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ISSUES OF SHORT-TERM RENTAL IN LIGHT OF EU AND MEMBER STATES' REGULATIONS

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ARTICLE

I. Introduction

The information revolution, which dates back to the middle of the 20th century, has contributed to many changes, especially in recent years. The development of technologies has influenced the creation of new forms of the market and the modification of existing ones (including the real estate market). It has, furthermore, influenced social transformations. The development of the digital economy is accompanied by changes in the perception of values by society, where “access” becomes of even greater value than “possession”. The sharing economy is a part of these new trends. This phenomenon has an economic as well as a social dimension. It affects changes in the consumption model and its costs. In this context, this phenomenon can also be described as a new consumer trend. The assumption of the sharing economy is firstly not so much the ownership of resources, but the access to them, and secondly the use of ICT (information and telecommunications technologies).

One of the areas of the sharing economy in which there is a use of tangible assets is the real estate market. In particular, the sharing economy in this area is associated with the issue of short-term rentals. The problem of short-term rentals combines many issues, such as the development of a new economic order, protection of consumer rights, tourism, gentrification of cities¹ as well as the rights of owners of premises. The interests of various entities clash in this field. Existing sectors of

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¹ Gentrification is a concept that means changing the character of a part of the city. It is emphasized that the phenomenon of renting the apartments to tourists for short periods leads to depopulation of city centers. Most of apartments are dedicated for rent to tourists and this leads to the crowding out of the local population, who chooses to move out to quieter places, enabling a peaceful everyday existence. At the same time, increasing the number of premises for short-term rental affects the rent increase for long-term rental. Consequently, this circumstance also determines

the economy are trying to maintain their market position, tourists (and not only) are interested in a place to stay at preferential rates anywhere in the world, and local communities are interested in living peacefully. Over the last few years, one can observe a special interest in this topic, focusing on the so-called “Fight against Airbnb”.

The existence of the so-called “Fight with Airbnb” was a consequence of the fast development of the sharing economy in the field of accommodation services, in particular for short-term rentals.² The huge interest in choosing this form of accommodation, in particular by tourists, triggered reactions, which in many countries took the form of attempts to limit the possibility of short-term rentals. They have resulted in complaints about Airbnb to the European Commission, containing the proposals of regulating the short-term rental market at the EU level. At the same time, legal regulations were introduced in individual Member States to limit the development of short-term rentals. This is due to the fact that the EU leaves shaping the short-term rental regulations to individual Member States. However, the EU has not remained passive to the problems reported in complaints. Since the “Fight with Airbnb” (which resulted in complaints to the European Commission), essentially concerns two problems, there is a need to differentiate between the European Commission’s responses in these two areas. The first is related to the position expressed by the EU in regard to the collaborative economy phenomenon and its development, which is objectionable to traditional economic entities wishing to maintain their market positions. The second is the EU’s reaction to complaints lodged in the context of the need to ensure consumer rights protection in the newly developing market.

The subject of the study was to analyze the phenomenon of accommodation services, and in particular short-term rentals. The research was carried out from the perspective of legal regulations and other activities undertaken in the European Union regarding accommodation services.³ The specific objective of this study was to

the crowding out of the local population from touristically attractive districts to the areas where the rent for long-term rental is lower.

² As well as transport. The surveys carried out in 2016 by Eurobarometer show that 17% of European consumers use the services provided within the collaborative economy, and 52% are aware of the availability of such services. The total value of transactions made in 2015 for platforms connecting service providers with consumers in the four main sectors, exceeded 28 billions. These four most popular sectors are: accommodation, transport, crowdfunding and loan platforms, as well as online markets of low and highly qualified labor. The largest sector, by the number of transactions, is the accommodation services sector. The second important one is transportation services sector which also takes first place in terms of revenue. See: www.europarl.europa.eu/news/pl.

³ The issue of accommodation services in the context of legal issues was the subject of various studies. For example, the issues of rapid technology development were presented in the context of unsuccessful changes in legal regulations (A. Varma, N. Jukic, A. Pestek, C.J. Shultz, S. Nestorov, *Airbnb: exciting innovation or passing fad?*, *Tourism Management Perspectives* 2016/20, pp. 228–237). Attempts have been made to introduce legal regulations restricting accommodation services in US cities (B. McNamara, *Airbnb: a not – so – safe resting place*, *Colorado Technology Law Journal*, 2015, 13, pp. 149–170; S. Miller, J. Jefferson-Jones, *Airbnb and the battle between Internet exceptionalism and local control of land use*, *Probate Prop.* 2017/31, pp. 36–39). The issue of the impact of tightening as well as simplifying the provisions on accommodation services on economic development and value of real estate was analyzed (B. Morgan, D. Kuch, *Radical trans-*

answer the following research questions: what is the attitude of the EU bodies in relation to the phenomenon of the sharing economy, especially accommodation services and its development?; are current regulations on short-term rental at EU level applicable to all Member States?; are measures taken at the EU level to ensure better protection of tourists' rights as consumers of accommodation services?; are the legal regulations for short-term rentals in individual Member States uniform?; are there any Member States in which there are legal regulations introducing restrictions or prohibitions on short-term rental?, and what are the arguments justifying the introduction of legal regulations prohibiting or limiting the possibility of short-term rental?

Due to the purpose of the research, sources such as opinions, recommendations, resolutions and draft directives issued by EU bodies were analyzed. The answer to further research questions required the analysis of legal regulations in force in selected Member States. Four countries were considered in the research sample: France, Germany, Portugal and Poland. The criteria for separation were:

1. Member States with regulations on short-term rental at the local level (France – Paris, Germany – Berlin) or at the national level (Portugal, Poland).
2. Member States in which legal regulations introduce prohibitions or strong restrictions on short-term rental (Germany – Berlin; France – Paris); introduce minor restrictions (Portugal) or short-term rent restrictions do not exist (Poland).
3. In addition, the choice of France – Paris, seemed important for the research due to the fact that the city is in the first place on the Airbnb list containing an enumeration of cities with the largest number of offers for short-term rental.

