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BRIEFING

# Platform liability in Europe: Questions raised by France's Court of Cassation challenge of Airbnb's hosting provider status

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On 7 January 2026, France's highest civil court delivered two closely related decisions that could reshape platform liability across Europe. The Court of Cassation ruled that Airbnb[1] does not qualify as a passive hosting provider under French law, opening the door to potential co-liability under ordinary civil liability rules when users illegally sublet properties through the platform. These cases arise in the specific context of short-term rentals and French residential tenancy rules, which makes the underlying illegality highly fact- and contract-dependent, but the reasoning has sparked immediate controversy, with significant questions about its compatibility with the Digital Services Act and established CJEU case law.

## Key issues



[1] The Court of Cassation is meticulous in distinguishing between Airbnb Ireland Unlimited Company (the service provider) and Airbnb France (the subsidiary). In Case 23-22.723, the court actually noted a withdrawal of the appeal (*désistement*) against the French subsidiary, as it played no technical role in hosting the content.

## The facts and the ruling

The commercial chamber of the Court of Cassation delivered two decisions (Cass. com., 7 January 2026, no. 23-22.723 and no. 24-13.163) that could reshape platform liability across Europe:

- **The first case (no. 23-22.723)** originated in Aix-en-Provence. A tenant of social housing (HLM) managed by the company Famille et Provence had been subletting her apartment via Airbnb since October 2019, in violation of the prohibition on subletting that applies to social housing. The landlord sued both the tenant and Airbnb Ireland, seeking reimbursement of the illegally collected rents. The first-instance court condemned the tenant to a civil fine (restitution of fruits (*restitution des fruits*)) and, jointly with Airbnb, to pay the subletting proceeds to the landlord. However, on appeal, the Cour d'appel d'Aix-en-Provence (21 September 2023) reversed course on Airbnb's liability: it confirmed the tenant's condemnation but exonerated the platform, holding that Airbnb qualified as a neutral hosting provider under the LCEN (*Loi pour la Confiance dans l'Économie Numérique*) and could not be held co-liable.
- **The second case (no. 24-13.163)** arose in Paris. A tenant had been subletting her furnished apartment in a tourist area of the capital via Airbnb since March 2016, without her landlord's written authorisation as required by Article 8 of the law of 6 July 1989. The landlord sued both the tenant and Airbnb, seeking reimbursement of the rents and commissions collected. The first-instance court condemned the tenant and Airbnb jointly to pay 58,000 euros. The Cour d'appel de Paris (January 2023) largely upheld this decision, finding that Airbnb had "contributed significantly" to the infringement and refusing to grant the platform hosting provider status. The repayment of illegally obtained rental income was reduced on appeal to 32,399.61 euros.

The Court of Cassation was thus confronted with two contradictory appellate decisions on the same legal question: does Airbnb qualify as a hosting provider under the LCEN and can it therefore invoke the liability exemption available to neutral intermediaries? The Court's answer was clear: Airbnb does not qualify as a passive hosting provider under French law, opening the door to potential co-liability under ordinary civil liability rules when users illegally sublet properties through the platform.

In concrete terms, the Court quashed the Aix-en-Provence decision and remanded the case for reconsideration. In the Paris case, it annulled the 32,399.61 euro civil condemnation imposed on Airbnb and the tenant, and remanded on that specific point. Under French procedure, the Court of Cassation does not rule on the merits: it reviews only whether the lower courts correctly applied the law. When it quashes a decision, the case is sent back to a different court of appeal (the "*Cour de renvoi*") to be reheard in light of the legal framework set out by the Court of Cassation. The final outcomes of both cases therefore remain pending.

