



**eu travel tech**

# **Regulating Short-Term Rentals: Towards Data-Driven Policymaking?**

A STUDY BY  
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# About this Study

This study was funded by eu travel tech, the European association of the travel technology companies. eu travel tech represents and promotes the interests of global distribution systems and travel distributors towards all relevant European stakeholders from industry to policymakers. The association's work focuses on building a consumer-driven, innovative and competitive travel and tourism industry that harnesses digitisation and is based on transparency and sustainability.

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# Executive Summary

The Proposal for a Regulation on short-term rentals (STRs), published by the European Commission in November 2022, is an ambitious step towards a new and promising model of data-driven regulation for the STR market. Although the proposed STR Regulation only lays down harmonised rules for registration schemes and data-sharing, the availability of up-to-date and granular activity data collected under the new rules will most likely influence the design of other regulatory measures and policies regarding STRs by public authorities.

Against this background, this study explores the limits set by EU law for the regulation of STR providers and analyses how the proposed STR Regulation will influence the type of market access restrictions which Member States can impose on STR providers and how such measures will have to be justified. The study argues that the availability of up-to-date and granular data on the STR market will enable authorities to adopt targeted and proportionate regulations that are in line with the standards defined by the CJEU in its *Cali Apartments* ruling.



**The study argues that the availability of up-to-date and granular data on the STR market will enable authorities to adopt targeted and proportionate regulation.**

At the same time, the better availability of data will raise the bar for the justification of market access restrictions. In particular, a total ban of STRs will hardly be justifiable as less drastic means will practically always be available, such as quotas, licensing schemes or night caps. Following the model of evidence-based policymaking, total bans and quotas should only be applied if there is clear evidence that other measures have failed to protect public interest objectives. In addition, the geographic scope of restrictions should be limited as much as possible to areas and neighbourhoods where they are necessary.

Under the new model of data-driven STR regulation public authorities will still maintain the necessary flexibility in order to respond to different needs and circumstances which will vary from urban areas to rural areas and between different neighbourhoods. In this perspective, the study provides a legal analysis of commonly used local STR regulations and outlines a “corridor of solutions” that can be deemed proportionate considering the specific needs of the local community.



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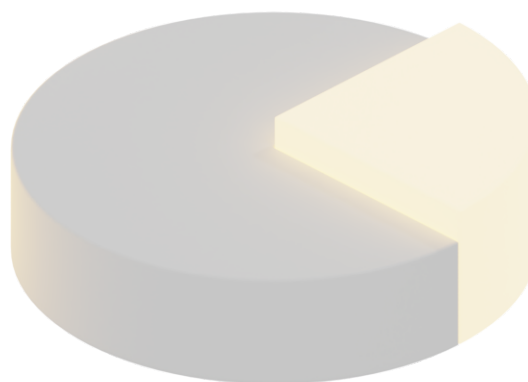
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# I. Introduction

## STRs: Opportunities and Challenges

Short-term accommodation rentals (STRs) have become an increasingly important part of the European tourism ecosystem. STRs may take different forms, such as a room in a dwelling, an entire apartment or a house which is rented out on a short-term basis. Certainly, the renting out of private properties to travellers is not new and has existed for many years as an alternative to traditional accommodations such as hotels. However, the emergence of digital platforms as intermediaries between hosts and guests has greatly contributed to the expansion of the STR market. Today, STRs represent nearly 25% of the total supply of tourist accommodation in the EU.<sup>1</sup>

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STRs contribute positively to the tourism industry and local economies across the EU. For guests, they offer a flexible and affordable travel option which often provides more authenticity, privacy and space than traditional accommodations. For hosts as well as for other service providers in the tourism sector, STRs can be an important source of income and employment. **While the STR ecosystem brings value to the economy, the rapid spread of STRs has also brought several challenges and concerns, especially in tourist hot spots.** Not only does the rise of STRs create challenges for the traditional hospitality industry. But there are also concerns regarding the effect of STRs on the long-term rental market and the quality of life in neighbourhoods faced with a high concentration of STRs. Furthermore, unregulated STRs may also raise concerns related to health and safety of guests as well as tax compliance.

In response to these challenges, **public authorities have increasingly taken action to regulate STRs at national, regional and local level.**<sup>2</sup> In many cases, registration requirements have been introduced to enhance the transparency of the STR market. In other cases, regulators have introduced market access restrictions, such as quotas for STRs or limits for the number of nightly stays. In some areas, STRs have even been subject to total bans. **As a result of this fragmented regulatory landscape, online platforms and hosts who intend to offer their services in several areas are faced with diverging regulatory requirements.** Another problem is that the authorities often do not have the necessary data to enforce the applicable rules. Therefore, online platforms

<sup>1</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council on data collection and sharing relating to short-term accommodation rental services and amending Regulation (EU) 2018/1724, Explanatory Memorandum, COM(2022) 571, p. 1.

<sup>2</sup> For a general overview of different regulatory approaches in the sharing economy see Hatzopoulos, The Collaborative Economy and EU Law, 2018.

are increasingly confronted with numerous and often diverging requests to share data with public authorities. Given the wide variety of different regulatory approaches, there is also a high degree of legal uncertainty regarding the extent to which certain regulatory measures are in compliance with EU law.

## STR Restrictions and EU Law

From the perspective of EU law, the debate focuses in particular on **the question of whether the restrictions imposed on STR providers are compatible with the Services Directive.**<sup>3</sup> This Directive, which seeks to facilitate the freedom of establishment for service providers and the free movement of services and complements the general Treaty framework on services,<sup>4</sup> does not prohibit the regulation of STRs by Member States but protects STR providers against discriminatory and disproportionate market access restrictions.<sup>5</sup> However, as the Services Directive is a horizontal Directive, which applies across a broad range of different sectors, it does not provide any specific rules tailored to STR activities. Consequently, **there is a considerable degree of legal uncertainty regarding the application of the Services Directive to the STR sector.**

Against this background, **there have been increasing calls for action at EU level in order to provide a more coherent legal framework for the STR market.** In this context, the Communication on the collaborative economy published by the European Commission in 2016 offers some guidance.<sup>6</sup> Similarly, the Policy Principles and Good Practices for Collaborative Short-Term Accommodation Services, which summarize the discussions held during a series of workshops organized by the European Commission in 2017 contain valuable insights for national regulators.<sup>7</sup> However, these texts are not legally binding and can therefore offer little legal certainty.

Recently, the jurisprudence of the Court of Justice of the EU (CJEU) has made an important contribution to clarifying some open legal questions regarding the regulation of STR providers and the application of the Services Directive to the STR sector. In its *Cali Apartments*<sup>8</sup> decision of 22 September 2020, **the CJEU has confirmed that public authorities can impose access restrictions on providers of STRs in order to protect public interest objectives** such as combating a shortage of long-term housing. However, as the CJEU emphasizes, **such measures must be non-discriminatory and proportionate.**

The latest addition to the EU framework for the STR sector is the proposal for a Regulation on data collection and sharing relating to short-term accommodation rental services (“STR Regulation Proposal”) which was published by the European Commission on 7 November 2022.<sup>9</sup> **The Proposal seeks to harmonize data-sharing between STR platforms and public authorities across the EU and**

<sup>3</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36. For an overview see Barnard, Unravelling the Services Directive, 45 CML Rev. (2008) 323-394; Hatzopoulos, Assessing the Services Directive (2006/123/EC), Cambridge Yearbook of European Legal Studies, 10, 215-261 (2008).

<sup>4</sup> See Articles 56-62 TFEU.

<sup>5</sup> Kramer and Schaub, EU Law and the Public Regulation of the Platform Economy: The Case of the Short-Term Rental Market, 59 CML Rev. (2022) 1633, 1652.

