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Inception Impact Assessment on a Short-term rental initiative

eu travel tech position paper

In this paper, eu travel tech sets out its initial views on the European Commission's plan for a possible legislative proposal to address issues in the short-term rental sector, based on the Inception Impact Assessment.

We look at the preliminary problem analysis and explain why this instrument is important for our association, and detail what in our view would be the most efficient way forward in terms of objectives and policy options.

Why a short-term rental regulatory instrument matters for the online travel market

Short-term rental (STR) has seen a strong growth in the last decade, now representing the largest accommodation sector in Europe, valued at 35bn EUR in 2016.¹ In 2019 guests spent more than 554 million nights in the EU in accommodation booked via online travel platforms.² This means that on an average day, around 1.5 million guests slept in a bed booked through one of these four platforms. Short-term rentals have been available for decades, and have become more popular as travellers increasingly seek alternative accommodation options. As acknowledged by the European Commission in the Inception Impact Assessment (IIA), STR services showed particular resilience during the COVID-19 pandemic, helping to shift demand from (urban) tourism hotspots to more rural, less well-known destinations, catering for the needs of domestic travellers as well as international.

The benefits of STR platforms serve both property owners and consumers: property owners of all sizes gain wide visibility in the marketplace with lower transaction and marketing costs, and access to a global customer base whilst maintaining full control of their own pricing; consumers have access to an easy to use tool for searching and comparing a large variety of accommodation options in order to book, offering greater flexibility and a different type of stay.

There are, of course, challenges linked to the strong growth of the STR segment, such as pressure on housing availability and disruptions to the urban environment. In recent years, these challenges have often led to tensions between STR online platforms and public authorities. While we recognise the Member States' right to legislate within the limits provided by EU law, and the right and ability of public authorities to manage the impact of the STR market, the current lack of legal clarity fuels an often antagonistic debate around the challenges, pitting public authorities against online STR platforms. In the past, this has often resulted in disputes in Courts or complaints to the European Commission on infringements procedures, a situation that eu travel tech members would very much like to see solved differently. **Therefore, we agree with the Commission's assessment that a proper regulatory framework to enforce rules on STRs could be helpful to address such problems.**

In addition, the fragmented rules and lack of harmonized implementation of EU law, in particular of the Services Directive and the e-Commerce Directive, has resulted in

¹ PhocusWright's report 'Private Accomodation in Europe: 2010-2020', 2017

² <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20210629-2>

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heightened legal uncertainty for booking accommodation platforms. The proposed Digital Services Act³ (currently being discussed by the policymakers) is expected to bring some solutions – notably regarding the liability framework and notice and take down procedures - however due to its horizontal nature, we fear that many issues specific to the STR will not be properly addressed there, hence the importance of a legislative proposal for STRs.

Objectives and Policy options

On the IIA, the European Commission sets out two possible targeted measures: access to data on STRs for public authorities, and market access conditions for STR players. Eu travel tech agrees that these are two key objectives to help delivering a responsible, fair and trusted single market for STR services. Below, we set out our views on the key aspects that should be taken into consideration to ensure that the expected objectives are fulfilled.

Access to data on STR for public authorities

Eu travel tech members fully acknowledge the importance of data sharing in the STR sector. For that reason, we support the objective of having greater legal clarity, especially around which data are relevant and necessary for public authorities, and proportional for STR platforms to collect.

Firstly, we believe that there is an important distinction to be made between data for public authorities relative to occupancy rates and guest numbers, and data requested by tax authorities for taxation purposes. On the latter, Eu travel tech believes that the recently adopted Directive on administrative cooperation in the field of taxation (Directive 2021/514/EU)⁴ resolves this type of request by tax authorities. As a starting point it clarifies that platforms are required to share annually with tax authorities certain data so that authorities can effectively tax platform users on the income they earned through their activity on the platform. This framework allows for the effective taxation of STR hosts for the economic activity they generate. The new rules formalise the exchange of information between online platforms and tax authorities, enhancing the cooperation with competent authorities allowing them to apply taxes correctly to their taxpayers and combat tax fraud and tax evasion. Therefore, any obligations relating to data for tax authorities should refer back to DAC 7 (Directive 2021/514/EU).

As for other types of data, it is well known that in 2020, STR platforms agreed with the European Commission to share data on occupancy rates and guest numbers (in an aggregated format), through EUROSTAT⁴. This agreement allows for more complete statistics on tourist accommodation around Europe, and for public authorities to better understand the development of the short-term rental market and support evidence-based policies. The first batch of data – covering national, regional and city-level data on the number of stays booked and the number of nights spent in accommodation booked via these platforms - was published on 29th June, 2021. From our perspective, the agreement represents a good starting point and a sign of the openness of STR platforms

³ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A825%3AFIN>

⁴ <https://eutravelttech.eu/eu-travel-tech-and-ehha-welcome-a-landmark-agreement-between-short-term-rental-platforms-and-eurostat/>

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to cooperate with authorities. However we also acknowledge the limitations of such an initiative, especially where it concerns enforcement of STR rules .

Therefore, eu travel tech members would support finding other formal ways of data exchange. For that to happen though, a few pre-requisites must be fulfilled. In particular , there is still a strong case to clarify what data can and should be provided by online platforms to authorities. At present, data requests from public authorities to online platforms sometimes fall outside the limits of EU law. Apart from guaranteeing compliance of such data requests with EU laws on data and privacy, any suitable solution will also need to consider the specific type of data actually held by STR platforms, and what is proportional for the purpose for which the data is intended.

