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NUANCING NUISANCE: DEVELOPMENTS IN SHORT-TERM RENTAL LAW AND POLICY IN FRANCE AND CROATIA

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ABSTRACT

The rise of the platform economy has dramatically expanded short-term accommodation throughout the last decade, often leading to unease over its inadequate regulation and its impact on the availability of long-term affordable housing and the urban landscape. The paper examines the recent development of national STR (short-term rentals) regulation in Croatia and France, as well as supranational developments in the EU. Both countries have enacted similar, yet distinct reforms, and both share a common tourism-oriented economy marked by a high concentration of STRs in major urban and coastal cities. STR controls are covered by both public and private law frameworks. Public law sets access rules across a larger geographical area aligned with urban and housing policy objectives. Under private law, decision-making authority is further distributed among the owners of multi-unit buildings, pursuant to general property law. Because STRs are essentially treated as potential nuisances, the logic of public and private nuisance should apply; yet the approach taken under reformed law creates public-private links which conflate the underlying rationales of these doctrines, compelling courts and regulators to navigate a fine line between constitutional property protections and the imperatives of affordable housing policy.

***Key words**: short-term rentals, Airbnb, nuisance, condominium, property.*

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1. INTRODUCTION

The idea of short-term hospitality is not a new one;[1] neither is the sharing economy. However, the platform environment is novel, and this has at times created new legal and regulatory challenges (e.g., in interpretations of occupancy control and taxation rules)[2] or exacerbated existing issues (e.g., discrimination[3]), fueling a supranational interest in the field.[4]

STRs have become a publicly contested social issue in many, mostly tourism-oriented countries, in the context of sustainable housing. In response, STR regulation typically addresses two principal concerns: (1) housing affordability and (2) transparency. Housing affordability has generally been found to suffer under STR pressure, because STRs induce an inflationary effect on rent levels, and reduce the availability of long-term housing.[5] Next to affordability, other complex issues, most importantly overtourism[6] (with its associated effects including increased congestion, noise, and waste, reduced public safety, and changes in the urban landscape that cater to tourism) and gentrification[7] are typically highlighted as problematic. STRs have consequently gained a profound political dimension,[8] both in terms of local political processes, and

1 See Zoltes, O. Z., Stern, R.: Welcoming the Stranger: Abrahamic Hospitality and Its Contemporary Implications, New York: Fordham University Press, 2024.

2 See Kaplan, R. A., Nadler, M. L.: Airbnb: A case study in occupancy regulation and taxation, *University of Chicago Law Review Dialogue*, 82 2015, p. 103.

3 See Hayat Brown, N.: Accommodating bias in the sharing economy, *Brooklyn Law Review*, 83(2) 2018, p. 613; Smith, D.: Renting diversity: Airbnb as the modern form of housing discrimination, *DePaul Law Review*, 67(3) 2018, p. 6.

4 See Hatzopoulos, V., Roma, S.: Caring for Sharing? The Collaborative Economy Under EU Law, *Common Market Law Review*, 54(1) 2017, p. 81.

5 See Mikulić, J, et al.: The effect of tourism activity on housing affordability, *Annals of Tourism Research*, 90 2021, p. 103264; Lee. D.: How Airbnb short-term rentals exacerbate Los Angeles's affordable housing crisis: Analysis and policy recommendations, *Harvard Law & Policy Review*, 10 2016, p. 229.

6 See Milano, C., Novelli, M., Cheer, J. M.: Overtourism and Tourismphobia: A journey through four decades of tourism development, planning and local concerns, *Tourism Planning and Development*, 16(4) 2019, p. 353; Celata, F., Romano, A.: Overtourism and online short-term rental platforms in Italian cities, *Journal of Sustainable Tourism*, 30(3) 2020, p. 20.

7 See Amore, A., de Bernardi, C., Arvanitis, P.: The impacts of Airbnb in Athens, Lisbon and Milan: a rent gap theory perspective, *Current Issues in Tourism,* 25(20) 2020, p. 3329; Wachsmuth, D., Weisler, A.: Airbnb and the rent gap: Gentrification through the sharing economy, *Environment and Planning A: Economy and Space*, 50(6) 2018, p. 1147.

8 See Novy, J., Colomb, C.: *Protest and resistance in the tourist city*, London: Routledge, 2017.; Novy, J., Colomb, C.: Urban tourism as a source of contention and social mobilisations: A critical review, *Tourism Planning and Development*, 16(3) 2019, p. 358; Milano, C., Koens,

indirect political consequences. The issue of transparency concerns a relatively high number of STRs operating illegally[9] due to poor data collection, sharing, and enforcement. It is illustrative that Paris is one of the cities that operates an extremely high number of illegal STRs (25000 out of 95000).[10]

Short-term rentals (STRs) are typically operated as three distinct types: (1) professional (2) occasional whole property and (3) occasional shared property.[11] The professional STR is a unit used for this purpose exclusively; it is otherwise unoccupied and the owner resides elsewhere. The occasional whole property (entire dwelling) is an STR where the host principally resides in but occasionally rents it out on a short-term basis. The third type is the occasional shared- property (partial dwelling) STR where the owner principally resides in and is present during the stay, renting out only a part of the unit (one or several rooms).[12]

This paper proceeds as follows. Part II analyzes STR regulation under supranational (EU) law, including the freedom to provide services under the Services Directive and the new STR regulation that is yet to apply starting next year. Part III and IV examine STR controls under public and private law, respectively, adopting a comparative approach in each regulatory segment, with examples from Croatian and French law. Part V goes on to discuss the public vs. private controls. Part VI gives conclusions to this paper.

2. STR REGULATION UNDER EU LAW

STRs are, for the most part, not regulated under EU law, which makes sense considering that housing and urban planning regulation are overwhelmingly locally oriented. However, there are two segments that do fall under EU law: STRs as services provided under the freedom to provide services, and transparency obligations related to STR activity.

K., Russo, A. P., The politics of urban tourism (im)mobilities: Critical perspectives on inequalities and social justice, *Cities*, 152 2024, p. 105148.

9 See Colomb, C., Moreira de Souza, T.: Illegal short-term rentals, regulatory enforcement and informal practices in the age of digital platforms, *European Urban and Regional Studies*, 31(4) 2024, p. 328.

10 blick.ch. 30.01.2025. Paris a-t-elle trouvé la solution contre les locations illégales?

11 See Colomb, C., Moreira de Souza, T: Regulating Short-Term Rentals. Plaform-based property rentals in European cities: the policy debates, London: Property Research Trust, 2021, p. 15.

12 See Adamiak, C.: Current state and development of Airbnb accommodation offer in 167 countries, *Current Issues in Tourism*, 25(19) 2022, p. 3131.

2.1. FREEDOM TO PROVIDE STRS AS SERVICES ON THE INTERNAL MARKET

The invocation of freedom to provide services under EU law in the STR industry has become prominent in the context of locally imposed restrictions affecting internal market transactions. The leading case from the ECJ is *Cali Apartments,* decided in 2020,[13] which involved judicial proceedings against STR (Airbnb) landlords in Paris, who were found to have been operating STRs without prior authorization under the French Housing and Construction Code, and subsequently fined and ordered to change the use of the property back to residential.[14]

Cali Apartments appealed, arguing that this violated EU law because the restriction was not justified by an overriding reason relating to the public interest, that the objective pursued by that legislation could be attained by means of a less restrictive measure, which were conditions under Article 9(1)(b) and (c) of the Services Directive[15] and that the implementation of that restriction is not dependent on criteria meeting the requirements of Article 10 of that directive.[16] Consequently, the ECJ had to first decide on the applicability of the Services Directive to STRs, and then whether the objective of tackling the shortage of rental housing constituted an overriding reason relating to the public interest capable of justifying a national measure which requires authorization, and whether it was proportionate.[17] The French authorization scheme is presented later in this paper in more detail.

