intervention can be important depending on the geographic location (cities vs. rural areas) and the type of property (multi-family housings vs. freestanding houses)¹⁵⁹.

Of course, externalities might also be positive, such as more people being interested to go to local restaurants.

Limit between the personal and the professional. Regarding the qualification of service providers, there can be professional providers or individuals¹⁶⁰. European legislation does not specifically define the point at which an individual becomes a professional. Some Member States will rely on the definition provided by the Services Directive (Article 4 (2)). If the consideration for the service is a fee, the service is deemed to be professional. Others will differentiate by developing a system of "thresholds": if the incomes generated by the activity do not exceed a certain amount or if the service is not made on a regular basis, we remain in a purely collaborative system. In this case, these individuals are not seen as professional service providers. Therefore, they will benefit from softer regulation and will be subject to less stringent requirements or will not be covered by the legislation.

Indeed, one of the identified indications of "professional" is duration: the number of houses being rented and number of days which the lodging is rented. These could evidence the professional character of the service and there is clearly an impact on how the regulation applies on/to the service provider; for instance, some countries decided not to bind by their local law the individuals who rent their lodging only occasionally¹⁶¹.

This second way of proceeding should be regarded as more proportionate in order to regulate on-demand services because they could evidence the signs of the professional character of the transaction.

¹⁵⁷ M. COHEN AND A. SUNDARARAJAN, "Self-Regulation and Innovation in the Peer-to-Peer Sharing Economy", *Law Review of Chicago University*, p. 120, available at https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/Dialogue/Sundararajan_Cohen_Dialogue.pdf.

¹⁵⁸ See, e.g., J.J. HORTON, "The Tragedy of Your Upstairs Neighbors: Is the Airbnb Negative Externality Internalized?", 29 May 2014, available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443343

¹⁵⁹ B.G. ELDERMAN AND D. GERADIN, "Efficiencies and Regulatory Shortcuts: How Should We Regulate Companies Like Airbnb and Uber", *Harvard Business School NOW Unit Working*, Paper No. 16-026, September 2015, available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2658603.

¹⁶⁰ Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *A Digital Single Market Strategy for Europe* (COM(2015) 192 final), Brussels, 2015, p. 5.

¹⁶¹ See section about Paris regulation.

3) *Crucial Role Of Lobbying*

As soon as market share can be lost, the lobbying war breaks out. Indeed, it is one of the main threats that is weighing over these new actors. As formerly written, the prescribed bounds concerning this matter are still vague. Airbnb was attacked several times in the United States because of the hotel sector which puts pressure to harden the rental rules between private individuals. For example, some are asking the joint owners proposing a room to let on Airbnb to get approval from the representative association or from the co-ownership before accepting travellers¹⁶².

The question is to know whether the true reason of the protected sector worries is that these new actors are new rivals without being obliged to respect the same rules or if the true reason of their worry is that they could lose market shares. The regulators' stake is to clarify the legitimate reason and the mere search of income.

The rules should not be aimed at protecting the actors in power and excluding the concurrent. Politicians must not be involved in protecting one sector from concurrent. To face the big companies and organized networks, the start-ups of on-demand economy have namely set up a label, OuisShare¹⁶³, which defends their interests and organizes lectures. In a new field, increasing awareness is important for both stakeholder groups.

In order to thwart the influence of the traditional actors, the ones belonging to the on-demand services must try to take advantage of their success among the population, in this setting, it is not impossible to imagine a "fuss" between the popular lobbying and the traditional actors' lobbying¹⁶⁴. While traditional actors have a fair amount of political weight, Airbnb users, although less organised, may also have a word to say.

When the traditional actors are putting pressure on the regulators to impede the service, the consumers are the first victims. However, a few investigations prove the success of this new economy among the consumers. Indeed, once users have learned to enjoy the efficiencies generated by platforms economy (as price and availability), they will certainly not want the service to be discontinued due to a lack of regulatory approval¹⁶⁵.

A possible solution to thwart this hinder is to try to mobilise, for a company such as Airbnb, its site users; to try to have public opinion by its side. In that way, Airbnb should bet on the fact that its users will put pressure on the regulators to grant the regulatory approval it needs.

¹⁶² C. MIKOLAJCZAK, « Demander l'aval des propriétaires, c'est évincer Airbnb », *La Libre*, 19 November 2015, available at <http://www.lalibre.be/economie/libre-entreprise/demander-l-aval-des-coproprietaires-c-est-evincer-airbnb-564cbd5d3570ca6ff8fe3973>.

¹⁶³ See OuisShare's website, in the support section <http://ouishare.net/fr>.

¹⁶⁴ « Sharing Economy 2.0: Can Innovation and Regulation Work Together ? », *University of Pennsylvania*, 5 November 2014, available at <http://knowledge.wharton.upenn.edu/article/the-next-phase-for-the-sharing-economy/>

¹⁶⁵ D. GERADIN, "Uber and the Rule of Law: Should Spontaneous Liberalization be Applauded or Criticized?", *Competition Policy International* (2015), George Mason Law & Economics Research, Paper No. 15-53, 20 November 2015, available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2693683

It is of course by providing a better service than the competitors (traditional economy as hotels) that technological companies will have the public support.

4) Stimulate Or Accompany And Secure?

Seeing the importance and the on-demand companies success (44% of US consumers are familiar with the on-demand economy¹⁶⁶), to stimulate that kind of economic model does not seem to be necessary. We are in an era when we would rather accompany and reassure (to embrace as much platforms as we could). This goal can be reached namely according to the way authorities are going to legislate.

In this part, the goal will be to analyse the different strategies led by the governments as far as the legislative power is concerned. We will try to sort them out into three categories and to put in it the 8th May *ordonnance*.

The optimum solution is of course to finalize a legislation which corrects the market failures and which corresponds to this new economic model so that it should be submitted to the requirements which border on the other actors. Yet, it seems also of the utmost importance to restrict this regulation so that it does not choke this phenomenon which, we think, is full of promises.

Negotiations look thus difficult between start-up, ready to make concessions to rejoin the ranks (Airbnb has proposed to collect tourist taxes¹⁶⁷), a government which does not wish to break innovative things but wants to protect jobs and traditional economic sectors which see their market shared threatened.

a) Defensive Strategy

The on-demand model growth clearly affects the market players who commit themselves in a traditional way in the sale or rental of products or services. In fact, the on-demand platforms are trying to place the provision of these services and products by and for individuals.

For these incumbents, this platform economy is seen as troublesome in the market. Indeed, investigations showed that the presence of these new platforms provoke a price-lowering and a decrease of the demand for traditional providing¹⁶⁸.

It is, in this assumption, that the hotel lobbyists' pressure on the authorities is very powerful.

¹⁶⁶ PwC, Consumer intelligence series: The sharing economy, 2015, available at <https://www.pwc.com/us/en/industry/entertainment-media/publications/consumer-intelligence-series/assets/pwc-cis-sharing-economy.pdf>

¹⁶⁷ See Airbnb's website, in the support section <https://fr.airbnb.be/help/article/653/in-what-areas-is-occupancy-tax-collection-and-remittance-by-airbnb-available>.

¹⁶⁸ G. ZERVAS AND D. PROSERPIO, "The Rise of the Sharing Economy: Estimating the Impact of Airbnb on the Hotel Industry", *Boston U. School of Management Research*, Paper No. 2013-16, 9 June 2016, available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2366898.

In this assumption, the regulation seems to be thought to freeze the development of the platforms such as Airbnb (or any other new entrants) in order to protect the traditional operators. As a result, this way of regulating can lead to the complete prohibition of “collaborative practices”. For instance, regarding automotive sector, Uber has been banished in several cities¹⁶⁹.

In emergency (because of the quick ascent of this economic model), some governments are passing an ad hoc sector-related regulation or pass more and more forbidding measures. These latter ones could be, on the one hand, ineffective in the long term (because these technologies targeted by these measure are liable to evolve) and on the other hand, it could negatively affect the attraction of the venture fabric and the vitality of the digital innovation.