As noted by the European Commission in the IIA, a possible solution to improve data sharing is the application of registration obligations. eu travel tech is supportive of pushing forward national mandatory registration systems, whereby all STR providers would be obliged to register their activity and ensure compliance with national requirements that would be linked to public policy objectives. In line with the legal obligations on removal of illegal content (e-Commerce Directive /future Digital Services Act), there should also be a corresponding obligation on online platforms to deactivate STR properties who do not provide a registration number.

However, we would like to stress that we would not support the inclusion of obligations within the registration scheme, where the intention is to protect one type of economic activity. Measures that put STRs on a par with hotels would lead to overregulation of the STR segment. At present, across the EU STR platforms and services have to deal with complex rules, from registration requirements and authorisation schemes on hosts, thresholds for the number of STRs, day limit on the sharing activity, a myriad of different requirements for hosts, just to name a few. Eu travel tech is supportive of a proportional and predictable regulatory framework for STR services that also recognises the different nature of STR services (trader vs non trader or peer vs professional) . Finally, as for the European Commission suggestion to make use of technical tools, such as an application programming interface (API) to facilitate data sharing, we believe it is an option that could be further explored. If, in the future, the STR sector can agree on a technical tool compatible with the different business models to help simplify the process of exchange of data, this could certainly be a very pragmatic way to support enforcement. However, before moving forward with such an API, a thorough assessment and discussion on how it will work in practice, its concrete purpose (e.g. only for registration schemes?, other types of data?) and feasibility for all the players involved needs to take place.

Market access conditions for STR players and level playing field

As mentioned, one of the issues heavily affecting STR platforms is the current legal uncertainty. The lack of legal clarity means that STR online platforms are subject to fragmented rules and requirements across EU Member States, and even within Member States. At present, national and local authorities in several Member States are applying different policies and rules onto STR services. This results in online platforms being asked to police/regulate the STR market instead of public authorities addressing the source of the problems.

Furthermore, the applicable EU law – in particular the e-Commerce Directive and Services Directive - leaves room to interpret in which circumstances authorities can legitimately

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impose rules (national or local) on STR platforms. leading to situations where STR online platforms often called upon to help enforce property owners' **compliance, which can** involve onerous obligations on platforms.. It is worth highlighting that eu travel tech members are not against restrictions *per se*, however it is time to have such restrictions – their limits, purpose and applicability – clarified in EU law.

We see room to clearly define the responsibilities of online platforms and property owners, but also the remit of public authorities as per the applicable legislation, always taking into account the key principles of the Single Market (proportionality, justification and non-discrimination), as expressed in such legislation.

In that respect, when/if designing legislation for STR services, there are two fundamental elements that should be considered:

- Build on the result of the ECJ ruling decision on the Cali apartments case⁵ to offer more legal clarity to STR platforms on the scope of public authorities action. The case confirmed that the Services Directive is applicable to the short-term letting of furnished accommodation in the peer-to-peer economy. According to the decision, the shortage of long-term housing constitutes an overriding reason of public interest which can justify a national measure requiring authorisation to be obtained for short-term rentals. We believe that the ruling is an important first step to provide more clarity on the applicable EU rules to short-term rental platforms, and that a future legislative proposal for STRs is an opportunity to further clarify the application of the ruling since many questions still remain. For instance, should such an authorisation scheme also apply to primary homes? What measures are to be considered proportional? How to assess whether a scheme does not go beyond what is necessary to achieve the objectives pursued?
- Provide clearer definitions of private and professional / trader and non-trader to which EU consumer laws do or do not apply. Online platforms are increasingly being asked to improve transparency to consumers by facilitating easy access to information on the differentiation between traders and non-traders via frontend display on their websites. Following a dialogue with the European Commission and national consumer authorities⁶, most STR platforms have committed to changes to differentiate between private and professional hosts as per EU consumer law. However there is still no agreement on a harmonised way to make such a distinction . This will be crucial for any workable registration scheme and discussions on public authorities' right and the ability of public authorities to manage the impact of the STR market.

In conclusion, eu travel tech is highly supportive of a clear framework applicable to STRs services that complements horizontal legislation. We believe that such an initiative would contribute to find concrete solutions to the specific issues of the STR sector, as presented above. Going forward, our members remain committed to work with the European Commission in this endeavor, as well as to continue cooperating with enforcement authorities to find solutions for all the players.

⁵ <https://curia.europa.eu/juris/liste.jsf?num=C-724/18>

⁶ https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/accommodation-booking_en

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About eu travel tech

eu travel tech represents the interests of travel technology companies. eu travel tech uses its position at the centre of the travel and tourism sector to promote a consumer-driven, innovative and competitive industry that is transparent and sustainable. Our membership spans Global Distribution Systems (GDSs), Online Travel Agencies (OTA), Travel Management Companies in business travel (TMCs) and metasearch sites.

Our members include Amadeus, Booking.com, eDreams ODIGEO, Expedia Group, Travelport, and Skyscanner. Associate members include American Express GBT, etraveli, Trainline and Tripadvisor. Strategic Partners include CWT, Travelgenio and Travix.