

# AIRBNB AND THE REAL ESTATE SECTOR

Airbnb is probably the best known of several different accommodation sharing platforms now operating in the real estate sector. As a rapidly developing phenomenon it has had some unexpected effects on the real estate sector, both positive and negative, and has disrupted some of the more traditional aspects of the real estate market. Its evolution and related attempts to control it also raise interesting questions about the development and regulation of the collaborative economy, aspects of which have been considered recently by the European Court of Justice (ECJ). Airbnb will be referred to throughout, but the points referred to below could also be relevant to other similar sharing platforms.

## What is the current situation?

Airbnb has grown exponentially from its origins as a new element in the collaborative economy aimed at helping people share their homes for profit on a short-term basis. From this early beginning it has developed into a much more commercial operation attractive to investors as well as private individuals. The fact that it tends to be most successfully operated in certain popular locations usually for tourism and related activities and can be highly profitable has meant that a large percentage of the accommodation available in such locations has been diverted to the short-term rental market, resulting in disruption and higher costs for local residents now increasingly priced out of these areas.

## Cities want to control the phenomenon

The growth of Airbnb in certain areas has put pressure on the availability of housing and local infrastructure and as such has presented many challenges to the housing policies of various municipalities. This has been made clear by the appeals made by the mayors of several cities in Europe who want to see more control being exercised over the activities

of Airbnb. Earlier this year 22 European cities joined together to call for action on short-term holiday rentals and better regulation of such platforms by the EU<sup>(i)</sup>. They expressed concerns about the upward pressure on housing costs and consequential impact on the social mix of the population in cities, as well as the difficulties in obtaining data about such rentals. Different cities have made various attempts to control the activities of Airbnb in recent years. For example, as from 1 July this year the city of Amsterdam has banned tourist rentals in three districts in the old city centre via platforms such as Airbnb and imposed requirements for permits for such accommodation in the rest of the city.

## What does the EU say?

The EU is in principle supportive of the development of the collaborative economy which it sees as important for jobs and growth due to the fact that tourism is a key economic activity in Europe. It has recognised the impact of Airbnb and the European Commission has issued guidelines to EU countries on how existing EU rules apply to the collaborative economy together with policy recommendations but it has to look at platforms<sup>(ii)</sup> such as Airbnb

within the confines of existing legislation intended to protect the European Single Market. This legislation has been tested in recent cases brought before the ECJ as mentioned further below.

The European Commission has worked with the national authorities within the framework of the Consumer Protection Network to force Airbnb and other platforms to improve their terms of service and enable consumers to make more informed comparisons<sup>(iii)</sup>. In March of this year the European Commission reached agreement with collaborative economy platforms including Airbnb to publish key data on tourism accommodation. This will allow Eurostat, the EU statistical office, to publish data on short-stay accommodations offered via these platforms across the EU.

(i) *European Cities Alliance on Short-Term Rentals Position Paper on better EU-legislation of Platforms offering Short-Term Holiday Rentals*  
<https://bit.ly/2DmvAWF>

(ii) <https://bit.ly/33BxLQP>

(iii) <https://bit.ly/30DH9S5>

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## Recent decisions of the ECJ about Airbnb

The ECJ has been called upon to assist in the interpretation of rules relating to the collaborative economy and there have been two important recent cases brought before the ECJ concerning attempts to control the activities of Airbnb by reference to existing EU legislation. The first has now been decided. The second is still before the court but a recent opinion by the Advocate General gives an indication of the direction that the court is likely to take.

The first case concerns the E-Commerce Directive<sup>(iv)</sup> and a case referred to the ECJ for a preliminary ruling on the freedom of Airbnb to provide services in France. It relates to proceedings brought in France against Airbnb Ireland following a complaint by the Association for Professional Tourism and Accommodation (AHTOP). AHTOP complained that Airbnb acted as an estate agent without holding a professional licence as required by the “Hoguet Law” which applies to the activities of real estate professionals in France.

The ECJ was asked if the services provided in France by the company Airbnb Ireland via an electronic platform managed from Ireland benefit from the freedom to provide digital services in the E-Commerce Directive. On 19 December 2019 the ECJ ruled that

Airbnb is an online platform, not a real estate company, and is an “information society service” giving it greater freedom to operate throughout Europe under the E-Commerce Directive. It also held that France cannot require Airbnb to hold an estate agent’s professional licence (in accordance with French regulation) as it did not notify the European Commission of that requirement in advance in accordance with the E-Commerce Directive. The decision in this case led to much comment and further concerns about how the activities of Airbnb could be controlled at national or local level.