II. EU position regarding the collaborative economy and its development

1. The European Commission – “European agenda for the collaborative economy” on 2.06.2016

The EU rates the collaborative economy phenomenon positively. This statement was officially pronounced by the European Commission on 2.06.2016, when a “European agenda for the collaborative economy” was created.⁴ Support for the devel-

actionalism: legal consciousness, diverse economies, and the sharing economy, Journal of Law and Society 2015/42, pp. 556–587; Jefferson-Jones J., *Can short-term rental arrangements increase home values? A case for Airbnb and other home sharing arrangements*, Cornell Real Estate Rev. 2015/13 (1), pp. 12–19). A comparison was also made of laws regarding accommodation services in three US cities (San Francisco, New York, Portland). Speier E.M., (2016), *Embracing Airbnb: How cities can champion private property rights without compromising the health and welfare of the community*, Pepp. L. Rev., 2016/44, pp. 387. However, there is no attempt in the literature to present the issue of legal regulations on accommodation services in the European Union while taking into account the position of the European Union bodies in the context of introducing such regulations at the European Union level. Therefore, binding legal instruments become a source enabling such an analysis.

⁴ The Communication of the European Commission to the European Parliament, the Council, the European Economic and Social Committee, and Committee of the Regions, Brussels,

opment opportunities of the collaborative economy, included in the single market strategy, was the main purpose of the agenda.. The European Commission stressed that the collaborative economy creates new opportunities for consumers and entrepreneurs, and it can significantly contribute to economic growth and the creation of new workplaces in the European Union. Recognizing the possibilities from the collaborative economy as well as the fact that it is still an emerging new business model led to outlining legal guidelines and policy directions (useful for public authorities, economic entities and interested citizens) that can contribute to the development of the collaborative economy and including them in the agenda. Guidelines regarding the application of EU law with respect to the sharing economy covered the main problems faced by economic entities and public bodies.⁵

The conclusion of the agenda contained an unambiguous EU position in regards to the collaborative economy phenomenon. It was pointed out that considering the essential benefits related to the development of new business models within the collaborative economy, Europe should open to these new possibilities. It was also stressed that the EU should actively support the development of the collaborative economy, while ensuring appropriate working conditions, consumer protection and social protection. Guidelines presented in the agenda, however, did not constitute legal regulations or proposals for shaping Union law. Their aim was solely to make it easier for Member States to apply EU law within the single market to incorporate the collaborative economy. Therefore, they took the form of certain guidelines concerning the expected reactions of Member States to the emergence of new business models. One of these guidelines, naturally also related to the accommodation service sector is included in the following: “Absolute bans and quantitative restrictions of an activity normally constitute a measure of last resort. They should in general only be applied if and where no less restrictive requirements to attain a legitimate public interest objective can be used.”

2. The European Committee of the Regions – “Collaborative economy and online platforms” on 7.12.2016

A positive approach and openness to the collaborative economy has also been expressed in the Opinion of the European Committee of the Regions: “Collaborative economy and online platforms: a shared view of cities and regions from 7.12.2016⁶”.

02.06.2016, CM (2016) 356 final. Document available: <http://ec.europa.eu/DocsRoom/documents/16881?locale=pl>. It can be marked that already on 24/09/2015, the European Commission has launched a public consultation on the “regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy.”

⁵ Guidelines included in the “Agenda” concerned such problems as: 1) requirements concerning the access to the market, 2) regulations concerning liability, 3) protection of users, 4) protection of employees, 5) taxation of new business models.

⁶ Opinion of the European Committee of the Regions – Collaborative economy and online platforms: a shared view of cities and regions, (2017 / C 185/04) of 9.06.2017 Official Journal of the European Union C 185/24.

This opinion, however, emphasizes that the guidelines are not enough and a common regulatory framework providing a certain direction to Member States and local and regional authorities is needed. In the context of short-term rentals the following, among others, were postulated:

- a) establishing EU level thresholds below which business activity is not professional activity. It was also claimed that the threshold values should be relative and determined on a temporal basis (e.g., the number of stays in a given accommodation) and not absolute and financial.
- b) identifying and defining the EU level parameters of values to be supported and protected.⁷ At the same time, it was postulated that determining to what extent the collaborative economy platforms are to complement existing housing resources and traditional hotel operators should remain in the competence of local authorities.

3. The European Parliament – Resolution on 15.06.2017

A positive stance on the collaborative economy and its development was taken by the European Parliament. On 15 June 2017, the European Parliament adopted a resolution on the European Agenda for the Collaborative Economy.⁸ The parliament stressed that one of the main factors behind the creation of the Agenda is that the collaborative economy is socially beneficial for EU citizens. In the text of the resolution, Parliament called for not viewing the collaborative economy as a threat to the traditional economy. They emphasized the importance of regulating the collaborative economy in a way that facilitates and creates opportunities and doesn't limit them, while respecting the principles of fair competition, employee rights and tax regulations.

In regard to the issue of creating legal regulations concerning the collaborative economy at the EU level, Parliament called on the European Commission to cooperate with Member States to develop guidelines for defining criteria concerning distinguishing between social partners and professionals. According to Parliament this is crucial for the fair development of the sharing economy. At the same time, Parliament also called on the European Commission to analyze the possibility of establishing a set of EU level general principles and criteria and a set of appropriate threshold values for the national level. However, it appealed to eliminate unnecessary regulatory burdens introduced in individual Member States, due to the necessity of ensuring equal operating conditions between comparable categories of service providers throughout the Union. As a particularly important point, Parliament has recognized the initiative of the Commission concerning the provision of proper consumer

⁷ It was argued that such a need is evident, for example, in tourism, where there is a risk of unfair competition between collaborative economy services and traditional activity, which may have an impact on the housing market due to an increase in prices or changing the use of buildings.

⁸ European Parliament resolution of 15.06.2017 on a European Agenda for the Collaborative Economy (2017/2003 (INI)); http://www.europarl.europa.eu/doceo/document/TA-8-2017-0271_EN.html. This resolution constituted a Parliament's response to, among others, European Commission's Communication 'European Agenda for the Collaborative Economy' of 2.06.2016 r.

protection, due to the fact that consumers should enjoy a high level of effective protection regardless whether the service providers are social partners or professionals.

In the area of the largest sector of the collaborative economy – accommodation services – the Parliament stressed that sharing homes is an excellent use of resources and explicitly condemned the regulations imposed by some public authorities that limit the provision of accommodation services for tourists within the collaborative economy.

