European Holiday Home Association

EHHA Preliminary Position Paper on the proposed Affordable Housing Act

The European Holiday Home Association (EHHA) shares the stated goal of more affordable homes for Europeans. Unfortunately, the EC's proposed Affordable Housing Act[1] (AHA) focuses on restrictions on short-term rentals (STRs) rather than building homes and will not make housing more affordable.

The EU estimates that 24 million new dwellings are needed by 2035[2]. While the proposed AHA is not equipped to deliver new homes, it will harm homeowners and working families relying on short term rental income, and tourism economies. It gives authorities broad room to restrict STRs and provides no independent check before restrictions take effect, as is currently the case, with bad decisions left to be challenged in the courts, which can take years. It also raises serious questions regarding property rights[3].

On the question of subsidiarity, housing policy is a matter for Member States and the proposal has been challenged on subsidiarity grounds[4]. By relying on Article 114 TFEU, the EC stretches the Internal Market legal basis into an area where the Treaties confer no competence on the EU. The proposal imposes one numerical test and detailed procedures on 27 vastly different housing markets and municipalities within them, overstepping the EU's role.

The EC rightly identifies housing affordability as being a supply problem, yet the proposal barely addresses it. STRs account for just 1.2% of conventional EU dwellings[5]. With 20% of dwellings sitting vacant across the EU[6], the priority should be unlocking existing supply and incentivising new construction. Instead, the proposal restricts how people can use the homes they own, discouraging renovation and investment.

The EC has diagnosed the housing problem but not the suitability of the remedy. Experience has shown that where STR restrictions have been applied, homes have not come back to the market and local economies have paid for it[7]. Any decision to restrict STRs must be supported by solid evidence. **Use of data generated under the EU STR Regulation (2024/1028), applicable since May 2026 (although not yet implemented in several Member States), must be mandatory and a key variable in providing the evidence needed for competent authorities to justify even considering measures to restrict STRs**.

1 COM(2026) 599

2 European Commission Joint Research Centre, 16 December 2025 (see here)

3 Article 17 of the Charter of Fundamental Rights distinguishes the control of the use of property from its deprivation, and national constitutions draw the same line.

4 The German Bundesrat's reasoned opinion (here) challenges the proposal on subsidiarity grounds. Likewise, the Chamber of Deputies (here) and the Senate (here) in Italy.

5 Joint Research Centre, "Place-based determinants of housing prices in Europe", 16 December 2025 (JRC145033): see here.

6 Idem

7 According to figures compiled by UNPLV covering 2023–2025, in the French Basque Country, restrictions resulted in 6000 fewer STR properties on the rental market, while only 5% of them returned to the year-round rental market. 2026 projections estimate approximately €230.4 million in lost economic benefits per year and 4000 direct and indirect local jobs at risk.

Under the proposal, restrictive regimes already in place get different treatment, risking more uncertainty and fragmentation; the exemption for primary homes is not sufficiently clear; second homes get no protection; restrictions come ahead of the EU's plan to build more homes (set for 2027). The proposal puts at risk in particular STR hosts, SME family businesses and the local communities that depend on visitors[8], including the hospitality, retail and cultural sectors, while no evidence has been presented that it would make housing more affordable[9] or more available.

The AHA proposal must be fundamentally reworked or otherwise rejected, as it will cause more harm than good. The focus must be put on increasing housing supply.

EHHA's key concerns regarding the AHA proposal are summarised below.

1 The proposal puts STR hosts at risk of outright STR bans

Article 10 (on Proportionality) leaves the door open to competent authorities to ban STRs, which would contradict the spirit of the proposal. The text refers to the "protection of legitimate expectations" of hosts (Art. 10(1)c), but a reference is not a safeguard.

A total ban of STRs is disproportionate *per se*. They not only hit the hosts who rely on the income, and the visitors and local businesses who depend on them, but also the families and individuals that need somewhere affordable to stay when travelling for tourism, health, education or work reasons.

A total ban of STRs is an extreme measure that does not take in account the real impact of existing STRs on the housing market. The *Smartflats* CJEU ruling reinforced that this is a mandatory requirement to be considered to justify any STR restrictions, as well as their geographical scope, with the Court reasoning that temporary and/or partial tourist lets from an operator's main residence has "no consequences for the long-term rental market"[10]. A total ban is therefore disproportionate by nature, when fully considering necessity and proportionality.

