Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

22 September 2020 (*)

(References for a preliminary ruling – Directive 2006/123/EC – Scope – Repeated short-term letting of furnished premises to a transient clientele which does not take up residence there – National legislation imposing a prior authorisation scheme for certain specific municipalities and making those municipalities responsible for defining the conditions for granting the authorisations provided for by that scheme – Article 4(6) – Concept of 'authorisation scheme' – Article 9 – Justification – Insufficient supply of affordable long-term rental housing – Proportionality – Article 10 – Requirements relating to the conditions for granting authorisations)

In Joined Cases C-724/18 and C-727/18,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decisions of 15 November 2018, received at the Court on 21 and 22 November 2018 respectively, in the proceedings

Cali Apartments SCI (C-724/18),

HX (C-727/18)

v

Procureur général près la cour d'appel de Paris,

Ville de Paris,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, A. Prechal, L.S. Rossi and I. Jarukaitis, Presidents of Chambers, E. Juhász, M. Ilešič, J. Malenovský, L. Bay Larsen, D. Šváby (Rapporteur) and N. Piçarra, Judges,

Advocate General: M. Bobek,

Registrar: V. Giacobbo, Administrator,

having regard to the written procedure and further to the hearing on 19 November 2019,

after considering the observations submitted on behalf of:

– Cali Apartments SCI and HX, by P. Spinosi and V. Steinberg, avocats,

– the ville de Paris, by G. Parleani, D. Rooz and D. Foussard, avocats,

– the French Government, by E. de Moustier and R. Coesme, acting as Agents,

– the Czech Government, by M. Smolek, J. Vláčil, T. Müller and T. Machovičová, acting as Agents,

– the German Government, by J. Möller and S. Eisenberg, acting as Agents,

– Ireland, by M. Browne, G. Hodge and A. Joyce, acting as Agents, and by D. Fennelly, Barrister-at-Law, and N. Butler, Senior Counsel,

– the Greek Government, by S. Charitaki, S. Papaioannou and M. Michelogiannaki, acting as Agents,

– the Spanish Government, by S. Jiménez García and M.J. García-Valdecasas Dorrego, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and J.M. Hoogveld, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by É. Gippini Fournier, L. Malferrari and L. Armati, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 April 2020,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Articles 1, 2, and 9 to 15 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

2 The requests have been made in proceedings between Cali Apartments SCI and HX, on the one hand, and the Procureur général près la cour d'appel de Paris (Public Prosecutor at the Court of Appeal, Paris, France) and the ville de Paris (City of Paris, France), on the other, concerning the infringement by the former of national legislation requiring prior authorisation for the exercise of activities consisting in the repeated short-term letting, for remuneration, of furnished accommodation to a transient clientele which does not take up residence there.

Legal context

European Union law

3 Recitals 1, 7, 9, 27, 33, 59 and 60 of Directive 2006/123 read as follows:

'(1) The European Community is seeking to forge ever closer links between the States and peoples of Europe and to ensure economic and social progress. In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of services is ensured. In accordance with Article 43 of the Treaty the freedom of establishment is ensured. Article 49 of the Treaty establishes the right to provide services within the Community. The elimination of barriers to the development of service activities between Member States is essential in order to strengthen the integration of the peoples of Europe and to promote balanced and sustainable economic and social progress. In eliminating such barriers it is essential to ensure that the development of service activities contributes to the fulfilment of the task laid down in Article 2 of the Treaty of promoting throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life and economic and social cohesion and solidarity among Member States.

…

(7) This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. That framework is based on a dynamic and selective approach consisting in the removal, as a matter of priority, of barriers which may be dismantled quickly and, for the others, the launching of a process of evaluation, consultation and complementary harmonisation of specific issues, which will make possible the progressive and coordinated modernisation of national regulatory systems for service activities which is vital in order to achieve a genuine internal market for services by 2010. Provision should be made for a balanced mix of measures involving targeted harmonisation, administrative cooperation, the provision on the freedom to provide services and encouragement of the development of codes of conduct on certain issues. That coordination of national legislative regimes should ensure a high degree of Community legal integration and a high level of protection of general interest objectives, especially protection of consumers, which is vital in order to establish trust between Member States. This Directive also takes into account other general interest objectives, including the protection of the environment, public security and public health as well as the need to comply with labour law.

…

(9) This Directive applies only to requirements which affect the access to, or the exercise of, a service activity. Therefore, it does not apply to requirements, such as road traffic rules, rules concerning the development or use of land, town and country planning, building standards as well as administrative penalties imposed for non-compliance with such rules which do not specifically regulate or specifically affect the service activity but have to be respected by providers in the course of carrying out their economic activity in the same way as by individuals acting in their private capacity.

…

(27) This Directive should not cover those social services in the areas of housing, childcare and support to families and persons in need which are provided by the State at national, regional or local level by providers mandated by the State or by charities recognised as such by the State with the objective of ensuring support for those who are permanently or temporarily in a particular state of need because of their insufficient family income or total or partial lack of independence and for those who risk being marginalised. These services are essential in order to guarantee the fundamental right to human dignity and integrity and are a manifestation of the principles of social cohesion and solidarity and should not be affected by this Directive.

…

(33) The services covered by this Directive concern a wide variety of ever-changing activities, including business services such as management consultancy, certification and testing; facilities management, including office maintenance; advertising; recruitment services; and the services of commercial agents. The services covered are also services provided both to businesses and to consumers, such as legal or fiscal advice; real estate services such as estate agencies; construction, including the services of architects; distributive trades; the organisation of trade fairs; car rental; and travel agencies. Consumer services are also covered, such as those in the field of tourism …

…

(59) The authorisation should as a general rule enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, unless a territorial limit is justified by an overriding reason relating to the public interest. For example, environmental protection may justify the requirement to obtain an individual authorisation for each installation on the national territory.

This provision should not affect regional or local competences for the granting of authorisations within the Member States.

(60) This Directive, and in particular the provisions concerning authorisation schemes and the territorial scope of an authorisation, should not interfere with the division of regional or local competences within the Member States, including regional and local self-government and the use of official languages.'

4 Article 1(1) of that directive states:

'This Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.'

5 Under Article 2 of that directive:

'1. This Directive shall apply to services supplied by providers established in a Member State.

