

> Return address Postbus 20401 2500 EK The Hague, the Netherlands

The President of the House of Representatives  
of the States General  
Binnenhof 4  
2513 AA THE HAGUE

Date

RE: Work on future-proof legislation: digital platforms and the sharing economy, including private letting to tourists (Airbnb).

Your Excellency Madam President,

In the letter 'Scope for innovation through future-proof legislation and regulations' of 20 July 2015,<sup>1</sup> I said that I consider it important that legislation and regulations allow sufficient scope for innovation, renewal and entrepreneurial capacity, while at the same time adequately protecting public interests. This requires the Dutch Government to think about how rules can be made more flexible and more future-proof in response to changing economic and social dynamics. With this letter the Dutch Government commits itself to actively seeking out those situations where innovation is being impeded by regulations. This forms part of a broader approach to future-proofing legislation that I have embarked on with the Minister of Security and Justice and the Minister of the Interior and Kingdom Relations.

Within this approach the Dutch Government is looking firstly at how legislation and regulations can stimulate innovation in concrete cases and, secondly, at how any obstacles in regulations can be eliminated as far as possible. The letter mentioned above reported on a number of cases involving current modernisation issues. This letter reports on the inquiries I requested into the rise of digital platforms and the sharing economy and on a concrete case in which these two issues come together, namely the letting of accommodation to tourists by private individuals.

First, I will examine the rise of digital platforms and the opportunities and challenges that this brings. My conclusions on this are partly based on the inquiry into digital platforms that I announced in the letter reporting on progress in developing a vision for telecommunications, media and the internet of 23 December 2014.<sup>2</sup> Furthermore, as promised in the Green Growth interim budget review for 2015,<sup>3</sup> I examine the question of where regulation can stimulate or impede desirable developments in the sharing economy. I also present the findings of an exploratory study into the letting of accommodation to tourists by private individuals via digital platforms such as Airbnb and Wimdu that I carried out jointly with the Minister for Housing and the Central Government Sector.

**Directorate-General  
Enterprise & Innovation**  
Regulatory Reform and ICT  
Policy Department

**Visiting address**  
Bezuidenhoutseweg 73  
2594 AC The Hague  
The Netherlands

**Postal address**  
Postbus 20401  
2500 EK The Hague  
The Netherlands

**Invoice address**  
Postbus 16180  
2500 BD The Hague  
The Netherlands

**Government organisation  
identification number**  
00000001003214369000

T +31 (0)70 379 8911  
(general)  
[www.rijksoverheid.nl/ez](http://www.rijksoverheid.nl/ez)

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**Enclosure(s)**

<sup>1</sup> House of Representatives of the States General, session year 2014-2015, 33 009, No 10.

<sup>2</sup> House of Representatives of the States General, session year 2014-2015, 26 430, No 345.

<sup>3</sup> House of Representatives of the States General, session year 2014-2015, 33 043, No 42.

In addition, in the letter of July 2015, I indicated that we are looking for ways to ensure that future-proofing is built more systematically into the process of drafting legislation and regulations. After all, prevention is better than cure. The Minister of Security and Justice is taking the lead in this because of his responsibility for the quality of legislation. This letter will also examine the activities carried out in this field.

This letter is also sent on behalf of the Minister of Security and Justice, the State Secretary for Infrastructure and the Environment and the Minister for Housing and the Central Government Sector. The different matters will be set out in more detail in the accompanying explanatory notes.

### **1. Digital platforms**

The rise of digital platforms is an unstoppable trend and a source of innovation in the economy and society. Digital platforms are increasingly playing an important role in bringing supply and demand together. This creates opportunities for both businesses and citizens. It is easier, for example, for a business to offer products to millions of potential customers via a digital platform such as Marktplaats or Bol.com. Digital platforms also create new markets and they change the dynamics in existing markets. Consumers benefit from this: as a result of the increasing competition and transparency, they gain access to a larger and more varied range of products, at more competitive prices and better quality.

However, the advance of digital platforms also brings challenges with it, for example in the areas of competition, use of data and the application of existing laws and rules. To enable a structured debate on the phenomenon of digital platforms, I have asked an investigative consortium made up of TNO, Ecorys and the Institute for Information Law (IViR), to draw up a cohesive analysis framework for issues relating to digital platforms.

Based on the research, I conclude that the Dutch Government should not immediately attempt to formulate new general rules but that we should first carefully examine how public interests are actually being affected. The fact is that there are already statutory and other instruments available to us, for example in the fields of competition and consumer protection, to answer questions relating to digital platforms. This means that, where specific problems arise, it is better if any intervention from the Dutch Government ties in with the sectoral, regional or administrative level where the problem has occurred and not to start from a generic platform approach, as there is no such thing as 'the platform' and so there is no such thing as 'the platform regulation.'