A total ban cannot be corrected under the proposal, as it is built on the premise that a restriction must be reviewed and withdrawn where it no longer meets the conditions. A ban removes the subject of that review. Once STRs have closed, there is no activity left to re-examine and nothing to restore if the measure is found to have failed. The suggested review and correction mechanism is meaningless under such circumstances.

The proposed AHA puts hosts at risk because it lacks clarity that competent authorities must rely on a proportionate, data-driven assessment - importantly, drawing upon data from implementation of the EU STR Regulation - before considering whether to regulate STRs. It also lacks minimum safeguards for legally established operators and protection mechanisms against the premature loss of previously recognised rights, as well as lacking mechanisms to provide financial compensation where a measure results in early termination of a valid licence or causes economic loss.

8 Idem

9 In Barcelona, rents reportedly increased by 72% per square metre despite a freeze on short-term rental licences since 2014 (source: Apartur, "Short-Term Rentals and Housing Affordability: Evidence, Balance and Regulation", May 2026, drawing on Barcelona City Council data and Spanish Tax Agency data on vacant dwellings (see here).

10 Case C-813/24 (see here), paragraph 95

2 Different standards for existing and new rules creates massive fragmentation

Reducing fragmentation and increasing legal certainty are central objectives of this proposal. Article 14 (on 'Existing Measures') works against both. Art. 14 leaves existing restrictive regimes subject to existing complaint procedures, raising the question of whether or how far regimes, which have already been adopted (including those not yet fully implemented, such as in Barcelona) will be challenged once a new framework is in place.

Article 14 protects measures adopted before the new rules apply. This risks encouraging authorities to adopt strict rules early and keep them afterwards and there is concern that a number of Member States and local authorities will use the transition period to rush through regulations that cannot be reviewed on the basis of the AHA.

The result would be two standards: new measures tested against the AHA, and older ones outside of the scope. Hosts in the cities with the strictest rules would get the least protection. Such an approach would create tremendous fragmentation. Two permanent legal regimes would govern substantively identical measures, distinguished only by their date of adoption. Member States that legislated early would be treated differently from those that did not, and the internal market justification for the instrument is weakened by its own transitional rule.

It is important that Article 14 is not interpreted as validating pre-existing measures against general principles of EU law; no act of secondary EU legislation, including a Regulation like the AHA, can validate or shield local measures from EU primary law, in particular the freedom to provide services and freedom of establishment, or from the CJEU's case law on necessity, proportionality and non-discrimination.

3 There is no longer an EU-level proportionality check

Member States no longer have to notify the EC of new or amended measures restricting access to or the provision of STRs (solely on the grounds of safeguarding housing affordability and availability), as Art. 3(1) removes the Art. 15(7) Service Directive notification procedure, which allows the EC to adopt a decision requesting a Member State to refrain from adopting the new requirements or to abolish them.

Without a check, no neutral referee can assess whether a measure is proportionate before it takes effect, with the possibility to request action when a measure is disproportionate. The only route left is the courts. Compliance would be tested only after adoption, before national courts, applying new general EU concepts like "significant (STR) adverse effect" and "commercial scale" — on which there is no case law at all. National judiciaries would absorb both the caseload and the interpretative burden; divergent rulings on identical wording across Member States are foreseeable.

Litigation is slow, costly and decided case by case. By the time a national court rules on the law being challenged (against an EU proportionality standard built on undefined, subjective terms), hosts and small businesses, who rarely have the means to go to court, may have lost their income. It is a serious concern that evidentiary and proportionality requirements are being diluted, rather than preserved and strengthened.

4 The assessment of housing stress test is arbitrary and too broad, posing a potential threat to places where affordability has been stable

The proposed AHA lets authorities restrict STRs in areas under housing stress (Arts 4(5), 6(1)(a), 6(2) and 7). As drafted, the criteria are broad, arbitrary and loosely defined. The proposed price-to-income ratio of 8 or 10 - the rationale for which is unclear - could capture whole regions, including areas where STRs play little or no role in housing pressure. This turns an exception into a general licence to restrict. It also treats very different local situations the same way. If the formula is flawed, the results will also be flawed.