For instance, it is within this defensive strategy that the Brussels *ordonnance* is situated. By adopting this regulation, the public authorities intended to find a good compromise between the expectations of traditional actors and those of the collaborative economy. One of the arguments advanced by the Brussels Hotel Association is to say that once obtained the registration number is valid for the life of the lodging. Once completed, the steps need not be repeated. Moreover, regarding fire safety rules, they argue that they are lightened for rental platform users as they should not complete the SIAMU certificate¹⁷⁰ which is obligatory for hotels). In addition, they do insist on the fact that all that is related to real share, like *couchsurfing*, is not target for the ruling¹⁷¹. Finally, they argue that this is an evolving legislation and thus "friendly" because of the pre-registration system. However, in the section reserved for the analysis of European law, we conclude, the evidence provided by the commission, it is rather a disguised licensing scheme because of the amount of unnecessary requirements requested.

The upholders of this ruling state that the legislature intervened in an appropriate way being faced with the development of international commercial companies which buy entire blocks of flats in order to let thousands of rooms via the on-demand platforms.

Lastly, even if in some cases the regulation was not aimed at blocking the development of these platforms, it could lead to it. We therefore think of a simple “cut and paste” of the

¹⁶⁹ S. KHOSLA AND E. GRANT, “Here’s Everywhere Uber is Banned Around the World”, *Business Insider*, 8 April 2015, available at <http://www.businessinsider.com/heres-everywhere-uber-is-banned-around-the-world-2015-4>.

¹⁷⁰ See Article 5 of the Brussels *ordonnance* : “L’établissement d’hébergement touristique devra détenir une attestation de sécurité d’incendie, délivrée par le bourgmestre, qui témoigne que l’hébergement satisfait aux normes de sécurité en matière de protection contre l’incendie ou une attestation de contrôle simplifié, qui témoigne que l’hébergement satisfait aux normes de sécurité concernant l’installation électrique, le chauffage et le gaz et qui pourra se substituer à l’attestation de sécurité d’incendie » (original text); SIAMU certificate available at <http://be.brussels/siamu/bibliotheque-multimedia/fichiers/formulaire-prevention-siamu>.

¹⁷¹ Interview of R. VAN WEYENBERGH, Secretary General at the Brussels Hotel Association; Couchsurfing is not target for the ruling because there is no remuneration (no fee is paid). The *ordonnance* is applicable to transactions involving “a consideration” (“à titre onéreux”).

regulation which applies to traditional actors even though business models are quite different¹⁷². These frameworks are out-dated and do not fit into this new economy. As a matter of fact, that would amount to saying that their activities would be banished and the consumers could be deprived of their gains¹⁷³.

b) Idle Strategy

Inside this reflection, we think of the assumption where no specific regulation is going to be finalized for the on-demand platforms.

Previously, we defended the idea that this strategy has to be brushed aside because this new model needs a new rules corpus regarding its specificities.

In this very case, what is going on? If no regulation can be applied, do not these platforms risk to be outside the law limits? Would it exist another way than regulations to manage this system and yet, to protect the consumers (for it would seem that it is the main objective of a regulation)?

Because of technologies, there is some self-regulation in place already, as the reputation system¹⁷⁴. They can assure consumers about some issues and correct market failures.

Airbnb offers an online feedback system that allows guests to learn about the quality of the hosts and the lodging. Therefore, there is a real possibility to warn the tenants or potential guests about possible problems¹⁷⁵. For instance, if a traveller had a poor experience in an unsanitary room or flat, he would be automatically paid back¹⁷⁶. The following step would be that if several pieces of advice would express similar concerns, the rental site withdraws this good from the platform.

In such a situation, this system protects angry guests, provides a minimal quality, and has the same role as regulation. Indeed, rating systems discourage harmful behaviour by markets' actors and may in some case reduce risks for consumers stemming from information

¹⁷² D. GERADIN, « Should Uber be allowed to compete in Europe? And if so how? », *Forthcoming in Competition Policy International* (2015), George Mason Law & Economics Research, Paper No. 15-29, 7 June 2015, p.9, available at SSRN: <http://ssrn.com/abstract=2615530>; see Appendix 1.

¹⁷³ N. PETIT, « Uber, Concurrent Déloyal ou Champion Libérateur de l'Economie du Partage? », *LCII Policy Briefs*, February 2015, p. 4, available at http://www.lcii.eu/wp-content/uploads/2015/05/20150206114718_LCII-Policy-Briefs-Issue-2014-3.pdf

¹⁷⁴ B.G. EDELMAN, D. GERADIN, "Efficiencies and Regulatory Shortcuts: How Should We Regulate Companies like Airbnb and Uber?", *Harvard Business School NOW Unit Working*, Paper No. 16-026, September 2015, available at SSRN: papers.ssrn.com/sol3/papers.cfm?abstract_id=2658603

¹⁷⁵ See Airbnb's website, in the support section <https://www.airbnb.com/help/article/13/how-do-reviews-work>

¹⁷⁶ See Airbnb's website, in the support section <https://fr.airbnb.be/help/article/326/do-i-have-to-refund-my-guests-when-they-make-a-complaint>

asymmetries. This can contribute to higher quality services and eventually reduce the need for certain elements of regulation.¹⁷⁷

We note that this will work if the rating system is correctly designed. Users cannot be afraid of retaliation¹⁷⁸ because it will not give relevant information about quality. For example, anonymous rating system is better (as Uber).

However, this sorting system cannot protect the consumer in an optimal way. As a matter of fact, it can happen that tenants cannot see a problem and so they cannot point it out. Let's imagine a rental when the heating does not work normally. If an X tenant lives there in July, there will not be any problem and there will be no remark about it. But for the Y tenant who is there for Christmas in this flat, the problem will be present and, in fact, quite problematic. Considering this, a regulation which would lay down the minimal standards to protect consumers seems necessary to us (a functional heating in this case).

Note that the quality of service provided will depend on the effectiveness of the "peer review systems"¹⁷⁹. It's certainly not a flawless system because it happened to a traveller to be in housing that did not meet safety regulations¹⁸⁰.

We observe that self-regulation (via ratings system) can be useful¹⁸¹. Indeed, technological innovations like mobile apps remove many of the traditional market failures and increase transparency in the market in terms of price, service and quality. We can develop this though regarding the rational of current and out-of-date regulation. Maybe ten years ago, some conditions were justified, but it seems that this is no longer the case.

However, self-regulation has its limits and can only be complementary. If we face more serious problems (if there is an accident, a dead person for example), who is going to be responsible for that? It seems that, in this situation, indispensable restraints for physical integrity must be taken.

Finally, a regulation necessity must be set according to the consumer's position in the sector with which we are concerned (i.e., lodging).

¹⁷⁷ Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *A Digital Single Market Strategy for Europe* (COM(2015) 192 final), Brussels, 2015, p. 4.

¹⁷⁸ See, e.g., H. WEBER, "Airbnb Tweaks Review Systems So Guests Don't Fear Retaliation from Hosts", *Venturebeat*, 11 August 2014, available at <http://venturebeat.com/2014/08/11/airbnb-tweaks-review-system-so-guests-dont-fear-retaliation-from-hosts/>

¹⁷⁹ See, e.g., Y. BENKLER, "The Wealth of Networks: How Social Production Transforms Markets and Freedom", *Yale University Press*, 2006, p. 59-81

¹⁸⁰ See, e.g., T. NEWCOMBE, "Airbnb given Safety Standards Warning", *BBT*, 17 July 2014, available at <http://buyingbusinessstravel.com/news/1722814-airbnb-issued-safety-standards-warning> (showing that some residences rented on Airbnb do not meet safety standards).

¹⁸¹ One example of full liberalization is the Irish case in the taxi industry. See the video of the Conference on « The Peer-to-Peer Economy: Competition « IN » and « FOR » the market ? », 16 February 2016, Brussels, available at <https://www.youtube.com/watch?v=r7vB67NyPyI>.

To sum it up, prescribed demands must be maintained (or even created if there are none) only when necessary to correct the market failures or to promote public policy objectives (for instance public health).

c) Progressive Strategy

As Professor Strowel wrote about Google, this new economy is challenging the law¹⁸². The state role in the market must be thought about again considering the emergence of this new economic model. The role of the public authorities is, according to us, to accompany this process by putting fair game rules (level playing field) for all actors in this market¹⁸³.