4. The European Commission – conference on 11.11.2018

On 11.11.2018 the “Collaborative Economy: Opportunities, Challenges, Policies” conference organized by the European Commission took place in Brussels. Its purpose was to summarize political changes, regulatory and market-related, since the adoption of the Communication on the Collaborative Economy in June 2016. At the conference it was noted that the collaborative economy is growing fast and now generates more than 26€ billion a year. It was also underlined that the position of the European Commission regarding the collaborative economy is invariably positive and the Commission will promote its sustainable and long-term development. An analysis of the current situation in the EU, conducted during the conference, led to the conclusion that in many Member States restrictive regulations limit the possibility of a uniform collaborative economy development across the whole EU. It was also noted that since 2006, the Commission has undertaken cooperation in particular with many cities and regions in order to develop common strategies and legal regulation drafts. An example of such cooperation in the area of accommodation services is a dialogue with 14 large European cities.

In conclusion, all measures taken since 2006 by EU bodies have been targeting the development of the collaborative economy.

III. The EU’s reaction to complaints about Airbnb’s activities in the context of consumer rights protection

Complaints about Airbnb’s activities constituted, as indicated, a reflection of a negative reaction to the development of the collaborative economy in the accommodation services sector, being a competition for traditional market operators. Another area with which those complaints were related is the phenomenon of short-term rental as a new consumer trend. In this context, the attention of the European Commission analyzing the complaints was focused on the issue of ensuring adequate protection of consumer rights for those purchasing services through the Airbnb.

Airbnb is the largest platform operating within the collaborative economy, enabling tourists (and not only) to rent a flat or a room directly from the owners.⁹ Essen-

⁹ Airbnb was established in 2008 in the USA and very quickly gained popularity. Currently, Airbnb has 4 million rental offers available in 191 countries in its database, in 65,000 cities around the world and 150 million users.

tially, Airbnb is just an intermediary between persons not directly linked to Airbnb. The service allows interested parties to enter into rental agreements via the website.¹⁰ Some elements of this contract, however – for example regarding the payment – are determined by Airbnb. As a consequence, by entering into a contract through the portal, the contracting parties are in a way forced to agree to the terms determined by Airbnb.¹¹ It is the way prices are presented¹² and some other conditions to which Airbnb customers are forced to agree to that have become one of the grounds for complaints addressed to the European Commission.¹³

After considering complaints, the European Commission¹⁴ found that both the way of presenting the prices as well as a number of other conditions shaped by Airbnb are inconsistent with the Union’s consumer law.¹⁵ In particular, it was considered that customers are not properly informed what they pay for and when the host can cancel the reservation.

On July 16, 2018, the European Commission called on Airbnb to comply with the consumer law. After being summoned, Airbnb promised to introduce the necessary changes in the conditions of providing services and in the manner of presenting the prices. Therefore, by this obligation, on 20 September 2018, the European Commis-

¹⁰ According to the website’s terms and conditions, “Airbnb provides an online platform that links hosts owning premises for rent with guests looking for such premises.” In the further part of the terms and conditions it was indicated that the company is not the owner, operator or manager of offered premises.

¹¹ An example of the impact of the website’s regulations on the content of the contract is, among others, the date of payment.

¹² In particular, this applies to only indicating the price per night without clearly specifying the fact that other costs, such as the handling fee deducted by Airbnb, climate tax, and cleaning fees, may be added and that the final rental price may increase by a few or a dozen percent per day.

¹³ Complaints to the European Commission concerned the activities of Airbnb. However, it should be noted that short-term rentals, as a form of housing sharing, is associated with various platforms such as HomeAway or Booking. However, Airbnb from the beginning was directed to private persons and mostly associated with the collaborative economy. Therefore, this platform began to be perceived as the largest competition for services hotels. For example, Booking from the outset was a platform that also promoted offers as a partner of hotels.

¹⁴ Cooperating with other EU consumer protection bodies – Under the Consumer Protection Cooperation (CPC) Regulation (2006/2004/EC), Member State authorities, with the facilitation of the European Commission, have the duty to work together to enforce EU consumer law in the Single Market. CPC authorities, with the Norwegian Consumer Authority acting as a coordinator, have taken the following common position regarding the protection of consumers using the services of Airbnb vis-a-vis the following two topics. This common position is without prejudice to other legal issues or terms that national authorities may want to raise in national proceedings.

¹⁵ It concerns: Directive 2005/29/EC of the European Parliament and of the Council of 11.05.2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive), Official Journal of the European Union, L. 149/22 from 11.6.2005; Council Directive 93/13 / EEC of 5.04.1993 on unfair terms in consumer contracts, Official Journal L 095, 21/04/1993 P. 0029–0034 and the decree on jurisdiction, applicable law, recognition and enforcement of decisions.

sion issued a communication according to which Airbnb should introduce adequate changes in all language versions of its website by the end of 2018. These changes include the obligation to:

- 1) present the total price of the reservation, including additional fees, such as service fees and cleaning costs. If it is not possible to provide the final price in advance, the customer is to be clearly informed about what additional fees may apply,
- 2) provide a precise indication of whether the offer comes from private hosts or from entities professionally involved in renting, as this determines what rights the consumer is entitled to,
- 3) fair rental agreement formulating. Contracts must be written in a clear and understandable language and cannot mislead the consumers.¹⁶

As pointed out by the European Commissioner for Justice, Consumers and Gender Equality, Věra Jourová, measures taken against Airbnb constituted the implementation of the proposed (a few months earlier – on April 11, 2018¹⁷), “New Deal for Consumers”, which aims to better protect consumers on the internet.¹⁸ As noted, the use of new technologies in the markets creates new opportunities for citizens and innovative entrepreneurs. However, it also creates the necessity to introduce other – corresponding to new forms of the market – regulations providing adequate consumer protection. This was the basis for the formulation of postulates by the European Commission with regard to Airbnb that met the expectations of the “New Deal for Consumers”. The “New Deal for Consumers” is, in fact, the proposal for new EU legal regulations which are to increase the protection of consumer rights in new markets. These proposals have been included in two conclusions:

- 1) the first application contains a proposal to regulate the so-called representative actions. These regulations are aimed at facilitating consumers to claim their rights in situations of collective damage. They will facilitate the collective investigation of consumer claims, including those aimed at obtaining compensation. In the name of the buyers, independent entities, e.g. consumer organizations will be able to bring an action against companies. As a result,

¹⁶ In particular: a) the contracts must clearly indicate the basis enabling the landlord to withdraw from the contract or change its terms, b) contracts may not contain provisions by virtue of which the consumer is deprived of the right to sue the host in case incurring personal injury or other damage, c) Airbnb cannot unilaterally change the terms of the contract without providing consumers with clear information and allowing them to terminate the contract. d) Airbnb will have to inform consumers if it decides to terminate the contract or to delete the content, and in such cases, it will offer consumers the right to appeal and, if applicable, to compensation. e) Airbnb will clearly indicate that consumers have the right to initiate proceedings against Airbnb before a court in their country of residence.