## The legal framework under strain

The legal battleground for these cases is Article 6 of the LCEN, the 2004 French law that transposed the EU e-Commerce Directive (2000/31/EC). This framework, now reinforced and modernised by Article 6 of the Digital Services Act (DSA), establishes a liability exemption regime strictly reserved for providers whose role is limited to the neutral, technical and passive

storage of user-provided information. Under this regime, platform liability traditionally turns on a binary classification:

- The Hosting Provider (*Hébergeur*): benefits from a "safe harbour" or limited liability, provided they remain technical and passive intermediaries.
- The Editor (*Éditeur*): subject to ordinary civil liability because they exercise editorial control or decisive influence over the content.

The Court of Cassation's 7 January rulings says that this protected status is lost if the operator plays an active role that confers knowledge of, or control over, the data. By shifting the analysis from a purely technical view of "storage" to a functional assessment of Airbnb's involvement in the transaction, the Court effectively moved the platform out of the "hosting" safe harbour and into the realm of ordinary civil liability under Article 1240 of the Civil Code.

The Court's reasoning marks a departure from a purely technical analysis of "storage" toward a functional analysis of the platform's structural interference. The Court found that the platform operator:

- imposes binding instructions on hosts regarding the presentation and execution of the service;
- exercises decisive influence over user behaviour through visibility algorithms and reward mechanisms, such as the enhanced ranking associated with standardised quality labels; and
- intervenes in the financial core of the transaction by managing payments and imposing standardised cancellation policies.

By these criteria, the Court held that the platform performs a role akin to a professional real estate intermediary rather than a passive host, thereby subjecting it to ordinary civil liability under Article 1240 of the Civil Code.

The Court of Cassation's reasoning on 7 January 2026 leans on the long-standing CJEU "Active Role" Doctrine. This doctrine, born from cases like *Google France v. Vuitton* (2010) and *L'Oréal v. eBay* (2011), establishes that once a platform provides "assistance" (such as optimising or promoting listings), it acquires a level of control that is incompatible with the "safe harbour" of a passive host.

But the ruling arrives also against a backdrop of conflicting signals within France itself. Just two months earlier, on 5 November 2025, the Paris judicial court (RG n° 24/02425) confirmed Airbnb's hosting provider status in another illegal subletting matter, applying both the LCEN and DSA frameworks. That court held that Airbnb has no duty to monitor listing legality proactively and cannot be required to police contractual compliance between landlords and tenants. Since the platform removed the disputed listing within days of notification, no fault was established.

This creates an unusual situation where trial courts and the Supreme Court are reading the same EU instruments differently, with lower courts arguably hewing more closely to the DSA's text and purpose.

### EU-law counterpoint: Airbnb's "control" over the rental service (CJEU, Airbnb Ireland, C-390/18)

*In Airbnb Ireland (C-390/18, 19 December 2019), the CJEU held that Airbnb's intermediation service is an information society service within the e-Commerce Directive framework, notwithstanding ancillary services. Crucially for "active role" debates, the Court distinguished Airbnb from Uber-type models: unlike Uber, Airbnb was not found to exercise decisive influence over the conditions of the underlying accommodation service, particularly because it does not determine (directly or indirectly) rental prices and does not select hosts or accommodation offered on the platform.*

*If this does not resolve the separate question of hosting safe harbour/liability for user content (LCEN/DSA), it is a useful EU-law anchor when assessing whether "platform governance" features should be treated as evidence of authority or control (DSA Article 6(2)) or as ordinary trust-and-safety/product design that should not, by itself, disqualify a platform from liability exemptions.*

## The DSA's general monitoring prohibition

Both Cour de Cassation rulings of 7 January 2026 relate to conduct and litigation steps that predate the DSA's general date of application (17 February 2024). In 24-13.163, for example, the landlord's claim was brought on 1 April 2019. In 23-22.723, the subletting began in October 2019 and proceedings were commenced in 2020–2021. Any discussion of "DSA incompatibility" is therefore necessarily prospective: it concerns what the Cour de Cassation's "active role" logic would imply for post-17 February 2024 fact patterns, not what the Court "should have applied" in these disputes.