Following this finding, the best reaction of the regulators is to create frameworks which would be to make suitable rules for this on-demand model in order to be able to take advantage of the benefits it can bring to us. By “appropriate rules”, we think of specific legislation to the collaborative economy which is broad. As for the hotel sector, one solution might be to adopt a minimum set of rules that require, for example, a criminal record check, a quick interview with the host, adequate insurance and collection of local taxes¹⁸⁴.

The aim is to find this balance we mentioned so much. The difficulty in this way of regulating is yet the fact that the public authorities have little information on the effects that rules can have on collaborative economy¹⁸⁵. This is a common problem when we want to regulate any “innovation”.

We believe the next amendment of the Walloon Code of tourism fits in this approach and is more or less “friendly”. After having compared it with the Brussels legislation, several elements confirm that this change is more suited to this new phenomenon even if there is still a long way to go.

Nevertheless, we could notice, in our research, that some frameworks, e.g., in Antwerp, went still further by simplifying the step. Indeed, to Mister Tarik Hennen, the Smartflats cofounder, the filling time of a file in Brussels or Antwerp is not comparable at all¹⁸⁶. Brussels must fill a lot of certificates as opposed to Antwerp where there is only one document to complete¹⁸⁷.

¹⁸² A. STROWEL, “Quand Google défie le droit – plaidoyer pour un internet transparent et de qualité”, *De Boeck & Larcier*, 2011.

¹⁸³ D. GERADIN, « Should Uber be allowed to compete in Europe? And if so how? », *Forthcoming in Competition Policy International* (2015), George Mason Law & Economics Research, Paper No. 15-29, 7 June 2015, p.9, available at SSRN: <http://ssrn.com/abstract=2615530>

¹⁸⁴ “All Eyes on the Sharing Economy”, *The Economist*, 9 March 2013, available at <http://www.economist.com/news/technology-quarterly/21572914-collaborative-consumption-technology-makes-it-easier-people-rent-items> (citing common regulatory concerns that arise from sharing economy practices, including insurance, liability, violation of industry-specific regulation and tax collection).

¹⁸⁵ See H. BAKHSI, A. FREEMAN AND J. POTTS, “State of Uncertainty: Innovation policy through experimentation”, *Nesta: making innovation flourish*, 14 April 2011, available at https://www.nesta.org.uk/sites/default/files/state_of_uncertainty.pdf (arguing that the main barriers to innovation policy have been “uncertainties surrounding opportunities and constraints”).

¹⁸⁶ Interview with T. HENNEN, cofounder of Smartflats.

¹⁸⁷ See Appendix 6; <http://www.vlaanderen.be/int/en/tourism-licences>

It appears that we are still far from knowing what innovation-friendly “perfect” regulation should be like. Indeed, “innovation law is a field of research pretty much in its infancy”¹⁸⁸. Regulators still try to find out how legal instrument can serve innovation.

The European Commission has chosen this option. Indeed, according to her, « in view of the significant benefits that new collaborative economy business model scan bring, Europe should be open to embracing these new opportunities. The EU should proactively support the innovation, competitiveness and growth opportunities offered by modernisation of the economy. At the same time, it is important to ensure fair working conditions and adequate and sustainable consumer and social protection »¹⁸⁹.

Finally note that to meet the uncertain nature of this new economy, it might be interesting to adopt temporarily this legislation to take the stock later and have the ability to adapt it to the needs encountered in the future¹⁹⁰.

5) Conclusion: Which Initiatives Have To Be Slowed Down And Which Ones Have To Be Sustained?¹⁹¹

Regarding the defensive strategy, we think that the biggest issue is that incumbents are afraid of the platforms’ monopoly if public authorities open the market. Instead of letting innovation blossom, this kind of regulation stifles it. In this option, public authorities want so badly to create a level playing field where all players can offer touristic hospitality in fair and free competition with each other, that it leads to a situation where the “on-demand industry” is suffocated by overregulation. Therefore, this option must be discarded.

The last strategy seems to be the best one: it takes positive points of idle strategy into consideration. Indeed, the time is right to find a **right balance** between consumer protection (guarantees for fire safety, hygiene, etc.) on the one hand and sufficient room for innovation and fair competition on the other hand. In order to do that, rather than to multiply regulations, we should legislate only when it is necessary not to stifle initiatives, which are a chance for Belgium’s economy. Indeed, right must not be a brake but a safety vector of the collaborative economy.

¹⁸⁸ S. RANCHORDAS, “Does Sharing Mean Caring? Regulating Innovation in The Sharing Economy”, *Minnesota Journal of Law, Science and technology*, 2015, p. 445, available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2492798

¹⁸⁹ Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *A Digital Single Market Strategy for Europe* (COM(2015) 192 final), Brussels, 2015, p. 16.

¹⁹⁰ S. RANCHORDAS, “Does Sharing Mean Caring? Regulating Innovation in The Sharing Economy”, *Minnesota Journal of Law, Science and technology*, 2015, p. 473, available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2492798

¹⁹¹ See Appendix 4

As Schneiderman said: “We must ensure that, as new online marketplaces revolutionize the way we live, laws designed to promote safety and quality-of-life are not forsaken under the pretext of innovation”¹⁹².

To summarize, regulation is good as long as it responds to market failures and protects consumers. It starts to become bad when it limits competition and protects incumbents.

¹⁹² « Sharing Economy 2.0 : Can Innovation and Regulation Work Together ? », *University of Pennsylvania*, 5 November 2014, available at <http://knowledge.wharton.upenn.edu/article/the-next-phase-for-the-sharing-economy/>.

V.- CONCLUSION

One of the main objectives of this paper was to study the compatibility of the Brussels *ordonnance* with the European Treaty, regarding the Services Directive and the competition law. In order to do that, it was first important to study the current legal framework of Brussels.

If public authorities regulate, are these rules all right under European law perspectives? Innovation, as on-demand economy, is a moving target while law is seen as rigid. However, some countries try to be open and responsive to innovation by pushing boundaries of the law. To know if local regulation of Brussels is compatible with European law, we first studied the Services Directive and then the competition law (articles 102 and 106 TFEU). We observed that current legal frameworks are not sufficient and unsuitable. The city of Brussels already needs to amend its new legislation to be in accordance with the European guidelines. Indeed, there are too many restrictions which bar actors of the on-demand services from entering on the market of tourist hospitality. We need an appropriate and flexible regulation to face this new business model challenges to attract other platforms since they offer innovative advantages. Then, we considered that the combination of Articles 102 and 106 TFEU could be an effective weapon to strike down the 2014 *ordonnance*.

Do governments have to be more involved in regulating the relative newcomers? Is regulating the best option? In this context and after analysing the issue, this paper calls for limited, but specific regulation of the tourist hospitality sector. Indeed, if somebody is better, smarter or more innovative, they should have the possibility to grow and be allowed to grow in a free market. In this regard, regulation should still exist as long as there is market failure.

According to Damien Geradin, a specialist in this field: “While Airbnb has been subject to a great deal of criticism, there is no doubt that it offers an attractive alternative to hotels. There is therefore no reason why Airbnb and other online-enabled location services to connect hosts with...should not be allowed to compete on a level playing field with hotels. Because hotels are protected by regulation, it is for regulators to take the initiative. These authorities have two options. One option is to resist Airbnb’s market entry and face many years of litigation, which will eventually result in Airbnb being able to operate legally. The other, preferable, option is to embrace technological change and adopt a regulatory framework allowing Airbnb and other similar companies to compete. This does not mean that Airbnb should be allowed to operate free of regulation. For instance, consumer safety should remain a priority. As to hotels, they do not need to remain passive bystanders waiting for their market share to be lost

to Airbnb and other similar companies. They can also embrace change by, for instance, relying on other existing online platforms”¹⁹³.

¹⁹³ D. GERADIN, « Should Uber be allowed to compete in Europe? And if so how? », *Forthcoming in Competition Policy International* (2015), George Mason Law & Economics Research, Paper No. 15-29, 7 June 2015, p.13, available at SSRN: <http://ssrn.com/abstract=2615530>

REFERENCES

Legislative Sources

Belgian sources

Loi spéciale du 8 août 1980 sur les réformes institutionnelles, *M.B.*, 15 août 1980, p. 9434.

