URBAN HERITAGE AND THE LEGAL REGULATION OF TOURIST RENTALS

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Abstract: This article by Marco Mariani explores the recent legal and jurisprudential developments concerning short-term tourist rentals, with particular attention to urban areas of historical and cultural significance, such as UNESCO-listed historic centres. The paper examines major regulatory innovations introduced at municipal, regional, and national levels, focusing specifically on the Regulation adopted by the City of Florence on 5 May 2025 and on Tuscany Regional Law No. 30/2024, both currently subject (indirectly o directly) to constitutional review. The analysis then turns to a comparative overview of selected European legal models and concludes with a reflection on the potential impact of the European Regulation 2024/1028.

1. Introduction: The rise of the issue and the role of historic city centres

In recent years, the proliferation of short-term tourist rentals has emerged as one of the most pressing challenges for urban policy, real estate market regulation, and the balancing of public interests with private freedoms. Initially considered a private contractual practice, devoid of public law implications, this rental model has increasingly occupied a regulatory space at the intersection of civil, administrative, and urban law.

The rapid growth of digital rental platforms such as Airbnb has transformed traditional hospitality markets, leading to a widespread emergence of informal accommodations that—although nominally outside the scope of entrepreneurial activity—have significantly influenced urban dynamics. The result has been a surge in legislative and regulatory responses at national and local levels, aimed at reconciling legitimate aspirations for property profitability with concerns over urban planning, housing access, and social sustainability.

These tensions have manifested with particular intensity in UNESCO-listed historic centres, where the mass presence of short-term rentals has fuelled processes of residential desertification, displacement of local inhabitants, disruption of local commerce, and erosion of cultural identity. In response, various local governments have introduced ordinances and regulations intended to discipline or restrict tourist rentals, raising complex questions regarding their legal and constitutional legitimacy.

The City of Florence stands out as a paradigmatic example. With a City Council resolution adopted on 5 May 2025, pursuant to Tuscany Regional Law no. 61/2024, the City Council enacted a regulatory scheme introducing a five-year authorisation requirement, setting minimum standards for floor space and habitability, banning new tourist rental permits in the UNESCO zone, and establishing a detailed sanctions regime. This act triggered a direct constitutional challenge (case No. 14/2025) filed by the national government, invoking Articles 3, 41, 42, and 117 of the Italian Constitution.

Concurrently, Italian administrative courts have offered diverging interpretations: some rulings have upheld broad municipal regulatory authority in the name of local public interest, while others have cast doubt on the legitimacy of equating tourist rentals with entrepreneurial hospitality activities. Notably, the Italian Council of State, in judgment, no. 2928 of 7 April 2025, recognised the validity of local restrictions in so far as they are based on legal provisions, proportionate, adequately reasoned, and grounded in urban policy objectives.

This article aims to examine the recent normative and jurisprudential developments regarding short-term tourist rentals, with particular emphasis on legal regimes introduced in historically significant urban areas and the mechanisms used to balance public interests and individual rights. The analysis is situated within the broader constitutional and supranational framework and integrates a comparative look at European legal approaches, culminating in a critical assessment of the EU Commission's proposed Regulation COM(2022)571.

2. The national and regional legal framework: fragmentation and uncertainty

The legal framework governing short-term tourist rentals in Italy has developed in a fragmented and sectoral manner, primarily through fiscal and administrative control instruments. Despite acknowledging the growing socio-economic relevance of the phenomenon, the national legislature has so far refrained from enacting a comprehensive statute, instead opting for a piecemeal approach that has led to legal uncertainty and wide discretion at the local level.

2.1 The notion of Short-Term Rentals and initial regulatory measures

The first significant attempt to define and regulate Short-Term Rentals was introduced by Article 4 of Decree-Law No. 50 of 24 April 2017, subsequently converted with amendments into Law No. 96 of 21 June 2017. This provision established the legal category of "Short-Term Rentals" as contracts concerning residential properties, entered into by individuals, and limited to a maximum duration of 30 days. These transactions were expressly required to fall outside the scope of any business activity.