2. This Directive shall not apply to the following activities:

(a) non-economic services of general interest;

(b) financial services …

(c) electronic communications services and networks, and associated facilities and services, with respect to matters covered by [Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ 2002 L 108, p. 7), Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21), Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51) and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37)];

(d) services in the field of transport …

(e) services of temporary work agencies;

(f) healthcare services …

(g) audiovisual services …

(h) gambling activities which involve wagering a stake with pecuniary value in games of chance …

(i) activities which are connected with the exercise of official authority as set out in Article 45 of the Treaty;

(j) social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State;

(k) private security services;

(l) services provided by notaries and bailiffs, who are appointed by an official act of government.

3. This Directive shall not apply to the field of taxation.'

6 Under the heading 'Definitions', Article 4 of Directive 2006/123 states:

'For the purposes of this Directive, the following definitions shall apply:

(1) "service" means any self-employed economic activity, normally provided for remuneration, as referred to in Article 50 of the Treaty;

(2) "provider" means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a service;

…

(6) "authorisation scheme" means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof;

(7) "requirement" means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy; rules laid down in collective agreements negotiated by the social partners shall not as such be seen as requirements within the meaning of this Directive;

(8) "overriding reasons relating to the public interest" means reasons recognised as such in the case-law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives.

…'

7 Articles 9 to 13 of Directive 2006/123 concern 'authorisations'.

8 Article 9(1) of that directive states:

'Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

(a) the authorisation scheme does not discriminate against the provider in question;

(b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;

(c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.'

9 The wording of Article 10(1), (2) and (7) of that directive is as follows:

‘1. Authorisation schemes shall be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 shall be:

(a) non-discriminatory;

(b) justified by an overriding reason relating to the public interest;

(c) proportionate to that public interest objective;

(d) clear and unambiguous;

(e) objective;

(f) made public in advance;

(g) transparent and accessible.

…

7. This Article shall not call into question the allocation of the competences, at local or regional level, of the Member States’ authorities granting authorisations.’

10 Article 13(1) of Directive 2006/123 states:

‘Authorisation procedures and formalities shall be clear, made public in advance and be such as to provide the applicants with a guarantee that their application will be dealt with objectively and impartially.’

11 Articles 14 and 15 of Directive 2006/123 concern ‘requirements prohibited or subject to evaluation’. Article 14 of that directive lists the requirements to which the Member States may not make access to, or the exercise of, a service activity in their territory subject. Article 15 of that directive obliges the Member States, inter alia, to examine whether their legal system makes access to a service activity or the exercise thereof subject to compliance with one or more of the requirements listed in paragraph 2 of that article and to ensure that, if so, such requirements are compatible with the conditions listed in paragraph 3 of that article.

French law

The Tourism Code

12 Article L. 324-1-1 of the code du tourisme (Tourism Code), in the version applicable to the dispute in the main proceedings (‘the Tourism Code’), states:

‘Any person letting furnished tourist accommodation, whether or not the accommodation is classified as such for the purposes of this Code, must have made a prior declaration thereof to the mayor of the municipality in which the accommodation is located.

This prior declaration is not obligatory where the premises to be used for residential purposes constitute the lessor’s main residence for the purposes of Article 2 of 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 (Law No 89-462 of 6 July 1989 seeking to improve lessor-lessee relations and amending Law No 86-1290 of 23 December 1986).’

The Construction and Housing Code

13 Article L. 631-7 of the code de la construction et de l'habitation (Construction and Housing Code) states, inter alia, that, in municipalities with more than 200 000 inhabitants and in the municipalities of Hauts-de-Seine, Seine-Saint-Denis and Val-de-Marne, change of use of residential premises is subject to prior authorisation under the conditions set out in Article L. 631-7-1 of that code and that the repeated short-term letting of furnished accommodation to a transient clientele which does not take up residence there constitutes change of use under that provision.

14 Article L. 631-7-1 of the Construction and Housing Code provides:

'Prior authorisation for change of use shall be granted by the mayor of the municipality in which the property is located; in Paris, Marseilles and Lyon, this shall be done after consulting the mayor of the arrondissement (district) concerned. It may be subject to an offset requirement in the form of the concurrent conversion of non-residential premises into housing.

Authorisation for change of use shall be granted on an individual basis. It shall cease to have effect upon the definitive termination, for any reason, of the beneficiary's professional practice. However, where authorisation is subject to an offset requirement, it is the premises, and not the individual, which are granted that status. The premises offered as an offset shall be listed in the authorisation which is published in the property file or entered in the land register.

The use of the premises defined in Article L. 631-7 shall under no circumstances be affected by the 30-year limitation period laid down by Article 2227 of the code civil (Civil Code).

For the application of Article L. 631-7, a decision adopted by the municipal council sets the conditions for granting authorisations and determining the offset requirements by quartier (neighbourhood) and, where appropriate, by district, in the light of social diversity objectives, according to, inter alia, the characteristics of the markets for residential premises and the need to avoid exacerbating the housing shortage. …'

15 By contrast, according to Article L. 631-7-1 A of the Construction and Housing Code, no authorisation for change of use is necessary if the premises constitutes the lessor's main residence for the purposes of Article 2 of 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 (Law No 89-462 of 6 July 1989 seeking to improve lessor-lessee relations and amending Law No 86-1290 of 23 December 1986) (*Journal Officiel de la République Française* of 8 July 1989, p. 8541), that is to say, if the dwelling is occupied for at least eight months per year, except owing to professional obligations, health reasons or *force majeure*, by the lessor or his or her spouse or by a dependant.

16 Article L. 651-2 of the Construction and Housing Code, in the version applicable to the facts in the main proceedings, states:

'Any person who infringes the provisions of Article L. 631-7, or who fails to comply with the conditions or requirements under that article, shall be liable to pay a fine of EUR 25 000.

That fine shall be imposed by the President of the tribunal de grande instance (Regional Court) of the place where the property is located, ruling on an application for interim relief submitted by the ministère public (public prosecutor's office); all proceeds from that fine shall be paid to the municipality in which the property is located.

The President of the tribunal de grande instance (Regional Court) shall order that premises which have been converted without authorisation be converted back into residential accommodation within a period to be prescribed by him or her. At the end of that period, he or she shall impose a penalty payment which may not exceed EUR 1 000 per day and per usable square metre of the improperly converted premises. All proceeds from that penalty payment shall be paid to the municipality in which the property is located.

After this period, the administrative authorities may, of their own motion and at the infringer's expense, evict any occupants and carry out the necessary works.'

The General Code for Local and Regional Authorities

17 Article L. 2121-25 of the code général des collectivités territoriales (General Code for Local and Regional Authorities) states that the minutes of municipal council meetings are to be displayed in the town hall and be made available online via the municipality's website.