Loi ordinaire visant à achever la structure fédérale de l'Etat, *M.B.*, 20 juillet 1993, p. 16838.

Ordonnance du 8 mai 2014 relative à l'hébergement touristique, *M.B.*, 17 juin 2014, p. 45695.

Décret du 16 juin 1981 organisant les gîtes ruraux, les gîtes à ferme, les meublés de tourisme et les chambres d'hôtes, *M.B.*, 11 juillet 1981, p. 8897 (abrogé par le décret du 18 décembre 2003).

Décret du 9 novembre 1990 relatif aux conditions d'exploitation des établissements d'hébergement et des établissements hôteliers, *M.B.*, 11 janvier 1991, p. 579 (abrogé par un décret de la Région wallonne du 18 décembre 2003, art. 156).

Décret du 14 janvier 1999 relatif à l'agrément des chambres d'hôtes et à l'autorisation de faire usage de la dénomination « chambre d'hôtes », *M.B.*, 3 février 1999.

Décret du 19 juillet 1993 du Conseil de la Communauté française attribuant l'exercice de certaines compétences à la Communauté française, à la Région wallonne et à la Commission communautaire française, *M.B.*, 10 septembre 1993.

Arrêté de l'Exécutif du 24 décembre 1990 déterminant les modalités de la procédure d'obtention de l'attestation de sécurité des établissements d'hébergement existants au 1er janvier 1991 et fixant les normes de sécurité en matière de protection contre l'incendie spécifique à ces établissements d'hébergement (« arrêté incendie »), *M.B.*, 21 Juin 1991, p. 13999 (abrogé par le décret du 18 décembre 2003, art. 158).

Arrêté de l'Exécutif du 12 juillet 1982 relatif aux gîtes ruraux, gîtes à la ferme, meublés de tourisme et chambres d'hôte, *M.B.*, 4 Août 1982, p. 8864 (abrogé par le décret du 18 décembre 2003).

Arrêté du Gouvernement de la Région de Bruxelles-Capitale du 24 mars 2016 portant exécution de l'ordonnance du 8 mai 2014 relative à l'hébergement touristique, *M.B.*, 14 avril 2016, p.24452.

Avis du Conseil Economique et Social de la Région de Bruxelles-Capitale sur l'arrêté du Gouvernement de la Région de Bruxelles-Capitale portant exécution de l'ordonnance du 8 mai 2014 relative à l'hébergement touristique, No A-2015-056-CES du 17 septembre 2015.

Projet d'ordonnance relative à l'hébergement touristique, *Doc. Parl.*, Ch. Repr., sess. ord., 2013-2014, n°501/1 du 7 février 2014.

Proposition de Décret modifiant le Code wallon du tourisme et relative aux hébergements particuliers mis en location touristique via des plateformes communautaires, *Doc. Parl.*, Ch. Repr., sess. ord., 2015-2016, n°445 du 24 mars 2016.

Foreign sources

Ley 13/2002, de 21 de junio, de turismo de Cataluña, DOGCno3739, 14/10/2002; ley 18/2007, de 28 diciembre, del derecho a la vivienda, DOGC no5044, 09/01/2008; Decreto 159/2012, de 20 de noviembre, de establecimientos de alojamiento turístico y de viviendas de uso turístico, DOCG no6268, 05/12/2012.

Decreto 159/2012, de 20 de noviembre, de establecimientos de alojamiento turístico y de viviendas de uso turístico, DOGC no6268, 05/12/2012, article 66(2).

Loi pour l'accès au logement et un urbanisme rénové (ALUR), n°2014-366 du 24 mars 2014.

European sources

Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *A Digital Single Market Strategy for Europe* (COM(2015) 192 final), Brussels, 2015, 20 p.

Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *An European Agenda for the Collaborative Economy* (COM(2015) 184 final), Brussels, 2015, 50 p.

Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *Upgrading the Single Market: more opportunities for people and business*, (COM(2015) 550 final), Brussels, 2015, 22 p.

European Commission, *Impulse Paper on the Business Authorisation/Licensing Requirements imposed both on Peer-providers and platforms: Barcelona, Berlin and Amsterdam*, May 2016, 84 p. (available at <http://ec.europa.eu>).

European Commission, *DG Competition, Discussion paper on the application of Article 82 of Treaty to exclusionary abuses*, December 2005, Brussels.

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L376, 27/12/2006, p.36-38).

Directive 2008/63 on competition in the markets in telecommunications terminal equipment (O.J. 2008, L162/20).

Case law

CJEU, 14 February 1978, *United Brands and United Brands Continentaal BV v. Commission*, C-27/76, ECR-I-207.

CJEU, 13 February 1979, *Hoffmann-La-Roche v. Commission*, C-85/76, ECR I-461.

CJEU, 3 January 1991, *AKZO v. Commission*, C-61-86, ECR I-3359.

CJEU, 13 December 1991, *RTT*, C-18/88, ECR I-5941.

CJEU, 17 November 1992, *Telecommunication Services*, C-271, ECR I-5868.

CJEU, 21 April 1993, *Klaus Höfner and Fritz Elser v Macrotron GmbH*, C-41/90, ECR-I-01979.

CJEU, 9 March 1999, *Centros Ltd v. Erhervs- og Selskabsstyrelsen*, C-212/1999, ECR-I-1459.

CJEU, 14 October 2004, *Omega Spielhallen- und Automatenaufstellungs-GmbH v. Oberbürgermeisterin der Bundesstadt Bonn*, C-36/02, ECR-I-09609.

CJEU, 13 December 2005, *SEVIC Systems AG.*, C-411/03, ECR-I-10805.

CJEU, 6 March 2008, *MOTOE*, ECR I-4863.

CJEU, 20 September 2012, *DEI v. Commission*, T-169/08.

Tribunal d'instance de Paris, 9^e Jugement, 13 février 2014, disponible sur http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=4140.

Tribunal de commerce de Paris, 1^e août 2014, RG n°2014/031828.

Memorandum of Understanding (MOU), 12 February 2014.

Scientific contributions

BAKSHI, H., FREEMAN, A., POTTS, J., “State of Uncertainty: Innovation policy through experimentation”, *Nesta: making innovation flourish*, 14 April 2011, 19 p. (available at https://www.nesta.org.uk/sites/default/files/state_of_uncertainty.pdf).

BENKLER, Y., “The Wealth of Networks: How Social Production Transforms Markets and Freedom”, *Yale University Press*, 2006, p. 59-81.

BONNET, H., “Internet Platforms: to regulate or not to regulate?”, *Autorité de la concurrence*, July 2015 (available at http://www.cullen-international.com/asset/?location=/content/assets/training--conferences/conferences/2015/bits_20150716_helene-bonnet_the-french-booking.com-case.pdf/bits_20150716_helene-bonnet_the-french-booking.com-case.pdf).

BOSCO, D., PRIETO, C., « Droit européen de la concurrence: ententes et abus de position dominante », *Collection droit de l'Union européenne-Manuels t.4, Bruylant*, 16 October 2013, 1522 p.

BOTSMAN, R., « The Sharing Economy lacks a shared definition », *Collaborative Consumption*, 13 November 2013 (available at

<http://www.collaborativeconsumption.com/2013/11/22/the-sharing-economy-lacks-a-shared-definition/>).

BOTSMAN, R., ROGERS, R., *What's mine is yours: the rise of collaborative consumption*, New York, HarperBusiness, 2010, 273 p.

BUENDIA SIERRA, J.L., "Exclusive Rights and State Monopoly under EC Law", *Oxford University Press*, 2000.

BUENDIA SIERRA, J.L., "Article 106 – Exclusive or Special Rights and other anticompetitive State Measures", Chapter 8 of the book in Faull, L. & Nikpay, A., *The EU Law of Competition* (3rd ed.), 2014, p.809-879.

COHEN M., SUNDARARAJAN, A., "Self-Regulation and Innovation in the Peer-to-Peer Sharing Economy", *Law Review of Chicago University*, p. 116-133 (available at https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/Dialogue/Sundararajan_Cohen_Dialogue.pdf).