Although the primary objective of this legislation was fiscal in nature—specifically, to allow the application of a flat-rate tax regime (the so-called "*cedolare secca"*) and to impose specific reporting obligations on real estate intermediaries and digital platforms—it also provided the structural foundation for a progressive convergence of these rental practices with regulated hospitality activities. This legal framing has since prompted their inclusion within the domain of administrative and urban regulation, especially as their proliferation began to significantly affect housing markets and urban planning dynamics.

2.2 Presumption of entrepreneurial activity beyond four units

A further qualification criterion was introduced with the 2021 Budget Law (Law No. 178 of 30 December 2020). Article 1, paragraph 595, established a legal presumption whereby any individual renting out more than four residential units per year is deemed to be engaged in business activity. This presumption, being absolute, excludes any contrary evidence and entails significant consequences not only in fiscal and civil terms but also in relation to tourism law and urban planning regulations applicable to hospitality services.

2.3 The National Identification Code and reinforced oversight

The most recent regulatory development came with Decree-Law No. 145 of 18 October 2023, converted into Law No. 191 of 15 December 2023, which introduced the National Identification Code (CIN) for units used in short-term rentals. This code—issued via a digital platform managed by the Ministry of Tourism—is mandatory for all advertisements and contracts, with non-compliance subject to financial penalties.

Beyond its function as a tax and transparency tool, the CIN provides local authorities with an up-to-date mapping of properties actually used for tourist purposes. The measure thus lays the foundation for a national database capable of supporting local regulatory strategies. Notably, the CIN aligns with the objectives of the proposed EU Regulation COM(2022)571, which seeks to promote data sharing between digital platforms and public authorities.

2.4 Local regulatory powers: autonomy and constitutional Limits

In the absence of a national framework law, many municipalities—often with regional support—have adopted their own regulations under the residual competence for spatial planning and local liveability. Article 118 of the Italian Constitution and Article 3(4) of Legislative Decree No. 23/2011 provide a basic legal basis for such municipal initiatives, allowing rules on access, eligibility, and limits for short-term rentals.

Nevertheless, administrative case law has repeatedly emphasised the need for systemic consistency and respect for the principle of legality. Any restrictive measure must have a clear statutory basis and may not circumvent constitutional principles protecting economic freedom and private property. The Council of State, in judgment No. 2271 of 13 March 2024, affirmed that municipal regulations must operate within the boundaries of national competences, particularly where fundamental rights or areas under exclusive state jurisdiction—such as civil law and competition—are at stake.

3. Recent local regulatory initiatives: the case of Florence

Among the various municipalities that have sought to discipline short-term tourist rentals through local ordinances, the City of Florence has adopted one of the most comprehensive and controversial regulatory instruments. Its decision has sparked intense public and legal debate

and has become a reference case for the broader national discourse on balancing tourism promotion with urban sustainability and residential rights.

The Florence City Council, by resolution No. 2025/48 of 5 May 2025, approved a regulation aimed at countering the proliferation of tourist rentals within the UNESCO-designated historic centre. The resolution was adopted in application of Tuscany Regional Law No. 61/2024, which granted municipalities enhanced regulatory powers over tourist accommodation, including the authority to impose temporary bans, set urban planning constraints, and introduce licensing systems.

The key elements of the Florentine regulation include:

- a five-year renewable authorisation requirement for each unit rented to tourists;
- a prohibition on issuing new authorisations within the UNESCO perimeter, except in specific cases linked to long-term urban regeneration plans;
- the obligation to comply with minimum floor area and sanitary requirements beyond those imposed for standard residential use;
- the introduction of a municipal digital registry, coordinated with the National Identification Code (CIN);
- a sanctions regime for non-compliant landlords, including monetary penalties and potential revocation of authorisation.