The Municipal Regulation adopted by the Council of Paris

18 Article 2 of the 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 (Municipal Regulation setting the conditions for granting authorisations for changes of use of residential premises and determining the offset requirements under Section 2 of Chapter 1 of Title III of Book VI of the Construction and Housing Code), adopted by the conseil de Paris (Council of Paris, France) in its meeting of 15, 16 and 17 December 2008, reads as follows:

'I – Offsetting consists in the conversion into housing of premises having a use other than housing on 1 January 1970 or in respect of which planning authorisation is granted to alter the intended use thereof after 1 January 1970 and which have not previously been used by way of offset.

The premises offered by way of offset must, cumulatively:

(a) consist of housing units and be of a standard and a surface area equivalent to the premises that are the subject of the change of use, with cases being considered on the basis of the suitability of the premises for housing purposes. The premises offered by way of offset must meet the standards laid down in the Decree of 30 January 2002 concerning the characteristics of decent housing;

(b) be located in the same district as the residential premises that are the subject of the change of use.

Surface areas shall be calculated in accordance with Article R 111-2 of the Construction and Housing Code.

II – In the areas covered by enhanced offsetting designated in Annex No 1, by way of derogation from subparagraph (a) of paragraph I, premises offered by way of offset must be twice the surface area of those which are the subject of a change of use application, unless those premises are converted into rental social housing which is the subject of an agreement concluded pursuant to Article L. 351-2 of the Construction and Housing Code for a minimum period of 20 years.

By way of derogation from subparagraph (b) of paragraph I, rental social housing that offsets converted premises in the areas covered by enhanced offsetting may be located in any part of those areas. However, if the converted premises are located in the first, second, fourth, fifth, sixth, seventh, eighth or ninth districts, where the housing shortage, by comparison with the level of activity, is particularly severe, a maximum of 50% of the converted surface area may be offset outside the district in which the conversion is to take place.

Those districts are characterised by a ratio of the number of salaried jobs to the number of working residents, as measured by the INSEE [(Institut national de la statistique et des études économiques) (National Institute of Statistics and Economic Studies)], that is higher than the average in Paris.

Where all of the units offered by way of offset may be located outside the district in which the conversion is to take place, the number of housing units offered by way of offset must, at the very least, be identical to the number of housing units removed.

If premises are converted and offset by one and the same owner within a single property unit, in connection with a rationalisation of the living space within that property unit, the minimum surface area required, for the purpose of offsetting, shall be the surface area of the converted premises.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

19 The tribunal de grande instance de Paris (Regional Court, Paris, France), hearing an application for interim relief submitted by the procureur de la République (public prosecutor) attached to that court on the basis of Article L. 631-7 of the Construction and Housing Code, ordered Cali Apartments and HX, each owners of a studio apartment located in Paris, to pay respective fines of EUR 5 000 and EUR 15 000 and ordered that the use of the properties in question be changed back to residential.

20 The City of Paris intervened voluntarily in the proceedings.

21 By two judgments of 19 May and 15 June 2017, the cour d'appel de Paris (Court of Appeal, Paris, France), hearing appeals by Cali Apartments and HX, held that it was established that the studio apartments in question, which had been offered for rent on a website, had, repeatedly and without prior authorisation, been let for short periods to a transient clientele, in breach of Article L. 631-7 of the Construction and Housing Code. On the basis of Article L. 651-2 of that code, in the version applicable to the facts in the main proceedings, that court ordered Cali Apartments and HX each to pay a fine of EUR 15 000, stated that the proceeds from those fines would be paid to the City of Paris and ordered that the use of the premises be changed back to residential.

22 Cali Apartments and HX brought appeals on a point of law against those judgments on the ground that those judgments infringed the principle of the primacy of EU law, inasmuch as they did not establish that (i) the restriction on the freedom to provide services resulting from the national legislation in question was justified by an overriding reason relating to the public interest, (ii) the objective pursued by that legislation could not be attained by means of a less restrictive measure as required by Article 9(1)(b) and (c) of Directive 2006/123, and (iii) the implementation of that restriction is not dependent on criteria meeting the requirements of Article 10 of that directive.

23 In that context, the Cour de cassation (Court of Cassation, France) is uncertain as to whether the service activity referred to in Article L. 631-7 of the Construction and Housing Code, in the version applicable to the facts in the main proceedings, the requirements of which supplement the declaratory system laid down in Article L. 324-1-1 of the Tourism Code in respect of the letting of furnished tourist accommodation, falls within the scope of Directive 2006/123.

24 If so, it also questions whether that legislation is covered by the concept of 'authorisation scheme' within the meaning of Article 4(6) of that directive, to which Section 1 of Chapter III thereof applies, or whether it is covered by the concept of 'requirement' within the meaning of Article 4(7) of that directive, to which Section 2 of Chapter III thereof applies.

25 Lastly, in the event that the legislation concerned is covered by the concept of 'authorisation scheme' within the meaning of Article 4(6) of Directive 2006/123, it questions whether such legislation is in line with that directive in view of its objective, which is 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, protecting owners and tenants, and increasing 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.

26 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following questions, which are worded identically in Cases C-724/18 and C-727/18, to the Court of Justice for a preliminary ruling:

‘(1) Having regard to the definition of the purpose and scope of application of [Directive 2006/123], as set out in Articles 1 and 2 thereof, does that directive apply to the repeated letting for short periods, against consideration, including on a non-professional basis, of furnished accommodation for residential use, not constituting the lessor’s main residence, to a transient clientele which does not take up residence there, particularly in the light of the concepts of “providers” and “services”?

(2) If the above question is answered in the affirmative, does national legislation such as that provided for in Article L. 631-7 of the code de la construction et de l’habitation (Construction and Housing Code) constitute an authorisation scheme for the abovementioned activity for the purposes of Articles 9 to 13 of [Directive 2006/123], or solely a requirement subject to the provisions of Articles 14 and 15 [of that directive]?

In the event that Articles 9 to 13 of [Directive 2006/123] are applicable:

(3) Should Article 9(b) of that directive be interpreted as meaning that the objective of tackling the shortage of rental housing constitutes an overriding reason relating to the public interest capable of justifying a national measure which requires authorisation to be obtained, in certain geographical areas, for the repeated letting of furnished accommodation for residential use for short periods to a transient clientele which does not take up residence there?

(4) If so, is such a measure proportionate to the objective pursued?

(5) Does Article 10(2)(d) and (e) of [Directive 2006/123] preclude a national measure which requires authorisation to be obtained for the “repeated” letting of furnished accommodation for residential use for “short periods” to a “transient clientele which does not take up residence there”?