The research also shows that the context and form in which digital platforms operate are subject to constant change. Therefore, applying existing legislation and regulations can be quite challenging. This dynamic demands legislation that can keep pace with developments. As announced earlier in the letter 'Scope for innovation through future-proof legislation and regulations', I will review what opportunities the application of goal-based regulations (instead of means-based) has to offer for this. By clearly making explicit what purpose and what public interests the legislation is intended to safeguard, and by working with goal based provisions, the Dutch Government will indicate how it will respond to future developments.

Furthermore, it is good to note that digital platforms also create opportunities to better safeguard public interests. This is because they usually lead to the improved operation of markets by making quality and prices more transparent for example, and reputation mechanisms tend to work better. This could create opportunities to reshape legislation and regulations, making them less burdensome.

Given the level of interest in the subject, including on the European agenda, and its cross-border character, I will facilitate the debate on digital platforms during the Dutch Presidency.<sup>4</sup> Moreover, I plan to draw attention to the analysis framework mentioned earlier, including in a European context. The debate on digital platforms is taking place in the broad context of the European digital internal market. Bringing about a European digital internal market is a priority for the Dutch Government, in order to exploit the maximum growth potential of the European digital economy. It is important that Europe responds adequately to the rapid development of the internet economy, as it will lead to new earnings models that will challenge existing players. The Dutch Presidency will give a prominent place to the digital internal market theme on the European agenda.

## **2. The sharing economy**

Partly due to the growth of digital platforms and their increasing social acceptance, sharing goods and services has become easier and has grown exponentially. This has speeded up the development of the sharing economy. The sharing economy enables better utilisation of and access to existing capital and other goods (such as cars and houses).

The terms 'digital platforms' and 'sharing economy' are usually used together. That is understandable because the overwhelming majority of initiatives in the sharing economy make use of a digital platform. However, the two concepts both raise their own policy questions. To gain a better understanding of the potential opportunities for and impediments to the sharing economy, the State Secretary for Infrastructure and the Environment and I requested ShareNL draw up a list of both the obstacles encountered in the sharing economy and the environmental impact of this phenomenon.

One important conclusion is that the sharing economy is beneficial to the environment and sharing economy initiatives therefore contribute to green growth. A second important conclusion is that there is a lack of clarity about the application of legislation and regulations, which is curbing the potential of the sharing economy. There are two important areas requiring attention here.

First, there is the shift from possession (ownership) to use: the sharing economy reduces the need to own goods such as cars or tools. The reasons for this are that users attach less and less importance to owning things and it is easier for them to borrow or hire them. However, regulations frequently assume that there is a single owner, which can create doubt about, for instance, ownership rights and liability.

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<sup>4</sup> PM Reference to the annotated agenda of the Telecoms Council (TM).

The second area requiring attention concerns the shift from consumer to producer. As consumers start to provide services more often, the boundary between consumer and producer/entrepreneur starts to become blurred. In an increasing number of sectors this has led to the question being asked as to where the boundary should be drawn between private and professional/commercial and, consequently, when particular laws and regulations apply, in terms of taxation for example. Given the variety of sharing economy initiatives and their corresponding characteristics, it is difficult to make general statements about where the boundary should be drawn between what is permitted and what needs to be regulated. This increasingly demands a case-by-case approach.

In the coming period, the Dutch Government will work to facilitate the further development of the sharing economy and will, where necessary, work to eliminate impediments and ambiguities and to make the best possible use of opportunities, including via the programme Smart Regulation for Green Growth and the Green Deals. The European Commission also recently announced a similar commitment in its strategy for the Internal Market.<sup>5</sup> In connection with this, I plan to put this theme forward for discussion during the Dutch Presidency.

### **3. In practice: private letting to tourists**

The emergence of digital platforms for letting accommodation to tourists, such as Airbnb and Wimdu, is an example where the questions concerning digital platforms and the sharing economy come together. Platforms like this have significantly boosted the renting out of private homes to tourists. I see this development as a welcome addition to the hospitality economy. Although this new form of letting creates opportunities, it can also cause problems at a local level. This is why the Ministry of Economic Affairs in collaboration with the Ministry of Housing and the Central Government Sector is engaging in dialogue with various parties to assess whether public interests such as quality of life and safety are being safeguarded sufficiently. Use is also being made in this context of the analysis framework for digital platforms mentioned earlier and the areas requiring attention identified in the research into the sharing economy.

Based on the discussions we have had and our own enquiries, the Minister for Housing and the Central Government Sector and I have concluded that public interests such as safety, quality of life and fair competition are not generally at issue as long as the home is rented out on a temporary basis, for short periods and to a limited number of tourists. This does not ignore the fact that local problems can occur, for example to do with quality of life and the division of living space. These problems mainly occur among the group who seize the new trend of private letting to tourists to evade laws and regulations that do actually apply to them. It should be noted in this respect that the picture is very diverse and problems in this area are (at least for now) mainly concentrated in municipalities like Amsterdam where letting to tourists has grown exponentially.

