

Position paper

## Short-Term Rentals: Establishing a European Framework that Works for Public Authorities, Hosts and Online Platforms

### The STR market needs an EU framework

eu travel tech welcomes the European Commission's proposal on short-term rentals (STRs). We see great value in an EU-wide framework regulating STRs. STRs have become an important part of the tourism ecosystem, representing nearly 25% of the total supply of tourist accommodation in the EU. STRs have an important role to play in diversifying the tourism accommodation offer and in supporting the tourism economy. They are seen by travellers as a more authentic way to discover tourism destinations and have helped put on the map less well-known cities and regions in Europe.

On the other hand, it is clear that the market growth of STRs in recent years has also created some challenges. Against this background, we welcome the proposal and its ambition to bring clarity and transparency in the STR market across Europe and to provide a starting point for a more harmonised STR legislative framework. The rules will complement legislation such as the Digital Services Act (DSA), the Data Act and the Directive on administrative cooperation in the field of taxation (DAC7). Ensuring an alignment between these rules will be essential to design a coherent and well-functioning legislative framework that helps public authorities better manage the STR sector and allows hosts and STR platforms to operate smoothly.

### The proposal ensures a balanced approach for all stakeholders

We welcome the proposal's provisions ensuring the harmonisation of procedures around the registration and verification of STR hosts across the EU. They are an important step forward vis-à-vis the diverging standards currently implemented in the Member States.<sup>1</sup>

We also appreciate the proposal's balanced approach with regard to the different roles and responsibilities of hosts, platforms and public authorities. Preserving this balance will be important for the success of this instrument. In particular, the set-up of registration schemes and digital infrastructure by Member States (so called "Single Digital Entry Points") will be essential for the effective implementation of obligations on online platforms both with regard to the sharing of activity data and for the performance of random checks.

However, we believe that the proposal could have gone further in terms of harmonisation and streamlining of the rules.

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<sup>1</sup> As highlighted in the European Commission's [impact assessment](#): "An increasing number of national or local authorities have put in place registration schemes. Registration schemes now exist in 22 Member States and at various levels (national, regional and/or locally) and other Member States are considering introducing them too. Some Member States have registration schemes at local level (e.g. the Netherlands, with currently nine local registration schemes, France with over 50 local registration schemes), or both at regional and local levels (e.g., Spain has regional registration schemes in place in 19 regions and at least 6 local registration schemes). Registration requirements differ however significantly both in terms of procedural and substantive requirements. Some authorities impose particularly burdensome requirements (e.g., requirements to submit a variety of documents) or procedures. This, in turn, can have a chilling effect on the number of hosts, and hence on the business opportunities for online platforms."

## Certain aspects of the proposal will require improvement or clarification

In view of the ongoing negotiations on the STR proposal, we have the following recommendations with regard to areas where the proposal should be improved or where provisions should be further clarified as well as where alignment should be ensured with other relevant legislation:

- **Extend the proposal's scope beyond STR platforms allowing guests to conclude distance contracts with hosts**

The proposal applies only to platforms which allow guests to conclude distance contracts with hosts for the provision of STR services. Recital 8 clarifies that "*webpages connecting hosts with guests without any further role in the conclusion of direct transactions should be excluded from the scope of the Regulation.*"

However, we are concerned that leaving online STR advertising channels outside of the proposal's scope would create a loophole that would ultimately help circumvent the new rules about host registration, where these are implemented by Member States. These channels, including search engines and meta search websites, are increasingly being used by travellers to discover and connect with STR hosts.

While some of these advertising channels do not allow guests to conclude distance contracts with STR hosts and would therefore not be in a position to share activity data with the Member States, it would be essential to ensure that they are designed in a way that requires the display of the STR unit's registration number. In addition, in line with the compliance by design obligations imposed on the STR platforms already in scope of the draft legislation, we recommend clearly setting out in the proposal that all STR advertising channels need to perform random checks of the hosts' declarations concerning the existence or not of a registration procedure for the listed STR unit.