(6) Does Article 10(2)(d) to (g) of [Directive 2006/123] preclude an authorisation scheme whereby the conditions for granting authorisation are set, by decision of the municipal council, in the light of social diversity objectives, according to, inter alia, the characteristics of the markets for residential premises and the need to avoid exacerbating the housing shortage?’

27 By decision of the President of the Court of 18 December 2018, Cases C-724/18 and C-727/18 were joined for the purposes of the written and oral procedure and of the judgment.

Consideration of the questions referred

The first question

28 By its first question, the referring court asks, in essence, whether Articles 1 and 2 of Directive 2006/123 are to be interpreted as meaning that that directive applies to legislation of a Member State relating to activities consisting in the repeated short-term letting, for remuneration, whether on a professional or non-professional basis, of furnished accommodation to a transient clientele which does not take up residence there.

29 Article 1(1) of Directive 2006/123 provides, in essence, that that directive is intended to facilitate the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.

30 Under Article 2(1) of Directive 2006/123, that directive applies to services supplied by providers established in a Member State. However, Article 2(2) of that directive excludes a series of activities from its scope. Article 2(3) of that directive specifies that it does not apply to the field of taxation.

31 Article 4(1) of Directive 2006/123 defines the concept of ‘service’ for the purposes of that directive.

32 It is therefore necessary to determine whether an activity consisting in the repeated short-term letting, for remuneration, whether on a professional or non-professional basis, of furnished accommodation to a transient clientele which does not take up residence there is covered by the concept of 'service' within the meaning of Article 4(1) of Directive 2006/123, and, if so, whether that service is nonetheless excluded from the scope of that directive under Article 2 thereof and whether national legislation such as that described in paragraph 28 above is itself excluded from that scope.

33 Regarding, first of all, the classification of the activity concerned, it is apparent from Article 4(1) of Directive 2006/123 that, for the purposes of that directive, 'service' means any self-employed economic activity, normally provided for remuneration, as referred to in Article 57 TFEU.

34 In the present instance, the activity consisting in the letting of immovable property, as described in paragraph 28 above, exercised by a natural or legal person on an individual basis is covered by the concept of 'service' within the meaning of Article 4(1) of Directive 2006/123.

35 In that regard, recital 33 of that directive also states that it applies to a wide variety of ever-changing activities, including real estate services and those in the field of tourism. As has been stated by the referring court, the legislation at issue in the main proceedings supplements the existing legislation set out in Article L. 324-1-1 of the Tourism Code, in the version applicable to the facts in the main proceedings.

36 Regarding, next, the question whether such a service is nonetheless excluded from the scope of Directive 2006/123 under Article 2(2) thereof, it must be noted that there is nothing in the file before the Court to suggest that that service may be one of the activities excluded by that provision, something which, moreover, the referring court itself does not contemplate. In addition, the situation which gave rise to the present cases does not fall within the field of taxation for the purposes of Article 2(3) of that directive.

37 Nevertheless, the German Government argues that the legislation at issue in the main proceedings governs not a service, but the change of use of residential premises and that, as a result, it may apply, inter alia, to changes of use for the purpose of accommodating homeless persons or refugees, which activities are not economic activities and are explicitly excluded from the scope of Directive 2006/123 under Article 2(2)(j) of that directive, read in conjunction with recital 27 thereof.

38 However, such a possibility, which has been neither raised nor confirmed by the referring court or the French Government, is not only hypothetical, as was noted by the Advocate General in point 42 of his Opinion, but is also incapable, as such, of excluding from the scope of Directive 2006/123 legislation such as that at issue in the main proceedings which applies to activities whose classification as a 'service' within the meaning of Article 4(1) of that directive has been clearly established, as has been noted in paragraph 34 above.

39 The mere fact that national legislation is applicable to access to, or the exercise of, an activity that is excluded from the scope of Directive 2006/123, such as those referred to in Article 2(2)(j) thereof, cannot entail the exclusion of that legislation from the scope of that directive in circumstances where it governs other activities which, for their part, are not covered by one of the exclusions listed in Article 2(2) of that directive without undermining the effectiveness of that directive and calling into question the objective, referred to in recitals 1 and 7 thereof, of establishing an area without internal frontiers in which the free movement of a wide variety of services is ensured.

40 Regarding, lastly, the question whether such legislation is nonetheless excluded from the scope of Directive 2006/123 read in the light of recital 9 of that directive, the Court has had occasion to specify that, according to that recital, under which 'requirements, such as … Rules concerning the development or use of land [and] town and country planning' are excluded from its scope, that directive is not applicable to requirements which cannot be regarded as constituting restrictions on the freedom of establishment of service providers in the Member States and on the free movement of services between the Member States, since those requirements do not specifically regulate or specifically affect access to a service activity or the exercise thereof, but have to be respected by providers in the course of carrying out their economic activity

in the same way as by individuals acting in their private capacity (see, to that effect, judgment of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 123).

41 It follows that only administrative formalities, requirements and, accordingly, legislation of Member States that specifically govern access to, and the exercise of, a service activity or a particular service category fall within the scope of Directive 2006/123 for the purposes of Article 2(1) of that directive, read in conjunction with Article 4(1) thereof.

42 In the present instance, it must be pointed out that, even though the legislation at issue in the main proceedings is intended to ensure a sufficient supply of affordable long-term rental housing and may, on that basis, be regarded as falling within the field of the development or use of land and, in particular, the field of town and country planning, 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 (see, by analogy, judgment of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 124).

43 As is apparent from the orders for reference and from Articles L. 631-7 and L. 631-7-1 A of the Construction and Housing Code, the letting, for remuneration, of unfurnished immovable property, and of furnished immovable property constituting the lessor's main residence for a cumulative period of less than four months per year, is not subject to that legislation.

44 Accordingly, in so far as that legislation governs access to, and the exercise of, certain specific forms of activity consisting in the letting of immovable property, it is not legislation which applies indiscriminately in the field of the development or use of land or the field of town and country planning and, therefore, cannot fall outside the scope of Directive 2006/123.

45 Having regard to the foregoing, the answer to the first question is that Articles 1 and 2 of Directive 2006/123 must be interpreted as meaning that that directive applies to legislation of a Member State relating to activities consisting in the repeated short-term letting, for remuneration, whether on a professional or non-professional basis, of furnished accommodation to a transient clientele which does not take up residence there.

The second question

46 By its second question, the referring court asks, in essence, whether Article 4 of Directive 2006/123 is to be interpreted as meaning that national legislation which makes the exercise of certain activities consisting in the letting of residential premises subject to prior authorisation is covered by the concept of 'authorisation scheme' within the meaning of paragraph 6 of that article or that of 'requirement' within the meaning of paragraph 7 thereof.