<sup>6</sup> European Commission, A European agenda for the collaborative economy, COM(2016) 356.

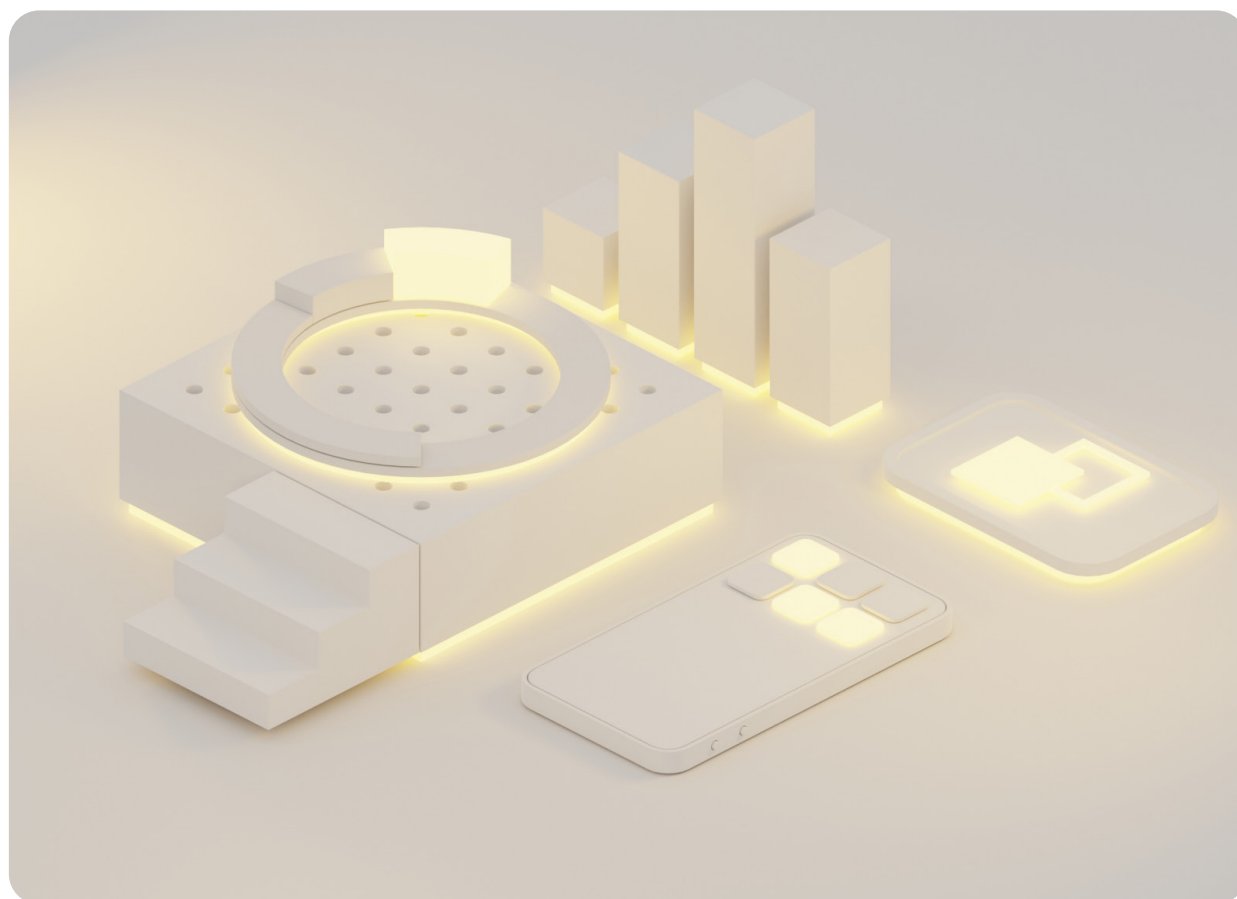
<sup>7</sup> European Commission, Collaborative Short Term Accommodation Services, Policy Principles & Good Practices, Ref. Ares(2018)5381503 - 19/10/2018.

<sup>8</sup> Joined Cases C-724/18 and C-727/18 Cali Apartments ECLI:EU:C:2020:743.

<sup>9</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council on data collection and sharing relating to short-term accommodation rental services and amending Regulation (EU) 2018/1724, COM(2022) 571.

makes access to data on STR activities conditional on the existence of a proportionate registration scheme. In doing so, the proposed STR Regulation will complement the recently adopted Digital Services Act (DSA).<sup>10</sup>

The DSA is relevant for the STR market in several respects. First, the DSA regulates under which conditions and according to which procedure public authorities can demand the removal of illegal STR listings from online platforms or require platforms to provide information about individual listings.<sup>11</sup> Second, the DSA formulates several due diligence obligations for providers of online platforms. In particular, providers of online marketplaces are required to ensure the traceability of professional hosts.<sup>12</sup> Moreover, providers of online marketplaces must ensure “compliance by design” through an obligation to design and organise their online interface in a way that enables traders to comply with their obligations regarding pre-contractual information duties.<sup>13</sup> This includes also the registration number which will be required as a unique identifier for each STR unit under the proposed STR Regulation<sup>14</sup>



10 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

11 See Articles 9, 10 DSA. However, these provisions allow public authorities only to take action regarding individual listings on STR platforms. The DSA does not require platforms to collect and share data regarding all hosts, see European Commission, STR Regulation Proposal, Impact Assessment Report, SWD(2022) 350, p. 193.

12 See Article 30 DSA.

13 See Article 31 DSA.

14 See Article 4(2)(b) STR Regulation Proposal. However, the “compliance by design” rule under Art. 31 DSA only applies with regard to “traders” (Art. 3(f) DSA) and not to private individuals offering STR services on an occasional basis. This regulatory gap will be filled by Art. 7 STR Regulation Proposal which introduces a “compliance by design” rule applicable to both professionals and peers.

# II. Study Objective and Methodology

As explained above, the STR Regulation Proposal lays down harmonized rules on registration schemes and data-sharing requirements for STR platforms. However, the proposal does not affect Member States' competence to adopt or maintain market access requirements relating to the provision of short-term accommodation rental services by hosts.<sup>15</sup> In this respect, the STR Proposal respects the principle of subsidiarity and the competences of national public authorities. As a consequence, Member States will still be able to regulate authorisation schemes, quantitative restrictions (e.g. limitation of STR licenses, night caps) or health and safety requirements regarding STR providers. Such market access requirements may only be introduced or maintained if they are necessary and proportionate to protect public interest objectives in accordance with the general framework of the Treaty and the Services Directive. In the context of the planned STR regulation, **a key question will therefore be to what extent Member States can impose restrictions on regulating STR providers and under which conditions such measures are compatible with EU law.**

Against this background, this study explores the limits set by EU law for the regulation of STR providers. For this purpose, **it will provide a proportionality assessment of market access requirements commonly imposed by local authorities across Europe** and evaluate these regulatory measures to determine whether they are necessary and proportionate to meet a specific public interest objective. In methodological terms, the analysis is primarily based on the recent case law of the CJEU and selected case law at the Member State level as well as the relevant legal literature. Aspects of taxation (e.g., tourist tax, tax on the income generated by hosts) are not investigated in detail in this study.<sup>16</sup>

## STR Regulation and Proportionality Assessment

The study also examines the extent to which the proposed STR Regulation will indirectly influence the type of market access restrictions Member States can impose on STR providers and how such measures have to be justified. While it is true that the proposed STR Regulation only lays down harmonised rules for registration schemes and data-sharing, the availability of granular “activity data”<sup>17</sup> collected under the new rules will most likely influence the design of other regulatory measures and policies regarding STRs (e.g. STR quotas, night caps). The European Commission also seems to expect such a “spill-over effect” of **the data-sharing rules when it emphasizes that the data collected under the planned STR Regulation “should allow public authorities to better assess the situation on the ground and make more targeted and proportionate rules”.**<sup>18</sup>

<sup>15</sup> Recital 4 STR Regulation Proposal.