The ECJ found that indeed STR as an economic activity was a service under Art. 4(1) of the Services Directive.[18] An argument was made that the rules in question could not be tested under the Services Directive because the Directive, under Rec. 9 applies only to requirements which affect the access to,

[13] Joined cases Cali Apartments SCI and HX v. Procureur général près la cour d'appel de Paris and Ville de Paris, C 724/18 and C 727/18, ECLI:EU:C:2020:743. See Pantazi, T.: Regulating short-term rentals: Joined cases C-724/18 and C-727/18 Cali Apartments, *Maastricht Journal of European and Comparative Law*, 28(4) 2021, p. 573; Hatzopoulos, V.: Disarming Airbnb–Dismantling the Services Directive? Cali Apartments, *Common Market Law Review*, 58(3) 2021, p. 905; Badura, E.: The Judgment of the European Court of Justice of 22 September 2020 C-724/18 and Its Impact on the Real Estate Market in the EU, *Zbornik Pravnog fakulteta u Zagrebu*, 71 2021, p. 77.

[14] See id. para. 21.

[15] European Parliament: *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.

[16] See *Cali Apartments*, supra, para. 22.

[17] See id. para. 26.

[18] See id. para. 34.

or the exercise of, a service activity, and does not apply to requirements such as rules concerning the development or use of land, town and country planning. The argument suggested that the authorization scheme is not targeting a service but is rather an urban planning policy tool. This argument was not accepted by the Court, which held that irrespective of the broader subject matter of the authorization scheme, "the fact remains that it is aimed, not at all persons indiscriminately, but, more specifically, at those planning to provide certain types of service, such as those relating to the repeated short-term letting of furnished immovable property to a transient clientele which does not take up residence there"[19] because only some STRs (those in business over four months per year) were affected.

In its analysis of overriding reasons, the Court noted that Article L. 6317 of the Construction and Housing Code is

> "intended to establish a mechanism for combating the rental housing shortage, the objectives of which are to deal with the worsening conditions for access to housing and the exacerbation of tensions on the property markets, in particular by addressing market failures, to protect owners and tenants, and to increase the supply of housing while maintaining balanced land use, since housing is a basic necessity and the right to decent housing is an objective protected by the French Constitution."[20]

All of this, the Court held, constituted an overriding reason relating to the public interest.[21] The Court explained they were supplied by a study that confirmed that STRs had a significant inflationary effect on rent levels, particularly if the activity was continued for more that 120 days per year with entire units, which warranted their conclusion.[22] The measure was also held proportionate, because the objective could not 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*."[23] This point references an argument put forward by the City of Paris that "the use of a declaratory system accompanied by penalties is not capable of effectively pursuing the objective".[24] This is very evidently so, as the case before the Court involved illegal conversion in spite of an extant ex ante authorization scheme.

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[19] Id. para. 42.

[20] Id. para. 65.

[21] Id para. 66.

[22] Id. para. 69.

[23] Id. para. 75.

[24] Id. para. 74.

Finally, the Court addressed the proportionality of the French scheme in terms of Art. 10(2)(c) of the Services Directive, under which prior authorization (under Article L-631-7 of the French Construction and Housing code) could be made subject to an offset requirement such that non-residential premises were converted to residential premises,[25] holding that this was "in principle, a suitable instrument"[26] because it *"contributes to maintaining an amount of accommodation on the long-term rental market that is at least consistent and, accordingly, contributes to the objective of maintaining affordable prices on that market by combating rent inflation."*[27]

The Cali Apartments opinion is an important one, because it made it abundantly clear that regulating STRs is generally acceptable under the Services Directive if there is an affordability crisis that needs to be mitigated or prevented. However, note that Article L-631-7-1 of the Construction and Housing code provides for an offset condition by making it dependent on social diversity objectives based on the characteristics of the housing market and the need to "not make the housing shortage worse". This is important, because in this case it seems clear that there was a present housing shortage that needed to be addressed. One may wonder whether the outcome would have been the same if there was no shortage, but diversity objectives were still pending. Or if there had been no diversity objectives at all, but other urban planning objectives, such as densification. It is difficult to predict, however, the fact that urban planning typically enjoys broad discretion suggests that even in cases where no immediate housing shortage was present, STR controls would still be allowed under the Services Directive.

2.2. TRANSPARENCY UNDER THE STR REGULATION

A new piece of supranational regulation appeared last year, with the passage of Regulation 2024/1028 on data collection and sharing relating to short-term accommodation rental services[28] which will only become applicable in May 2026.[29] The Regulation does not regulate STR authorization schemes, nor

[25] Id. para. 81.

[26] Id. para. 84.

[27] Id. para 85.

[28] European Parliament: *Regulation (EU) 2024/1028 of the European Parliament and of the Council of 11 April 2024 on data collection and sharing relating to short-term accommodation rental services and amending Regulation (EU) 2018/1724, OJ L*, 2024/1028, 29.4.2024. [See] Kramer D.: Airbnb, the city, and the drive for European integration, *European Law Open*, 3(3) 2024, p. 500.

[29] See id. art. 19.

contract law or property law issues relating to STRs. Rather, it addresses the problem of a "lack of reliable information" [30] which "makes it difficult for authorities to assess the actual impact"[31] of STRs and "develop and enforce appropriate and proportionate policy responses."[32] It creates a set of harmonized rules on STR data generation and data sharing. It applies to all types of STRs, as hosts are defined to include all providers of STR services, including professional or non-professional, regular or temporary,[33] as defined by domestic law.[34]

Notably, Airbnb and other platforms are not classified as real estate agents, or providers of accommodation under EU law, but providers of intermediation services classified as information society services.[35] However, their upstream position in the market makes the downstream market, as well as those who wish to control it, beholden to them. This is why the Regulation targets the platforms, though not particularly restrictively, with most restrictions still positioned downstream.[36]

The most important features covered by the Regulation are registration, verification, and compliance. Member States that impose data sharing requirements must establish a public and easily accessible[37] registration system.[38] The registration system should be based on self-reporting by hosts,[39] and should include

30 Id. rec. 1.

31 Id.

32 Id.

33 Id. art. 3(2).

34 Id. art. 3(4).

35 See Case C-390/18 Airbnb Ireland, EU:C:2019:1112. Szpunar, M.: Reconciling New Technologies with Existing EU Law – Online Platforms as Information Society Service Providers, *Maastricht Journal of European and Comparative Law*, 27(4) 2020, p. 401; Chapuis-Doppler, A., Delhomme, V.: : Regulating Composite Platform Economy Services: The State-of-play After Airbnb Ireland, *European Papers*, 5 2020, p. 411; Van Cleynenbreugel, P.: Accommodating the freedom of online platforms to provide services through the incidental direct effect back door: Airbnb Ireland, *Common Market Law Review*, 57 2020, p. 1201; Morais Carvalho, J.: Airbnb Ireland Case: One More Piece in the Complex Puzzle Built by the CJEU Around Digital Platforms and the Concept of Information Society Service, *Italian Law Journal*, 6 2020, p. 463; Kramer, D., Schaub, M.: EU Law and the Public Regulation of the Platform Economy: The Case of the Short-Term Rental Market, *Common Market Law Review*, 59(6) 2022, p. 1633.