The regulation was explicitly justified by reference to Article 117 (6) of the Italian Constitution (municipal regulatory autonomy) and Article 41 (economic initiative not in contrast with social utility). It drew empirical support from urban impact assessments commissioned by the municipality, which documented rising housing costs, a drop in long-term rentals, and depopulation in the historic centre.

The regulation also includes transitional provisions, safeguarding existing authorised activities for a limited time period and enabling appeals before a municipal review commission. Nonetheless, the measure has faced strong opposition from property owners, platform operators, and parts of the political spectrum, which have questioned its proportionality, legality, and coherence with national and EU law.

Notably, Florence's initiative has already triggered administrative litigation before the Regional Administrative Court (TAR Toscana), as well as a direct constitutional challenge filed by the national government before the Constitutional Court (case No. 14/2025). The National

Government contends that such Regulation infringes national competence in civil law and competition and violates the principles of equality, legality, and proportionality enshrined in Articles 3 and 41 of the Constitution.

The outcome of this legal challenge is expected to influence the regulatory future of short-term rentals across Italy, as numerous municipalities—particularly in high-tourism regions—have adopted or are planning similar ordinances modelled on the Florentine experience.

4. Ongoing administrative and constitutional litigation: critical issues

The Regulatory initiative undertaken by the City of Florence has catalysed a wave of contentious legal challenges, both in the administrative courts and before the Constitutional Court. These proceedings underscore the legal complexities and unresolved constitutional tensions surrounding the authority of local governments to regulate short-term tourist rentals, particularly when such measures impose limitations on the exercise of property and entrepreneurial freedoms.

Following the enactment of the municipal regulation in May 2025, several appeals were filed before the Regional Administrative Court of Tuscany (TAR Toscana), contesting both the procedural regularity of the regulation and its substantive compatibility with higher-ranking legal norms. The applicants—including individual landlords, property management firms, and digital platform intermediaries—allege that the regulation exceeds the competences conferred by Tuscany Regional Law No. 61/2024, infringes the principle of legality, and imposes disproportionate restrictions on constitutionally protected economic freedoms. They also contest the adequacy of the municipality's empirical basis for introducing differentiated regulatory treatment within the UNESCO area, citing the need for uniformity, transparency, and predictability in urban governance.

Parallel to these administrative proceedings, a direct constitutional challenge has been brought by the National Government (Case No. 14/2025), targeting the Regional enabling Law. The government argues that the contested measures encroach upon matters falling within the exclusive competence of the State, namely civil law, competition, and the protection of individual rights. It invokes Article 117(2)(l) of the Constitution, which reserves to the national legislature the authority to regulate civil and economic legal relations, and further alleges

violations of Articles 3 and 41, on grounds of unequal treatment and unjustified constraints on free enterprise.

In its submissions, the Government also points to a lack of coordination with national regulatory instruments, including the rules governing short-term leases under the Civil Code and the recent legislative interventions concerning the National Identification Code (CIN). It highlights the risk of regulatory fragmentation and market distortion, particularly if similar measures were to proliferate across different regions and municipalities without a coherent national framework.

This evolving litigation landscape reflects the inherent difficulty in striking a balance between local regulatory autonomy and overarching legal guarantees. The jurisprudence emerging from these cases will be critical in clarifying the scope of permissible intervention by subnational entities in the field of tourist accommodation and may shape the contours of a future legislative reform at national level.

5. Between Local autonomy and European constraints: urban heritage and the limits of localism

The governance of urban heritage in Europe has long been anchored in municipal traditions of land-use regulation and cultural preservation. Cities have historically acted not merely as administrative units, but as normative actors with distinct identities and regulatory rationalities. In recent years, the exponential growth of short-term tourist rentals (STRs)—facilitated by transnational digital platforms—has challenged this paradigm, prompting a wave of municipal responses aimed at curbing the transformation of residential housing into commodified tourist accommodations, particularly in historically sensitive areas.