47 Under Article 4(6) of Directive 2006/123, an 'authorisation scheme' is defined as any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof.

48 For its part, Article 4(7) of that directive defines the concept of 'requirement' as any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy.

49 An 'authorisation scheme' within the meaning of Article 4(6) of Directive 2006/123 is thus distinct from a 'requirement' within the meaning of Article 4(7) of that directive, inasmuch as it involves steps being taken by the service provider and a formal decision whereby the competent authorities authorise that

service provider's activity (see, to that effect, judgment of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 115).

50 In the present instance, it follows from Articles L. 631-7 and L. 631-7-1 of the Construction and Housing Code, taken together, that persons who own premises located in a municipality with more than 200 000 inhabitants and who wish to let those furnished premises repeatedly for short periods to a transient clientele which does not take up residence there are, in principle and subject to the penalties laid down in Article L. 651-2 of that code, required to obtain a prior authorisation for change of use, granted by the mayor of the municipality in which those premises are located; that authorisation may be subject to an offset requirement in the form of the concurrent conversion of non-residential premises into housing.

51 Thus, such legislation requires persons wishing to provide such a service of letting immovable property to undergo a procedure which obliges them to take steps in order to obtain a formal decision from a competent authority enabling them to access and to exercise that service activity.

52 Accordingly, it must be regarded as establishing an 'authorisation scheme' within the meaning of Article 4(6) of Directive 2006/123, which must comply with the requirements laid down in Section 1 of Chapter III of that directive (see, by analogy, judgment of 4 July 2019, *Kirschstein*, C-393/17, EU:C:2019:563, paragraph 64), and not as a 'requirement' within the meaning of Article 4(7) of that directive.

53 Having regard to the foregoing, the answer to the second question is that Article 4 of Directive 2006/123 must be interpreted as meaning that national legislation which makes the exercise of certain activities consisting in the letting of residential premises subject to prior authorisation is covered by the concept of 'authorisation scheme' within the meaning of paragraph 6 of that article.

The third, fourth, fifth and sixth questions

Preliminary observations

54 By its third, fourth, fifth and sixth questions, the referring court asks, in essence, whether Section 1 of Chapter III of Directive 2006/123 and, more specifically, Article 9(1)(b) and Article 10(2)(d) to (g) of that directive, is to be interpreted as precluding legislation of a Member State which, for reasons designed to ensure a sufficient supply of affordable long-term rental housing, makes certain activities consisting in the repeated short-term letting, for remuneration, of furnished accommodation to a transient clientele which does not take up residence there subject to a prior authorisation scheme applicable in certain municipalities whose local authorities are to determine, within the framework laid down by that legislation, the conditions for granting the authorisations provided for by that scheme, making them subject, if necessary, to an offset requirement in the form of the concurrent conversion of non-residential premises into housing.

55 In that regard, it should be noted, as the referring court did and as the Advocate General did in point 70 of his Opinion, that Chapter III of Directive 2006/123, and in particular Section 1 of that chapter, is applicable to the facts in the main proceedings.

56 It is settled case-law that that chapter applies even to purely domestic situations, namely those where all the relevant elements are confined to a single Member State (judgments of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 110; of 4 July 2019, *Commission* v *Germany*, C-377/17, EU:C:2019:562, paragraph 58; and of 4 July 2019, *Kirschstein*, C-393/17, EU:C:2019:563, paragraph 24).

57 In addition, it is apparent from Section 1 of Chapter III of Directive 2006/123 that the compliance of a national authorisation scheme with the requirements laid down by that directive presupposes, in particular, that such a scheme, which, by its very nature restricts the freedom to provide the service concerned, satisfies the conditions set out in Article 9(1) of that directive, namely it is non-discriminatory, justified by an overriding reason relating to the public interest, and proportionate, but also that the criteria for granting the authorisations provided for by that scheme are in line with Article 10(2) of that directive, namely they

are non-discriminatory, justified by an overriding reason in the public interest, proportionate to that public interest objective, clear and unambiguous, objective, made public in advance, and transparent and accessible.

58 It follows that the assessment of whether legislation of a Member State establishing such an authorisation scheme is in line with the two articles referred to in paragraph 57 above, which lay down clear, precise and unconditional obligations giving them direct effect (see, by analogy, concerning Article 15 of Directive 2006/123, judgment of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 130), presupposes that separate and consecutive assessments must be made of, first, whether the very principle of establishing that scheme is justified, and, then, the criteria for granting the authorisations provided for by that scheme.

59 Regarding legislation of a Member State whereby the national legislature makes certain local authorities responsible for implementing an 'authorisation scheme' within the meaning of Article 4(6) of Directive 2006/123 by setting the conditions under which the authorisations provided for by that scheme are to be granted, it is for the national courts, first, to assess whether the use by the national legislature of such a mechanism is in line with Article 9 of that directive and, second, to verify whether the criteria set out by that legislature regulating the grant of those authorisations by the local authorities and the effective implementation of those criteria by the local authorities whose measures are contested are in line with the requirements laid down in Article 10 of that directive.

60 In the present instance, the referring court questions the Court of Justice regarding the interpretation of Article 9 and Article 10(2) of Directive 2006/123 in connection not with the regulation adopted by the City of Paris, but only with the national legislation, derived from Articles L. 631-7 and L. 631-7-1 of the Construction and Housing Code, which requires certain local authorities to adopt an authorisation scheme in respect of the service activities concerned and which regulates the conditions for the grant by those authorities of the authorisations provided for by that scheme.

61 In the light of those factors, it is therefore appropriate to answer, in the first place, the third and fourth questions relating to the issue of whether national legislation making certain local authorities responsible for implementing a prior authorisation scheme in respect of the service activities concerned is in line with Article 9 of Directive 2006/123 and, in the second place, the fifth and sixth questions relating to the issue of whether the criteria set out by such legislation regulating the conditions for the grant by those local authorities of the authorisations provided for by that scheme are in line with Article 10 of that directive.

The third and fourth questions

62 By its third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 9(1)(b) and (c) of Directive 2006/123 is to be interpreted as meaning that national legislation which, for reasons intended to ensure a sufficient supply of affordable long-term rental housing, makes certain activities consisting in the repeated short-term letting, for remuneration, of furnished accommodation to a transient clientele which does not take up residence there subject to a prior authorisation scheme applicable in certain municipalities where rent pressure is particularly severe is (i) justified by an overriding reason relating to the public interest consisting in combating the rental housing shortage and (ii) proportionate to the objective pursued.