ECKHARDT, G.M., BERDHI, F., "The Sharing Economy isn't about sharing at all", *Harvard Business Review Online*, 29 January 2015 (available at <http://hbr.org/2015/01/the-sharing-economy-isnt-about-sharing-at-all>).

EISENMANN, T., PARKER, G., VAN ALSTYNE, M., "Strategies for two-sided markets", *Harvard Business Review*, October 2006, 12 p. (available at <http://hbr.org>).

ELDERMAN, B.G., GERADIN, D., "Efficiencies and Regulatory Shortcuts: How Should We Regulate Companies Like Airbnb and Uber", *Harvard Business School NOW Unit Working Paper No. 16-026*, September 2015, 33 p. (available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2658603).

FERRARY, N., « Les nouvelles formes de tourisme collaboratif: une demande en pleine expansion », *Cairn*, August 2015, vol. 3, ISSN 1148-7941, 104 p. (available at <https://www.cairn.info/revue-realites-industrielles-2015-3-page-50.htm>).

FILISTRUCCHI, L., GERADIN, D., VAN DAMME, E., « Identifying Two-Sided Markets », *TILEC Discussion Paper No. 2012-008*, 21 February 2012, 25 p. (available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2008661).

GAGNE, G., « Economie collaborative, culture du partage et guerre des brevets: nouveaux regards sur l'innovation numérique », *Organisation internationale de la francophonie*, vol. 10, n7, 7 September 2015 (available at http://www.ieim.uqam.ca/IMG/pdf/oif-volume10-numero7septembre-2015ceim_vf.pdf).

GANSKY, L., *The Mesh: why the Future of Business is Sharing*, 28 September 2012, 272 p., Portfolio.

GERADIN, D., « Should Uber be allowed to compete in Europe? And if so how? », *Forthcoming in Competition Policy International* (2015), George Mason Law & Economics Research, Paper No. 15-29, 7 June 2015, 15 p. (available at SSRN: <http://ssrn.com/abstract=2615530>).

GOUDIN, P., « The Cost of Non-Europe in the Sharing Economy: Economic, Social and Legal Challenges and Opportunities », *European Parliament Research Service*, January 2016, 200 p. (available at <http://www.europarl.europa.eu>).

GUTTENTAG, D., *Airbnb: disruptive innovation and the rise of an informal tourism accommodation sector*, *Current issues in Tourism*, 2015, p. 1192-1217 (available at <http://dx.doi.org/10.1080/13683500.2013.827159>).

HAMARI, J., SJÖKLINT, M., UKKONEN, A., "The Sharing Economy: Why People Participate in Collaborative Consumption", *Journal of the Association for Information Science and Technology*, 2015, 18 p., DOI: 10.1002/asi.23552 (available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2271971).

JOURDAIN, L., LECLERC, M., MILLERAND, A., "Economie collaborative & Droit: les clés pour comprendre", Ed. fyp, 2016, 159 p.

HORTON, J.J., "The Tragedy of Your Upstairs Neighbors: Is the Airbnb Negative Externality Internalized?", 29 May 2014, 4 p. (available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443343).

KHOSLA, S., GRANT, E., "Here's Everywhere Uber is Banned Around the World", *Business Insider*, 8 April 2015 (available at <http://www.businessinsider.com/heres-everywhere-uber-is-banned-around-the-world-2015-4>).

KIM, C., TAO, W., SHIN, N., KIM, K-S., « An empirical study of customers' perceptions of security and trust in e-payment systems », *Electronic Commerce Research and Applications*, 28 April 2009, 12 p. (available at www.elsevier.com/locate/ecra).

LAMPINEN, A., BELLOTTI, V., MONROY-HERNANDEZ, A., C. CHESHIRE, C., *Studying the "Sharing Economy: Perspectives to Peer-to-Peer Exchange*, New York, 2015, p. 117-121 (available at <http://dl.acm.org/citation.cfm?id=2699339>).

MAINGUY, D., RESPAUD, J-L., DEPINCE, M., "Droit de la concurrence", 2^e édition, June 2015, *Lexis Nexis*, 395 p.

MASSE, D., « Comprendre l'économie collaborative et ses promesses à travers ses fondements théoriques », working paper n°05/2015, *IDDRI*, 2015, 14 p. (available at <http://www.iddri.org/Publications/Comprendre-l-economie-collaborative-et-ses-promesses-a-travers-ses-fondements-theoriques>).

MILLER, S., « Les hébergements touristiques en Belgique : Examen dans les 3 Régions », p. 319, *Revue pratique de l'immobilier 2/2010*, Ed. Larcier, p. 227-354.

OWYANG, J., « A Market Definition Report: the Collaborative Economy », *Altimeter Research Theme: Digital Economies*, 4 June 2013 (available at <http://fr.slideshare.net/Altimeter/the-collaborative-economy>).

PANERO RIVAS, J.M., « Article 106(1) TFEU ready for duty again; the CJEU's judgment in the DEI case », 13 October 2014 (available at <https://blogs.kcl.ac.uk/kslreuropeanlawblog/?p=753#.V6MXIRQ00Us>).

- PARTRIDGE, A., « Hotel online booking investigation », *Competition and Markets Authority case* (CE/9320-10), 16 September 2015 (available at <https://www.gov.uk/cma-cases/hotel-online-booking-sector-investigation>).
- PASSA, J., « Le domaine de l'action en concurrence déloyale », n°9, *JurisClasseur Concurrence-Consommation*, fascicule 240, 1998, p. 115, n°99.
- PETIT, N., « Droit européen de la concurrence », *Lextenso*, 2013, 684 p.
- PETIT, N., « Uber, Concurrent Déloyal ou Champion Libérateur de l'Economie du Partage? », *LCII Policy Briefs*, February 2015, 6 p. (available at http://www.lcii.eu/wp-content/uploads/2015/05/20150206114718_LCII-Policy-Briefs-Issue-2014-3.pdf).
- PwC, *Consumer intelligence series: The sharing economy*, 2015, available at <https://www.pwc.com/us/en/industry/entertainment-media/publications/consumer-intelligence-series/assets/pwc-cis-sharing-economy.pdf>.
- RANCHORDAS, S., « Does Sharing Mean Caring? Regulating Innovation in The Sharing Economy », *Minnesota Journal of Law, Science and technology*, 2015, 63 p. (available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2492798).
- RANCHORDAS, S., *Home-Sharing in the Digital Economy: The Cases of Brussels, Stockholm, and Budapest*, 2016, 117 p. (available at <http://ec.europa.eu>).
- ROCHET, J.-C., TIROLE, J., « Two-sided Markets: A Progress Report », *RAND J. Econ.*, Vol. 37, No. 3, Autumn 2006, p. 645-667 (available at https://www.jstor.org/stable/25046265?seq=1#page_scan_tab_contents).
- STARKOV, M., « End of the OTA merchant model – this time for real », HeBS digital, 2010 (available at http://d1i7wqrofor4z.cloudfront.net/1492126425/cms/pressroom/11_hotelsmag_end_of_the_ota_merchant_model.pdf).
- STROWEL, A., « Quand Google défie le droit – plaidoyer pour un internet transparent et de qualité », *De Boeck & Larcier*, 2011, 240 p.
- THIRION, N., « Droit de l'entreprise », *Collection de la Faculté de droit de l'Université de Liège*, Ed. Larcier, Bruxelles, 2013, 851 p.
- VAN CLEYNENBREUGEL, P., « Notes de cours personnelles: Droit européen », *Université de Liège*, 2015-2016, 231 p.
- Wallonie Bruxelles Tourisme, *Nouvelle réglementation relative aux hébergements touristiques bruxellois*, 30 March 2016 (available at <http://pro.walloniebruxellestourisme.be/fr/30-03-2016-nouvelle-reglementation-relative-aux-hebergements-touristiques-bruxellois.html?IDC=14&IDD=8096>).
- ZERVAS, G., « The Rise of the Sharing Economy: Estimating the Impact of Airbnb on the Hotel Industry », *Boston U. School of Management Research*, Paper No. 2013-16, 9 June 2016, 45 p. (available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2366898).