<sup>16</sup> See in this regard Case C-83/21, Airbnb Ireland and Airbnb Payments UK, ECLI:EU:C:2022:1018.

<sup>17</sup> According to Article 3(11) of the STR Regulation Proposal ‘activity data’ means the number of nights for which a unit is rented and the number of guests that stayed in the unit per night.

<sup>18</sup> European Commission, Questions and Answers: New Rules on Short-term Accommodation Rentals, QANDA/22/6494, [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_22\\_6494](https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_6494) (last visited 8 January 2023).



In other words, it is to be expected that the requirements for justifying market access restrictions will increase if the planned STR Regulation takes effect. **Public authorities will have to implement a more data-driven approach to STR regulation** that is based on up-to-date market data and thus more responsive to the dynamic development of the STR market. In this context, it is worth recalling that the CJEU has already ruled in the past that when enacting restrictions of market access public authorities cannot rely on a “general presumption” that an objective of public interest is at risk.<sup>19</sup> Rather, they must present “precise evidence” which enables to substantiate their arguments.<sup>20</sup>

At the same time, the concept of data-driven STR regulation still leaves room for flexibility. As underlined by Advocate General **Bobek** in *Cali Apartments* “rather than just one solution, there are a range of conceivable solutions that would pass the test of proportionality: not just one inevitable outcome, but more of a corridor, a zone of conceivable solutions, containing a range of outcomes than can be deemed proportionate.”<sup>21</sup> In this sense, this study seeks to outline a “corridor of solutions” that may benefit all actors in the STR space and formulate policy principles that may serve to guide policy makers and regulators.



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Advocate General **Bobek** in *Cali Apartments*

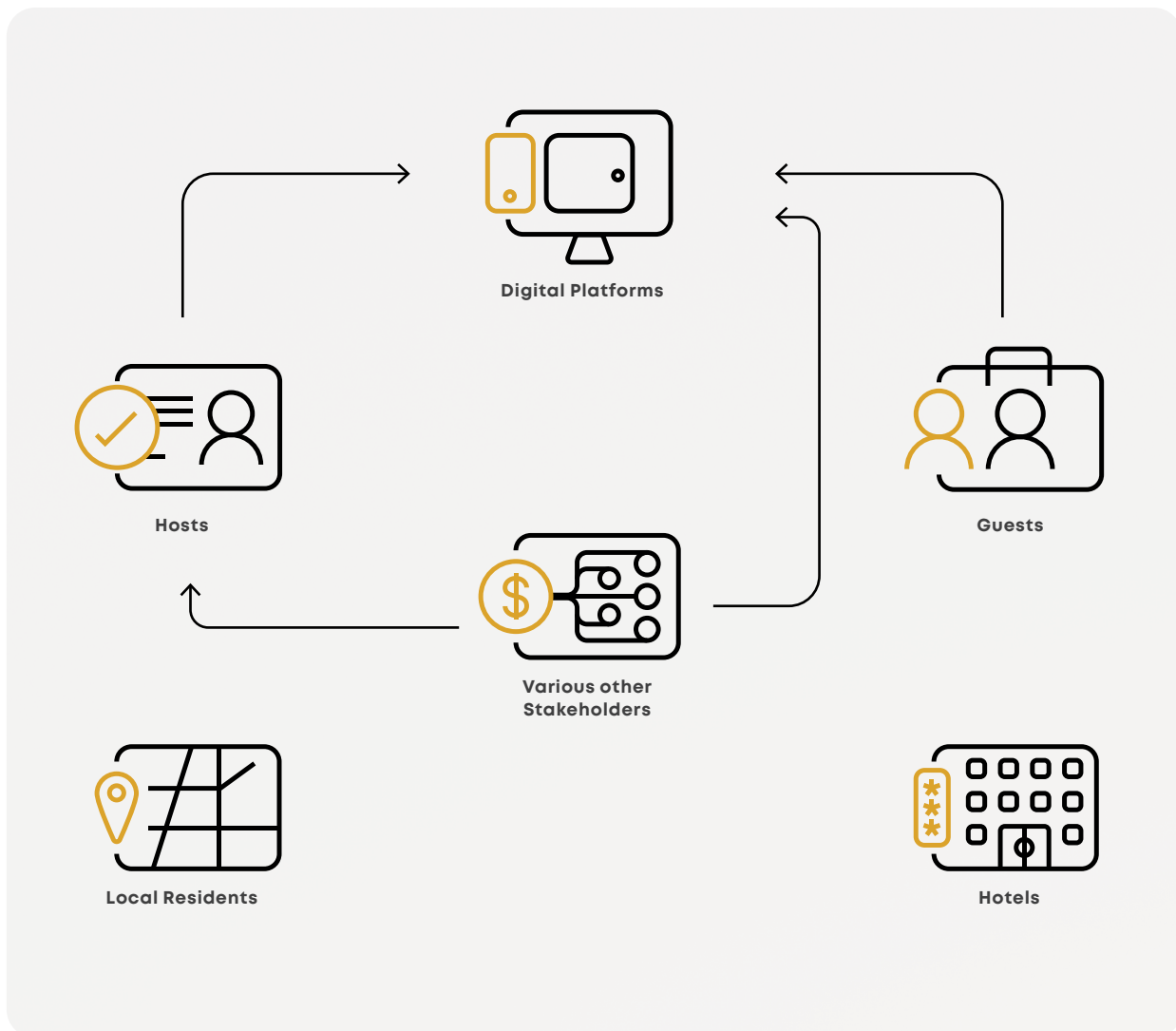
19 See Case C-577/10, *Commission v Belgium*, ECLI:EU:C:2012:814, para 53.

20 See Case C-161/07, *Commission v Austria*, ECLI:EU:C:2008:759, para. 36; see also European Commission, *Collaborative Short Term Accommodation Services, Policy Principles & Good Practices*, Ref. Ares(2018)5381503 - 19/10/2018, p. 3.

21 *Joined Cases C-724/18 and C-727/18 Cali Apartments* ECLI:EU:C:2020:251, Opinion of AG Bobek, para. 94.

# III. Main Actors in the STR Space

Before proceeding to an in-depth analysis of the different regulatory instruments, this section will take a snapshot of the STR landscape and give a brief overview of the key actors involved. The structure of the STR ecosystem is complex and involves a variety of players. When regulating STRs, the competent authorities are faced with the challenge of finding a nuanced approach and balancing the sometimes diverging interests of the different actors. For the purposes of this study, five categories of relevant actors can be distinguished: (1) hosts, (2) digital platforms, (3) guests (4) local residents, (5) hotels, and (6) various other stakeholders.<sup>22</sup>



<sup>22</sup> See also Colomb and Moreira de Souza, *Regulating Short-Term Rentals*, 2021, p. 9 (distinguishing between six different broad categories of interest groups and non-state actors: (1) advocates of the sharing or collaborative economy, (2) corporate platforms, (3) professional organisations representing operators of commercial short-term rentals, (4) associations of (mostly non-professional hosts) or home-shares (5) representatives of the hotel and hospitality industry, and (6) residents' associations, citizens' movements and housing activists).