¹⁷ The Commission’s Communication to the European Parliament, the Council and the European Economic and Social Committee from 11.04.2018 (COM/2018/0183 final).

¹⁸ Press release – European Commission of 20.09.2018, www.europa.eu.

the court or the administration body will issue a warrant to stop harmful practices and order compensation for consumers.¹⁹

- 2) the second element of the “New Deal for Consumers” is the draft of the “Omnibus” Directive. It predicts changes in four directives²⁰ that need to be amended due to the development of digital technologies. The most important changes are to be ensured by:
 - a) a greater transparency of online purchases. Before signing up to an agreement on an online platform, the consumer will learn whether they are buying from an entrepreneur or a private person.²¹ The consumer must be also informed about the criteria for positioning offers, e.g. about the fact that the entrepreneur paid for a better place in the customer’s search results,
 - b) facilitating individual redress. If the consumer experiences harm as a result of unfair commercial practices, e.g. aggressive marketing, they will be able to terminate the contract and demand compensation,
 - c) consumer protection for “free” digital services. In exchange for using them, the consumers provide their personal data. After changes, they will gain the same rights as in the case of paid contracts concluded via the internet, e.g. they will be able to withdraw from the contract within 14 days,
 - d) protecting consumers against products’ double standards. By virtue of the new EU regulations, marketing products in the same packaging but with a significantly different composition, without informing consumers about these differences, will constitute unfair commercial practice.²²

Currently, both projects are being developed in working groups in the Council and in the European Parliament.

¹⁹ Authorized entities will also be able to negotiate an agreement with the company – it will be approved by a court or administration body. The entrepreneur will have to inform consumers affected by the infringement about the final decision or settlement and compensation.

²⁰ Council Directive 93/13/EEC of 5.04.1993 on unfair terms in consumer contracts; Directive 98/6/EC of the European Parliament and of the Council of 16.02.1998 on consumer protection in the indication of the prices of products offered to consumers, DU L 080, 18/03/1998, P. 0027–0031; Directive 2005/29/EC of the European Parliament and of the Council of 11.05.2005 “Directive concerning unfair business-to-consumer commercial practices”; Directive of the European Parliament and of the Council 2011/83/EU dated 25.10.2011 on consumer rights, amending Council Directive 93/13/EEC and the Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and the Directive 97/7/EC of the European Parliament and of the Council, DU L 304/64. [www. Eur-lex.europa.eu](http://www.Eur-lex.europa.eu).

²¹ In the latter case, the regulations protecting consumers are not applicable, about which the purchaser of the service will have to be notified by the portal.

²² Currently, products marked as identical to those sold in other EU countries are often introduced to the market, while they differ significantly in, for example, composition. For example, the same coffee in two different EU countries may contain different doses of caffeine.

IV. Regulations concerning short-term rentals in Member States

As already indicated, the EU's attitude to the phenomenon of the collaborative economy and its development is positive. This is expressed, among others, by a negative assessment of attempts to block it through the introduction of regulations which ban or severely limit the possibility of its development. However, as it results from the analysis of regulations enforced in the individual Member States, such bans or severe restrictions have been introduced in many of them.²³ In addition, these regulations are very diverse. That makes it possible to talk about a large fragmentation of the regulation regarding the accommodation services sector in the EU which is forming within the framework of the collaborative economy. To illustrate this phenomenon, it is worth highlighting the regulations enforced in several Member States, especially in countries whose capitals are characterized by the highest number of Airbnb offers.

1. France

In France, in the context of the analysis of short-term rental regulations, the Act on Access to Housing and Renewed Urban Development of 26 March 2014,²⁴ is essentially significant. The Law for a Digital Republic²⁵ of 7.10. 2016 is also of significant importance. It provided communes with the right to set rules and procedures for the short-term rental registration of furnished flats.²⁶ This authorization concerned

²³ The first city in the world to have restrictions on short-term rentals was New York City. The ban on renting apartments for fewer than 30 days came into force in 2010. In San Francisco, in 2014, a city level regulation was introduced, under which an apartment rented for a short period of time must be listed in a register kept by the city (from 2016 onwards Airbnb is required to remove unregistered properties from the portal's database), initiation of business activity is possible after paying a registration fee, and the property can be rented for no longer than 90 days a year. Such restrictions have also been introduced in other countries. For example, in Singapore, restrictions on short-term rental possibilities were introduced in 2017. In Japan, short-term rented accommodation must be registered for the issue of a license. Japan, however, is one of the countries very favorable to short-term rental, which is related to a deliberate increase in tourist traffic in Japan to 40 million people per year. Therefore, in March 2017, the short term rental service called 'Minipak' was legalized in Japan. Currently, "Minipak" is allowed in Osaka and Tokyo. However, a restriction has been introduced that housing rented under short-term lease can be used for this purpose for 180 days a year and at the same time it must be reported to the appropriate authority. www.inwestycjewkurortach.pl

²⁴ Loi n° 2014-366 du 24.03.2014 r. Pour l'accès au logement et un urbanisme rénové (Loi ALUR) JORF nr 0072, 26.03.2014, p. 5809, (Access to Housing and Renewed Urban Development Act – ALUR). This law regulates a rental agreement for furnished premises. A classic rental agreement is an agreement concluded for a period of 1 year or longer (possibly 9 months for students), www.legifrance.gouv.fr.