« Sharing Economy 2.0 : Can Innovation and Regulation Work Together ? », *University of Pennsylvania*, 5 November 2014 (available at <http://knowledge.wharton.upenn.edu/article/the-next-phase-for-the-sharing-economy/>)

Written Press

ARSENAULT, C., « Airbnb hors-la-loi à Berlin, d'autres villes tentent de mettre le holà », *RFI*, 23 April 2016 (available at <http://www.rfi.fr/ameriques/20160423-airbnb-hors-loi-berlin-autres-villes-tentent-mettre-le-hola-amende-taxe>).

BADGER, E., « Why we can't figure out how to regulate Airbnb », *The Washington Post*, 23 April 2014, available at <https://www.washingtonpost.com/news/wonk/wp/2014/04/23/why-we-cant-figure-out-how-to-regulate-airbnb/>.

COLDWELL, W., « Paris become Airbnb's top home-sharing city destination », *The Guardian*, 27 February 2015 (available at <https://www.theguardian.com/travel/2015/feb/27/paris-becomes-airbnbs-top-home-sharing-city-destination>).

DE PECOL, D., « Her Majesty gives Airbnb Blessing », *Premier Traveler Worldwide*, 30 March 2015 (available at https://www.ptwwonline.com/Her_Majesty_Gives_Airbnb_Blessing/76/2540.aspx).

DYKMANS, I., « Nouveaux cadre fiscal pour l'économie collaborative: des critères stricts pour profiter de la discalité light de l'économie de partage », *L'Echo*, 13 May 2016 (available at http://monargent.lecho.be/imp%F4ts/Nouveau_cadre_fiscal_pour_l_economie_collaborative.9765902-1785.art).

GABOULAUD, A., « Non à l'hotellerie déguisée », *Paris Match*, 22 June 2015 (available at <http://www.parismatch.com/Actu/Economie/Interview-de-Laurent-Duc-de-l-UMIH-les-hotels-face-a-Airbnb-789450>).

GODARD, S., « Berlin ne veut plus d'Airbnb dans sa ville », *L'Echo*, 26 April 2016 (available at http://www.lecho.be/actualite/archive/Berlin_ne_veut_plus_d_Airbnb_dans_sa_ville.9758811-1802.art?highlight=airbnb).

KASSAM, A., « Airbnb fined 30,000 for illegal tourist lets in Barcelona », *The Guardian*, 7 July 2014 (available at <http://www.theguardian.com/technology/2014/jul/07/airbnb-fined-illegal-tourist-lets-barcelona-catalonia>).

KLEIN, J-Y., « La Commission européenne prend la défense d'Uber et de Airbnb », *L'Echo*, 2 June 2016 (available at http://www.lecho.be/economie_politique/europe_economie/La_Commission_europeenne_pre_nd_la_defense_d_Uber_et_Airbnb.9773330-3167.art).

- KLEIN, J-Y., « Barcelone hausse le ton face à Airbnb », *L'Echo*, 28 June 2016 (available at http://www.lecho.be/entreprises/tourisme/Barcelone_hausse_le_ton_face_a_Airbnb.9782946-3009.art?highlight=airbnb).
- KLEIN, J-Y., « Après Berlin, New York près de bannir Airbnb », *L'Echo*, 20 June 2016 (available at http://www.lecho.be/entreprises/immobilier/Apres_Berlin_New_York_pres_de_bannir_Airbnb.9779712-3064.art).
- MIKOLAJCZAK, C., « Demander l'aval des propriétaires, c'est évincer Airbnb », *La Libre*, 19 November 2015 (available at <http://www.lalibre.be/economie/libre-entreprise/demander-l-aval-des-coproprietaires-c-est-evincer-airbnb-564cbd5d3570ca6ff8fe3973>).
- NESBA, S., « La Wallonie aura aussi son cadre légal pour Airbnb », *L'Echo*, 31 March 2016 (available at http://www.lecho.be/economie_politique/belgique_wallonie/La_Wallonie_aura_aussi_son_cadre_legal_pour_le_Airbnb.9749877-3156.art?highlight=airbnb%20wallonie).
- NEWCOMBE, T., “Airbnb given Safety Standards Warning”, *BBT*, 17 July 2014 (available at <http://buyingbusinesstravel.com/news/1722814-airbnb-issued-safety-standards-warning>).
- RAMPELL, C., « The dark side of sharing economy jobs », *The Washington Post*, 26 January 2015 (available at https://www.washingtonpost.com/opinions/catherine-rampell-the-dark-side-of-sharing-economy-jobs/2015/01/26/4e05daec-a59f-11e4-a7c2-03d37af98440_story.html).
- SERAFINI, T., « A Berlin, Airbnb se heurte à un mur », *Libération*, 25 April 2016 (available at http://www.liberation.fr/france/2016/04/25/a-berlin-airbnb-se-heurte-a-un-mur_1448595).
- WALSH, B., “Today’s smart choice: don’t own. Share”, *Times*, 17 March 2011 (available at content.time.com:ti.me/19YTeQY).
- WEBER, H., “Airbnb Tweaks Review Systems So Guests Don’t Fear Retaliation from Hosts”, *Venturebeat*, 11 August 2014 (available at <http://venturebeat.com/2014/08/11/airbnb-tweaks-review-system-so-guests-dont-fear-retaliation-from-hosts/>).
- « Le discours inattendu et engagé de Leonardo DiCaprio après son premier Oscar », *Le Huffington Post*, 29 February 2016 (available at http://www.huffingtonpost.fr/2016/02/29/leonardo-dicaprio-discours-oscar-meilleur-acteur-environnement_n_9346574.html).
- « Les villes européennes qui ont ou vont bannir les voitures du centre ville », *Le Monde*, 23 October 2015 (available at http://www.lemonde.fr/pollution/article/2015/10/22/tour-d-europe-des-futurs-et-actuels-centres-villes-sans-voiture_4795189_1652666.html).
- “L’uberisme est un tchatchérisme”, *Kaléidoscope*, January 2015, available at <http://www.kaleidoscopemag.fr/luberisme-est-un-tchatcheurisme>.

“All Eyes on the Sharing Economy”, *The Economist*, 9 March 2013 (available at <http://www.economist.com/news/technology-quarterly/21572914-collaborative-consumption-technology-makes-it-easier-people-rent-items>).

Videos

The Conference on « The Peer-to-Peer Economy: Competition « IN » and « FOR » the market ? », 16 February 2016, Brussels (available at <https://www.youtube.com/watch?v=r7vB67NyPyl>).

Online ressources

www.airbnb.com

<https://www.blablacar.fr>

<http://ec.europa.eu>

<http://insideairbnb.com>

<http://www.oecd.org>

<http://www.legifrance.gouv.fr>

<http://www.paris.fr>

<http://europarl.europa.eu>

<http://ouishare.net/fr>

<http://www.vlaanderen.be>

<https://ssl.stadtentwicklung.berlin.de>

Interviews

Interview with Tarik HENNEN (cofounder), **Smartflats**, 27 June 2016.

Interview with Rodolphe VAN WEYENBERGH (secretary general), **Brussels Hotel Association**, 11 April 2016.

Interview with Olivier POULAERT (founder-owner), **Bed&Brussels**, 24 February 2016.