63 Pursuant to Article 9(1) of Directive 2006/123, Member States may make access to a service activity or the exercise thereof subject to an authorisation scheme only if that scheme does not discriminate against the provider in question and is justified by an overriding reason relating to the public interest and the objective pursued by that scheme cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.

64 It should be noted at the outset that the third and fourth questions relate exclusively to the second and third conditions laid down in Article 9(1)(b) and (c) of Directive 2006/123.

65 Regarding, in the first place, the condition laid down in Article 9(1)(b) of that directive, it is apparent from the requests for a preliminary ruling that Article L. 631-7 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.

66 An objective such as that pursued by that national legislation constitutes an overriding reason relating to the public interest for the purposes of EU law and, in particular, Directive 2006/123.

67 Article 4(8) of Directive 2006/123 states that the overriding reasons relating to the public interest on which the Member States are entitled to rely are reasons recognised as such in the case-law of the Court, which include, in particular, grounds relating to the protection of the urban environment (judgment of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 135), and social policy objectives.

68 Moreover, the Court has already acknowledged that requirements relating to public housing policy and seeking to combat land pressure, especially where a specific market is experiencing a structural housing shortage and a particularly high population density, may constitute overriding reasons relating to the public interest (see, to that effect, inter alia, judgments of 1 October 2009, *Woningstichting Sint Servatius*, C-567/07, EU:C:2009:593, paragraph 30, and of 8 May 2013, *Libert and Others*, C-197/11 and C-203/11, EU:C:2013:288, paragraphs 50 to 52).

69 Accordingly, and in view of the evidence provided by the referring court and the study sent to the Court of Justice by the French Government and confirmed by the City of Paris, which highlights the fact that the short-term letting of furnished premises has a significant inflationary effect on rent levels, in particular in Paris, but also in other French cities, especially when this is done by lessors offering to let two or more entire housing units, or one entire housing unit for more than 120 days per year, it must be held that legislation such as that at issue in the main proceedings is justified by an overriding reason relating to the public interest.

70 Regarding, in the second place, the condition laid down in Article 9(1)(c) of Directive 2006/123, it is apparent, in essence, from Articles L. 631-7 and L. 631-7-1 of the Construction and Housing Code, taken together, that, in French municipalities with more than 200 000 inhabitants and in the municipalities in Paris' three neighbouring departments, the repeated short-term letting of furnished accommodation to a transient clientele which does not take up residence there requires, unless otherwise specified, an authorisation for change of use granted by the mayor of the municipality in which the property concerned is located.

71 First of all, the material scope of such national legislation is limited to a specific activity consisting in the letting of immovable residential property.

72 In the same vein, under Article L. 631-7-1 A of the Construction and Housing Code, that legislation excludes from its scope housing which constitutes the lessor's main residence, as the letting of such housing has no effect on the long-term rental market, since there is no need for that lessor to establish his or her main residence in another dwelling.

73 Next, that same legislation establishes an authorisation scheme which is not of general application, but of limited geographical scope, concerning a limited number of densely populated municipalities experiencing, as is apparent from several documents provided to the Court by the French Government, including the study referred to in paragraph 69 above, tensions on the rental housing market following an increase in the repeated short-term letting of furnished accommodation to a transient clientele which does not take up residence there.

74 Lastly, and as the City of Paris argues in its written observations, the use of a declaratory system accompanied by penalties is not capable of effectively pursuing the objective of combating the long-term rental housing shortage. By enabling the local authorities to intervene only a posteriori, such a system would not enable those authorities to put an immediate and effective end to the rapid conversion trend which is creating that shortage.

75 Having regard to the foregoing, the answer to the third and fourth questions is that Article 9(1)(b) and (c) of Directive 2006/123 must be interpreted as meaning that national legislation which, for reasons intended to ensure a sufficient supply of affordable long-term rental housing, makes certain activities consisting in the repeated short-term letting, for remuneration, of furnished accommodation to a transient clientele which does not take up residence there subject to a prior authorisation scheme applicable in certain municipalities where rent pressure is particularly severe is (i) justified by an overriding reason relating to the public interest consisting in combating the rental housing shortage and (ii) proportionate to the objective pursued, inasmuch as that objective cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.

The fifth and sixth questions

76 By its fifth and sixth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 10(2) of Directive 2006/123 is to be interpreted as precluding national legislation introducing a scheme which makes the exercise of certain activities consisting in the letting, for remuneration, of furnished accommodation subject to prior authorisation, which is based on criteria relating to the fact that the premises in question are let ‘repeatedly for short periods to a transient clientele which does not take up residence there’ and which gives the local authorities the power to specify, within the framework laid down by that legislation, the conditions for granting the authorisations provided for by that scheme in the light of social diversity objectives and according to the characteristics of the local housing markets and the need to avoid exacerbating the housing shortage, making those authorisations subject, if necessary, to an offset requirement in the form of the concurrent conversion of non-residential premises into housing.

77 According to Article 10(1) of Directive 2006/123, the authorisation schemes referred to in Article 9(1) of that directive must be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner. Under Article 10(2) of that directive, those criteria must, inter alia, be justified by an overriding reason relating to the public interest, proportionate to that public interest objective, clear and unambiguous, objective, made public in advance and, lastly, transparent and accessible.

78 In that regard, it should be borne in mind that, while it is for the national court, which has sole jurisdiction to assess the facts and interpret the national legislation, to determine whether those requirements are met in the case in point, the Court of Justice, which is called on to provide answers that are of use to the national court in the context of a reference for a preliminary ruling, may provide guidance, on the basis of the documents relating to the main proceedings and the written and oral observations which have been submitted to it, in order to enable the national court to give judgment (see, to that effect, judgment of 6 March 2018, *SEGRO and Horváth*, C-52/16 and C-113/16, EU:C:2018:157, paragraph 79).

79 From that point of view and regarding, in the first place, the requirement, set out in Article 10(2)(b) of Directive 2006/123, that the authorisation criteria must be justified by an overriding reason relating to the public interest, it should be noted that, inasmuch as they regulate the arrangements for determining, at local level, the conditions for granting the authorisations provided for by a scheme adopted at national level which is justified by such a reason, as is apparent from paragraphs 65 to 69 above, the criteria established by legislation such as that referred to in paragraph 76 above must, in principle, be regarded as justified by that same reason.