**Hosts:** The first category of actors comprises hosts who actively participate in the STR market by offering accommodations. The category of hosts is not homogeneous. Generally speaking, a distinction can be made between individual hosts (often referred to as “peers”) and professional hosts. Individual hosts usually rent out their primary residence (or only a part of it) or a secondary residence on an occasional basis. In contrast, professional hosts usually rent out several properties on a more commercial basis. Originally, the STR market was essentially considered to be a market for peer-to-peer accommodation. Meanwhile, however, a clear trend towards professionalisation can be observed.<sup>23</sup> According to the European Commission, the share of professional hosts has more than doubled between 2014 and 2020, with professional hosts accounting today for more than 45% of the offers and representing 13% of all hosts.<sup>24</sup>



**Digital platforms:** A second category of actors of the STR market is represented by digital platforms. Certainly, the short-term renting of property to visitors existed before the rise of the platform economy. However, online intermediary platforms have greatly contributed to the expansion of the STR market and the diversification of the STR offer both in terms of types of properties and locations.<sup>25</sup> According to the European Commission, it is estimated that there is a total of 710 STR platforms active in the European market, many of which operate in more than one Member State.<sup>26</sup> These platforms have different business models. Some of them focus on peer-to-peer rentals, others on business-to-consumer rentals or both. Overall, there is a high degree of concentration in the market for STR platforms. Four major players (Airbnb, Booking.com, Expedia Group, Tripadvisor) represent approximately 83% of the STR market in terms of numbers of guest nights booked, with Airbnb being the market leader with an average traffic share of 55%.<sup>27</sup> At the same time, search engines (e.g. Google Travel) are playing an increasing role as intermediaries in the STR market. From a regulatory perspective, it is important to note that the intermediary role of STR platforms can also contribute to safer transactions for hosts and guests and may help to bring an existing informal or fragmented market to the surface.<sup>28</sup>



**Guests:** A third category of actors comprises the guests staying at STRs. Travellers choose STRs for a variety of reasons, such as preferring a more authentic experience or a more affordable travel option or because they are looking for an accommodation that offers more space and privacy. It should be noted that just as the category of hosts also the category of guests is not homogeneous. In addition to tourists who stay at STRs for vacation purposes, this category also includes other travellers who are booking accommodations for work-related purposes, such as business travel or a ‘workation’ stay.

23 See e.g. Agustin Coccola-Gant et al, *Corporate hosts: The rise of professional management in the short-term rental industry*, *Tourism Management Perspectives* 40 (2021) 100879.

24 European Commission, *STR Regulation Proposal, Impact Assessment Report*, SWD(2022) 350, p. 2.

25 See e.g. Morais Carvalho, 6 *Italian L.J.* 463, 471 (2020); Van Acker, C-390/18 - *The CJEU Finally Clears the Air (bnb) Regarding Information Society Services*, *Journal of European Consumer and Market Law*, 77, 79 (2020); see also Szpunar, *Reconciling new technologies with existing EU law – Online platforms as information society service providers*, *Maastricht Journal of European and Comparative Law*, Vol. 27(4) 399-405.

26 European Commission, *STR Regulation Proposal, Impact Assessment Report*, SWD(2022) 350, p. 1.

27 *Ibid.*

28 Cf. European Commission, *A European Agenda for the collaborative economy*, COM(2016) 356, p. 4 (arguing that rating and reputational systems or other mechanisms used by online platforms to discourage harmful behaviour by market participants may reduce risks for consumers stemming from information asymmetries).



**Local residents:** The aforementioned actors are the central players active in the STR market. However, the development of the STR ecosystem has also a major impact on other stakeholders that are not directly involved in the STR transaction. First to be mentioned are local residents that are affected by external effects of the STR activities. A high concentration of STRs in a particular neighbourhood can create negative externalities such as issues with traffic, parking noise and nuisance.<sup>29</sup> Furthermore, some studies suggest that an increase of STRs can contribute to the decrease of the supply of long-term rentals and thus contribute to the increase of rental prices.<sup>30</sup> From a regulatory perspective, such concerns regarding the protection of the urban environment<sup>31</sup> as well as social policy objectives<sup>32</sup> have been recognized by the CJEU as possible justifications for non-discriminatory and proportionate market access regulations.



**Hotel industry:** Another category of stakeholders is represented by traditional tourism accommodation service providers such as hotels and guesthouses. From their perspective, the rapid growth of the STR sector can be described as a disruptive development. It is therefore not surprising that representatives of the traditional hospitality industry support a tougher approach to STR regulation. In particular, they emphasize the need for a level playing field in the tourism accommodation sector and often criticize what they perceive as a regulatory imbalance between hotels and STR providers. In this respect, the hotel industry calls for lifting the regulatory burden faced by traditional tourism accommodation service providers and/or for stricter regulation of STRs.<sup>33</sup>



**Other stakeholders:** Finally, there is a variety of other stakeholders in the local economy and the broader tourism ecosystem that are positively or negatively affected by the development of the STR market. For example, there is a growing number of service providers that support hosts (in particular property portfolio owners) by offering ancillary services (e.g. cleaning and maintenance services, real estate agents, property management companies, branded home managers).<sup>34</sup> In a broader perspective, STRs can also have benefits for the larger community, such as the creation of tourism-related jobs (e.g. in restaurants) and the revitalization of neighbourhoods.

This brief overview of the complex STR ecosystem and the often diverging interests of the key stakeholders underlines that the regulation of STRs represents a considerable challenge for public authorities at national, regional or local level. At the same time, the snapshot illustrates that there is a need for evidence-based policymaking regarding the selection of regulatory instruments.

29 See e.g. Nieuwland and van Melik, *Regulating Airbnb: how cities deal with perceived negative externalities of short-term rentals*, *Current Issues in Tourism*, 23:7, 811, 813 (2020).

30 Duso et al, *Airbnb and Rents: Evidence from Berlin (August 2020)*, DIW Berlin Discussion Paper No. 1890, <http://dx.doi.org/10.2139/ssrn.3676909> (last visited 8 January 2023); Van Haaren et al, *Short-term accommodation rental in Amsterdam. An empirical investigation of statistical correlations between short-term rental, housing prices and quality of life index*, 2021.

31 Joined Cases C-724/18 and C-727/18 *Cali Apartments* ECLI:EU:C:2020:743, para 67; see also Joined Cases C-360/15 and C-31/16 *Visser*, EU:C:2018:44, para. 135.

32 Joined Cases C-724/18 and C-727/18 *Cali Apartments* ECLI:EU:C:2020:743, para 67.

33 See e.g. HOTREC, *Position Paper on EU-wide Regulation of Short-term Rentals*, 2022, p. 5.

34 European Commission, *STR Regulation Proposal, Impact Assessment Report*, SWD(2022) 350, p. 159.

# IV. Approaches to Regulating STRs

In response to the abovementioned challenges, public authorities across EU Member States have increasingly taken action to regulate STRs. In particular, market access restrictions have been imposed at national, regional and/or local level. The scope of regulatory approaches ranges from outright bans and quotas via registration and licensing requirements to limits on the number of nightly stays. Furthermore, compliance with various health and safety rules is required. Regulatory requirements often differentiate between different types of properties (e.g. primary/non-primary residence) or distinguish between individual hosts and professional hosts. Regulations also differ from one city to another as local circumstances and the impact of STRs on the local community may vary. As a result, hosts and platforms operating in different cities or different Member States are faced with a high level of regulatory fragmentation. Against this background, this section provides a legal analysis of the most common market access requirements. In doing so, this section will provide a proportionality assessment of regulatory requirements commonly imposed by local authorities across Europe and evaluate them to determine whether they are necessary and proportionate to meet a specific public interest objective. Special attention will be paid to the question of how the planned STR regulation will affect regulatory design and the selection of regulatory instruments.