Looking forward, the DSA's hosting safe harbour is not framed as a general "platform neutrality" label, but as a knowledge/notice-and-action test. Under Article 6(1), a hosting service is not liable for user-stored information where it lacks actual knowledge/awareness (including, for damages, where illegality is not apparent) or acts expeditiously once it obtains such knowledge/awareness. The exemption is expressly switched off only where the user is acting under the provider's authority or control (Article 6(2)). In parallel, the DSA protects "Good Samaritan" compliance: providers do not lose the liability exemptions solely because they carry out voluntary investigations or take measures to detect/remove illegal content or comply with the law (Article 7).

This architecture matters for illegal subletting. If liability is imposed on the theory that Airbnb should verify *ex ante* that every host has legal authority to sublet, that begins to resemble a general verification obligation. The DSA draws a clear line here: Article 8 prohibits imposing any general obligation to monitor information transmitted/stored or to actively seek facts or circumstances indicating illegal activity. In many subletting cases, the illegality depends on private lease terms and landlord permissions that the platform cannot realistically access or assess at scale. The DSA-compliant focal points should therefore be:

(i) whether Airbnb had specific knowledge/awareness of the particular illegal subletting and failed to act expeditiously (Article 6(1)), or

(ii) whether the host was in substance acting under Airbnb's authority or control (Article 6(2)), rather than treating ordinary platform governance or quality features as disqualifying per se.

## Broader European context

So, the Court of Cassation's stance places France in direct tension with the burgeoning "Common European" interpretation of the DSA. This divergence creates a high risk of legal fragmentation for platforms operating across borders.

While France has tightened its criteria, other Member States remain more aligned with the "passive host" status for short-term rental platforms:

- In 2022, Spain's Supreme Court confirmed that the platform operator acts as a neutral intermediary, not a real estate agent, provided it does not determine the specific content of the listings.
- However, the landscape is shifting rapidly. In December 2025, Spanish authorities issued a landmark €64 million fine against the platform for unlicensed rentals, signalling that even where "host status" remains, administrative and consumer protection laws are being used to bypass traditional "safe harbour" protections.

A recent opinion by Advocate General Szpunar in the *AGCOM v. Google case* (C-421/24) offers a potential counter-narrative to the French ruling.

- The AG suggested that standardised commercial partnerships (like the YouTube Partnership Programme) do not necessarily endow a platform with an "active role".
- The AG argued that as long as the platform does not exercise specific control or editorial choice over individual videos, it should retain its hosting immunity. This directly contradicts the French Court of Cassation's view that general "quality labels" (like Superhost) constitute disqualifying control.

The *Russmedia Digital* judgment (C-492/23, 2 December 2025) introduces a new, dangerous variable for platform operators:

- The CJEU ruled that an online marketplace is a joint data controller for the personal data contained in user-posted ads.
- Crucially, the Court held that GDPR controller duties can push platforms toward more *ex ante* measures in some contexts, and the Court does not treat the hosting/no-monitoring logic as a blanket shield against GDPR compliance. This means platforms may now have a proactive duty to "screen" content for data protection violations before publication.
- While the French ruling attacks the "host" status under civil law, *Russmedia* attacks it from the perspective of data protection, potentially forcing platforms into a "general monitoring" role they have fought for decades to avoid.

## The core interpretive divide

The controversy ultimately turns on how to define "active role" under EU law. The Court of Cassation's approach focuses on the platform's structural capacity for intervention and influence. It considers that any features that impose rules, verify compliance or promote certain listings demonstrate active involvement incompatible with hosting provider neutrality, regardless of whether the platform specifically targets illegal content.

The alternative reading, reflected in lower court decisions and more consistent with CJEU guidance, applies a notice-and-action logic and

rejects any *ex ante* duty to verify subletting legality. Under the DSA, the relevant question is ordinarily whether the platform had specific knowledge or awareness of particular illegal content (or whether illegality was apparent) and failed to act expeditiously, not whether it "promoted" the listing in the ordinary product sense. That distinction matters here because illegal subletting typically depends on off-platform facts (lease clauses, landlord consent and HLM status) that the platform cannot infer from the listing itself.