36 See Kramer D.: Airbnb, the city, and the drive for European integration, *European Law Open*, 3(3) 2024, supra, p. 512 (explaining regulatory chill) and p. 523 (explaining the difficulties in the legislative process).

37 See STR Regulation art. 4(5).

38 See id. art. 4(2).

39 See id. art. 4(3)(a).

an automatic and immediate issuance of a registration number,[40] as well as technical means to enable the assessment of their validity.[41] Registration numbers must be provided to the STR platform.[42]

The Regulation provides, in detail, the information collected for units[43] and for the host.[44] Hosts are responsible for the accuracy of the information,[45] and the competent authority is authorized to verify the declaration and any supporting documentation after registration.[46] This *ex post* verification can result in findings of incomplete or incorrect data, resulting in further action, and, ultimately, suspension and removal of the unit from the market.[47] These actions are ordered against the STR platform, who removes or disables access to the listing without undue delay, essentially forcing the platforms to act as enforcers, as they are in the best position to do so. Further to that, the Regulation mandates platform design that promotes compliance ("compliance by design"), meaning that STR platforms must design their interface such that hosts must self-declare and provide a valid registration number prior to listing, and also actively perform random checks on a regular basis for valid registration numbers,[48] and report back to the national authority.[49] Finally, the Regulation requires that STR platforms collect and on a monthly (or quarterly) basis transmit to the national single digital entry point activity data per unit.[50]

3. STRS UNDER PUBLIC LAW

Public law is traditionally the primary, and most valuable tool in STR control, usually including two major instruments: (1) authorization (permitting and licensing) and (2) taxation. Authorizations usually involve restrictions based on STR type and its location. The literature[51] identifies several types of re-

40 See id. art. 4(3)(b).

41 See id. art. 4(3)(f).

42 See id. art. 4(3)(h).

43 See id. art. 5(1)(a).

44 See id. art. 5(1)(b)-(c).

45 See id. art. 5(6).

46 See id art. 6(1).

47 See id. art. 6(3).

48 See id. art. 7(1).

49 See id. art. 7(2).

50 See id. art. 9.

51 See Nieuwland, S., Van Melik, R.: Regulating Airbnb: how cities deal with perceived negative externalities of short-term rentals, *Current Issues in Tourism*, 23(7) 2020, p. 81; Guttentag,

strictions, sometimes categorized as quantitative and qualitative. Quantitative restrictions include location-based limits (e.g., a cap on STR units in a specific area) or duration limits (e.g., maximum days rented per year). Qualitative restrictions include restrictions on certain types of STRs (e.g. whole property STR bans). These restrictions are typically imposed through administrative authorization and registration procedures. Taxation, which is beyond the scope of this article, involves the levy of specific taxes that target STR hosts such as rental income tax, or tourist tax.

3.1. STRS UNDER FRENCH PUBLIC LAW

French law governing STRs is richly developed, the most recent development occurring in November 2023 with the passage of the Loi Le Meur.[52] The system includes both authorization and registration, depending on the type of STR, and is controlled by the Tourism Code[53] and the Construction and Housing Code.[54]

STRs are defined in the Tourism Code as units rented on a daily, weekly, or monthly basis.[55] This only applies to entire units, so partial-property STRs (Type 3) are not covered. The Tourism Code establishes a registration system, wherein, depending on the local rules, each STR landlord must make a prior declaration to the local mayor. This declaration triggers an immediate issuance of a declaration number.[56]

A fundamental legal distinction exists between primary and non-primary residences. Primary residences may be operated as STRs (Type 2) without an authorization to change the use of the unit,[57] because the unit is still primarily used as a residence. Primary residences are occupied as such at least eight

D.: Airbnb: disruptive innovation and the rise of an informal tourism accommodation sector, *Current issues in tourism*, 18(12) 2015, p. 1192; Hübscher, M., Kallert, T.: Taming Airbnb locally: analysing regulations in Amsterdam, Berlin and London, *Tijdschrift voor economische en sociale geografie*, 114(1) 2023, p. 6.

[52] Loi n° 2024-1039 du 19 novembre 2024 visant à renforcer les outils de régulation des meublés de tourisme à l'échelle locale, JORF n° 0274 du 20 novembre 2024.

[53] Code de tourisme.

[54] Code de la construction et de l'habitation (CCH).

[55] Code de tourisme, art. L. 324-1-1(I).

[56] Id. art. L. 324-1-1(III).

[57] See CCH art. L. 631-7(11).

months per year by the tenant, their spouse, or by a dependent.[58] The Tourism Code provides that a primary residence STR may not be operated over 120 days during the same calendar year, except for professional obligations, health reasons or force majeure.[59]

A Type 1 STR unit is not a residence, so a residential unit must be converted to a Type 1 STR[60] which may require prior authorization, if subject to a decision by the local authority.[61] Such conversions (changes of use) may be authorized as permanent or temporary (depending on local rules). Temporary authorizations of less than 5 years may be further regulated by municipal council decisions,[62] including conditions that may relate to the duration of the rental, the physical features of the unit, as well as its location, particularly given the features of the housing market and the need to avoid worsening the housing shortage.[63] They may also set out a maximum number of temporary authorizations or a maximum percentage of temporary authorized units per geographically designated area.[64] In such cases temporary authorizations are only granted against (monetary) compensation.[65]

Permanent authorizations may be contingent upon compensation in the form of converting non-residential property into housing. In such cases, the authorization is issued *in rem*, i.e. it runs with the unit, and is registered as such in the land register, unlike in other cases where the authorization is issued *in personam*.[66] The compensation criteria are set out with reference to social diversity, and particularly the features of the housing market and the need to avoid worsening the housing shortage.[67] For example, in Paris, the converted prop-

[58] See Loi n° 89-462 du 6 juillet 1989 tendant à améliorer les rapports locatifs et portant modification de la loi n° 86-1290 du 23 décembre 1986, art 2.

[59] See CT art. L. 324-1-1(IV). The local community may lower this limit to 90 days (e.g. Paris).

[60] See id. art. L. 631-7(8).

[61] See id. art. L. 631-7(1).

[62] For example, for Paris, see Règlement municipal fixant les conditions de délivrance des autorisations de changement d'usage de locaux d'habitation et déterminant les compensations en application de la section 2 du chapitre 1er du titre III du livre VI du Code de la construction et de l'habitation adopté par le Conseil de Paris dans sa séance des 11 au 14 février 2025, https://cdn.paris.fr/paris/2025/03/03/2025-dlh-44-reglement-municipal-sur-les-changements-d-usage-consolide-03-03-25-Rgn7.pdf

[63] CCH, art. L. 631-7-1A(2).

[64] Id. art. L. 631-7-1A(3).

[65] Id. art. L. 631-7-1A(7).

[66] Id. art. L. 631-7-1(2).

