

VIR - Response to IIA on STR Initiative

Munich, 9th of December 2021

The Verband Internet Reisevertrieb e.V. (VIR) welcomes the efforts of the European Commission to develop a '*Short-term rental (STR) initiative*'. We share the view that a harmonization initiative in the STR sector would significantly reduce the obstacles for small and medium-sized enterprises to expand into markets to which access would otherwise be difficult or even entirely unfeasible, due to the high number of fragmented STR regulations across the European Union.

As the European Commission recognizes, STR represents an important sub-segment of the tourism sector in the European Union as it accounts for over 23% of the tourist accommodation sector. On the regional level, STR exerts a positive impact on local tourism as well as businesses and significantly contributes to the regional economy. In addition, it offers individuals the possibility to ensure an additional income by renting out apartments, houses or individual rooms on a short-term basis.

However, each Member State of the European Union has implemented different legal standards for the short-term rental market. These norms - various registration and licensing requirements, platform obligations, differing day cap schemes and second home taxes - span all governance levels and therefore vary nationally (through different federal laws), regionally (through different state laws) as well as locally (through different municipal statutes). This multitude of approaches creates a legal fragmentation that acts as a significant business barrier especially for small and medium-sized companies.

A harmonization of the legal framework of short-term rental in the European Union addresses this issue and generates much-needed legal certainty for both platforms and their business partners, who are currently faced with a multitude of regionally varying regulations that are difficult to oversee and monitor. In view of this, the VIR explicitly welcomes the fact that the European Commission has decided to address the issue in order to ensure a level playing field for all professional and non-professional accommodation service providers, property managers and online platforms. However, there are some aspects that in our view have to be taken into consideration:

Scope of Regulation

Often, where legislative action is presumed to be necessary, a corresponding regulatory framework already exists. That is, the DAC-7 Directive, the VAT Directive and, in the future the Data Act as well as the Digital Services Act, already regulate or will regulate aspects related to data-sharing at the European level, particularly with regard to digital platforms. We therefore advocate that existing or pending regulation is taken into consideration in the further development of the proposal. In the interest of legal certainty and unambiguity, it is of utmost importance that duplicate structures and contradictions between the different legal standards are avoided and that these are coordinated in a holistic manner. In addition, it should thoroughly be examined to what extent the existing regulations already contain expedient data sharing obligations for platforms.

Furthermore, we believe that the definitions of the regulation, and thus its scope of application, must be designed in an unambiguous way in order to provide distinct legal certainty, i.e. it must be transparent and clear which business models fall under the scope of application and which do not. Unclarity in regards to, for example, novel business models, needs to be adequately addressed.

Strengthening of the Technical Notification Mechanism

Directive EU 2015/1535 (TRIS Directive) requires Member States to notify the European Commission in advance of any technical regulations they intend to introduce for products and Information Society services. Modifications to STR-related elements such as registration obligations or the introduction of night caps are also covered by the scope of the TRIS Directive. In our experience, however, compliance with the TRIS Directive in the past was unsatisfactory and insufficient, thereby reducing the much-needed predictability for companies that are active in the European market. Moreover, we have become aware of incidents where the notified legislation was in violation to existing EU law. We believe that the STR initiative of the European Commission does provide an excellent opportunity to address these issues as well, to provide legal clarity and reinforce the application of the Technical Notification Mechanism by EU Member States as well as its redress mechanisms.

Data Sharing Regulations

It is currently being discussed that the Commission's proposal could oblige rental platforms to transmit certain data to the responsible authorities upon their request in order to facilitate the enforcement of the short-term rental regulations.

Against the background of this discussion and taking into account the principle of data parsimony of the General Data Protection Regulation (GDPR), the sensitivity of the data to be transmitted and in order to keep administrative burdens as low as possible, we advocate for the standardization of data reports and requests in such a way that reports with congruent or overlapping content do not have to be sent repeatedly to different authorities. Mandatory coordination and administrative assistance between the authorities are suitable means to improve the processes.

