

Short term rentals (STR): From *Cali Apartments* to *Smartflats*

Prof. dr. B. Keirsbilck
KU Leuven – CCM

- *Airbnb* [2019]
- *Cali Apartments* [2022]
- *Smartflats* [2026 (?)]
 - Outlook

1

Paris: *Airbnb*



- Facts:
 - Connection of hosts, whether businesses or individuals, with accommodation to rent with persons seeking that type of accommodation — Qualification
 - National legislation imposing certain restrictions on the exercise of the profession of real estate agent [= **regulation of “upstream market”**]
 - ‘Association pour un hébergement et un tourisme professionnels’ (AHTOP) → AirBnB = real estate agent – without the required authorisation → criminal proceedings with ancillary civil action
 - Airbnb → only ‘intermediation’ (= ‘information society service’)
 - AirbnB: French law ↔ E-CD
 - AHTOP + French government → SD

2

Airbnb



1. Article 2(a) of [the E-CD] ... must be interpreted as meaning that an **intermediation service** which, by means of an electronic platform, is intended to connect, for remuneration, potential guests with professional or non-professional hosts offering short-term accommodation, **while also providing a certain number of services ancillary** to that intermediation service, must be classified as an **'information society service'** under Directive 2000/31.
2. The second indent of Article 3(4)(b) of [the E-CD] must be interpreted as meaning that, in criminal proceedings with an ancillary civil action, an **individual may oppose the application to him or her of measures of a Member State restricting the freedom to provide an information society service** which that individual provides from another Member State, **where those measures were not notified in accordance with that provision.**

3

Paris: Cali Apartments [2022]



- Facts:
 - Repeated short-term letting of furnished premises to a transient clientele which does not take up residence there
 - National legislation imposing a prior authorisation scheme (not if premises constitute lessor's main residence) for certain specific municipalities (> 200,000 inhabitants) and making those municipalities responsible for defining the conditions for granting the authorisations provided for by that scheme (with possibility to impose a so-called "offset requirement") [= **regulation of "downstream market"**]
 - Public prosecutor & Ville de Paris → Cali Apartments = service provider without the required authorisation → fines
 - Cali Apartments: French law ↔ Art 9 and 10 SD

4

Cali Apartments [2022]

1. Articles 1 and 2 [SD] must be interpreted as meaning that that directive **applies** to legislation of a Member State relating to **activities consisting in the repeated short-term letting, for remuneration**, whether on a professional or non-professional basis, **of furnished accommodation to a transient clientele which does not take up residence there**.
 - See paras 40-44: legislation does not apply indiscriminately in field of “town and country planning” (rec. 9) → does not fall outside scope of SD
2. Article 4 [SD] must be interpreted as meaning that national legislation which makes the exercise of certain activities consisting in the letting of residential premises subject to **prior authorisation** is covered by the concept of ‘**authorisation scheme**’.

5

SD – establishment – authorisations (applicable even to purely national situations)

- **Art 9(1): authorisation schemes** only if
 - (a) non-discriminatory
 - (b) **overriding reason relating to the public interest**
 - (c) **proportionate**
- **Art 10: conditions for the granting of authorisations: idem +**
 - (2) (d) **clear and unambiguous**; (e) **objective**; (f) **made public in advance**; (g) **transparent and accessible**
 - (3) **no double control!**
 - (4) **for whole territory, by way of agency, branch, subsidiary except if overriding reason**
 - (5) **no delays**
 - (6) **decisions fully reasoned and open to judicial review**
- **Art 13: conditions for authorisation procedures**

6

Cali Apartments [2022]

3. Article 9(1)(b) and (c) [SD] must be interpreted as meaning that national legislation which, **for reasons intended to ensure a sufficient supply of affordable long-term rental housing**, makes certain activities consisting in the repeated short-term letting, for remuneration, of furnished accommodation to a transient clientele which does not take up residence there **subject to a prior authorisation scheme** applicable **in certain municipalities where rent pressure is particularly severe** is (i) justified by an overriding reason relating to the public interest consisting in **combating the rental housing shortage** and (ii) proportionate to the objective pursued, inasmuch as that objective cannot be attained by means of a less restrictive measure, in particular because an **a posteriori inspection would take place too late to be genuinely effective**.

7

Cali Apartments [2022]