[67] Id. art. L. 631-7-1(4).

erty must be located in the same *arrondissement* and must be of equivalent floor space,[68] or occasionally triple (for arrondissements exceeding 50 STR registrations per 1000 principal residences[69]) or double (for areas designated as "sectors of reinforced compensation"[70]) the converted floor space. Further to the permanent change of use authorization, a declaration of a change of purpose (*changement de destination*) is also required under urban planning legislation.[71]

Furthermore, there are numerous qualitative restrictions in place. Specifically, for STRs, in all cases the issuance of the change of use authorizations is contingent on presentation of an energy performance certificate with a rating A-E (A-D after January 1, 2034).[72] Non-specific restrictions applicable to STRs indiscriminately are governed as "decent housing" requirements.[73]

3.2. STRS UNDER CROATIAN PUBLIC LAW

Croatian tourism law was recently reformed through amendments which target STRs as less desirable compared to other hospitality establishments.[74] The system remains very loosely regulated, but this may soon change. The revised Hospitality Act[75] differentiates between "hosts" and "short-term renters." Hosts are a subcategory of short-term renters who live in the same building, city, or county where the unit is located, and the building is not a multi-unit residential

[68] Règlement municipal, supra, art. 2(I). Doubling can be avoided in cases of conversion into 20-year social housing or baux réels solidaires.

[69] See id. Annex VI (which includes arrondissements 1-11 and 18).

[70] See id. Annex I (which includes the entirety of arrondissements 1-9, and partially 10-18).

[71] See Code d'urbanisme art. R. 421-17(2).

[72] Id. art. L. 631-7-10.

[73] See Décret n°2002-120 du 30 janvier 2002 relatif aux caractéristiques du logement décent pris pour l'application de l'article 187 de la loi n° 2000-1208 du 13 décembre 2000 relative à la solidarité et au renouvellement urbains.

[74] The Hospitality Act (Revisions) Bill states that short-term vacation rentals account "for 61% of the supply … and has the highest average annual growth rate (4.5%) compared to other types of accommodation" and that they "have begun to significantly impact real estate prices in the country, reducing their availability and increasing costs for long-term rentals and housing. The inadequate structure and quality of accommodation, along with the uncontrolled growth of seasonal rentals that operate mainly during one part of the year, are creating increasing pressure on space (environmental and spatial sustainability). This results in lower revenue per overnight stay compared to similar countries, generally reducing the competitiveness of Croatian tourism." Hospitality Act (Revisions) Bill, P. Z. 106, 2024, p. 2.

[75] Narodne novine: *Zakon o ugostiteljskoj djelatnosti*, Zagreb: Narodne novine d.d., 85/2015, 121/2016, 99/2018, 25/2019, 98/2019, 32/2020, 42/2020, 126/2021, 152/2024.

building or a mixed-use building.[76] This newly-coined distinction is designed to facilitate distinctions in taxation, which are expected to be introduced in the future, but currently has no bearing on hospitality service licenses. These are issued by the local authority[77] pursuant to local government rules on number, type, and category of hospitality establishments providing accommodation services, as well as rules covering capacity for a tourist destination.[78]

The current system remains untested, as the restrictions on the issuance of hospitality service licenses (dependent on local capacity calculations) were only introduced in the latest revision.[79] The Tourism Act[80] authorizes local government, in order to achieve sustainable development of tourism, to pass decisions on the number, type, and category of hospitality establishments and accommodation facilities within part or the entire area, based on carrying capacity calculations, and the capacity of accommodation facilities in the destination, the management of tourist flows, etc.[81] Licensing authorities must adhere to such decisions when issuing hospitality service licenses.[82] This effectively authorizes quotas, and similar restrictions which may be designed at the local level and is clearly aimed at reducing STRs in areas experiencing overtourism.[83] As of now, no such restrictions have been implemented.

Unlike French law, Croatian planning law is less clear on the change of use authorizations. These are envisaged under the Spatial Planning Act[84] as "per-

[76] See Hospitality Act art. 30.a.

[77] See id. art. 19-20.

[78] See id. art. 21.a.

[79] See Hospitality Act (Amendments), 152/2024.

[80] Narodne novine: *Zakon o turizmu*, Zagreb: Narodne novine d.d., 156/2023.

[81] See id. art. 31(1).

[82] See id. art. 31(3).

[83] The Tourism Bill explains that "local self-government units facing overtourism and a shortage of affordable long-term housing for local residents are granted the authority to adopt decisions—based on carrying capacity calculations—regulating the number, type, and category of hospitality establishments and accommodation facilities within part or the entire area of the local self-government unit, as well as the capacity of accommodation facilities in the destination." Tourism Bill, P.Z. 547, 2023, p. 31. This is preceded by references to the Constitutional provisions on restricting ownership and entrepreneurship which seems to indicate concern with purported constitutional tensions. These concern the same issues as those under the Services Directive, discussed above, and there seems to be no doubt under EU law that housing affordability represents an overriding public interest that warrants (proportionate) restrictions. A similar justification would be available under the proportionality clause (art.16) of the Constitution.

[84] Narodne novine: *Zakon o prostornom uređenju*, Zagreb: Narodne novine d.d., 153/2013, 65/2017, 114/2018, 39/2019, 98/2019, 67/2023.

mits for a change of purpose and use" of an independent functional unit.[85] They can be issued if the new purpose of the unit is in accordance with the spatial plan and meets the conditions prescribed by special regulations for the new purpose.[86] It is not entirely clear, however, whether a conversion from a residence to an STR unit is considered a "change of purpose and use" in terms of the Spatial Planning Act. It does not seem that this has been so far the case, as neither the Tourism Act nor the Hospitality Act makes any reference to it. However, it would certainly make sense to consider any conversion of a primary residence to a Type 1 STR as a change of use subject to authorization because STR is effectively not residential use. Note that a similar situation existed in France before 2011, when the courts held that STRs did constitute a change of use.[87] The Loi ALUR[88] later introduced an express provision into the Construction and Housing Code to that effect[89] resolving any lingering doubt. Unfortunately, there is no such provision under Croatian law.

4. STRS UNDER PRIVATE LAW

Private law regulation of STRs relates to the exercise of (mostly) ownership, which includes short-term letting, as against other owners or property right holders. Typically, these include: (1) co-owners in the same building, (2) owners of neighboring property, (3) landlords, and (4) mortgage lenders. The first category is central, because the strength of competing rights is strongest among co-owners. The typical situation involves condominiums, where one or more unit owners in a residential building operate STRs. The second category includes neighboring properties, i.e. the conflicting parties are not legally joined in ownership (condominium) but are independent owners of adjacent buildings. The third category includes landlord-tenant relationships in tenant-operated STRs. The fourth category includes mortgage lenders who may have contractual rights in terms of decision-making about STR operations in units that are encumbered by a mortgage or lien. The third and fourth categories will not be discussed further, as these are usually extensively governed by professionally drafted contracts, which sufficiently resolve most issues.

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85 See id. art. 151(1).

86 See id. art. 153(1).

87 See Cour d'appel de Paris, 24 mai 2011, nº 10/23802; Tribunal de grande instance de Paris, 9 août 2012, nº 12/54776 ; Cour d'appel de Paris, 4 septembre 2012, nº11/58295.

88 Loi n° 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové, JORF n° 0072 du 26 mars 2014.

89 See CCH art. L. 631-7(8).

Disputes between unit owners and neighboring property owners are typically resolved under private law using the doctrine of (private) nuisance. STRs are especially prone to generating nuisances, including excessive noise and vibrations, frequent movement, waste, nighttime glare, and occasionally odors. They may also increase safety concerns due to provision of easy and frequent access to the building, as well as costs due to faster degradation of common parts of the building, increased use of cleaning and other auxiliary services (e.g. concierge staff). Occasionally they are associated with criminal, illegal, or suspicious activity (drug dealing, drug use, prostitution, production of pornographic material etc.). This is why nuisance represents a good analytical framework for approaching STRs as well.