²⁵ Loi n° 2016-1321 du 7.10.2016 nr 1, www.legifrance.gouv.fr

²⁶ Rules for short-term rental as well as penalties for non-compliance with short-term rental limits were introduced in 2018 by ELAN Act, ELAN. Loi n° 2018-1021 du 23.11.2018 portant évolution du logement, de l'aménagement et du numérique (Loi ELAN), JORF nr 0272, 24.11.2018, nr 1, (The law on the evolution of housing, land management and digital technology – ELAN). This law also defines the new type of short-term rental "mobile rental", www.legifrance.gouv.fr.

cities with more than 200,000 inhabitants and such regulations were introduced in Paris. The rules for short-term rental depend on the classification of the flat as main residence *residence principale*, second residence *résidence secondaire* and tourist flat *meublés de tourisme*.

In the case of the property being a main residence, short-term rental is allowed up to 120 days a year. For the remaining 8 months of the year, it must be inhabited by the landlord. Such flats (from 1 December 2017) must be registered as an apartment rented as a short-term rental.²⁷ For exceeding the limit of 120 days a year, the owner is subject to a fine of up to €5,000.²⁸

If the landlord lived in the flat for less than 8 months, the place loses the status of a residence. It is then treated as a so-called second house, to which different rules apply. In such cases, the registration of such flat under short-term rental includes obtaining permission to transform the living area into an economic area.²⁹ The rental of a second flat without such permission is subjected to a fine of €50,000.

The strictest rules relate to the rental of tourist flats called *meublés de tourisme*, which are apartments exclusively intended for short-term rental.³⁰ In the case of *meublés de tourisme*, in addition to registering such flat, it is obligatory to obtain permission to transform the living space into an economic area. To obtain permission, one must pay €1,500–2,000 per square meter.³¹ In addition, such permissions have temporary character.³² They are issued on compensation terms in the case of *meublés de tourisme*, in cities with over 200,000 inhabitants and in the suburbs of Paris.³³

²⁷ Until 1.12.2017 there was no obligation to register the main apartment with respect to short-term rental. The registration system is not linked to the issuance of a permission to rent. It is based on the registration of a flat through a special website.

²⁸ Or even €10,000 if the overrun is not properly justified (e.g. professional obligation, health issues).

²⁹ Such rules apply not only in Paris but also in the suburbs of Paris, in the cities of France with more than 200,000 inhabitants (e.g. Marseille, Lyon, Nice, Nantes) and in towns with a population of more than 50,000 in the so-called ‘tension zone’.

³⁰ *Meublés de tourisme* differ from other types of accommodation such as hotels and tourist residences, because they are reserved for the exclusive use of the tenant but do not have a reception and there are no additional accommodation services provided. They are also different from B&Bs, because in the latter case, the landlord lives in the property during the rental period.

³¹ The regime for changing the use of a residential area into a usable area is not uniform. It is subjected to different rules, e.g. depending on the location of the apartment.

³² After the expiration of the permission, a new one must be applied for. For example, in Nice, licenses are issued for two years.

³³ Essentially, this is about recognizing that when a flat is rented under short-term rental, the landlord “removes” this dwelling from the long-term rentable housing stock and therefore by granting the permission, the city demands that the loss be compensated for by the creation of another location suitable for habitation. Generally speaking, a landlord who wants to rent a flat under short-term on conditions of “second home”, may propose conversion of uninhabitable premises which he owns (e.g. office premises), into an apartment. He/she also may acquire the title to the compensation from a third party who owns such premises, and therefore, get the right to convert the seller’s premises into living space. The ‘compensation title’ may be the premises owned by the applicant or the “transfer of commercial value” – a certificate sold on the market. In any event,

It should also be added that under the Act of 23.11.2018 on changes in housing, land management and digital technology (ELAN), a new type of short-term rental contract has been developed – that of a “mobile rental”. It was defined as the rental of a furnished flat, where the contract is concluded for a fixed period of time from one to up to ten months. The renter may be a person who, due to work-related reasons, has to change their place of residence on a regular basis (e.g. workers employed temporarily, etc.).³⁴ In the absence of an explicit regulation containing an obligation to register a flat for this type of short-term rental, it is assumed that it is not subject to registration.

2. Portugal³⁵

In Portugal, short-term rentals are regulated by Decree-Law No. 128/2014.³⁶ The main distinction concerns “local accommodation establishments” and tourism enterprises, where the latter have to meet additional requirements, and for the conduct of which, appropriate permission is required. “Local accommodation establishments” mean both single-family houses, parts of buildings, flats and rooms if the property or part of it:

- a) is advertised, made available by any entity or means, e.g. by travel agencies, or websites, as accommodation for tourists or as a temporary accommodation, or

once the compensation has been awarded the applicant may submit an application for permanent change of use. Usually the landlord must compensate for a furnished dwelling that is short-term rented with the same surface of living space. In the most touristic districts of Paris it is necessary to create a living space twice as large as a short-term rental area.

³⁴ The catalogue of such entities includes students and apprentices, participants of vocational training courses, temporary employees (either in training or on secondment for a specified period of time to work in France). The landlord can be either a natural person or a legal person such as an entrepreneur.

³⁵ In Portugal, especially in Lisbon, the effect of the takeover of the city by tourists was caused by the policy of the government which introduced the “golden visa” program. The Golden Visa Portugal system was introduced in 2012. It was an attempt to attract more economic investments from abroad, in particular (but not only) in the housing market. Obtaining a golden visa allowed one to apply for permanent residence after five years of residence and, after six, one could apply for citizenship. However, applying for permanent residence or citizenship is linked to proving the maintenance of the investment for the entire 6-year period, having a proof of residence in Portugal, having no convictions since the beginning of the investment and passing the exam in Portuguese, while one of the most common way of obtaining a Golden Visa is to invest at least €500,000 in real estate in Portugal. Every foreigner who has invested a minimum of €500,000 in Portuguese properties by the means of the Golden Visa, was automatically granted a right to unrestricted movement, work or residence in all Schengen countries. Since 2012. The Golden Visa has been obtained by more than 4,400 foreigners, mostly from China. They massively purchased flats in which they did not live, instead they were intended for rental to tourists, in particular in Lisbon. Rental prices increased considerably, which forced the local population to leave the popular districts. The Aliance Act 23/2007 of July 4, amended by Act 29/2012 of August 9. See www.sef.pt.

³⁶ Decree-Law No 128/2014 as amended by Decree-Law No 166/2014, *Diario da Republica*, series I of 29.08.2014, as amended by Decree-Law No 63/2015.

- b) if furnished and equipped, it is offered to the general public as an accommodation-related service, such as cleaning for shorter periods of time shorter than 30 days.