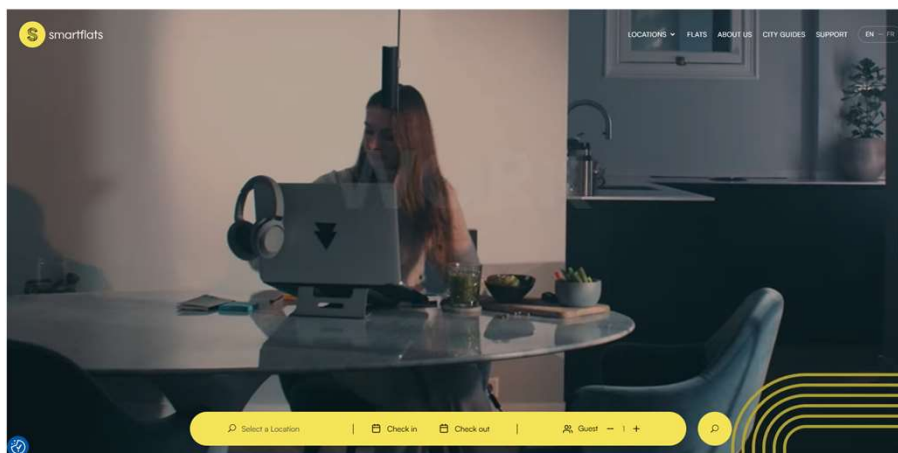
4. Article 10(2) [SD] must be interpreted as not precluding national legislation introducing a scheme which makes [STR] subject to prior authorisation, ... which **gives the local authorities the power to** specify ... the conditions for granting the authorisations ... in the light of social diversity objectives and according to the characteristics of the local housing markets and the need to avoid exacerbating the housing shortage, **making those authorisations subject, if necessary, to an offset requirement in the form of the concurrent conversion of non-residential premises into housing**, provided that those granting conditions are in line with the requirements laid down by that provision and that that requirement can be met under conditions that are **transparent and accessible**.

8



9

Brussels: *Smartflats* case



Case C-813/24, *Smartflats*: Request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 27 November 2024 – *Smartflats SA v Région de Bruxelles-Capitale*

10

Smartflats case

- Facts:
 - Provision of accommodation equipped with the fixtures and fittings necessary for sleeping and cooking, and including, where appropriate, hotel-type services for an additional charge, offered to tourists for one or more nights, in return for payment, on a regular or occasional basis
 - Smartflats submitted a prior declaration for this operation in accordance with Art 4 Brussels Ordinance of 8 May 2014 on tourist accommodation. According to the Ordinance, a registration number must be assigned for this activity based on the submission of an administrative file containing a **fire safety certificate** and a **town planning certificate of conformity** (on the basis of Art 98 Brussels Town and Country Planning Code)
 - Smartflats' declaration was deemed inadmissible due to the incompleteness of the file
 - Smartflats: Brussels legislation ↔ Art 9, 10 and 13 SD

11

Smartflats case

1. Does [the SD] apply to national legislation on land use and town planning, ... which formally applies in the same way to providers of a service activity within the meaning of that directive and to individuals acting in their private capacity, but which, as interpreted in ... **rules on tourism, in practice, affects, if not exclusively then at least principally, access to or the exercise of that activity?**
2. If the answer to the first question is in the negative, may or must that **national legislation on land use and town planning nevertheless be taken into account** in assessing the **compatibility with [the SD] of the ... rules on tourism**, ... [including] among the criteria for the grant of prior authorisation, a certificate of compliance with the national legislation on land use and town planning, regard being had, in particular, to [the “no double control” condition in Art 10(3) SD] ?

12

Smartflats case

3. Does **Article 9 [SD]** preclude, from the point of view of the requirement of **proportionality**, a legal scheme that makes the [activity of Smartflats], subject to a **prior declaration and registration**, on the principal ground that **tourists should be protected** and on the subsidiary (and implicit) ground that that scheme **protects the urban environment**, including, by implication, accommodation?

13

Smartflats case

4. Does **Article 10 [SD]** preclude a legal scheme that makes the [activity of Smartflats], subject to a **prior declaration and registration, which involves, inter alia, producing a certificate**, issued by the municipality in which the tourist accommodation in question is located, **confirming that that accommodation is provided in accordance with the land use and planning regulations and town planning rules** in force, given that the national legislation on land use and town planning requires planning permission to be obtained in the event of a change in the use or intended use of immovable property from “dwelling” to “hotel establishment” and that the [activity of Smartflats] would be classified as the operation of a hotel establishment...?
5. Does the answer to the previous question differ depending on whether or not the classification of “hotel establishment” is left to the discretion of the municipal authority as provided for in a ministerial circular?

14

Smartflats case

6. Does Article 13 [SD] preclude a legal scheme that makes the [activity of Smartflats], subject to a prior declaration and registration, which involves, inter alia, producing a certificate, issued by the municipality in which the tourist accommodation in question is located, confirming that that accommodation is provided in accordance with the land use and planning regulations and town planning rules in force, given that no time limit is set for the issue of that certificate, no specific obligation to state reasons is imposed and no specific means of redress is provided for?
7. If the condition relating to the production of a certificate of town planning compliance is unlawful under European Union law, does European Union law require the exclusion of that requirement alone or of the entire scheme of prior declaration and registration?

15

Outlook

- In absence of harmonization:
 - STR platforms (upstream market) can rely on the platform-friendly E-CD
 - Yet, considerable leeway for 'local' policymakers to regulate the downstream market, within the boundaries of Art 9-10 SD
 - Proportionality and transparency are key (*Cali Apartments*)
 - Quid certificate of town planning compliance? Proportionality? (*Smartflats*)
- Need for further harmonization at EU level?



EXECUTIVE SUMMARY

S&D study on Short-Term Accommodation Rentals in the EU

14 MAY 2025

This study was conducted by Vassilis Hatzopoulos
Professor of EU Law and Policies, Panteion University, Athens, Greece
30 April 2025

16