4.1. STRS UNDER FRENCH PRIVATE LAW

Under French condominium law, each co-owner (unit owner) has the right to use and enjoy their unit freely if this does not infringe the rights of other co-owners nor goes against the intended use of the building.[90] This means that by default each unit owner is free - in terms of property law - to rent out the unit, including on a short-term basis, unless there is some harm caused to other unit owners or such use is contrary to the intended use of the building.

Note that condominiums are always regulated under bylaws that may contain rules, including prohibitions on STRs that will restrict the freedom of unit owners. Because bylaws are contractual by their nature, such clauses could be supported by the owners' waiver of this stick in the bundle. However, the law is clear that bylaws cannot impose any restrictions on the rights of co-owners except those justified by the intended use of the building, as defined in documents, its characteristics, or its location, even though the application of these principles to STRs remains extremely contentious.[91] Cases with defined restrictions (e.g. exclusively residential buildings) are easier to resolve, but less common, particularly in buildings that were built before STRs became popular. Under the new Loi Le Meur, all future bylaws must contain specific clauses on STR prohibitions or authorizations[92] in order to avoid uncertainty, but it

[90] Loi n° 65-557 du 10 juillet 1965 fixant le statut de la copropriété des immeubles bâtis (Condominium Act), art. 9. See Cass. Civ. 3e 20 janvier 2004, no. 02-17.120.

[91] Condominium Act art. 8(1). See e.g. Cass. 3e civ., 8 juin 2011, no 10-15.891 (clause requiring STR authorization by assembly void if liberal professional activity allowed). But see, Cass 3e civ., 8 mars 2018, no 14-15.864 (STR violates bylaws excluding all commerical activity). But see Cass 3e civ., 25 janv. 2024, no 22-21.455 (no commercial activity if STR does not include hotel-like services, e.g. breakfast, housekeeping, and reception).

[92] See id. ar. 8-1-1. This applies to bylaws drafted after November 21, 2024.

remains somewhat unclear whether this choice is binary, or if prohibitions would now be allowed even if they aren't justified by the intended use of the building.[93]

If the condominium bylaws say nothing on the matter, a vote is required only if the STR infringes on the rights of other unit owners or violates the intended use of the building (e.g., residential, commercial, or mixed-use).[94] If in fact there is a change that interferes with the intended use of the building, then a unanimous decision is required to authorize the change.[95] The literature also supports the view that a decision declaring there is no interference with the intended use of the building can be adopted by a simple majority.[96]

The Loi Le Meur changed the majority necessary for certain decisions under existing bylaws. A modification of condominium bylaws that would prohibit Type 1 (secondary) STRs now requires a two-thirds majority.[97] This applies only if the bylaws already prohibit any commercial activity in units that are not specifically designated for commercial use.[98] This means that an STR prohibition may be introduced (by way of modification) with a two-thirds majority vote if the building is residential. As mentioned above, in such buildings the default position allows STR operation, unless it is of commercial nature (i.e. with hotel-like services provided).[99] In buildings with designated commercial use, no such decision can be taken at all because STRs are allowed by virtue of such designation. Unanimous approval is still required in residential buildings for Type 2 and Type 3 STRs prohibitions.

Most cases will be resolved according to intended use of the building criterion, but even if this is not an issue, the question of disturbing other unit owners may still arise. These cases are more difficult to solve, because they require a finding that the STR violates the rights of other unit owners. Such a finding constitutes a typical private nuisance (*trouble anormal de voisinage)*[100] which

[93] See Lagraulet, P.-E.: Droit de la copropriété et loi Le Meur, *AJDI*, 2025, p. 103.

[94] See Naudin, B.: *La copropriété*, Paris, 2024, p. 64.

[95] See id. art. 26.

[96] See id. art. 24(I). See Terré, F.; Simler, P.: *Les biens*, Paris: Dalloz, 2018, para. 717.

[97] See id. art. 26(1)(d).

[98] See id. art. 26(2).

[99] This change in majority was obviously motivated by the recent change in the case law which classified some STRs outside the commercial sphere. In such cases unanimity practically meant that a prohibition was unavailable because the STR owner's sole vote was sufficient to maintain the status quo.

[100] Nuisance rules apply to condominium, as well as neighboring property. See Civ. 2e, 17 mars 2005, Bull. civ. II, n° 73, D. 2005; See Terré, F., Simler, P., Les biens, Paris, 2018, para.

requires not only proof of a disturbance, but also a qualification of such disturbance as "abnormal" i.e. excessive. The Civil Code regulates nuisance as a tort, providing strict liability[101] but for the discussion on STRs the important issue is the excessiveness of the disturbance, defined as "exceeding the normal inconveniences of neighborhood relations."[102] Therefore, the assembly is authorized to vote against STR operation only if there is an actual and excessive disturbance present, and not a simple fear of such disturbances.[103] The absence of nuisance, however, must also effectively be decided unanimously, because each co-owner may seek an injunction if there is a private nuisance to their own unit.[104]

4.2. STRS UNDER CROATIAN PRIVATE LAW

Croatian law has recently undergone a relatively substantial reform of condominium law with the passage of the Building Management and Maintenance Act (BMMA).[105] The Act covers condominiums in residential buildings with at least 4 residential units (multi-unit buildings) or 3 residential units and 1 commercial unit (mixed-use building).[106]

Under the BMMA, STRs may be operated in a building only with prior written consent of at least two-thirds of all co-ownership shares,[107] including all unit owners whose walls, floors, and ceilings are adjacent to the STR unit,[108] but excluding such unit owners who already own STR-operated units.[109] Croatian law does not distinguish here between the various STR types, so these requirements are necessary even for Type 2 and Type 3 STRs, i.e. principal residence STRs, which are typically not subject to restrictions.

713. See Vermeulen, N., Trouble anormal du voisinage : il faut que tout change pour que rien ne change, *AJDI*, 2024 p. 507; Marguénaud, J.-P., Les troubles de voisinage combattus par le droit au respect du domicile et de la vie privée, RTD civ. 1996, p. 507.

101 See CC art. 1253.

102 Id. See Civ. 3e, 24 oct. 1990, n° 88-19.383.

103 See Cass. civ. 3e, 14 octobre 2014, nº 13-20.585.

104 See Cass. civ. 3e, 29 février 2012, nº 10-28.618.

105 Narodne novine: *Zakon o upravljanju i održavanju zgrada*, Zagreb: Narodne novine d.d., 152/2024.

106 See BMMA art. 1 and 4.

107 See BMMA art. 34(1).

108 See BMMA art. 34(1).

109 See BMMA art. 34(2).

The co-owners' consent is always temporary, because it must include a fixed term, no less than five years.[110] It may also be revoked, by simple majority, if at least three house rules violations occur in a period of two years.[111] Croatian law insists that consent is issued with a fixed term, which is difficult to justify, because STR operation, in Type 1 STRs, results in a change of use for the unit, which by its very nature is not temporary (particularly given the five year minimum term). It is also at odds with the hospitality licensing scheme, under which authorizations are issued on a permanent basis, with no mandatory renewals.