The maximum capacity of the establishments is nine rooms and the maximum number of users is 30. Conditions that the offered accommodation facility must fulfill depend on the number of people who will stay in that establishment.³⁷ For example, if the establishment is intended for 10 users or more, it shall be subjected to the obligations arising from fire safety regulations.³⁸ When there are less than 10 users, it is sufficient for the accommodation establishment to be equipped with a fire extinguisher, first aid kit, and information about the emergency number displayed in a clear and visible way. Short-term rental is only subjected to the obligation to register at the city office. At the same time, however, it is necessary to register short-term rentals at the tax office.³⁹

In order to encourage property owners to a long-term rental, from 2019 onwards, new tax reduction measures have been introduced. They depend on the length of the rental agreement – the longer the agreement, the lower the taxes will be.⁴⁰

3. Germany

German regions, as well as the *Länder*, were authorized under the 1971 Act on the “Improvement of Tenancy Law”,⁴¹ to establish acts introducing a ban on the use of flats for non-residential purposes, in the situation where the adequate supply of housing for the local population is at risk. Essentially, such regulations may be introduced in the case of recognition that there is a shortage of housing for the local population is due to the fact that too much of it is used as flats for short-term rent.⁴²

³⁷ However, all accommodation establishments must meet certain requirements. These include, for example, the connection to a public sewerage system or fitting with a septic tank, a connection to a public water supply system, a window, or a balcony providing ventilation, appropriate furniture, equipment and utensils.

³⁸ Decree-Law No 220/2008 of 12 November 2008.

³⁹ Short-term rental is treated as an economic activity. The notification must therefore relate to: the pursuit of an activity of “furnished accommodation for tourists” or “other short-term rental accommodation”. At the same time, the numbering should also be requested in the context of intra-community transactions, where the short-term rental is made through the websites such as Airbnb.

⁴⁰ See: <http://portal.uniplaces.com>.

⁴¹ Gesetz zur Verbesserung des Mietrechts und zur Begrenzung des Mietanstiegs sowie zur Regelung von Ingenieur- und Architektenleistungen (Mietrechtsverbesserungsgesetz – MRVerbG) of 4.11.1971, Rental Law Improvement Act.

⁴² In one of its judgements, the Federal Constitutional Court ruled that the remedying of limited resources is the only reason for the possibility of introducing such regulations. At the same time, it emphasized that social tissue, gentrification or pauperization are not grounds for such prohibitions. <http://www.kanzlei-wenderoth.de/app/download/5798903892/BVerfG+1975+Verfassungsm%C3%A4%C3%9Figkeit%2C+Genehmigung.pdf>. In a landmark judgment, the German Federal Constitutional Court held that remedying scarce housing supply is strictly the only legitimate use

With this authorization, a “ZwVbG”⁴³ law prohibiting misuse of housing was introduced in Berlin⁴⁴ in 2013. Under this Act, from 2014 to 2016, Berlin had a total ban on short-term rentals. This ban was found to be unconstitutional and infringing upon the flats’ owners’ rights.⁴⁵ Currently, from 1 May 2016, in Berlin, there is a ban on renting out whole apartments through reservation platforms. It is only allowed to rent rooms (less than 50% of the surface area of the apartment), but only on condition that the landlord is living in the apartment for the duration of the short-term rental period.⁴⁶ In addition, specific permission must be obtained. Such permissions are issued for a temporary period and only if the applicant can prove that his private interests deserve to be protected beyond the public interest. As private interests worthy of protection, according to “ZwVbG”, the following are considered: putting their economic existence in danger⁴⁷ or renting a dwelling during the absence of its residents (e.g. holiday trip). Other regulations apply to renting under a regime of short-term rental of the so-called “second home”. Renting an owner’s second home is possible, but only for a period of up to 90 days per year and provided that the owner’s main residence is not located in Berlin and he/she doesn’t own any other additional apartments in the city.

Not abiding by the law may be sanctioned by means of eviction orders and the resettlement of persons who do not make legitimate use of their homes or high penalties – even up to €500,000.⁴⁸

of such empowerment. Conversely, the social tissue in a given area, gentrification, or pauperisation are issues which do not warrant legislation pursuant to the MRVerbG.

⁴³ Gesetz über das Verbot der Zweckentfremdung von Wohnraum; of 29 November 2013 r. GVBl.2013, 626 “ZwVbG” (The law prohibiting the misuse of dwellings). Last amendment of 9.04.2018.

⁴⁴ Such regulations were also issued in Hamburg, Freiburg and Baden, for example. In Baden, the following regulations are in force: Gesetz über das Verbot der Zweckentfremdung von Wohnraum (Zweckentfremdungsverbotsgesetz – ZwEWG) Vom 19.12.2013, GBl.2013, 484. The regulations introduced in particular cities vary.

⁴⁵ The judgment of the Federal Constitutional Court has been based on views expressed earlier in the jurisprudence. For example the judgment of the Berlin Supreme Administrative Court of 13 June 2002 at point I.B: <http://www.ferienwohnung-zimmer-berlin.de/Unterkuenfte/Vermieter/OVG%20Berlin.pdf> (page 7 of the document).

⁴⁶ It is also allowed to rent vacant flats, which, in spite of appropriate efforts of the owner haven’t been rented for a long time.

⁴⁷ In this case, the permission may be issued for a period of up to 3 years only (§3.3. ZwVbG0).

⁴⁸ See §4 I 7 ZwVbGO. Landlords under a short-term rental regime are also subject to the tax obligations. Even if the landlord rents only sporadically via internet platforms, and therefore has little income, it must be reported to the tax office (Article 21(1) of the Einkommensteuergesetz Federal Income Tax Act) of 8.10.2009, last amended on 21 December 2015). However, depending on the actual tax liability will vary depending on the individual situation. Since renting out a flat to tourist is an economic activity, the owner of such a flat is subject to business tax if the income exceeds €24, 500 (Art. 11, § 1, pt. 1 Gewerbesteuergesetz, Federal Trade Tax Act) restated on 15 October 2002 and last amended on 2.11.2015.