In the literature, different categorisations have been suggested for the analysis of regulatory approaches to STRs. For example, Jefferson-Jones distinguishes between six types of regulations: (1) full prohibitions, (2) geographically-based restrictions, (3) quantitative restrictions, (4) proximity restrictions, (5) operational restrictions, and (6) licensing requirements.<sup>35</sup> In contrast, Nieuwland and van Melik distinguish between four categories: (1) quantitative restrictions (including limits on the amount of STR accommodations, the amount of allowed visitors or the number of days an accommodation can be rented out per year), (2) locational restrictions (confining STRs to specific locations), (3) density restrictions (limiting the number of STRs in certain neighbourhoods), and (4) qualitative restrictions (regarding the type of accommodation and safety requirements).<sup>36</sup> All of these restrictions are often combined licensing requirement.

## Categories of Regulatory Measures

For the purposes of this study the following categorisation seems helpful in order to assess the proportionality of the different regulatory measures: (1) A first category comprises total bans of STRs, which can only be justified as *ultima ratio* in exceptional circumstances. (2) As a less drastic measure, quantitative restrictions, especially quotas for STRs and limits on overnight stays per year, form a second category. (3) A third category comprises registration requirements which will be largely harmonized by the proposed STR Regulation. (4) Authorisation schemes, which are often

<sup>35</sup> Jefferson-Jones, Can short-term rental arrangements increase home values? A case for Airbnb and other home sharing arrangements, 13 *Cornell Real Estate Review* 12, 13 (2015).

<sup>36</sup> Nieuwland and van Melik, Regulating Airbnb: how cities deal with perceived negative externalities of short-term rentals, *Current Issues in Tourism*, 23:7, 811, 814 (2020).

combined with quantitative or qualitative requirements, form a fourth category. (5) A fifth category is represented by qualitative restrictions, such as health and safety requirements. (6) Finally, the distinction between peers and professionals which is relevant for many of the other regulatory measures will be addressed.

## 1. Total Ban of STRs

The strictest regulatory measure would be a complete ban of STRs in a community or in certain neighbourhoods. Total bans have been introduced for example in Nice, Amsterdam, the Balearic Islands and Barcelona.<sup>37</sup> In several cases, such **blanket bans have been declared illegal by courts**.<sup>38</sup> For example, in March 2021 the Court of Justice of Amsterdam reversed a decision of the city government which had banned all vacation rentals from three city centre districts in the old town in reaction to concerns about ‘overtourism’. In its ruling, the court emphasised that instead of a total prohibition, the city could take other measures, such as imposing a quota for STRs in conjunction with a night cap.<sup>39</sup>

Considering that a blanket ban of STRs is a far-reaching encroachment of property rights and the free movement of services, **a total prohibition of touristic rentals can only be seen as a justifiable measure in very exceptional circumstances**.<sup>40</sup> In the same vein, the explanatory memorandum<sup>41</sup> to the recently introduced Dutch ‘Act on residential accommodation for holiday letting purposes’ (*Wet toeristische verhuur van woonruimte*<sup>42</sup>) emphasizes that a total ban on STRs will not be readily justifiable because less drastic means will always be possible, such as a quota, a licensing scheme or a night cap.

A similar assessment was already expressed by the European Commission in its 2016 Communication on the collaborative economy: “Absolute bans and quantitative restrictions of an activity normally constitute a measure of last resort. They should in general only be applied if and where no less restrictive requirements to attain a legitimate public interest objective can be used. For example, banning short-term letting of apartments appears generally difficult to justify when the short-term rental use of properties can for example be limited to a maximum number of days per year. This would allow citizens to share their properties on an occasional basis without withdrawing the property from the long-term rental market.”<sup>43</sup>

37 European Commission, STR Regulation Proposal, Impact Assessment Report, SWD(2022) 350, p. 5.

38 See e.g. High Court of the Balearic Islands, Judgement of 10 September 2021, Case No. 00481/2021 (declaring illegal the ban on tourist apartments in the city of Palma de Mallorca). In January 2023, however, this decision was overruled by a decision of the Spanish Supreme Court, see Tribunal Supremo, Judgement of 31 January 2023, Case No. STS 238/2023 - ECLI:ES:TS:2023:238.

39 Rechtbank Amsterdam, Judgment of 12 March 2021, Case No. AMS 20/4800, ECLI:NL:RBAMS:2021:1017.

40 Botsman, Regulering van toeristische verhuur: grenzen en mogelijkheden, NtEr 2021, 97, 103.

41 Kamerstukken II 2019/20, 35353, nr. 3, p. 19.

42 Wet van 7 oktober 2020 tot wijziging van de Huisvestingswet 2014 en de Gemeentewet in verband met de aanpak van ongewenste neveneffecten van toeristische verhuur van woonruimte en de aanpak van woonoverlast (Wet toeristische verhuur van woonruimte), Staatsblad van het Koninkrijk der Nederlanden 2020, 460; 2020, 566.

43 European Commission, A European Agenda for the collaborative economy, COM(2016) 356, p. 4.



**Absolute bans and quantitative restrictions of an activity normally constitute a measure of last resort. They should in general only be applied if and where no less restrictive requirements to attain a legitimate public interest objective can be used.**

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European Commission,  
Communication on the collaborative economy, 2016

Under the planned STR Regulation, this assessment is likely to be even more compelling. If granular data on STR activity is available under the planned STR Regulation, a blanket ban of all STRs across several districts can no longer be considered. At most, a very targeted measure against specific types of STR in a narrowly defined geographical area would be conceivable as ultima ratio if the available data clearly indicates that milder measures have not been successful. **The hurdle of justification is therefore particularly high for total bans of STRs.**

## 2. Quantative Restrictions

Compared to the drastic step of totally banning STRs from a community or neighbourhood, imposing certain types of quantitative restrictions or “caps” on STRs can be considered a more moderate measure. In practice, two types of quantitative restrictions are mostly used by public authorities: a cap on the overall number of properties available for STR in a given area (“quota”) or a limit regarding the number of nights a certain type of property can be rented out (“night cap”). Both types of quantitative constraints must be considered separately.

### A) Limitation of STR Licenses

**A frequently used method to limit the growth of the STR supply is to limit, or reduce, the overall number of STRs in the entire city or in specific neighbourhoods.** The Services Directive takes a rather critical stance towards such quantitative restrictions. While they do not figure among the “prohibited requirements” enumerated in the “blacklist” stipulated by Article 14 of the Services Directive, they are at the top of the list of requirements that need to be “evaluated” by Member States.<sup>44</sup> According to Article 15(3) of the Services Directive, Member States shall verify that such a quantitative restriction satisfies the triple conditions of non-discrimination, necessity and proportionality. According to *Colomb* and *Moreira de Souza*, quantitative restrictions of STRs should only be a “measure of last resort”.<sup>45</sup> Similarly, the European Commission underlines

<sup>44</sup> Art. 15 (2)(a) Services Directive.

<sup>45</sup> *Colomb* and *Moreira de Souza*, *Regulating Short-Term Rentals*, 2021, p. 53.

that “quantitative restrictions of an activity normally constitute a measure of last resort”.<sup>46</sup> **As a general rule, they should only be applied if and where no less restrictive requirements to attain a legitimate public interest objective can be used.**<sup>47</sup> It goes without saying that the quota must neither be set arbitrarily nor be disproportionately low.