APPENDIXES

1. BRIEF COMPARISON OF BUSINESS MODELS (AIRBNB VS. TRADITIONNAL HOTELS)

AIRBNB				
<p>KEY PARTNERS</p> <ul style="list-style-type: none"> - Hosts (people who rent their lodging) - Guests (people who book lodgings) - Local photographers (freelance) - Main investors (e.g.: Sequoia Capital, Y combinatory, Greylock partners) - Payment providers (e.g.: Paypal, Western Union) 	<p>KEY ACTIVITIES</p> <ul style="list-style-type: none"> - Product Development & Management: platform development and maintenance - Community management: Building Host network and Managing hosts; Building travellers network & managing guests 	<p>VALUE PROPOSITIONS</p> <p><u>Hosts:</u></p> <ul style="list-style-type: none"> - Hosts can earn rental money by listing their lodging effortlessly for a worldwide audience - Airbnb provides insurance to house owners - Free photo shoots for property listings through local photographers <p><u>Guests:</u></p> <ul style="list-style-type: none"> - Guests can book a homestay instead of hotel - Prices are often less as compared to hotels <p>Rating and review system for hosts and guests</p>	<p>CUSTOMER RELATIONSHIPS</p> <ul style="list-style-type: none"> - Customer Service - Social Media: online community rankings - Promotional Offers - Home Insurance 	<p>CUSTOMER SEGMENTS</p> <p><u>Hosts:</u></p> <ul style="list-style-type: none"> - People who own a lodging and want to earn money (extra room) - People who want to meet new people (e.g. expats & students) <p><u>Guests:</u></p> <ul style="list-style-type: none"> - People who love to travel (globetrotters) - People who want to stay comfortably at a low price <p><u>Freelance Photographers</u></p>
<p>COST STRUCTURE</p> <ul style="list-style-type: none"> - Technological Set up & running costs (marketing and community management) - Salaries to permanent employees - Payments to freelance photographers - Local and traveller Insurance 		<p>REVENUE STREAMS</p> <ul style="list-style-type: none"> - Guest service fees to help cover the costs of running Airbnb (6-12%) - Host service fees to cover the cost of processing guest payments (3%) 		

TRADITIONAL HOTELS: ACCOR HOTELS (EX: MERCURE)				
KEY PARTNERS <ul style="list-style-type: none"> - Food suppliers - Bedding suppliers - Financial partners - Companies of transport (air, rail, taxis) - Payment providers (e.g.: Paypal) - Travel network 	KEY ACTIVITIES <ul style="list-style-type: none"> - Rental of comfortable rooms - Services associated with the room 	VALUE PROPOSITIONS <ul style="list-style-type: none"> - Global presence - Comfort - Loyalty program - Package: flight, hotel, car - Adaptation of accommodation according to their geographical area 	CUSTOMER RELATIONSHIPS <ul style="list-style-type: none"> - Newsletter - Website - Social network 	CUSTOMER SEGMENTS <ul style="list-style-type: none"> - Couples - Family - Average budget
	KEY RESSOURCES <ul style="list-style-type: none"> - Skills - Knowledge - Material resources - Employee training - Good trade relations with partners - Communication - Security 		CHANNELS <ul style="list-style-type: none"> - Website - Mobile App - Travel agencies - Event planning 	
COST STRUCTURE <ul style="list-style-type: none"> - Advertising and communication - Research and innovation - Payroll - Employee training - Construction costs 			REVENUE STREAMS <ul style="list-style-type: none"> - Booking - Restoration - Additional services (recreation, pool, spa, gyms/game) - Economies of scales that increase margins 	

2. COMPARISON OF BELGIAN LEGISLATIONS

Brief comparison with the proposal of the Walloon decree amending the Walloon Code of tourism and on individual accommodation set in tourist rental via community platforms.

	Walloon decree proposal	Brussels <i>ordonnance</i> of the 8 May 2014
Safety and fire	<ul style="list-style-type: none"> - Solicitations of fire safety certificate from the local authorities: General tourism police can accredit operators able to deliver simplified security certificates¹⁹⁴ (those issued for accommodation with a capacity below 10 people). - Obligations regarding the general state of cleanliness and good maintenance of the facility; Need to cover by insurance of civil liability of the Manager and its agents; Exemption of any court sentence.¹⁹⁵ 	<ul style="list-style-type: none"> - Operator holder of liability insurance (copy of the insurance contract liability); operator free of convictions for crimes / crimes against persons or property and immoral acts (criminal records)¹⁹⁶. - Good health and state of maintenance; compliance with security standards against fire (fire safety certificate or simplified control); compliance with management standards and urban planning for tourist accommodation activities; registration with Brussels Economy and Employment in a category; compliance with the specific operating conditions for the category or subcategory in which the lodging is recorded¹⁹⁷.
Transparency	Creating transparency obligations on the part of intermediaries who organize the meeting of supply and demand for such tourist accommodation ¹⁹⁸ .	
Who?	<p>People who rent out occasionally, seasonally or regularly housing for tourism (lucrative full).</p> <p>Exclusion: Exchanging personal residence for a vacation regarding</p>	All individuals and professionals who operate or wish to operate a lodging located in one of the 19 municipalities of Brussels, proposed for consideration for a period of at least 1 night and up to

¹⁹⁴ Article 347. D Code wallon du tourisme

¹⁹⁵ Article 223. D Code wallon du tourisme

¹⁹⁶ Article 5 of the 2014 *ordonnance*

¹⁹⁷ Article 5 of the 2014 *ordonnance*

¹⁹⁸ Article 493bis. D Code wallon du tourisme

	a period of less than 30 days a year. ¹⁹⁹	90 days for people traveling for private or professional reasons ²⁰⁰ .
What?	Determination of basic rules for every accommodation put in tourist rental outside any protected designation (to give minimum of quality guarantees to tourists who use this type of accommodation) ²⁰¹ .	<ul style="list-style-type: none"> - General operating conditions (conditions to be met by any operator / applicant - operator & conditions related to the establishment of tourist accommodation)²⁰². - Operating conditions specific to the category of tourist accommodation²⁰³.
Controls and sanctions	Fine (EUR 25 000 if not the general conditions of operation , 50 000 euros if no transmission of requested data) ²⁰⁴ .	<ul style="list-style-type: none"> - Fine ranging from 250 to 25,000 euros²⁰⁵. - Suspension of registration: prohibition to perform an activity for a period ranging from one week to one year²⁰⁶. - Withdrawal of registration: permanent ban operate the accommodation concerned²⁰⁷.
Procedure		<ul style="list-style-type: none"> - Prior notification file²⁰⁸. - Registration number and logo²⁰⁹.

Extract of the Analytical paper of Sofia RANCHORDAS who explains in details the requirements of Brussels regulation:

“Brussels

With the enactment of the Implementation Decree in March 2016, Brussels imposes a very stringent regulatory framework on home-sharing. The 2014 *ordonnance* and the Implementation Decree prescribe extremely detailed rules on registration and authorization procedures, facilities, furniture, and appliances of accommodation; prohibition of shared rooms; “logo” and visibility of price disclosure (see above 2014 *ordonnance*). The Implementation Decree also imposes rules on the interaction between hosts and guests which might discourage many individuals from engaging into collaborative practices and leasing

¹⁹⁹ Article 1. D 10° Code wallon du tourisme

²⁰⁰ Article 3, 1° of the 2014 *ordonnance*

²⁰¹ Section 2 Code wallon du tourisme

²⁰² Section 1 of the 2014 *ordonnance*

²⁰³ Section 2 of the 2014 *ordonnance*

²⁰⁴ Article 496. D Code wallon du tourisme

²⁰⁵ Article 23 of the 2014 *ordonnance*

²⁰⁶ Article 20 of the 2014 *ordonnance*

²⁰⁷ Article 20 of the 2014 *ordonnance*

²⁰⁸ Article 16 of the 2014 *ordonnance*

²⁰⁹ Article 10 of the 2014 *ordonnance*

their house while on vacation (e.g., how hosts should welcome guests and cleaning).

The regulations on the number of hangers in a closet, furniture (e.g., number of chairs and “matching tables”), bathroom and kitchen appliances appear to be excessive, particularly in the context of the collaborative economy. Both Brussels and Budapest regulate these elements in a very detailed manner.

It is important to distinguish between national restrictions since some provisions address important concerns. While the imposition of sufficient “lighting” can be justified on the grounds of public safety, this argument appears to be excessive in the case of furniture. The Implementation Decree compares a bedroom advertised on a home-sharing platform to a hotel room, imposing similar requirements. However, many travelers nowadays often prefer a “home-sharing stay” over a hotel because they seek to experience a “different vacation” rather than a standardized hotel room. Therefore, the requirements imposed both by Hungarian legislation and by the recent Brussels *Ordonnance* and Implementation Decree transcend the mere argument of the public interest as they understand and regulate home-sharing through the lens of hotels and not of collaborative economy.