80 This must especially be the case where, as with Article L. 631-7-1 of the Construction and Housing Code, the national legislature has made sure that the local authorities are required to pursue such an objective

when implementing the national legislation in practice, emphasising the objective of social diversity and the need to take into consideration, for the purposes of that implementation, the characteristics of the markets for residential premises and the need to avoid exacerbating the housing shortage.

81 Regarding, in the second place, the proportionality requirement referred to in Article 10(2)(c) of Directive 2006/123, it is apparent from the orders for reference as clarified by the corresponding written observations of the parties and other interested persons involved in the present proceedings that the focus of the discussion is essentially the option available to the French municipalities concerned, under Article L. 631-7-1 of the Construction and Housing Code, to make the prior authorisation requirement laid down in Article L. 631-7 of that code subject to an offset requirement in the form of the concurrent conversion of non-residential premises into housing, the quantum of which is to be defined by their municipal council.

82 In that regard, it should be noted at the outset that such legislation is suitable for ensuring that the authorisation scheme it introduces is suited to the specific circumstances of each of the municipalities concerned, of which the local authorities have particular knowledge.

83 It gives those local authorities the power to set the conditions under which the authorisations provided for by that scheme are to be granted. In particular, Article L. 631-7-1 of the Construction and Housing Code enables, but does not compel, those authorities to make the grant of a prior authorisation subject to an offset requirement, while providing, first, that the local authorities who choose to impose such a requirement are to ensure that that requirement is strictly relevant to the specific situation not of the municipality concerned taken as a whole, but of each neighbourhood or, as the case may be, district of that municipality and, second, that the quantum of that offsetting is to be determined in the light of the objective of social diversity and according to, inter alia, the characteristics of the markets for residential premises and the need to avoid exacerbating the housing shortage.

84 As the Advocate General noted in point 133 of his Opinion, the use of such an offset requirement as authorised by that national legislation for the attention of municipalities that are under particular land pressure stemming from a significant increase in the amount of real estate being dedicated to the letting of furnished accommodation to a transient clientele at the expense of the long-term letting of accommodation to a clientele that establishes its residence there constitutes, in principle, a suitable instrument for pursuing the objectives of socially diverse housing on its territory, a sufficient supply of housing units, and maintaining rents at an affordable level.

85 This is the case, inter alia, when the offset requirement concerned 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, as was argued by the French Government at the hearing before the Court.

86 However, the option which the national legislation gives the local authorities concerned to make use, in addition to the prior authorisation scheme imposed by that legislation, of an offset requirement such as that referred to in paragraph 81 above must not go beyond what is necessary to achieve that objective.

87 For the purposes of that assessment, it is for the national court to verify, in the light of all the evidence available to it, first of all, whether that option is an effective response to the shortage of long-term rental housing that has been observed in the territories concerned.

88 In this regard, what is particularly relevant is the existence of studies or other objective analyses highlighting the fact that the offset requirement enables local authorities to respond to a situation where there has been a struggle to satisfy demand for residential housing under acceptable economic conditions because of, inter alia, an increase in the repeated short-term letting of furnished accommodation to a transient clientele which does not take up residence there.

89 Next, it is for the national court to make sure that the option given to the local authorities concerned by the national legislation at issue in the main proceedings to determine the quantum of the offset requirement that they have chosen to impose is not only appropriate for the rental market situation in the municipalities concerned, but also compatible with the exercise of the activity consisting in the repeated short-term letting of furnished accommodation to a transient clientele which does not take up residence there.

90 Concerning, first, the appropriateness of that quantum for the rental market situation in the municipalities concerned, that option is a strong indication of the suitability of the offset requirement authorised by the national legislation at issue in the main proceedings, provided that the use of that option is subject to the taking into consideration of the objective differences of situation between the territories concerned and, accordingly, that it enables account to be taken of the specific features of each municipality, or even of each neighbourhood or district thereof.

91 Concerning, secondly, the compatibility of the quantum of the offset requirement authorised thereby with the exercise of the activity consisting in the repeated short-term letting of furnished accommodation to a transient clientele which does not take up residence there, it must be assessed by taking into consideration, inter alia, the generally observed additional profitability of that activity as compared to the letting of premises as residential accommodation.

92 Furthermore, it should be noted that the offset requirement that the local authority concerned would have chosen to impose does not, as a general rule, deprive the owner of property intended for rental of the opportunity to profit from that property, since that owner has, in principle, the option to rent that property not as furnished premises for the use of a transient clientele, but as premises for the use of a clientele that takes up its residence there, admittedly a less profitable activity, but one to which that requirement does not apply.

93 Lastly, the national court must take into consideration the practical arrangements enabling the offset requirement to be met in the local authority concerned.

94 In particular, it is for that court to take account of the fact that that requirement may be met not only by the conversion into housing of other non-residential premises owned by the person concerned, but also by other offset mechanisms, such as, inter alia, the purchase by that person of rights from other owners, contributing to maintaining long-term housing stock. Those mechanisms must however be in line with reasonable, transparent and accessible market conditions.

95 Regarding, in the third place, the requirements of clarity, non-ambiguity and objectivity laid down in Article 10(2)(d) and (e) of Directive 2006/123 and referred to in the fifth and sixth questions referred, it is apparent from the orders for reference and the discussions that have taken place before the Court that Cali Apartments and HX essentially complain that the national legislation at issue in the main proceedings is based on an ambiguous concept that is difficult to understand, derived from Article L. 631-7 of the Construction and Housing Code, namely that of ‘the repeated short-term letting of furnished accommodation to a transient clientele which does not take up residence there’.

96 In that regard, the Court has already had occasion to specify that the requirements of clarity and non-ambiguity referred to in Article 10(2)(d) of Directive 2006/123 refer to the need to make the conditions for authorisation easily understandable by all while avoiding any ambiguity in their wording (judgment of 26 September 2018, *Van Gennip and Others*, C-137/17, EU:C:2018:771, paragraph 85). As regards the requirement of objectivity stipulated in Article 10(2)(e) of that directive, it is intended to ensure that requests for authorisation are assessed on the basis of their own merits, in order to provide the parties concerned with a guarantee that their request will be dealt with objectively and impartially, as is required, moreover, by Article 13(1) of that directive (see, by analogy, judgment of 1 June 1999, *Konle*, C-302/97, EU:C:1999:271, paragraph 44).

97 It should also be noted that Article 10(7) and recitals 59 and 60 of Directive 2006/123 state that that directive, and in particular Article 10 thereof, does not call into question the allocation of the competences,

at local or regional level, of the Member States' authorities that grant authorisations.