4. Poland

In Poland, the concept of short-term rental has no distinct legal definition. Reference to short-term rental can be found in the general definition of a rental agreement and in the regulations contained in the Civil Code. For several years, however, attempts have been made to address the need to separate such contracts.⁴⁹ This resulted in the undertaking of resolutions by the councils of two cities – Krakow and Sopot, in 2018 – which constituted an appeal to the authorities of Poland to take appropriate actions.⁵⁰ The authorities of the cities appealed, firstly, to establish regulations that would provide local governments with the possibility to regulate matters of short-term rental (right to shape the notion of a short-term rental, as well as the right to introduce rules and terms for the admissibility of short-term rental). Secondly, to change the regulations governing the functioning of housing communities by granting them the power to adopt a resolution on consent for renting premises to tourists. The postulates were argued by means of the following:

- 1) The need to prevent the gentrification of cities,
- 2) The need of to introduce some control over the quantity and quality of apartments rented under a short-term rental agreement. A matter particularly stressed here was the need for a ban on renting apartments as short-term rentals if they are in buildings that do not meet specific, rigorous fire safety requirements (which must be met by hotel buildings.),
- 3) The necessity of equipping the inhabitants of a specific building (housing communities) with the right to decide in the form of a resolution whether they agree to rent a flat located in a given building to tourists,
- 4) The necessity to introduce the principle of taxing short-term rental as an economic activity, not as a housing rental. This principle should affect both an increase in revenues to the budgets of local governments⁵¹ and the state.⁵²

⁴⁹ This is connected with the increase of tourist traffic in Poland and the emergence of new internet platforms servicing accommodation. On 13.02.2019, a new booking website entered the Polish market: RateHawk.com being part of the Emerging Travel Group. In its offer, the website has over 1 million premises in over 220 countries around the world. The website was founded in 2016. The company's headquarters is located in Cyprus. The site is available in eight languages – Polish, English, German, French, Italian, Spanish, Portuguese and Russian. The financial results for 2018 indicate an increase of over 300% in comparison to those from 2017 www.tur-info.pl.

⁵⁰ Resolution of the City Council of Krakow dated 11/06/2018, print no. 2938-R, www.bip.krakow.pl; Resolution of the City Council of Sopot from 11/06/2018, www.sopot.pl.

⁵¹ For example, while concerning property tax, the recognition of a short-term rental as an economic activity will lead to the taxation of short-term rentals at a higher rate – like for service premises.

⁵² As regards income tax, it is subject to taxation as another source of income. Short-term rental has not been defined for income tax purposes. Paid access to the premises occurs as part of a private lease or as part of an economic activity. Basically, a distinction one from the other follows by scale of earnings. Often, however, one can meet with the view that everyone who makes a short-term rental or a lease of several premises acts as an entrepreneur and therefore not only should he be a subject to the tax scale, and not the lump sum of 8.5%, but also the necessity to pay Social Insurance Institution (ZUS) contributions.

These postulates are supported by the Chamber of Commerce of the Polish Hotel Industry, interested in the limitation of the short-term rental phenomenon.⁵³ The postulates⁵⁴ concerning the need to introduce new legal regulations addressed to the Ministry Sport and Tourism included:

- 1) Introduction of the obligation to register premises rented to tourists,
- 2) Introduction of the restriction of renting a flat to tourists by specifying the maximum number of days per year and the maximum number of premises that can be used by one owner for short-term rental,
- 3) Increasing the tax for the landlords,
- 4) Introduction of regulations shaping the obligation to ensure safety for tourists during their stay (informing about the rules of evacuation in case of fire or complying with basic sanitary requirements.),
- 5) Introduction of regulations shaping the owner's responsibility towards guests and permanent residents of the building (including bearing responsibility by the owner if the booking agreement is not fulfilled or addressing consequences of disturbing the peace by the guests.).

In response to the postulates, the Ministry of Sport and Tourism announced that measures to prepare the so-called “white regulation book” will be taken. It is supposed to cover all issues related to tourism, including short-term rental. It will contain a definition of a short-term rental – as renting a premise at one time for up to 30 days. It also contains regulations on the limits of the permissibility of renting premises as part of a short-term rental, as well as the regulations of the so-called tourist tax, which will be required to be collected from tourists by owners of short-term rented apartments. At the same time, an online list of all places to stay in the country is supposed to be created. The preparation of the “white book” is supposed to constitute the basis for creating a bill that will regulate the real estate market in terms of short-term rental. The need to protect the housing market is being raised as the basic argument justifying the introduction of new regulations.⁵⁵ It initially anticipated that new regulations could come into force at the end of 2019.

However, while the work on the preparation of the “white book” has not yet been completed, it does not mean that the problem of regulating a short-term rental has been forgotten. In recent months, postulates regulating the short-term rental market at a European level have appeared again. Such aspirations are being implemented as a part of the international program “Historical Cities 3.0”. Under this program, a joint postulate of many cities aiming to draw the attention of the European Commission

⁵³ The Chamber of Commerce of Polish Hotel Industry participated in the national debate “Polish cities in the face of the phenomenon short-term rental for tourists” organized on September 17, 2018 in Krakow as part of the international project “Historical Cities 3.0”.

⁵⁴ www.noclegowo.pl.

⁵⁵ Firstly, it is emphasized that the allocation of a larger number of flats for short-term rental affects real and countable impact on the rising price of square meter in tourist areas, but also skews the offer. The long-term rental offer begins to shrink and the rent at long-term lease causes the phenomenon of gentrification. At the present time, more and more apartments are bought for the sake of short-term rental.

to the necessity of regulation of short-term rental at the European level was launched in January 2019.⁵⁶

V. Discussion and Conclusions

As indicated, the development of technology has influenced the creation of new forms of the market and the modification of existing ones. New business models have been created as part of the sharing economy trend. One of the areas of the sharing economy is the real estate market. The sharing economy is associated in this area with the issue of the accommodation services sector, in particular with the issue of short-term rental, and the accommodation services sector is the largest in the sharing economy. The widest group of entities using the accommodation services sector and which are interested in its development are tourists. The analyzes presented in the work show that the development of the accommodation services sector is also supported by the EU.

All measures taken since 2006 by the EU bodies have been targeting the promotion of the sharing economy development (including accommodation services sector). Recognizing the problem of the clash of interests between existing market operators and entities operating new models of business, the EU negatively evaluates attempts to prevent innovations by introducing restrictive regulations. This does not mean, however, unconditional support for the development of new business models. The EU is in favor of supporting the accommodation services sector development while, simultaneously, respecting the principles of fair competition, workers' rights and tax regulations. Special attention is also paid to the matter of ensuring adequate protection of consumer rights. It is the protection of consumer rights, that has been recognized as requiring additional regulations at EU level.