The second recent case brought before the ECJ concerns the Services Directive and the question of whether or not authorisation schemes for the letting of apartments on Airbnb are allowed under EU law<sup>(v)</sup>. Cali Apartments was fined for the unauthorised letting of studios in Paris. The ECJ was asked to clarify if national legislation that makes the letting of furnished accommodation for short stays subject to an administrative authorisation falls within the scope of the 2006 Services Directive. Advocate General Michal Bobek concluded that the Services Directive is applicable to rules subjecting to authorisation changes of use of property intended for housing.

However he also concluded that the objective of tackling a shortage of long-term housing can constitute an overriding reason relating to the public interest and is therefore capable of justifying a national measure which requires authorisation to be obtained. Such national and municipal provisions are allowed by the Services Directive if they comply with the

conditions of proportionality and non-discrimination, and in this case combating a housing shortage and seeking to ensure the availability of sufficient and affordable (long-term) housing, as well as protection of the urban environment are valid justifications for the establishment of authorisation schemes broadly based on social policy. If this initial opinion is followed by the Court it could open Airbnb to more administrative controls across Europe particularly in areas where there is a shortage of affordable housing.

## How does this concern real estate professionals?

CEPI welcomes investment and innovation in the real estate sector, but Airbnb’s impact on the market is significant and sometimes detrimental to a vibrant rental sector. There has been a notable growth in the size of the short-term rental sector in recent years and there is some empirical evidence suggesting that Airbnb is having an impact on prices for both sales and rentals. This is particularly the case in the most popular locations (e.g. Paris, Barcelona, and Amsterdam). Its popularity means that properties suitable for use as an Airbnb attract increasing interest from

<sup>(iv)</sup> Judgment in Case C-390/18 *Airbnb Ireland* <https://bit.ly/3fxjdyZ>

<sup>(v)</sup> Advocate General’s Opinion in joined cases C-724/18 and C-727/18 *Cali Apartments v Procureur général près la cour d’appel de Paris, Ville de Paris, and HX v Procureur général près la cour d’appel de Paris, Ville de Paris* <https://bit.ly/3a36s2M>

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investors, raising prices. The rents payable for short-term rentals are higher than average, having the effect of raising rents in certain locations where activity is concentrated.

There is a risk that the use of housing for short-term rentals may reduce the supply of properties for sale (increasing prices). It also risks shrinking the supply of properties in the long-term private rental sector, particularly the affordable private rental sector. However, establishing a clear link is difficult because other factors, such as the low rate of construction, also apply, and more evidence is needed to analyse the real impact.

Real estate professionals have to deal with the consequences of the impact on neighbours and others when different uses are made of property. Property managers in particular are confronted by problems caused by short-term rentals in multi-apartment buildings. These problems may include nuisance caused by additional noise and disturbance due to the behaviour of temporary occupants. Some co-ownerships (e.g. in Belgium) are already restricting the right of owners to let their properties on a short-term basis but finding solutions to these problems can be difficult.

There needs to be a distinction made between the activity of individual homeowners renting out all, or part, of their property on an

occasional basis and larger, commercial, operators who may have a number of properties which they rent on a regular basis resulting in a new business model. It may be necessary to find a definition of the service economy distinguishing it from business services which require a different approach. New ways have to be found of regulating platforms such as Airbnb. The impact of Airbnb on both the sales and rental markets needs to be understood better and it is clear that there is a need for further scientific study on the consequences for the housing market of the development of the collaborative economy.

## What happens next?

The EU is due to publish later this year a proposal for a Digital Services Act. It is expected to deal with the question of the regulation of online platforms including a review of the E-Commerce Directive. There are different forms that such regulation could take. Airbnb itself has backed calls for the creation of an EU regulator for digital services<sup>(vi)</sup>. It remains to be seen how the many challenges presented in attempting to control the collaborative economy will be addressed.

In the meantime, another different problem looms over Airbnb. The socioeconomic crisis caused by the Covid-19 pandemic has caused problems for many sectors, including the short-term accommodation sector. There are signs that landlords are returning properties back into long-term rentals rather than face the uncertainties of finding occupants on a short-term basis at a time when demand is strongly reduced. It is too early to say with any

certainty how long these effects will last, but it demonstrates the ability of the real estate market to adapt. The likelihood is that Airbnb is here to stay in the medium and long-term and that its impact on the real estate market will continue to present both challenges and opportunities for real estate professionals which need to be better understood.

(vi) <https://bit.ly/3fz9VY5>

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*The mission of CEPI, the European Association of Real Estate Professions, is to support the European real estate market and cross-border transactions by enhancing and strengthening the work and activities of real estate professionals. We represent twenty six national professional organisations of estate agents and property managers based in eighteen EU and EFTA countries. Their individual members are active in all sectors of the residential real estate market on a daily basis involving both sales transactions and long-term management.*