Brussels appears to justify its detailed regulations on a number of public interest justifications, including:

- (i) “dignity”, salubrity and privacy of tourist accommodation – one guest bedroom required (instead of shared bedroom), minimal cleaning requirements;
- (ii) public safety: fire certification; sufficient lighting; maximum occupancy;
- (iii) combat tax evasion and maintain level-playing field: registration obligations, payment of income and local taxes.²¹⁰

In the following table is provided an overview of some mentioned national restrictions and their underlying public interest²¹¹:

Public interest	Examples of regulatory provisions: Brussels
Justification	
Fire safety	Certificate of fire safety

²¹⁰ S. RANCHORDAS, *Home-Sharing in the Digital Economy: The Cases of Brussels, Stockholm, and Budapest*, 2016, p. 93-94, available at <http://ec.europa.eu>.

²¹¹ S. RANCHORDAS, *Home-Sharing in the Digital Economy: The Cases of Brussels, Stockholm, and Budapest*, 2016, p. 96, available at <http://ec.europa.eu>.

Safety	Availability of host: welcome and throughout stay; after-hours access; first-aid kit
Privacy	Only individuals rooms with key lock; “blackouts”; bathroom window (temporary blackout)
Health	e.g., window/adequate ventilation; cleaning and daily maintenance of common areas

3. STRINGENT REQUIREMENTS OF THE BRUSSELS ORDONNANCE

Subsection 4 of the 2014 *ordonnance* lists a number of specific dispositions applicable to home-sharing practices with the duration of up to 90 days (“hébergement chez l’habitant”)²¹²: Stays that exceed the period of 90 days will be regulated according to landlord-tenant law, more specifically, “location avec service”).

1. The host commits himself/herself to offer a personal and quality welcome and facilitate the tourists’ stay (article 10§1er, 1e)²¹³;
2. The host must provide for regular cleaning services and clean linens (article 10§1er, 1g);
3. The housing unit must be well maintained, safe, and clean, have between one to a maximum of five guestrooms (article 10§1er, 2). This means that home-sharing platforms offering accommodation in shared rooms or living-rooms (sofa-beds) do not comply with this requirement.

The implementation decree (Annex 4) imposes a number of detailed additional requirements on units leased in the context of the collaborative economy (“hébergement chez l’habitant”) including:

1. The host must welcome the tourists upon their arrival.
2. The host must be available during the period of the guest’s stay.

²¹² Stays that exceed the period of 90 days will be regulated according to landlord-tenant law, more specifically, “location avec service”.

²¹³ The original text of article 10§1er, 1e) “L’exploitant ou la personne chargée de la gestion journalière de la personne morale exploitant (...) s’engage à s’impliquer personnellement, éventuellement avec la ou les personnes qui vivent habituellement sous le même toit, dans l’accueil des hôtes, à leur réserver un accueil personnel de qualité, à mettre tout en oeuvre pour faciliter leur séjour et à les aider dans leurs recherches d’informations touristique.”

3. All the leased rooms must have their entrance door identified and can be locked with a key.
4. The number of hosts able to sleep in the unit is limited to the stated occupancy: a convertible bed, a bunk bed, a fixed wall bed, wardrobe bed or similar equipment are equated to regular bed as far as the maximum occupancy is concerned.
5. All the rooms leased and facilities accessible to the tourists must have sufficient lighting (100 lx).
6. All the rooms leased must have a light switch at the entrance to the room. The main lighting is controlled from the beds in the absence of lamp.
7. There must be at least one window in the bedroom. In the absence of air conditioning or ventilation, the guests must be able to open the windows. The windows must have blackout curtains or be equipped with something similar.
8. There is at least one electrical outlet in the bedroom.
9. The beds are equipped with mattresses, mattress covers, pillow and bedding adapted to the dimensions of beds.
10. The bedroom must be furnished at least with:
 - a) A cabinet or similar space built for use as wardrobe and underwear, at least two hangers per person are available;
 - b) A seat each. When the room has a maximum capacity of more than two people, two seats are sufficient;
 - c) If breakfast is provided, there is a chair person and a table. The chair is considered a seat as referred to in point b);
 - d) A wastebasket.
11. When the room has a private bathroom, the bathroom must either directly next to the room or built in an area of the house or in a connected annex which can be closed. If the bathroom is not immediately next to the room, there should be a clear visible symbol identifying it.
12. The private bathroom of the room has at least the following equipment:
 - a) A reasonable general electric lighting (100 lux);
 - b) A window or a ventilation system which can be opened;
 - c) A bath or shower with clean running water, hot and cold, always available (at any time – 24 hours a day). The bath is equipped with a drain plug or a similar device;
 - d) A sink with clean running water, hot and cold, always available (at any time - 24 hours a day);

- e) A sink mirror;
- f) An electric lighting sink (200 lux);
- g) A cup or glass for each guest;
- h) A guest towel;
- i) A small garbage bin;
- j) When there is a window in the bathroom, it should be possible to obscure the view temporarily.

There are equally detailed dispositions for separate toilets. Shared bathrooms can be used by a maximum of three bedrooms. The amenities and furniture of shared bathrooms are also regulated in detail and must have the same items as private bathrooms. The regulation also imposes the daily maintenance of shared facilities, the availability of a first-aid kit. If the host claims to be a Bed & Breakfast, breakfast must be provided in the bedroom, in the host's or in an annex adjoining the bedroom. The Regulation also states that "if the facility has space for breakfast, this space includes at least a chair for each guest in the facility and one or more matching tables."

4. REGULATORY PRINCIPLES

When considering regulations, the next seven regulatory principles have to be applied by public authorities:

1. Explain the need for regulation (market failures?);
2. Guarantee transparent regulatory implementation and development;
3. Minimize the effect of regulating on a fair, competitive and innovative market;
4. Minimize or eliminate too stringent requirements which do not seem necessary;
5. Write regulations so they are easily understood;
6. Make regulations easily accessible for everybody;
7. Evaluate and assess regulations regularly (in need, amend).

5. ATTRACTIVE PRICES²¹⁴

Table 1. Rates for different forms of accommodation (\$USD).

	Airbnb			Hotel			Hostel
	Shared room	Private room	Entire home/apartment	1–2 star	3 star	4–5 star	
<i>Mean rate</i>							
Chicago	60	105	213	85	136	220	30
Montreal	62	74	139	84	131	196	25
Rio de Janeiro	59	136	265	101	159	256	23
San Francisco	79	126	270	110	168	297	29
Sydney	64	117	311	101	148	218	31
Venice	57	129	196	125	158	247	49
<i>Median rate</i>							
Chicago	56	78	168	77	123	199	31
Montreal	59	59	115	84	125	177	22
Rio de Janeiro	48	112	197	106	148	209	21
San Francisco	64	106	223	100	158	265	27
Sydney	60	102	242	93	141	197	30
Venice	54	90	161	113	127	206	47
<i>Mean of 10 cheapest rates</i>							
Chicago	25	31	56	48	77	114	-
Montreal	28	23	40	51	73	139	21
Rio de Janeiro	21	29	46	77	78	150	17
San Francisco	27	36	69	54	89	197	27
Sydney	46	42	105	87	101	115	23
Venice	-	30	61	54	53	65	43
<i>n</i>							
Chicago	49	334	231	129	123	64	6
Montreal	27	468	291	72	99	29	13
Rio de Janeiro	83	533	323	19	102	41	52
San Francisco	82	804	446	171	136	45	11
Sydney	19	349	85	17	86	133	48
Venice	6	237	62	63	231	134	13

Note: All rate data were collected on 26 January 2013 and refer to one night of accommodation for one adult on Friday, 5 April 2013. Airbnb prices were obtained from www.airbnb.com, hotel prices were obtained from www.kayak.com ('hotels' and 'motels'), and hostel prices were obtained from www.hostelbookers.com. Prices include all applicable taxes and fees. A uniform 12% fee was applied to Airbnb prices, as this percentage fee was common among the reservation prices considered, with limited variance. Hotel star ratings were based on Kayak's rating system. The boundaries for each city were determined by the websites used, and these boundaries generally included the greater areas of the cities considered. Hotel and hostel rates collected were the cheapest rate for each individual property.

²¹⁴ D. GUTTENTAG, *Airbnb: disruptive innovation and the rise of an informal tourism accommodation sector*, *Current issues in Tourism*, 2015, p. 1197, available at <http://dx.doi.org/10.1080/13683500.2013.827159>