If the special circumstances of a community or a neighbourhood justify an STR quota, the principle of equality requires that all market participants have a fair chance of obtaining a permit. Therefore, the permit should be granted only for a limited time (e.g., two years) so that other market participants have a chance in the next round of permission granting. This corresponds to the requirements set out in Article 11 of the Services Directive. As a general rule, this provision stipulates that authorisations shall be granted to service providers for an indefinite period of time. In deviation from this principle, authorisations may also be issued for a limited period of time where “the number of available authorisations is limited by an overriding reason relating to public interest”.<sup>48</sup>

**Consideration must also be given to whether the overriding reason relating to the public interest justifies a quota for all types of STRs** or whether a differentiated approach is warranted. If, for example, the quota shall be justified on the grounds that it is needed to address a shortage of available housing, this argument can only justify a quota for STRs in non-primary residences. To enable as many providers as possible to benefit from the advantages of the STR market while limiting the overall number of properties on the market, other differentiations could also be considered. For example, a licensing system could be envisaged whereby some providers are allowed to rent out their accommodations for tourism only during a certain period (e.g., winter period) and other providers in the same area during another period (e.g., summer period).<sup>49</sup>

## B) Night Caps

One of the most frequently used quantitative restriction are limits regarding the number of nights a certain type of property can be rented out (“night cap”). In this context, applicable time limits vary considerably between cities. For example, in Amsterdam a maximum of 30 nights per year applies for holiday rental (vakantieverhuur) of primary residences.<sup>50</sup> In contrast, in Berlin a time limit of 182 days applies for primary residences and a maximum of 90 days for secondary residences.<sup>51 52</sup>

As a quantitative restriction in the sense of Article 15(2)(a) of the Services Directive, night caps also fall in the category of requirements that need to be “evaluated” by Member States.<sup>53</sup> As a consequence, Member States must verify that such a quantitative restriction satisfies the triple conditions of non-discrimination, necessity and proportionality.<sup>54</sup> Compared to a quota, night caps should be easier to justify because they do not limit the number of market participants, but

46 European Commission, A European Agenda for the collaborative economy, COM(2016) 356, p. 4.

47 Ibid.

48 Art. 11 (1)(b) Services Directive.

49 Kamerstukken II 2019/20, 35353, nr. 3, p. 9.

50 Colomb and Moreira de Souza, Regulating Short-Term Rentals, 2021, p. 68.

51 For an overview see Busch, Regulating Airbnb in Germany – status quo and future trends, Journal of European Consumer and Market Law 2019, 39, 40.

52 According to the Berlin regulation, a permit and a registration number are required in order to rent out an entire home on a short-term basis. The 90-day cap for secondary residences has been enshrined in law. In contrast, the 182 days for primary residences are based on a settlement between a Berlin district and a plaintiff in 2017.

53 Art. 15 (2)(a) Services Directive.

54 Art. 15(3) Services Directive.





only the extent of participation in the market. The European Commission also seems to favour night caps over STR quotas.<sup>55</sup> In the spirit of data-driven regulation, the pre-defined number of nights per year should not be set arbitrarily but based on up-to-date data obtained via the data-sharing framework envisaged by the European Commission in the STR Regulation Proposal.

### 3. Registration Procedures

According to the European Commission, registration schemes currently exist at various levels (national, regional or local) in 22 Member States and other Member states are considering introducing them.<sup>56</sup> The existing registration schemes differ significantly both in terms of procedural and substantive requirements. In the past, diverging registration schemes and differing data requests by public authorities have imposed a heavy burden on platforms and led to a lack of reliable data on STR activities.<sup>57</sup> In order to remedy these shortcomings, the recently published STR Regulation Proposal lays out a common approach to registration procedures for STR providers.<sup>58</sup> As the official title of the STR Regulation proposal suggests, **the main purpose of the harmonised rules on STR registration procedures is to provide a common framework for data collection and data sharing on STR services.**

It is important to note that the STR Regulation Proposal does not legally require Member States to introduce a registration procedure. However, if competent authorities wish to receive data from STR platforms about hosts' activities, they will be required to establish or maintain a registration procedure.<sup>59</sup> As a consequence, it could be argued that the STR Regulation creates a *de facto* obligation or at least a strong incentive for Member States to introduce a registration procedure. If a Member States decides to impose a registration procedure, such a procedure must comply with the requirements set out in Chapter II of the proposed STR Regulation. Under these rules, STR providers will be required to provide a standardized set of information about the STR unit and the identity of the host (e.g., address, type of unit, whether the unit is the host's primary or secondary residence, maximum number of guests).<sup>60</sup>

55 European Commission, Collaborative Short Term Accommodation Services, Policy Principles & Good Practices, Ref. Ares(2018)5381503 - 19/10/2018.

56 European Commission, STR Regulation Proposal, Impact Assessment Report, SWD(2022) 350, p. 1.

57 STR Regulation Proposal, Explanatory Memorandum, p. 1.

58 See Chapter II STR Regulation Proposal.

59 Recital 17, STR Regulation Proposal.

60 Article 5 STR Regulation Proposal.

**The STR Regulation Proposal, however, does not provide for a full harmonization of rules on registration procedures.** According to Recital 12 of the STR Regulation Proposal, Member States shall remain free “to require hosts to submit additional information and documentation attesting compliance with requirements established by national law, such as health and safety and consumer protection requirements”.<sup>61</sup> If a Member State requires hosts to submit further information and documentation, the submission of such additional information and documentation shall not be a condition for issuing the registration number.<sup>62</sup>

The Proposal also lays down harmonized rules on how competent authorities shall verify the information and documentation provided by the host during the registration procedure.<sup>63</sup> In particular, the STR Regulation Proposal seeks to ensure that certain requirements of procedural fairness are met if the competent authority intends to suspend the validity of a registration number and request an STR platform to remove or disable access to a listing. Therefore, the competent authority must notify hosts before any such steps are taken and give them the opportunity to be heard.

## 4. Authorisation Schemes

Unlike registration schemes, which involve the automatic and immediate issue of a registration number upon the submission of the required information and documentation,<sup>64</sup> **prior authorisation schemes impose a stricter form of market access requirement.** According to the definition in Article 4(6) of the Services Directive the term “authorisation scheme” refers to “any procedure under which a provider or a recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof”. In other words, an authorisation scheme entails the issuance of an ex ante individual decision to an applicant.<sup>65</sup> In contrast, in case of a registration scheme, competent authorities only verify the information and documentation submitted by the host ex post, after issuing a registration number.<sup>66</sup>

According to Chapter III of the Services Directive, **authorisation schemes are subject to a two-step test:** Article 9 of the Services Directive stipulates substantive requirements for the necessity of the authorisation scheme as a whole. If the test of Article 9 is satisfied and the need for the authorisation scheme is established, Article 10 to 13 of the Services Directive add a number of procedural requirements that must be fulfilled by the authorisation scheme.<sup>67</sup>

### A) Substantive Requirements

According to Article 9(1) of the Services Directive any authorisation scheme for STR providers must meet three requirements. **It must be (a) non-discriminatory; (b) justified by an overriding reason relating to the public interest; (c) proportionate,** i.e. the objective pursued cannot be attained by a less restrictive measure, in particular an ex post inspection.<sup>68</sup>

61 Recital 12 STR Regulation Proposal.

62 Article 5(3) STR Regulation Proposal.

63 Article 7 STR Proposal.

64 See Article 4(2)(b) STR Regulation Proposal.

65 Joined Cases C-724/18 and C-727/18 *Calvi Apartments* ECLI:EU:C:2020:251, Opinion of AG Bobek, para. 68.

66 Article 6(1) STR Regulation Proposal.

67 See Hatzopoulos, *Disarming Airbnb – Dismantling the Services Directive?*, 58 *Common Market Law Review* (2021), 905, 912 (distinguishing between the “substantial conditions” of Article 9 of the Services Directive and the “procedural requirements” of Article 10 to 13 of the Services Directive).

68 In addition, Article 9(2) of the Services Directive stipulates that any such authorisation scheme must be reported to the Commission.