- **Provide guidance and secondary acts to ensure a standardised approach to the Single Digital Entry Points**

The proposal's requirements around the establishment of a digital infrastructure by Member States to manage registrations by hosts and the sharing of activity data by platforms are paramount. A well-functioning digital infrastructure will be key to making the rules operational and to ensuring national measures on STRs are more easily enforceable. In particular, so-called Single Digital Entry Points (SDEPs) will be essential to:

- Ensure that platforms can fulfil their obligations with regard to listing the properties that obtain such registration numbers, for the performance of random checks against an existing database or register as well as for the sharing of activity data.
- Ensure that hosts can easily submit all the information online without additional administrative burden. When properly regulated, the STR market can provide great value to hosts and local communities, but it is important that this market remains agile especially with regard to the services offered by "peer" hosts (private individuals offering STR services on an occasional basis).

It will be important, however, that greater guidance is provided with regard to the technical specifications and procedures to ensure interoperability of solutions for the functioning of this digital infrastructure at national level and the seamless exchange of data. As the proposal currently stands, there is no strict requirement for the Commission to adopt implementing acts to provide this technical guidance (see Article 10, paragraph 5). We would like to stress the importance of having this secondary legislation in place to provide a coherent approach on this issue. It will also be essential that the European Commission and Member States work with online platforms to ensure that any technical solution is compatible with platforms' data sharing tools and infrastructure.

- **Clarify the definition of STRs**

While we understand that all matters pertaining to more specific measures on STRs should be dealt with at the national level, we see the merits of providing an EU-wide definition of STR. As the text currently stands, ‘short-term accommodation rental service’ is defined as the short-term letting of a unit, against remuneration, whether on a professional or non-professional basis, *as further defined by national law*. An EU-wide STR definition would contribute to ensuring greater clarity and less fragmentation in the STR market and support the deepening of the European single market. It will also be important to ensure alignment between definitions in the STR proposal and definitions in the European Commission’s [proposal](#) on VAT for the digital age.

- **Alleviate the burden for the host**

The proposal foresees an automatic and immediate issuing of a registration number for hosts and ex post verification of the information provided by the hosts by the competent authorities. Registration schemes that are user-friendly and not burdensome for hosts are key to ensuring that this sector remains agile, especially considering that the majority of hosts are peers.<sup>2</sup>

In this regard, the text should be clear that the registration procedure should be at no cost to the host. To limit the burden for the host, it should be specified that any supporting documentation shall be submitted online rather than physically.

- **Strengthen tools for effective enforcement of the rules by STR platforms and STR advertising channels**

Since its finalisation in 2022, the DSA has become the main legislative instrument at EU level concerning the removal of illegal content by platforms, including the removal of illegal STR listings. The DSA establishes obligations on STR platforms only with regard to the listing of products and services offered by traders. The STR proposal helpfully complements this by extending the scope to all STR hosts, irrespective of whether they are traders or non-traders. Maintaining consistency with the DSA is paramount to avoid creating different regimes for different sets of STR hosts. It is important that the rules are clear and enforceable.

In this regard we believe the regulation could go further in supporting effective enforcement of the rules by STR platforms. Article 13 helpfully includes an obligation on Member States to publish lists of areas where a registration procedure applies. We believe this obligation could be expanded to ensure that the lists are updated on a regular basis by the Member States and that there is a possibility for STR platforms, as well as hosts, to be notified of changes. This will help ensure the right information is available to support platforms in carrying out the checks related to STR host registration requirements.

Regrettably the Council General Approach deviates from the DSA compliance by design provisions adding an obligation on platforms to carry out random checks “including with reasonable regularity.” We believe the alternative approach of supporting the provision of more easily accessible and up to date information regarding the areas where a registration procedure applies for STR hosts would be a more effective approach.

We also believe that the obligation for platforms to inform the competent authorities and the hosts of the results of random checks in Article 7(2) should be limited to *illegal* declarations and registration numbers instead of covering *incorrect* declarations and *invalid* registration numbers as

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<sup>2</sup> According to the European Commission’s [impact assessment](#), the percentage of peer hosts is 87% against 13% of professional hosts.

those may be pure administrative and often unintentional errors that should be distinguished from illegal activity.

- **Ensure the STR regulation becomes the main instrument for B2G data sharing on STRs, in compliance with the GDPR**

It will be important to ensure that regulatory coherence is kept between the Data Act and the STR regulation with regard to B2G data access obligations. In particular, sectoral legislation such as the STR proposal should become the main instrument for access by public authorities to online platforms data on STRs. This would ensure a coherent compliance framework for both data holders and public bodies, preventing the simultaneous use of several legal instruments to attain data regarding the same services provided.