The consent is binding on future owners of the unit for the same period, even though this fact is not registered in the land registry.[112] The BMMA does provide that bylaws and all subsequent decisions on management are stored in the Register of Condominium Associations,[113] which is a separate register operated by the State Geodetic Administration,[114] however, it does not seem this part of the register is publicly available for inspection.[115]

For new buildings, there is no statute requiring bylaws to address STR permissibility, although they may do so. Bylaws are passed by a simple majority,[116] but a permissive clause would need to be passed by a supermajority.[117] If the bylaws are silent, then the default position appears to be a total STR ban in residential units, and it does not seem to depend on intended use of the building, even in mixed-use buildings.

This certainly represents a departure from the general rules under the Ownership and Other Property Rights Act[118] which still apply to all other condominiums, and which applied to all condominiums prior to January 1, 2025, including STRs.[119] Under this statute, a unit owner manages the unit on behalf of all co-owners and is authorized to exercise all incidents of ownership as if

[110] See BMMA art. 34(4).

[111] See BMMA art. 34(5).

[112] See BMMA art. 34(7).

[113] See BMMA art. 9(4).

[114] See BMMA art. 9(1).

[115] See BMMA art. 9(8).

[116] See BMMA art. 36(3).

[117] See BMMA art. 39(6).

[118] Narodne novine: *Zakon o vlasništvu i drugim stvarnim pravima*, Zagreb: Narodne novine d.d., 91/1996, 68/1998, 137/1999, 22/2000, 73/2000, 114/2001, 79/2006, 141/2006, 146/2008, 38/2009, 153/2009, 90/2010, 143/2012, 152/2014, 52/2025.

[119] See Josipović, T.: Short-Term Rentals in Multi-Owned Buildings, *Osteuropa Recht*, 69(3) 2023, p. 440.

he solely owned it,[120] and is specifically authorized to rent the unit in whole or in part, without seeking approval from the other co-owners, unless otherwise agreed and recorded in the land register.[121] Restrictions in bylaws are generally allowed, and are not explicitly made dependent on the intended use of the building. Further to that, any restriction must be registered in the land register to be effective against a purchaser, similar to French law, which provides that bylaws as well as any modifications are only enforceable against acquirers from the date of their publication in the land register.[122]

A change of use is a modification under Article 82 of the Ownership Act which does not require approval of other unit owners, provided such modification does not infringe upon the legitimate interests of other co-owners that deserve protection, and, in particular, it must not pose a risk to the safety of persons, the building, or other property. In case there is an infringement of legitimate interests that deserve protection, a unanimous decision by all co-owners (unit owners) is required.

The interpretation of this provision before the BMMA with respect to STRs was not entirely clear. If we accept that conversion of a residential unit to an STR represents a change of use, then no approval would be required if such a change does not infringe upon the other unit owners' "legitimate interests that deserve protection." These interests are simply those that encompass enjoyment of their property rights without disturbances.[123] In the author's view, these standards should be interpreted in conjunction with general nuisance rules, which also apply to condominiums.[124]

Nuisance includes both direct and indirect disturbances. Unless directly targeting a neighboring unit or property, disturbances are only prohibited if they are "excessive", which is weighed against the proper (intended) use of the property with respect to its location and time, if they cause significant harm, or are prohibited by regulation.[125] Conversely, if the disturbances are excessive,

[120] See Owership Act art. 79(1).

[121] See id. art. 81(1).

[122] See Loi n° 65-557 du 10 juillet 1965 fixant le statut de la copropriété des immeubles bâtis art. 13.

[123] This would imply that some interests are not legitimate, and that even some legitimate interests are not deserving of protection, but there is no guidance in existing case law on the matter. Illegitimate interests would be ones not directly connected to ownership of the unit (e.g. pet upset with visitors) or are illegal (e.g. racism); legitimate interests that don't deserve protection would be interests that are directly connected to ownership of the unit but could be considered extraneous (e.g. irritation in presence of children).

[124] See Ownership Act art. 100(5).

[125] See Owership Act art. 110(1).

but the activity causing them is authorized (permitted) by an administrative authority, injunctive relief is unavailable, but the affected owners may seek compensation (damages).[126]

By application of this logic to STRs, no approval would be required unless the STR operation caused excessive disturbances, which would ultimately depend on the intended use of the building. Hence, we would come to a similar solution as the one under French law, where intended use of the building plays a crucial role in determining the necessity of prior approval. Ultimately, this means that in exclusively residential buildings prior unanimous approval would be required. This is also the solution under Austrian law. Croatian property law is modeled after Austrian law, where condominium is governed under the Wohnungseigentumsgesetz,[127] hence Austrian jurisprudence may offer valuable interpretive guidance. The Austrian Supreme Court held in 2011 ruled that converting a residential unit to an STR infringes on the rights of other unit owners, because it runs against their expected (intended) use of the building as residential.[128] Therefore, prior approval of all unit owners is required.

In mixed-use properties that include commercial activity, no prior consent would be necessary for STR operation, because such operation would be consistent with mixed use. Note, however, that, as previously mentioned, the view that conversion to STR use is not a change of residential use would mean that no approval is ever necessary. Nuisance provisions would still apply, so unit owners who could prove excessive disturbance could still seek an injunction against further STR operation.

The BMMA's final provisions contemplate a 5-year transition period for owners of STR units during which they are required to obtain requisite consent[129] which seems to suggest that previously no such consent was required. Possible explanations vary. No prior consent would have been necessary if STR use was not considered a change of use (i.e. residential), which appears to have been the

[126] See id. art. 110(3).

[127] The original WEG was passed in 1975, and was replaced in 2002 by the Bundesgesetz über das Wohnungseigentum (Wohnungseigentumsgesetz), BGBl. I Nr. 70/2002.

[128] See Nemeth, K., Schramer, M.: Regulating Airbnb in Austria, *Journal of European Consumer and Market Law*, (6) 2018, p. 251. See OGH 3 Ob 158/11 y ("The high frequency of use of the residential building by constantly changing non-residents, which inevitably entails the use of more than one-third of the apartments through the conclusion of accommodation contracts, even at only half capacity per year, and which is very similar to a hotel operation, fundamentally does not correspond to the expectations of the purchasers of a condominium upon conclusion of the contract and their interests in a building dedicated exclusively to residential purposes. It is therefore likely to impair their legitimate interests.").

[129] See BMMA art. 63(2).

prevailing view, though not a particularly persuasive one. Another way to look at it is to imply consent in all cases where STRs remained uncontested, which would still be the case for non-BMMA STRs, while BMMA STRs would now require new approvals. Note that Article 63, Section 3 provides that the transition period does not affect the rights of co-owners to seek legal protection under general property law, which implies the application of the rules on deserving legitimate interests, as well as nuisance, suggesting implied consent.

The difficulty with the implied consent theory is in the fact that it cannot resolve the lack of authorization under planning law, which would again render STR operation potentially illegal. This matters because illegal activities that cause nuisances do not have to be tolerated, excessive or not.[130]

5. VARIETY AND NUANCE IN THE PUBLIC-PRIVATE NEXUS

When discussing public and private controls of STRs it is crucial to note that they serve very different purposes. As discussed above, public law typically involves tourism, housing, and planning regulation. These are all concerned with the effects of STRs on public spaces within the city or region, and the macro-effects on affordable housing and the urban landscape. They can respond to broader societal and economic changes and do not depend on idiosyncrasies specific to individual properties. In contrast, property law is concerned with resolving competing rights over land by distributing power between individuals.