98 Thus, regarding national legislation, such as that at issue in the main proceedings, which introduces a prior authorisation scheme, specific to certain municipalities, in respect of activities consisting in the 'repeated short-term letting of furnished accommodation to a transient clientele which does not take up residence there', while conferring on the local authorities concerned the power to set the conditions for granting the required authorisation, to lay down an offset requirement and to determine the quantum of that requirement according to, inter alia, the characteristics of the markets for residential premises and the need to avoid exacerbating the housing shortage, the fact that that concept is not defined by that national legislation, in particular using numeric thresholds, does not, in itself, constitute an element capable of demonstrating disregard for the requirements of clarity, non-ambiguity and objectivity set out in Article 10(2)(d) and (e) of Directive 2006/123.

99 By contrast, it is necessary, for the purposes of that provision, to verify whether, in the absence of any sufficient indication in the national legislation, the local authorities concerned have clarified the terms corresponding to the concept in question in a way that is clear, unambiguous and objective, so that when interpreting that concept there is no doubt as to the scope of the conditions and obligations thus imposed by those local authorities and so that those authorities cannot apply that concept arbitrarily.

100 Such a verification is essential, especially in view of the fact that the issue of the clarity of the concept in question arises in the context of a procedure to which the general EU law principle of the legality of criminal offences and penalties should apply (judgment of 3 May 2007, *Avdocaten voor de Wereld*, C-303/05, EU:C:2007:261, paragraph 49).

101 The referring court also questions whether Article L. 631-7-1 of the Construction and Housing Code is sufficiently clear and objective inasmuch as it states that the conditions under which authorisations are granted and offsets are set by neighbourhood and, as the case may be, by district are to be determined in the light of social diversity objectives, according to, inter alia, the characteristics of the markets for residential premises and the need to avoid exacerbating the housing shortage.

102 In that regard, it should be noted that the fact that the national legislature confines itself to regulating the arrangements for a local authority determining the conditions for granting the authorisations provided for by a scheme by referring to the objectives which that authority must take into consideration cannot, in principle, lead to a finding that those conditions are insufficiently clear and objective, especially if the national legislation in question lays down not only the aims that must be pursued by the local authorities concerned but also the objective factors on the basis of which those authorities must determine those granting conditions.

103 Subject to the assessment of the referring court, conditions of that nature are sufficiently clear and precise and are suitable for avoiding any risk of their being implemented arbitrarily.

104 Regarding, in the fourth and last place, the requirements laid down in Article 10(2)(f) and (g) of Directive 2006/123 and referred to in the sixth question referred that the conditions for granting the authorisations be transparent and accessible and be made public in advance, it is apparent from the orders for reference that Cali Apartments and HX complain that the national legislation at issue in the main proceedings does not meet those requirements on the ground that the conditions for granting those authorisations and the quantum of the offsets are to be determined not by law, but by the municipal councils of each of the municipalities concerned.

105 However, in the light of what has been stated in paragraph 97 above, it is necessary, in a legislative context such as that described in paragraph 98 above, to verify, for the purposes of Article 10(2)(f) and (g) of Directive 2006/123, whether all owners wishing to let furnished accommodation to a transient clientele which does not take up residence there are in a position to familiarise themselves fully with the conditions for granting an authorisation and any offset requirements laid down by the local authorities concerned, before committing to the letting activities in question.

106 In that regard, the referring court states that, pursuant to Article L. 2121-25 of the General Code for Local and Regional Authorities, the minutes of municipal council meetings are to be displayed in the town hall and made available online via the website of the municipality concerned.

107 Such a publicity measure is sufficient to meet the prior publicity, transparency and accessibility requirements laid down in Article 10(2)(f) and (g) of Directive 2006/123, in so far as it effectively enables any interested person to be informed immediately of the existence of legislation likely to affect access to, or the exercise of, the activity concerned.

108 Having regard to the foregoing, the answer to the fifth and sixth questions is that Article 10(2) of Directive 2006/123 must be interpreted as not precluding national legislation introducing a scheme which makes the exercise of certain activities consisting in the letting, for remuneration, of furnished accommodation subject to prior authorisation, which is based on criteria relating to the fact that the premises in question are let ‘repeatedly for short periods to a transient clientele which does not take up residence there’ and which gives the local authorities the power to specify, within the framework laid down by that legislation, the conditions for granting the authorisations provided for by that scheme in the light of social diversity objectives and according to the characteristics of the local housing markets and the need to avoid exacerbating the housing shortage, making those authorisations subject, if necessary, to an offset requirement in the form of the concurrent conversion of non-residential premises into housing, provided that those granting conditions are in line with the requirements laid down by that provision and that that requirement can be met under conditions that are transparent and accessible.

Costs

109 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Articles 1 and 2 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted as meaning that that directive applies to legislation of a Member State relating to activities consisting in the repeated short-term letting, for remuneration, whether on a professional or non-professional basis, of furnished accommodation to a transient clientele which does not take up residence there.**

2. **Article 4 of Directive 2006/123 must be interpreted as meaning that national legislation which makes the exercise of certain activities consisting in the letting of residential premises subject to prior authorisation is covered by the concept of ‘authorisation scheme’ within the meaning of paragraph 6 of that article.**

3. **Article 9(1)(b) and (c) of Directive 2006/123 must be interpreted as meaning that national legislation which, for reasons intended to ensure a sufficient supply of affordable long-term rental housing, makes certain activities consisting in the repeated short-term letting, for remuneration, of furnished accommodation to a transient clientele which does not take up residence there subject to a prior authorisation scheme applicable in certain municipalities where rent pressure is particularly severe is (i) justified by an overriding reason relating to the public interest consisting in combating the rental housing shortage and (ii) proportionate to the objective pursued, inasmuch as that objective cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.**

4. **Article 10(2) of Directive 2006/123 must be interpreted as not precluding national legislation introducing a scheme which makes the exercise of certain activities consisting in the letting, for remuneration, of furnished accommodation subject to prior authorisation, which is based on criteria relating to the fact that the premises in question are let 'repeatedly for short periods to a transient clientele which does not take up residence there' and which gives the local authorities the power to specify, within the framework laid down by that legislation, the conditions for granting the authorisations provided for by that scheme in the light of social diversity objectives and according to the characteristics of the local housing markets and the need to avoid exacerbating the housing shortage, making those authorisations subject, if necessary, to an offset requirement in the form of the concurrent conversion of non-residential premises into housing, provided that those granting conditions are in line with the requirements laid down by that provision and that that requirement can be met under conditions that are transparent and accessible.**

[Signatures]

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* Language of the case: French.