Regarding the regulation of short-term rental, EU authorities have not introduced regulations common to all Member States. The EU acts contain only guidelines on the regulation of short-term rental in individual Member States. At the same time, however, EU authorities are against introducing bans and restrictive restrictions on short-term rental in the regulations of the Member States. However, as has been pointed out, such restrictions exist in the regulations of individual Member States and, in addition, there is a large fragmentation of short-term rental regulations in the European Union resulting from regulatory differences at the national or local level in individual Member States. This is also one of the reasons why proposals are now being re-directed to the European Commission to regulate short-term rental at the EU level. Undoubtedly, the introduction of short-term rental regulations at the EU level would harmonize the rules. However, when analyzing the legitimacy of these aspi-

⁵⁶ Amsterdam, Dortmund, Barcelona, Berlin, Bordeaux, Brussels, Cologne, Krakow, Madrid, Paris, Utrecht, Valencia, Vienna, Reykjavik have decided to address to the European Commission to present their concerns and experiences related to the short-term rental for tourists. The cities take the position that it is necessary to register the activity of a short-term rental with a given number as a common regulation at the European level, at the same time obliging P2P platforms to sell only registered accommodation facilities.

rations, it is worth considering that the diversification of short-term rental provisions in Member States is linked, *inter alia*, to the fact that the regulation of property law and housing policy belongs to the Member States. Given the above, it seems that the actions of the EU bodies are appropriate. Creating common short-term rental regulations for Member States (defined by thresholds – the number of rental days and the number of premises) at the EU level (applicable to existing but also developing tourist destinations) does not seem justified.

SUMMARY

The problem of short-term rentals has become very topical in recent years. This is due to the development of a new form of the real estate market, within the framework of the sharing economy. The sharing economy is associated in this area with the issue of the accommodation sector, in particular with the issue of short-term rental. More and more tourists are resigning from accommodation in hotels and opting for renting apartments using online platforms. This rapid development of the sharing economy, especially in the field of accommodation services, triggered reactions that in many countries took the form of attempts to reduce this phenomenon. They resulted in complaints to the European Commission concerning proposals to regulate the short-term rental market at the EU level. The subject of the article is the analysis of this phenomenon. It has been performed taking into account the EU's response to this phenomenon as well as the reactions of individual Member States. First of all, the position of the EU bodies was presented, which in principle approves of the development of the sharing economy, whilst taking into account the need to protect the rights of tourists as consumers. The analyzes have shown that as regards short-term rental, the EU authorities have not introduced common regulations for all Member States. The EU acts contain only guidelines on the regulation of short-term rentals in individual Member States. At the same time, however, EU authorities are against introducing bans and restrictions on short-term rentals in the regulations of the Member States. The second level of analysis covered the presentation of the reactions of individual Member States to the progressive increase in the sharing economy in the area of short-term rental, in the context of legislative attempts to restrict this phenomenon. Regulations in Germany (where there are very strong restrictions), France (where there are strong restrictions) and Portugal (where there are slight restrictions) were analyzed. The arguments raised by supporters of the ban or restriction of short-term rental presented by communities in Poland were also presented.

STRESZCZENIE

ZAGADNIENIE NAJMU KRÓTKOTERMINOWEGO W ŚWIETLE REGULACJI PAŃSTW CZŁONKOWSKICH ORAZ UNIJNYCH

Problematyka najmu krótkoterminowego stała się w ostatnich latach bardzo aktualna. Przyczynił się do tego rozwój technologii, który wpłynął na tworzenie się nowych i modyfikację istniejących rynków, w tym rynku nieruchomości, w ramach gospodarki współdzielenia (*sharing economy*). *Sharing economy* związana jest w obszarze rynku nieruchomości z rozwojem sektora usług zakwaterowania i popularyzacją najmu krótkoterminowego. Coraz więcej bowiem turystów (i nie tylko) rezygnuje z zakwaterowania w hotelach, wybierając najem pokoi czy też mieszkań za pośrednictwem platform internetowych. Zjawisko to wywołało reakcje, które w wielu krajach przybrały formę prób jego ograniczenia. Zaowocowały one m.in. skargami do Komisji Europejskiej zawierającymi postulaty uregulowania rynku najmu krótkoterminowego na poziomie UE. Tematem artykułu stała się analiza reakcji organów UE na rozwój *sharing economy* w zakresie usług zakwaterowania, jak również reakcja na to zjawisko wybranych państw członkowskich. W pierwszej kolejności przedstawiono stanowisko organów UE, które co do zasady popierają rozwój gospodarki współdzielenia, biorąc jednak pod uwagę potrzebę równoczesnej ochrony praw najemców jako konsumentów. Analizy przedstawione w pracy wykazały, że w odniesieniu do najmu krótkoterminowego organy UE nie wprowadziły wspólnych przepisów, a akty przez nie wydawane zawierają jedynie wytyczne dotyczące uregulowania najmu krótkoterminowego w państwach członkowskich. Jednoznacznie jednak wynika z nich, że władze UE są przeciwne wprowadzaniu zakazów i restrykcyjnych ograniczeń dotyczących najmu krótkoterminowego w przepisach państw członkowskich. Jak jednak wynika z analiz poczynionych w dalszej części pracy, w wielu państwach członkowskich reakcja na postępujący wzrost gospodarki współdzielenia w obszarze najmu krótkoterminowego zaowocowała wprowadzeniem regulacji mających na celu ograniczenie tego zjawiska. Analizy przedstawione w pracy skoncentrowane zostały na regulacjach wprowadzonych w Niemczech (gdzie istnieją bardzo silne ograniczenia), Francji (gdzie istnieją silne ograniczenia) i Portugalii (gdzie istnieją niewielkie ograniczenia). W pracy przedstawiono także argumenty zwolenników wprowadzenia regulacji ograniczających dopuszczalność najmu krótkoterminowego przedstawione przez społeczność w Polsce.

Słowa kluczowe: najem krótkoterminowy, usługi zakwaterowania, regulacje prawne, prawa konsumenta, gospodarka współdzielenia

Key words: short-term rental, accommodation services, legal regulations, consumer rights, sharing economy