Nuisance law is particularly interesting because it concerns private restrictions on ownership that facilitate coexistence in close communities, and because it lends itself to rich theoretical exploration.[131] Nuisance law typically falls within private law, although common law systems have developed old doctrines on "public nuisance" which historically facilitated the development of modern

[130] See Ownership Act art. 110(1).

[131] See Smith, H. E.: Exclusion and property rules in the law of nuisance, *Virginia Law Review*, 90(4) 2004, p. 965; Ellickson, R. C.: Alternatives to zoning: covenants, nuisance rules, and fines as land use controls, *University of Chicago Law Review*, 40 1972, p. 681, Brady, M. E.: Turning Neighbors into Nuisances, *Harvard Law Review*, 134 2020, p. 1609; Calabresi, G., Melamed, A. D.: Property Rules, Liability Rules and Inalienability: One View of the Cathedral, *Harvard Law Review*, 85 1972, p. 1609; Coase, R. H.: The Problem of Social Cost, *Journal of Law and Economics*, 56(3) 2013, p. 1; Calabresi, G., Melamed, A. D.: Property Rules, Liability Rules and Inalienability: One View of the Cathedral, *Harvard Law Review*, 85 1972, p. 1089; Rabin, E.: Nuisance Law: Rethinking Fundamental Assumptions, *Virginia Law Review*, 63 1977, p. 1299.

zoning.[132] Nuisance law intersects with public law if it defers decision-making on permissibility of a noxious activity to a public authority, rather than the courts, and neighbors. Such is the case under the Croatian Ownership Act, because it provides that permitted (authorized) activities cannot be enjoined even if they cause excessive disturbance (where only damages and abatement are available).[133] There is no such rule under French law, where injunctions are available if the nuisance represents an abnormal (intolerable) disturbance. The solution under Croatian law is a direct legal transplant from Art. 364a of the Austrian Civil Code (ABGB), introduced in 1917 to accommodate industrialization. Its effect is to shift regulatory power to administrative authorities away from the courts, rather than legalize unlimited disturbances. Only disturbances that remain within the regulatory limits (e.g. noise pollution thresholds) must be tolerated, even if they could be considered excessive in particular circumstances.[134] By contrast, the French approach preserves judicial discretion to determine nuisance standards.

For our discussion on STRs this distinction is not particularly relevant, because what matters is whether the decision-making power resides with a public authority or with the unit owners themselves. In the STR context, pre-reform, both systems allocated powers such that the planning authority authorized the existence of an STR in a particular locality (depending on macro-factors), and the condominium members restricted its operation if it violated their rights by seeking injunctions under the law of private nuisance. Ultimately, the STR could be viewed as akin to both a public nuisance controlled by a public authority, and a private nuisance controlled by neighbors.

Post-reform, however, the models we analyzed above contain a more complex structure because they create a nexus between public and private controls. In France, the Loi Le Meur introduced an important innovation: the change of use authorization may only be issued if such change is self-certified as conforming to the contractual stipulations contained in the condominium bylaws.[135] This rule seems innocuous at first glance; history, however, would disagree. According to Art. 19 of the Loi ALUR, the condominium assembly had the right to require a vote of prior approval issued to a unit owner intending to re-

[132] See Schwartz, V. E., Goldberg, P.: The Law of Public Nuisance: Maintaining Rational Boundaries on a Rational Tort, *Washburn Law Journal*, 45 2005, p. 541; Franklin, J.: Zoning ordinances and common-law nuisance, *Syracuse Law Review*, 16(4) 1965, p. 860.

[133] See Ownership Act art.110(3).

[134] See Koziol, H., Bydlinksi, P., Bollenberger, R.: *Kurzkommentar zum ABGB*, Wien, 2023, p. 332 (obligation to tolerate disturbances extends only as far as the scope of the permit and does not apply to cases where they exceed permitted limits).

[135] CCH art. L. 631-7-1A(5).

quest a change of use authorization under the CCH. This provision was struck down by the Conseil constitutionnel in 2014 for violating the constitutional protection of ownership, due to a disproportionate restriction of individual unit owners as against the discretionary powers of the assembly.[136]

Is there a difference between the new regime and the one under the Loi ALUR? The Loi ALUR made the change of use authorization conditional on prior approval by the assembly. Such an authorization was always required in cases of conversion to Type 1 STRs, regardless of condominium bylaws or intended use. This means that in cases where the conversion was not contrary to intended use, the assembly was still granted a discretionary power to decide on the change of use, which is essentially inconsistent with Article 9 of the Condominium act, and consequently in violation of the constitutional protection of ownership. This makes sense because restrictions, even for the benefit of other unit owners in the condominium, still need to have a reasonable justification, and must not stay prone to arbitrary judgement. Under the Loi Le Meur, the requested change of use must simply comply with the bylaws, which in turn must comply with Article 9 of the Condominium act, hence there should be no constitutional breach.[137]

Note that even under the Loi Le Meur, there is a difference as compared to the simple model in that public law still defers initial decision-making to the neighbors, because if the change of use does not comply with the bylaws, no authorization can be issued. This confuses public and private controls which target different facets of the same activity. The choice is, however, deliberate, because even in the mild version of self-certification, it puts additional pressure on potentially illegally operated STRs by requiring such compliance.

[136] See Conseil constitutionnel, 20 mars 2014 N° 2014-691, para. 47 ("the legislator, in an effort to combat the shortage of rental housing, has allowed the general assembly of co-owners of a building to decide to subject any request for authorization to change the use of a residential unit within the co-ownership for short-term rental to transient guests to its prior discretionary approval … has thereby, in a manner contrary to Article 2 of the 1789 Declaration, enabled the general assembly of co-owners to impose a disproportionate restriction on the rights of individual co-owners."). Similar developments are present on the local level. See Tr. Adm. Nice n° 2104077, 31. 1. 2024. (striking down a local regulation conditioning change of use authorization on approval by the assembly because "it allows the general assembly of co-owners to impose a disproportionate restriction on the rights of individual co-owners, in violation of Article 2 of the 1789 Declaration.").

[137] But see Gijsbers, C.: La loi « Le Meur » et la protection constitutionnelle du droit de propriété, *Revue de droit immobilier. Urbanisme – construction*, 2 2025, p. 49 (suggesting a violation).

Under Croatian law, a similar link between public and private controls is established in Hospitality Act, Article 24 by introducing a novel licensing requirement: prior written consent of other unit owners (to be supplied within five years for existing units). Indeed, it closely resembles the French model under the Loi ALUR that adopted the hard version struck down as unconstitutional, forcing French lawmakers to take a softer, nuanced approach under the Loi Le Meur. To boot, in Croatia, the licensing condition was explicitly introduced as a measure of STR control, the stated objective being a reduction of "negative effects" of STRs on affordable housing.[138]

Such reasoning is entirely flawed. The Government invokes the constitutional protection of ownership (of STR unit owners) which it claims should be balanced against a public interest (affordable housing). The restriction, however, is unrelated to the public interest—it makes the authorization conditional on approval by the co-owners (unit owners) in the condominium. Unit owners have no authority, duty, or incentive to protect the public interest, but are motivated by their own personal interests. In fact, it could be argued that individual unit owners lack any incentive to promote housing affordability, as lower prices may adversely affect their unit's value. Their refusal of approval can only be explained by other motives which might be rational, but also entirely irrational. Therefore, in the author's view, the balancing argument only validly applies to permitting restrictions set by the local government (authorization quotas), and not the condominium members' approval.