In addition, it should be thoroughly examined to what extent the existing regulations (DAC7 Directive, VAT Directive) already contain data sharing obligations for platforms that cover desired information. Multiple transmission of reports with the same or highly similar content on the basis of different laws should be avoided and minimized as much as possible. We also believe that the data reports and requests should be designed in uniform and standardized format across the European Union in order to ease the administrative impact and compliance with the regulation.

We further believe that the individual capabilities of differently sized companies should be taken into account, so that exemption rules for small companies are included. Otherwise, smaller companies, for which processing a large number of inquiries would quickly represent a resource burden difficult to bear, might be forced out of the market or prevented from entering it.

In addition, the introduction of any data sharing obligation should provide sufficient legal certainty for the transfer of data. Especially in light of the GDPR, a clear legal basis for the collection and use of data is, not least due to liability reasons, indispensable for companies. It should also be ensured that data sharing requests of official authorities are compliant with existing EU law, as we have become aware of instances in which authorities made *collective requests* to companies, which are not permissible within the framework of the GDPR.

Finally, we believe that it is essential that new data sharing obligations provide the platforms with an adequate amount of time to sufficiently implement the requirements.

Common Registration Scheme

The European Commission explicitly mentions the possibility of a '*common registration scheme*' for landlords, who want to rent out living space on a short-term basis, as well as the introduction of an obligation to publish corresponding offers with a mandatory registration number. Such an obligation could either be introduced for all landlords renting out living space on a short-term basis or could be restricted to landlords renting out in areas where short-term rental is already regulated in a special form.

From our point of view, the option of introducing an area-wide registration obligation, decoupled from authorization processes and irrespective of the location of the rental space, appears preferable for two reasons. First, such a unified regulation helps small and medium-sized companies that avail of fewer resources to also participate in the market - even across different regions and countries. If such a registration obligation, however, were introduced in a regionally differentiated - i.e. fragmented - form, the high degree of legislative fragmentation of the numerous regions of the Member States would pose a considerable administrative burden, that would hardly be manageable for SMEs. A nationwide registration obligation, on the other hand, would considerably reduce the regulatory and administrative strain.

Second, the establishment of an area-wide registration obligation offers the advantage that knowledge on the STR market would significantly be expanded through the data gained, providing legislators with a well-founded overview of the number of overnight stays and bookings that take place in a city or region. The gained transparency can enhance and ease evidence-based regulatory decisions.

We further emphasize that such a registration scheme should be separate from authorization processes. By reason of proportionality and to keep bureaucratic efforts for authorities as well as for peers or professional operators on a low level, the instrument of authorization requirements should only be used locally and only as long and to the extent that evidence-based problems in those regions were identified.

The introduction of a '*common registration scheme*' should also adhere to the established principle of platforms not being obliged to verify whether the registration numbers provided by users are legitimate. Changing this principle would not only push forward the problematic outsourcing of sovereign verification tasks to private companies, but the additional expense caused by the expansion of responsibility would also place a considerable burden on already challenged companies.

Among and within the Member States of the European Union a high degree of fragmentation in regards to registration obligations, as well as the registration process per se, exists. In order to keep the administrative hurdles as low as possible whereby compliance would be increased, the introduction of a registration obligation should be designed in such a way that a uniform, central, easily accessible and non-discriminatory online application for the registration is established across the European Union. This registration system should preferably be established in a central office at national but ideally at EU level and should consist of a common standard, as a pronounced divergence between the application systems would run counter to the purpose and objective of the Commission's regulation. Best practice examples of successful and user-friendly systems include the system currently being used in Portugal and the opt-in system of the Netherlands.

With kind regards,



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The Verband Internet Reisevertrieb e.V. (VIR) is the industry association of the German digital travel industry and as such represents the sector of digital tourism, which, according to figures of the Research Community Vacation & Travel (FUR) from 2019, accounts for around 67 percent of holiday trips that include one night or more with pre-booked services. The members of the VIR include more than 90 companies active in the area of digital tourism. They are divided into the four clusters of OTAs, Suppliers & Tour Operators, Service & Travel Technology and Start-ups. The VIR acts as a point of contact for consumers, the media, politics and the industry itself on all topics related to digital tourism.