A non-exhaustive list of overriding reasons relating to the public interest recognised in the case law of the CJEU is provided in Article 4(8) of the Services Directive (e.g., public policy, public security, public health, protection of consumers). In *Cali Apartments*, the CJEU explicitly mentions **three public interests that may justify an authorisation scheme for STRs: protection of the urban environment,<sup>69</sup> social policy objectives<sup>70</sup> and “requirements relating to public housing policy and seeking to combat land pressure, especially where a specific market is experiencing a structural housing shortage and a particularly high population density”.<sup>71</sup> In other words, the objective of combatting shortages in affordable rental housing can *in abstracto* justify authorisation schemes for STRs.<sup>72</sup>**

In contrast, as the CJEU has repeatedly emphasized, **purely economic objectives, such as the profitability of competing businesses, can under no circumstances be used as justification for a restriction on the freedom to provide services.**<sup>73</sup> Similarly, the European Commission underlined in its 2016 Communication on the collaborative economy that market access requirements must not favour one business model over the other.<sup>74</sup>

### Proportionality of Authorisation Schemes

Once an overriding reason relating to the public interest has been identified, it is necessary to establish that the objective pursued cannot be attained *in concreto* by a less restrictive measure than the authorisation scheme. In order to be proportionate, the scope of the authorisation scheme has to be limited to what is strictly necessary. In other words, **a blanket ban of all types of STRs across all districts and neighbourhoods of a city will most likely not meet the proportionality test.** Rather, the authorization scheme has to be a well-targeted measure and its regulatory design needs to be fine-tuned to the policy objective pursued.



69 Joined Cases C-724/18 and C-727/18 *Cali Apartments* ECLI:EU:C:2020:743, para 67; see also Joined Cases C-360/15 and C-31/16 *Visser*, EU:C:2018:44, para. 135.

70 Joined Cases C-724/18 and C-727/18 *Cali Apartments* ECLI:EU:C:2020:743, para 67.

71 Joined Cases C-724/18 and C-727/18 *Cali Apartments* ECLI:EU:C:2020:743, para 68.

72 See also *Kramer and Schaub*, *EU Law and the Public Regulation of the Platform Economy: The Case of the Short-Term Rental Market*, 59 *CML Rev.* (2022) 1633, 1654.

73 Case C-400/08 *European Commission v. Kingdom of Spain* ECLI:EU:C:2011:172, para. 74; see also Case C-338/09 *Yellow Cab Verkehrsbetriebs GmbH v Landeshauptmann von Wien* ECLI:EU:C:2010:814, para 51.

74 European Commission, *A European Agenda for the collaborative economy*, COM(2016) 356, p. 3.

As underlined by Advocate General *Bobek* in his Opinion in *Cali Apartments*, authorisation requirements can incorporate proportionality into their design.<sup>75</sup> When assessing whether an authorisation scheme is proportionate aspects to be taken into account include, for example, whether its territorial scope is limited to larger cities and excludes hosts renting out their primary residence.<sup>76</sup> In this perspective, an authorisation scheme which excludes from its scope housing which constitutes the host's main residence would be more likely considered proportionate as the temporary letting of primary residences has no significant effect on the long-term rental market.<sup>77</sup> In this context, empirical evidence and granular data on the development of the housing market will be particularly relevant in order to assess whether an authorisation scheme is adequately tailored to meet the public policy objective.<sup>78</sup>

### Ex Ante Versus Ex Post Intervention

Finally, **it has to be assessed whether an ex post intervention could be an alternative to a prior authorisation scheme** or whether such an approach would be – in the words of Article 9(1)(c) of the Services Directive – “too late to be genuinely effective”. In *Cali Apartments*, the CJEU quickly dismissed the possibility of *ex post* corrective measures arguing that these would not be as effective. However, in this context, the new data reporting requirements under the proposed STR Regulation could change the legal assessment. In the past, it was difficult for local regulators to rely on *ex post* interventions because of the lack of reliable data on the dynamics of the STR market. If the new data reporting scheme with its monthly reports on STR activity works well, it will provide regulators with almost real-time data on the development of the STR market. This could make it possible for local regulators to swiftly react to changing market conditions and take decisions in a more responsive way in order to intervene without delay if problems arise. As a consequence, in the future, *ex post* interventions based on granular market data could become a more viable alternative to *ex ante* authorisation schemes.

## B) Procedural Requirements

Once the test of Article 9 is satisfied and the need for the authorisation scheme is established, Article 10 of the Services Directive focuses on the particular criteria that must be fulfilled by the authorisation scheme. According to Article 10(2) the criteria for granting an authorisation must be non-discriminatory, justified by an overriding reason relating to the public interest and proportionate to that public interest objective.<sup>79</sup> In addition, the criteria must be in conformity with principles of good administration, i.e. clear and unambiguous, objective, made public in advance, transparent and accessible.<sup>80</sup>

In *Cali Apartments*, for example, the CJEU closely analysed whether an offset requirement is a suitable instrument to ensure a sufficient supply of housing units and to promote the overall objective of ensuring affordable housing.<sup>81</sup> Here again, the CJEU underlines that the existence of “studies and other objective analyses” are particularly relevant.<sup>82</sup> For a detailed proportionality assessment, such studies have to provide data at a granular level which allows to take into

<sup>75</sup> Joined Cases C-724/18 and C-727/18 *Cali Apartments* ECLI:EU:C:2020:251, Opinion of AG Bobek, para. 116.

<sup>76</sup> *Ibid.*

<sup>77</sup> Joined Cases C-724/18 and C-727/18 *Cali Apartments* ECLI:EU:C:2020:743, para 72.

<sup>78</sup> See also Recital 4 STR Regulation Proposal.

<sup>79</sup> Article 10(2)(a)-(c) Services Directive.

<sup>80</sup> Article 10(2)(d)-(g) Services Directive.

<sup>81</sup> Joined Cases C-724/18 and C-727/18 *Cali Apartments* ECLI:EU:C:2020:743, paras 84–85.

<sup>82</sup> Joined Cases C-724/18 and C-727/18 *Cali Apartments* ECLI:EU:C:2020:743, paras 88.

consideration “specific features of each municipality, or even of each neighbourhood or district thereof”.<sup>83</sup>

Articles 11 to 13 of the Services Directive lay down further procedural requirements regarding the issuing of authorisations. For example, as a general rule, authorisations are to be granted for an unlimited period and applications are to be subject to tacit approval.<sup>84</sup> In addition, any charges which the applicants may incur from their application must be reasonable and proportionate and shall not exceed the cost of the authorisation procedure.<sup>85</sup>

In summary, as underlined by Kramer and Schaub, “national and local authorities should design authorisation schemes that are grounded in clearly identifiable public interests, demonstrate coherence between the overall authorisation scheme and the specific conditions for granting individual authorisations, and use instruments that are effective responses to (local) needs, as substantiated by objective evidence”.<sup>86</sup>

## 5. Health and Safety Requirements

While measures such as STR bans, quotas or night caps are primarily intended to reduce or control the negative externalities that STR for the local community, health and safety requirements for STRs are meant to protect guests staying in STR units (and possibly also providers of ancillary services working there). Specific requirements for safety such as the installation of a smoke detector and/or a carbon monoxide detector or the duty to display emergency information for guests fit into this category.