Both readings find support in the case law. The tension reflects competing policy objectives: protecting legitimate property rights and contractual obligations on one hand and maintaining the liability framework that enabled digital innovation on the other.

## Practical implications

For platform operators, the ruling raises questions that extend well beyond the short-term rental sector. If the reasoning is applied more broadly, other sharing economy platforms that impose quality standards and promote certain users could face similar exposure. The distinction between legitimate quality control and a disqualifying "active role" remains undefined.

For property owners, the decision offers a new avenue for recovery, though practical enforcement raises questions. Airbnb's EU establishment is in Ireland, and under the DSA's country-of-origin principle, the Irish Digital Services Coordinator holds primary supervisory authority. Cross-border enforcement within the EU framework remains to be tested.

For the DSA's harmonisation objective, the ruling underscores a structural risk. The regulation was designed to establish uniform platform liability rules across all 27 member states. Regardless of the merits of the Court's analysis, divergent national interpretations of the "active role" test – particularly from a major jurisdiction like France – risk fragmenting the digital single market in a manner that runs counter to the political objectives underpinning maximum harmonisation.

### Relevance of the *EU Short-Term Rental Data Regulation (EU) 2024/1028*: transparency, not a new platform-liability regime.

*Regulation (EU) 2024/1028 (the "**STR Data Regulation**") sits alongside the DSA but does not redesign the intermediary liability safe harbour. Its core purpose is transparency and data availability for public authorities: it harmonises registration schemes and data-sharing obligations for online short-term rental platforms, including the allocation of a unique registration number to be displayed on listings and the transmission of activity data to a single national digital entry point. It applies from 20 May 2026.*

*The cases discussed here turn on off-platform illegality (lease restrictions, landlord consent, HLM rules) that platforms cannot detect from the listing alone. The STR Data Regulation does not change that. It may, however, matter for a distinct category of disputes: where national law conditions lawful short-term rental on holding a valid registration number, a missing or invalid number could serve as an objective illegality signal, strengthening "awareness" arguments under DSA Article 6(1), without by itself supporting an "active role" recharacterisation.*

## What comes next

While the Court of Cassation's rulings are final as to the interpretation of French law, the legal battle moves to the Courts of Remand. Notably, the Aix-en-Provence case has been referred to the Paris Court of Appeal, a jurisdiction that has previously rejected Airbnb's hosting status. Airbnb has indicated it will pursue EU-law remedies, and a preliminary reference to the CJEU is highly likely during these remand proceedings to test the ruling's compatibility with the DSA. Until then, while liability is established in principle, the final financial damages remain pending and the scope of the hosting safe harbour in France remains uncertain.

The prudent approach is to monitor developments closely while stress-testing compliance frameworks against scenarios in which ordinary platform governance features (ranking, verification, enforcement tools) are treated as disqualifying.

More fundamentally, these cases also sit within a wider and less legal dynamic: the direction of travel in politics and public opinion. There is a growing expectation, often sharpened when the platform is perceived as large, foreign, or culturally distant, that "the platform" must be responsible for harms occurring through it, even where the immediate actor is a user, tenant, or third-party vendor. In practice, many observers focus on the visible intermediary rather than the underlying counterparty, and the platform becomes the intuitive locus of accountability. That instinct increasingly pulls against the liability architecture that has structured EU intermediary law since the e-Commerce Directive: the principle that requiring platforms to pre-vet the legality of each transaction is technically and economically impracticable, and risks collapsing the hosting model into a general monitoring obligation that the DSA expressly prohibits.

The Airbnb decisions will therefore test whether national courts can expand the "active role" doctrine beyond its established CJEU perimeter without compromising the harmonised, notice-based liability framework the DSA was designed to secure. In any event, a fragmented approach across Member States would itself be problematic and difficult to reconcile with the regulation's maximum-harmonisation ambition.

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