In the same vein, we welcome the proposal's approach aimed at ensuring, for the purposes of harmonisation and coherence, that no additional obligation can be imposed on STR platforms by Member States with regard to data sharing outside the specific regime laid down in the STR regulation. We would, however, recommend that such point is mentioned also in the articles and not only in the recitals (currently recital 4).

- **Consider splitting the Regulation application period into successive phases**

According to Article 19 of the Commission's proposal, the new rules would start applying from 24 months from the entry into force of the legislation. In this regard, considering that both platforms and public authorities have called on the European Commission to issue such an instrument for some time considering the level of unclarity and fragmentation in the STR market, we would welcome efforts to ensure a swift implementation of the rules.

We would also highlight the need for a transition period for STR platforms and STR hosts, which is currently not envisaged by the proposal. This is important to give all STR stakeholders the opportunity to adjust their processes and interfaces in order to better comply with the new regulatory framework. This would not delay the applicability altogether, but would rather involve splitting the Regulation's application period into successive phases.

We therefore propose that the current 24-month transition period for compliance with the STR Regulation is split to allow 12 months for Member States to put in place the regulatory changes, followed by a 12-month compliance period for other stakeholders, including STR platforms and hosts, to comply with the regulation. This would ensure that e.g., STR platforms have time to ensure interoperability with the national Single Digital Entry Points that have been implemented by the Member States.

- **Provide further guidance on the proportionality of market conditions for STR providers later down the line**

Over the last few years, in view of the perceived challenges created by STRs, public authorities across the EU have increasingly taken action to regulate STRs at national, regional and local level. The approaches adopted to manage the sector have greatly varied from country to country, and from city to city. The scope of regulatory approaches has ranged from outright bans on STRs and quotas via registration and licensing requirements to limits to the number of nightly stays. For platforms, this has meant dealing with a myriad of different requirements, some of which have been found to be in breach with EU law.<sup>3</sup>

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<sup>3</sup> In March 2021 the Court of Justice of Amsterdam reversed a decision of the city government which had banned all vacation rentals from three city centre districts in the old town in reaction to concerns about 'overtourism'. In its ruling, the court emphasised that instead of a total prohibition, the city could take other measures, such as imposing a quota for STRs in conjunction with a night cap.

Rules on STR providers in the EU need to be compatible with Directive 2006/123 on services in the internal market (“Services Directive”), the EU legislation seeking to facilitate the freedom of establishment for service providers and the free movement of services across the Union. While the Directive does not prohibit the regulation of STRs by Member States, it protects STR providers against discriminatory and disproportionate market access restrictions. However, as the Services Directive is a horizontal Directive, which applies across a broad range of different sectors, it does not provide any specific rules tailored to STR activities. Consequently, there is a considerable degree of legal uncertainty regarding the application of the Services Directive to the STR sector.

The CJEU *Cali Apartments* decision of 22 September 2020 has contributed to providing greater clarity in this regard.<sup>4</sup> It confirmed that public authorities can impose access restrictions on providers of STRs in order to protect public interest objectives such as combating a shortage of long-term housing. It has also stressed that such measures must be non-discriminatory and proportionate.

We believe that there is a need for greater coordination in aligning STR rules with the proportionality principle. In particular, harmonised and clearer processes are needed to facilitate the adoption and implementation of proportionate and compliant rules on STR hosts. In this regard we would support the creation of a coordination group at national level, involving all STR stakeholders, to facilitate dialogue on the design of STR rules relevant and proportionate to the local circumstances and aligned with the EU Services Directive.

We share the European Commission’s expectation that the data collected under the new STR rules “*should allow public authorities to better assess the situation on the ground and make more targeted and proportionate rules*”.<sup>5</sup> In other words, it is to be expected that the requirements for justifying market access restrictions will increase once the STR rules will start applying and public authorities will have the necessary data to make informed decisions.

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<sup>4</sup> Joined Cases C-724/18 and C-727/18 *Cali Apartments* ECLI:EU:C:2020:743

<sup>5</sup> “Questions and Answers: New Rules on Short-term Accommodation Rentals,” European Commission: [https://ec.europa.eu/commission/presscorner/detail/en/QANDA\\_22\\_6494](https://ec.europa.eu/commission/presscorner/detail/en/QANDA_22_6494)