### STR Versus Hotels

In this context, the question arises what level of security precautions can be considered proportionate. Representatives of the hotel industry argue that measures should aim to reach a comparable level of health, safety and security as those which are already well-established for hotels or guesthouses.<sup>87</sup> When determining the appropriate level of security, however, it is important to keep in mind that STRs and hotels carry different risks. This is reflected, for example, in fire safety regulations which provide for special requirements for escape routes only from a certain number of rooms or beds. For example, the German ordinance on lodging establishments stipulates certain requirements (e.g., a second escape route) only from 30 or 60 beds upwards.<sup>88</sup> In this sense, it should be ensured that health and safety requirements for STRs are not so stringent as to be prohibitive for private hosts and thus constitute for them a de facto ban of STR activities.

In the context of protecting consumers in the sharing economy, it is sometimes pointed out that online platforms offer tools and mechanisms that reduce risks for consumers and enable safe transactions. For example, in its Communication on the collaborative economy, the European Commission mentions that rating and reputational systems “may in some cases reduce risks for

83 Joined Cases C-724/18 and C-727/18 *Cali Apartments* ECLI:EU:C:2020:743, paras 90.

84 Articles 11(1) and 13(4) Services Directive; see also European Commission, *A European Agenda for the collaborative economy*, COM(2016) 356, p. 4.

85 Article 13(2) Services Directive.

86 Kramer and Schaub, *EU Law and the Public Regulation of the Platform Economy: The Case of the Short-Term Rental Market*, 59 *CML Rev.* (2022) 1633, 1655.

87 HOTREC, *Position Paper on EU-wide Regulation of Short-term Rentals*, 2022, p. 13.

88 See Busch et al, *Sharing Economy in Deutschland*, 2019, p. 206.

consumer stimulating from information asymmetries.”<sup>89</sup> However, the effect of such a “reputational enforcement” of quality standards and decent market behaviour is limited. In particular, a quality control system based on user reviews can only provide information about such qualities of a product which can be observed by customers (that is, experience qualities such as the cleanliness of an apartment), but not about those which cannot be reliably assessed in advance (that is, credence qualities such as the fire safety in a house).

Finally, some requirements for the use of STRs are related both to guest safety and potential negative effects on the local community. This applies, for example, to regulations which limit the maximum overnight occupancy of short-term rental properties. Such regulations are usually imposed by establishing a guests-per-bedroom or per-property cap. When assessing the proportionality of such dual-functional measures, it is necessary to identify precisely the different objectives of the measures and to examine in each case whether the objective can also be achieved by a less drastic measure.

## 6. Peers and Professionals

In the policy debate on STR regulation, it is often emphasized that a distinction must be made between peers and professionals in the design of the regulatory measures. In this sense, the European Commission’s Communication on the collaborative economy underlines that “an important element to assess whether a market access requirement is necessary, justified and proportionate, can be whether the services are offered by professional providers or rather by private individuals on an occasional basis”.<sup>90</sup> Similarly, the summary of the follow-up workshops organized in 2017 by the European Commission emphasizes that “a differentiated policy between peers and providers acting in a regular or professional capacity can be useful to ensure that policy measures addressing accommodation providers are both effective and proportionate”.<sup>91</sup>



89 European Commission, A European Agenda for the collaborative economy, COM(2016) 356, p. 4.

90 European Commission, A European Agenda for the collaborative economy, COM(2016) 356, p. 5.

91 European Commission, Collaborative Short Term Accommodation Services, Policy Principles & Good Practices, Ref. Ares(2018)5381503 - 19/10/2018, p. 4.



**A differentiated policy between peers and providers acting in a regular or professional capacity can be useful to ensure that policy measures addressing accommodation providers are both effective and proportionate**

European Commission,  
Workshop on the collaborative economy, 2017

**The practical implementation of this principle has often proved difficult in the past.** First, EU legislation does not establish expressly at what point a “peer” turns into a professional service provider in the STR sector. Similarly, in the context of consumer law, the CJEU has also not yet provided a clear criterion for determining when a consumer acting as a “prosumer” turns into a trader. Instead, a case-by-case assessment is necessary based on a bundle of indicia.<sup>92</sup> Second, differentiating between peers and professionals has been further complicated in the past by the fact that public authorities often did not have the necessary data about the extent of the rental activity. Registration obligations for accommodation providers and data-sharing with online platforms did not offer a viable solution for this problem as hosts often registered an STR unit with multiple platforms. Such multi-homing practices made it difficult to obtain a clear picture of the extent of the rental activity as it was difficult to merge the activity data from different sources without a reliable method of identification.

**This could change with the proposed STR Regulation** and the planned harmonization of the rules on registration obligations and data-sharing between platforms and public authorities. In particular, the introduction of a registration number which serves as a unique identifier for STR units should make it much easier to identify the volume of rental activity, even across multiple platforms. As a consequence, **it will most likely be easier in the future to differentiate market access rules for peers and professionals and to enforce these rules effectively.**

### Night Cap Threshold

Even if the STR Regulation will solve some practical problems regarding data collection, the normative question remains where to draw the line between a peer and a professional. In this regard, **a practical solution could be to apply a differentiation using thresholds (e.g., night caps) in order to distinguish between peers and professional STR providers.** It is, however, not possible to formulate uniform rules for defining the thresholds that could be applied across the EU. Rather, the specifics of the local market must be taken into account when deciding about where to set the thresholds. Another useful proxy could be whether the property is a primary or a non-primary residence. This approach would be based on the assumption that a primary residence can only be rented out on an occasional basis.<sup>93</sup>

<sup>92</sup> Case C-105/17 Kamenova, ECLI:EU:C:2018:808.

<sup>93</sup> European Commission, A European Agenda for the collaborative economy, COM(2016) 356, p. 5.

# V. Conclusions and Recommendations

01

The proposed STR Regulation is an ambitious step towards a new and promising model of data-driven regulation for the STR market. Although the proposed STR Regulation only lays down harmonised rules for registration schemes and data-sharing, the availability of up-to-date and granular activity data collected under the new rules will most likely influence the design of other regulatory measures and policies regarding STRs by public authorities. Therefore, **further guidance from the European Commission on what regulatory measures it considers permissible in the light of the proposed STR Regulation would be helpful.**

02

**The availability of up-to-date and granular data on the STR market should allow public authorities to make informed decisions** about whether and how to regulate STRs. This will enable authorities to adopt more targeted and proportionate rules. At the same, the better availability of data will raise the bar for the justification of market access restrictions. As a consequence, in future, ex post interventions based on granular market data could become a more viable alternative to ex ante authorisation schemes.

03

In particular, **a total ban of STRs will hardly be justifiable as less drastic means will practically always be available**, such as quotas, licensing schemes or night caps. Following the model of evidence-based policymaking, total bans and quotas should only be applied if there is clear evidence that other measures have failed to protect public interest objectives. In addition, **the geographic scope of restrictions should be limited as much as possible to areas and neighbourhoods where they are necessary.**

04

Under the new model of data-driven STR regulation public authorities will maintain the necessary flexibility in order to respond to different needs and circumstances which will vary from urban areas to rural areas. Rather than just one inevitable outcome, a “corridor of solutions”<sup>94</sup> can be deemed proportionate considering the specific needs of the local community (e.g., different night caps for different neighbourhoods).

05

A shift towards a more responsive data-driven regulation is conditional on the availability of up-to-date and granular data on STR activities. Therefore, it is essential that the data-sharing framework envisaged by the proposed STR Regulation is fully functional. From this perspective, **the establishment of a technical interface for data-sharing (“Single Data Entry Point”) would be preferable instead of having 27 different technical solutions.**

06

In order to ensure a successful transition towards the new model of data-driven STR regulation, **an advisory panel should be established that brings different stakeholders within the STR space together** and supports regulators in identifying best practices with regard to data-sharing and evidence-based policymaking.

<sup>94</sup> Joined Cases C-724/18 and C-727/18 Cali Apartments ECLI:EU:C:2020:251, Opinion of AG Bobek, para. 94.



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