Balancing on the condominium level concerns property rights, i.e. the right to use and enjoy the unit versus the right to exclude (or be free of interference) that belongs to every other unit owner, and possibly neighbors on neighboring properties. This is typically mediated by nuisance law. The BMMA, in fact, introduced a modified rule that regulates nuisance in multi-unit residential and mixed-use buildings by providing that unit owners do not have to tolerate disturbances caused by commercial activity in an apartment if such activity exposes them to excessive noise or vibrations, and that they may demand such disturbances cease, as well as damages be paid.[139] This rule departs from the

[138] The Hospitality Act (Revisions) Bill states that "considering the negative economic, social, and demographic impact of short-term rentals in multi-unit and mixed-use residential-commercial buildings, as well as the lack of affordable long-term housing for local residents, the public interest, and the principle of proportionality, measures will be introduced to mitigate these negative effects. Since this objective cannot be achieved by other means, as a condition for issuing hospitality permits … in properties located in multi-apartment and mixed-use residential-commercial buildings, it will be required to submit prior written consent from co-owners." Bill, p. 5.

[139] See BMMA art. 33(7).

general rule under the Ownership Act which does not allow neighbors to enjoin a permitted activity, irrespective of the excessiveness of the nuisance.[140]

The placement of this rule is within Article 33 that covers commercial activity in residential buildings, including both registered "quiet and unobtrusive" professional activities and other registered commercial activity[141] (as opposed to Article 34 that covers STRs) would suggest that the exception applies only to such activities, and not to STRs (which would be covered under the Ownership Act). This would mean STRs fall under the general nuisance rules, and that they could not be enjoined as such, unless disturbances caused by them violate the levels of disturbance implied in their operating permits. However, this framework carries less weight after the introduction of mandatory prior approval, because this approval would primarily govern the relationship between unit owners with respect to potential disturbances.

On the other hand, it could also be argued that because STRs are a type of registered commercial activity they are in fact covered by the exception, and that other unit owners are free to seek injunctions for excessive noise and vibrations regardless of the permit. This interpretation should also be contextualized in terms of mandatory prior approval which will primarily govern the relationship between unit owners with respect to disturbances. It may still be useful in case the prior approval does not specify levels of disturbance, where courts would then still assess excessiveness depending on the circumstances in the building. The choice of a property rule (as opposed to a liability rule) may be justified by the proximity of neighboring units which make disturbances more like direct nuisance (which is always enjoinable),[142] as well as the overly simplified idea that prior approval does not imply a waiver of injunctive relief against excessive noise and vibrations.

6. CONCLUSION

Both Croatia and France are Mediterranean countries which heavily rely on tourism, and have thus experienced explosive growth of STRs, raising various concerns, most notably reduced housing affordability, overtourism, and gentrification. Both countries have reacted in a similar fashion, by introducing both public and private STR controls. Recently, both countries have also introduced

[140] See Ownership Act art. 110(3).

[141] Quiet and unobtrusive activites do not require any prior approval, while any commercial activity requires prior approvals identical to those required for STRs (supermajority and adjacent owners).

[142] See Ownership Act art. 110(4).

legislation which tries to reinforce private controls both by facilitating restrictions, and by integrating them with public controls.

The Loi Le Meur has introduced mandatory clauses in all new bylaws allowing or disallowing STRs, and reduced the majority needed to introduce an STR ban in residential buildings, as a consequence of difficulties in positioning STRs in the system as compared to other activities. STRs are not unique in terms of causing discontent among neighbors. Restaurants, bars, night clubs, gyms, dance studios, and music schools are all examples of activities that typically cause concerns. But unlike these activities, they are rentals, so the question is: are they more like long-term rentals, or more like hotels. French case law has evolved to the point where it accepts that sometimes STRs are more like a commercial activity, and at other times more like a long-term rental. The primary criterion applied when assessing an activity under French law is intended use, and not nuisance-in-fact, although the logic behind intended use is very close to nuisance, because any use contrary to intended use may be viewed as presumed nuisance. Intended use sets the normalcy threshold for all condominium members. If the threshold is low (e.g. strictly residential buildings, that prohibit any activity except principal residency) STRs will always present a nuisance, because they are presumed to be excessive disturbances by design. This is possible because members of the condominium, unlike neighbors, regulate their relationship via mutual agreement which sets their expectations *ex ante*. The threshold can also be set higher (e.g. allowing professional activity, or commercial activity), and in such cases the courts will apply the same standard to STRs, because they consider it abusive and unfair if various condominium members are treated differently, even though there is no difference in the level of disturbance. If the threshold is set vaguely, the courts will look to intended use in order to position STRs, and this has presented such difficulties that legislators forced condominium members to make a choice *ex ante* in all future bylaws.

Hence, the default position is no nuisance in case STR use fully conforms to intended use (mixed residential-commercial), and in such cases there is no ex ante prohibition, but ex post nuisance control through the civil justice system. In cases where intended use clearly opposes STR use (exclusively residential), the default position is the ex ante STR ban, because it is an ex ante agreed nuisance, requiring unanimous approval. The novel type of case under the Loi Le Meur is when STR use conforms to intended use in ordinary residential buildings that allow professional, but no commercial activity. In such cases the default position is still no nuisance (because the Cour de cassation allowed STRs to be classified as non-commercial), but the legislator has lowered the voting threshold needed for a ban, because Type 1 STRs still seems removed from non-commercial activity. A potential problem with this logic is that re-

strictions must be justified by intended use (*ex ante*) or nuisance (*ex post*), which is not the case for the novel restriction, so the new rule may still be attacked as disproportionate.

Croatian law is far less nuanced, and this is why the BMMA model suffers from serious constitutional deficiencies. First, it has introduced the consent of a supermajority as a mandatory condition for all STRs, irrespective of type, which obviously cannot be justified by housing affordability. Second, the consent must be given prior to STR operation and does not have to be supported either by intended use or nuisance, which may be qualified as a disproportionate restriction on ownership. The default position under reformed law is a total STR ban, whereas under the Ownership Act, the position is similar to French law, such that no prior approval is necessary if STRs conform with the intended use of the building. The importance of default positions cannot be overstated, because they are sticky and are often difficult to change, and thus were the main target of the reform. Third, there is no distinction made between residential and mixed-use buildings, and it is certainly difficult to accept that in mixed-use buildings STRs present the same issues as in purely residential buildings. The only exception under the BMMA is presumed consent of existing STR owners, but no such presumed consent exists for owners of units which are used for commercial activity. Similarly, the veto power of adjacent unit owners may also be challenged on proportionality grounds, as the rule simply assumes that all STR activity is noxious *per se*. Finally, the consent, even when given, is always only temporary, which may also be seen as disproportionate. In light of these concerns and in order to alleviate them, the BMMA should be revised so as to align with general property law, discussed above, which would make Croatian law more nuanced, as was the case with French law.

Both Croatia and France have made compliance with bylaws a condition of authorizing STR operation, with France taking a far softer approach than Croatia. Irrespective of the strength of the public-private links, these should be avoided because they create circularity and conflate regulatory targets. Crucial decision-making powers should be shared between the public and private sphere, but with a clear delineation of authority, unfortunately absent from the reforms. Future reform should revisit this issue and de-link private from public controls, leaving each segment with the authority to which it naturally pertains.

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