These local regulations—ranging from zoning ordinances and numerical caps to restrictions on duration and location—are typically grounded in legitimate public interest objectives: the preservation of the residential function of city centres, the mitigation of housing scarcity, the protection of intangible cultural heritage, and the prevention of overtourism. However, they often operate in legal tension with supranational norms that prioritize market access, service liberalization, and platform neutrality.

Under the Services Directive (2006/123/EC) and the Digital Services Act (Regulation 2022/2065), Member States and sub-national authorities are prohibited from imposing unjustified or disproportionate restrictions on service providers. According to established case law of the Court of Justice of the European Union (CJEU), any restriction on access to services must be assessed against a strict test of legitimacy, necessity, and proportionality. This jurisprudence has created a demanding evidentiary burden for local authorities seeking to justify constraints on STRs, particularly where those constraints involve economic operators acting across borders.

In this context, many municipalities have found themselves disempowered—politically expected to act, yet institutionally constrained by procedural requirements and informational deficits. Measures intended to protect local communities or historic quarters have been struck down or weakened due to lack of sufficiently documented justification, raising concerns about the scope of urban self-government within the internal market.

It is precisely this structural dilemma that Regulation (EU) 2024/1028 aims to address—not by harmonizing substantive restrictions, but by creating a procedural infrastructure for transparency, accountability, and coordination. The Regulation introduces a Europe-wide obligation for platforms to collect and transmit standardized datasets—including registration numbers, guest volumes, duration of stay, and unit locations—through single national digital entry points. It also requires municipal or regional registration systems to be interoperable, accessible, and capable of uniquely identifying each unit offered as STR.

This new framework represents a foundational shift in the multilevel governance of urban space. While local authorities retain the power to adopt specific restrictions to protect their urban heritage and ensure social balance, they must now ground those measures in reliable, accessible, and legally verifiable data. Urban regulation is no longer merely an exercise in local political will or cultural narrative; it must conform to supranational procedural standards, ensuring that policy goals are pursued through proportionate, evidence-based means.

From a theoretical perspective, this development reveals a reconfiguration of the principle of subsidiarity. The regulation does not neutralize localism; rather, it conditions and enables it. It reframes subsidiarity not as a space of unregulated autonomy, but as a shared responsibility for governance, structured through common procedural norms and interoperable digital tools. In

other words, localism is no longer pre-political, but becomes legally constituted and digitally mediated.

This has profound implications for the regulation of STRs in historic cities. Where municipalities invoke heritage protection as a ground for restricting tourist rentals, they must now demonstrate that their measures correspond to a clearly defined public interest, supported by disaggregated data and subject to review. This requires an epistemic shift in how urban heritage is conceptualized and defended: from a symbolic or cultural category to a policy field governed by digital evidence, normative proportionality, and supranational scrutiny.

Moreover, the regulation opens space for a more cooperative model of governance. Rather than operating in parallel silos, cities, Member States, and the European Commission are invited to converge around shared infrastructures of monitoring and enforcement. The introduction of registration identifiers, digital transparency, and routine data flows allows for a more legitimate and responsive allocation of regulatory functions, reducing duplication and enhancing mutual trust.

Accordingly, Regulation (EU) 2024/1028 neither centralizes nor displaces local authority, but transforms its legal conditions of exercise. It compels a new kind of local governance—one that is data-informed, procedurally coherent, and normatively aligned with EU internal market values. Urban heritage, as a justification for STR regulation, remains valid and compelling, but must now be articulated within a shared legal and technological architecture that binds local action to transnational accountability.

This transformation reflects a broader evolution in European law, whereby the regulation of urban space is no longer exclusively territorial, but increasingly infrastructural and epistemic. In this new phase, protecting the cultural identity and residential integrity of historic centres is not only a matter of local sentiment, but of compliance with a supranational logic of digital governance and legally accountable urbanism.