As regards the assessment of whether an area meets the housing stress criteria, there is no requirement in the proposed AHA for competent authorities to use EU STR Regulation generated data. There is also no requirement for mandatory use of the Nomenclature of Territorial Units for Statistics (NUTS) 3 methodology or the Local Administrative Unit (LAU) system, administered by Eurostat, the EC's statistical office.

Causality - proof that STRs caused the problem – is also insufficiently defined (Art 9.2). If the AHA does not require proof that STRs caused the housing stress, it makes restrictions easy to justify without evidence. The proposal lacks, for example, a requirement for authorities to examine the different uses competing for the space available in the city in order to assess and prove causality; or to demonstrate that STRs would otherwise be rented out long-term.

It is also a concern that, before any restrictions are adopted, there is no impact assessment required to analyse not only the potential effect on housing availability and affordability, but also the economic and social consequences, which should be a mitigating factor.

5 The proposal does not fully protect primary or secondary homes

It is essential that in line with CJEU rulings - most recently *Smartflats*[11] - primary residences are protected from STR restrictions. Art. (5(2) fails to include a directly invocable prohibition on restricting a host's own primary residence. It limits the exclusion to measures adopted "solely" on the grounds of safeguarding housing affordability and availability, but what happens when other grounds are jointly cited, such as relating to the urban environment?

The proposal also fails to recognise second homes as a legitimate use of property. It lacks safeguards for hosts who let second homes, yet these properties are usually the first target of restrictions. Many belong to families who also use them or rely on the income.

Measures restricting the acquisition or use of residential property that is not a primary residence also have a cross-border dimension the proposal does not address. Those affected are disproportionately nationals of other Member States exercising rights of establishment and of free movement of capital under Articles 49 and 63 TFEU. Measures adopted by one Member State would fall in significant part on the citizens of others, with foreseeable bilateral friction.

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11 Case C-813/24 (see here). Paragraph 95: "*the objective of protecting the urban environment and housing cannot justify such an obligation in so far as it applies to properties that are the principal residence of the accommodation provider, since, in that situation, the use of the property concerned as tourist accommodation, whether that use is temporary or of part only or both, has no consequences for the long-term rental market*".

The proposal also fails to explain that any scale criterion (Art. 10(1)(d) should be applied per owner or beneficial owner and not per operator or property manager (with professional management being a compliance partner for e.g., registration, taxation, safety).

6 The right approach is supply first, not restrictions first

The proposed AHA lets authorities restrict STRs straight away, while the Commission's main initiative to cut the red tape holding back construction, the housing simplification package, is only due in 2027. Restrictions come first, new homes later. Restricting STRs does not create new homes. Europe's housing shortage calls for more construction, faster permits and lower building costs.

Other factors may reduce the available residential housing stock, such as the conversion of homes to commercial or other economic uses, as well as the existence of vacant homes. Yet the proposal does not include any requirement for the EC to assess and report on the real effect of STR restrictions on housing affordability, nor a review clause to allow rules to be adjusted based on that evidence.

If the EC is serious about tackling the housing crisis, it would make better sense for housing supply to be the focus of the AHA, with restrictions as a targeted, last-resort tool. Competent authorities should only be able to restrict STRs where they consistently pursue policies tackling the root cause of the housing crisis such as building more social housing – STRs cannot be the scapegoat for their failure to do so.

Conclusion

The AHA proposal must be fundamentally reworked, or otherwise rejected, and the focus put on increasing housing supply. EHHA supports more affordable housing and fair, workable rules for STRs. The STR Regulation, once fully implemented, will provide authorities with the data to act where it is needed. The AHA should build on that, with rules that are targeted, proportionate and checked at EU level. EHHA and its members stand ready to work with EU decision-makers to get there.



Meet the people behind short-term rentals: morethanastay.eu

European Holiday Home Association

About EHHA: The European Holiday Home Association (EHHA) has been the voice of the short-term rental sector in Europe since 2013. Its members include national and regional associations representing hosts, property managers and professionally managed serviced apartments, and online short-term rental platforms.

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