Most of the local problems that occur are caused by the lack of a clear boundary between private and commercial letting and the enforcement of this boundary. Municipalities are predominantly responsible for the clarification of these boundaries. Given the fact that the problems mainly occur at the local level, we

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<sup>5</sup> Upgrading the Single Market: more opportunities for people and business {SWD(2015) 202 final}.

want to give municipalities the scope to respond locally. The Municipality of Amsterdam is a good example of a local authority that has adopted a constructive attitude toward tourist lettings and has formulated a policy that serves the interests of all parties involved (see also the attached explanatory notes). Amsterdam's policy is an example that shows that municipalities are perfectly capable of providing their citizens with more clarity on private lettings to tourists. The notes accompanying this letter examine the reference points in more detail in order to design such a policy for other municipalities.

The setting of an explicit limit also clarifies when municipalities can take action against excesses. The manner in which Amsterdam operates shows that current regulations, in combination with good cooperation with digital platforms, give the authorities enough scope to act against any negative consequences on, for instance, quality of life and safety. We are therefore calling on municipalities to actively start working on this.

This does not alter the fact that we will continue to actively monitor the developments in this market. If at any point the current range of enforcement instruments available to municipalities turns out not to be effective enough, we will re-examine whether additional instruments need to be deployed.

#### **4. Future-proof legislation and regulations**

With this letter I am fulfilling my promise to further develop the topic of 'the rise of digital platforms and the sharing economy' and to indicate how the questions that this development raises can be dealt with in practice. The Dutch Government also wants future-proofing to be systematically built into the process of drafting legislation and regulations. Unnecessary rules must be avoided.

It is essential, therefore, that when regulations are being drafted there is a thorough examination of why the rules are necessary. This is why the Dutch Government is looking into how to make this assessment a more important step in the policy and legislative process than it is now. Use of the questions from the Comprehensive Assessment Framework for policy and rule-making help with this but this is still not living up to its promise in concrete dossiers. To supplement this, the Dutch Government wishes to explore and test the potential for building greater flexibility into legislation and regulations, so that we are in a better position to respond to technological and social trends. There are many methods that could bring about this flexibility, such as goal based regulation, self-regulation, guides to regulations and technologically neutral rule-making. Specifically, the Dutch Government wants to look at provisions that allow for experiments. Experience with this so far could be better used to draw lessons for the future. In addition, the Dutch Government is looking into the possibility of applying the 'right to challenge' concept; some countries (the United Kingdom and Denmark) have experience with this and now, to a lesser extent, so does the Netherlands.

Finally, it is essential that all this is supported by an open, digital legislative process: an open process for drafting rules with sufficient scope for participation can contribute to the quality of rules. Much has been done in recent years to make the policy-making and legislative process transparent (for example with the legislation calendar) and to create space for participation (for example via the

website internetconsultatie.nl), but the social developments require new steps to be taken and the technological developments make more possible.

### **In conclusion**

The Dutch Government is supporting initiatives in the platform and sharing economies and aims to give them as much scope as possible. At the same time we are aware of the public interests that have to be safeguarded. I conclude that, based on the examples given, there is no reason for additional generic legislation and regulations at the moment. At the same time I can see that it is important to examine on a case-by-case basis the limits within which an innovation can be given scope and whether, for instance, additional rules are needed or the problem is simply a matter of clarifying the current rules. I have given an example of this in this letter by clarifying the conditions in which scope can be created for the private letting of accommodation to tourists via digital platforms such as Airbnb and Wimdu. My final conclusion is that it is important to build sufficient flexibility into laws and regulations to allow people to respond to changing circumstances, for example by applying instruments such as provisions that allow for experimentation, right to challenge and goal based regulation.

Naturally, technological changes, such as the emergence of platforms and the sharing economy also have an impact on the labour market. The Dutch Government has therefore asked the Social and Economic Council of the Netherlands (SER) to give its opinion on how the Netherlands can properly prepare for this and which parties have a role in this.<sup>6</sup>

European Commissioner Timmermans' 'better regulation' agenda also addresses the future-proofing of legislation and regulations. The experiences and themes described in the letter of 20 July have already been explored in discussions at European level. It became clear during these discussions that both the European Commission and the Member States have found it useful that this topic has been put on the EU agenda. The Commission will discuss better regulation from the perspective of research and innovation during the Dutch Presidency. A discussion will take place on this during the research and innovation part of the Competitiveness Council. As far as we know, the Commission's initiatives fit in well with the Dutch experience in practice, such as the Green Deals. The discussion on how laws and regulations can be improved and made smarter to keep pace with major changes will therefore be continued during the Dutch Presidency.

Finally, I believe it is important that 'future-proof legislation and regulations' remain on the agenda, which is why I also want to further develop themes from the letter of 20 July, such as the use of Big Data in relation to privacy protection. I will provide your House with more information on this by the summer of 2016 at the latest

(signed) H.G.J. Kamp  
Minister of Economic Affairs

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<sup>6</sup> Letter to Parliament from the Minister of Social Affairs and Employment dated 30/11/2015: 'Response to the letter on the request from the Technology and Labour Market Supervisory Committee'.