6. From fragmentation to coordination: The EU Data Regulation and the future of urban control

For over a decade, the governance of short-term tourist rentals (STRs) has evolved in a climate of legal uncertainty and territorial experimentation. Cities such as Amsterdam, Lisbon, Berlin, and Florence have acted as regulatory laboratories, attempting to mitigate the negative effects of mass tourism and housing commodification through zoning restrictions, licensing schemes, and host registration requirements. These measures have been driven by pressing local concerns: the depletion of long-term rental stock, the erosion of resident communities, and the disruption of urban heritage and identity.

Yet, despite their normative ingenuity, such local regulations have often been undermined by two structural constraints: the lack of reliable, granular data and the transnational nature of the platforms mediating the STR market. Regulatory fragmentation within and across Member States has led to legal friction, procedural opacity, and enforcement gaps. Local authorities have faced significant difficulties in verifying listings, tracking host activity, and monitoring compliance, while platforms have been burdened with divergent reporting obligations and inconsistent expectations across jurisdictions.

In this fragmented context, the adoption of Regulation (EU) 2024/1028, on the collection and sharing of data relating to short-term accommodation rental services, represents a systemic innovation in European urban governance. Rather than imposing uniform restrictions on STR activity, the regulation establishes a coordinated procedural infrastructure for data generation, access, and interoperability. It obliges hosting platforms to transmit, on a monthly basis, standardized datasets to competent authorities via a national single digital entry point, covering key variables such as registration numbers, number of guests, duration of stays, and unit locations. These provisions apply regardless of where the platform is established, ensuring consistency across the internal market.

Crucially, the regulation does not seek to harmonize the substance of local STR regulation. It leaves intact the power of national, regional, and municipal authorities to adopt restrictive or permissive frameworks, provided that such measures comply with general principles of EU law. This includes the requirement that restrictions be justified by an overriding reason of general interest—such as the protection of housing stock, the safeguarding of urban heritage, or the preservation of local communities—and that they be proportionate, transparent, and non-discriminatory. In this way, the EU norm does not displace local discretion, but rather conditions and empowers it, by supplying the informational and legal scaffolding necessary for rational, evidence-based regulation.

The consequences of this shift are significant. For the first time, the right to regulate urban space is framed within a supranational system of procedural accountability. Cities are no longer operating in isolation, but within a governance architecture that fosters cooperation, legal certainty, and digital interoperability. Platforms, for their part, face clearer obligations, predictable standards, and reduced compliance costs through the streamlining of reporting mechanisms.

This evolution also reflects a broader paradigm change in the European legal treatment of platform-mediated urban services. The regulation signals a move from a market-driven, reactive model of governance towards a proactive, data-governed model, one that treats STR activity not merely as a private contractual matter, but as a phenomenon of public relevance requiring structural oversight. It embeds platform tourism within the legal rationality of the Digital Services Act and the Services Directive, but adapts this rationality to the specificities of urban spatial justice and heritage protection.

Moreover, by establishing a legal basis for the collection and use of activity data—while ensuring compliance with the GDPR and safeguarding data minimization—the regulation lays the groundwork for more granular and legitimate policymaking. This opens new possibilities for the integration of STR data into urban planning, taxation, demographic monitoring, and housing needs assessments. In cities facing acute housing pressure, such data could enable more targeted and proportionate restrictions, thereby enhancing the legal defensibility of local measures under EU law.

In conclusion, Regulation (EU) 2024/1028 does not resolve the normative tensions between platform economy and urban conservation, nor does it prescribe a single model of regulation. What it does is more subtle and potentially more enduring: it reshapes the institutional conditions under which such regulation occurs. By formalizing a Europe-wide data infrastructure, clarifying the legal preconditions for local restrictions, and embedding transparency into the operational logic of digital platforms, the regulation establishes a new constitutional moment for urban governance in the age of tourism.

Rather than constraining municipal autonomy, it reconfigures it within a shared legal and technological architecture, enabling cities to better balance economic openness with the long-term sustainability of their cultural, social, and spatial fabric. In this sense, the regulation

represents not a technocratic fix, but a foundational step in the repoliticization of urban space as a shared European resource.