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GROW.G.3/LW

Developing a responsible, fair and trusted single market for short-term rental services

Workshop 2: Achieving a fair single market for short-term rental services.

Online, 10 December 2021 - Conclusions

On 10 December 2021, DG GROW organised the second of two workshops asking stakeholders for input in relation to the short-term accommodation rental initiative. The workshop focussed on achieving a fair single market for short-term rental services (STR).

The workshop attracted 183 participants from the Member States (national, regional and local level, including regulatory authorities, relevant tourism authorities, cities and their representatives), online intermediaries and their representatives, associations representing hotels, representatives of businesses, chambers of commerce, academics, non-governmental organisations and journalists. The participants came from 23 EU Member States.

The Commission, represented by DG GROW, introduced the workshop by explaining the background of the STR initiative. It noted the steps taken for its preparation, including the publication of the Inception Impact Assessment and research done, as well as the ongoing consultation with stakeholders. It recalled also the conclusions of the first workshop focussing on enhancing transparency on STR.

This report sets out a summary of the presentations, the main conclusions drawn by participants and the discussion that took place in the chat. It does not represent an official position of the Commission.

The presentations given by participants have been published.

Part 1: The short-term rental ecosystem

- **Who are the main actors in the short-term rental ecosystem and the different shapes and sizes of hosts?**

An academic representative from the University of Leeds and University of Lisbon provided an overview of STR ecosystem and its evolution. It was noted that the STR ecosystem, particularly those providing STR accommodation, has become increasingly professional spurred on by the growth of online intermediaries and service providers, such as property managers. The example of GuestReady and Vacasa were provided to demonstrate the scale of the industry. GuestReady is the biggest operator in Portugal with 4,000 properties whereas Vacasa, founded in 2009, provides property management services for over 30,000 vacation rentals in the US and EU. Vacasa is listed on the US Stock Exchange and has acquired more than 160 companies to reach its current size. It was said that this growth is also linked to the fact that many small operators have been absorbed by larger companies, more so as a result of the COVID crisis. As a comparison,

it was noted that research has identified that in 2019 there were 40 property management companies in Lisbon, but that after crisis many of the smaller operators had disappeared and only the larger ones remained.

Shifting from management by individual property owners to property managers demonstrates that one simple category of hosts is no longer relevant. There could now be a need to distinguish between host ownership and host managers. Furthermore, as some property managers are vertically integrated, they are able to offer additional services to property owners such as cleaning, laundry, check-in and the day-to-day maintenance/property management.

In addition, industry has developed alongside the offer of accommodation. Start-ups have created software for property managers for example, enabling the same property to appear on hundreds of different online platforms simultaneously (beyond the most well-known) to guarantee full occupancy.

- **How similar are hotels and professional short-term rental providers?**

A representative from HOTREC advised that there are similarities between STR and hotels. Both provide a bed away from home on a daily basis and hotels too can offer STR accommodation. However, hotels have existed for a long time and they compete with big chains, whereas STR usually competes with property owners.

In relation to the rules, there is a difference between the transparency provided by hotels and STR, namely in relation to the reporting requirements. In addition, hotels are subject to a number of obligations in relation to insurance, contracts, protection of consumers, health and safety, etc. Complete alignment is not appropriate; rather an equivalent regulatory approach is required. This could follow the suggestions made by HOTREC to foster a fair ‘collaborative’ economy based on five pillars¹. This suggests that there should be a basic registration requirement for STR; a differentiation based on thresholds, for example, to distinguish those that are more professional, those that offer their primary or secondary residence, who offer more than one property etc.; a fair system of taxation, compliance with health, safety and security requirements and proper liability regime in case things go wrong (e.g. a requirement on hosts to have adequate insurance).

Part 2: The effects on market access, particularly for SMEs, when public authorities pursue public objectives

- **What are the underlying policy objectives pursued in setting the rules for short-term rentals & how is this being achieved?**

The external expert for URBACT and the Urban Agenda Culture & Cultural Heritage Partnership, provided an overview of the study they have undertaken to understand the regulatory landscape and the public policy objectives pursued across the EU. Using a survey, they were able to review current policies across the EU in different types of cities and towns, and identified a lot of fragmentation. A common approach is the use of a 90-day rule, where once a cap of 90 nightly stays is reached, a permit is needed. However, municipalities struggle to check whether the cap is respected.

¹ [5-Pillars-to-Foster-a-Responsible-and-Fair-Collaborative-Economy-14-February-2017.pdf \(hotrec.eu\)](#)

The main types of policy objectives pursued in setting rules on STR are to protect permanent residents, preserve the identities of cities, preserve locally owned shops etc. The policy objectives are pursued particularly in big cities within the EU (e.g. Barcelona, Berlin), but also in smaller cities along the coast. The methods used, often focus on urban planning and the need to balance STR between different zones to help avoid concentration in the city centre. There are many methods being used to strike the right balance, for example, where a host lets a second residence as STR for longer than a set number of nightly stays, they are required to provide a third residence for the long term rental market (e.g. for residential use) or for an alternative use, e.g. as an office.

- **The impact of national regulatory approaches on market access, especially for SMEs.**

A Professor of Commercial Law from the Universidad Carlos III de Madrid and Sir Roy Goode Scholar at UNIDROIT, Rome, 2021-2022, discussed the effect of rules put in place to control access to services in the Single Market. She pointed to the fact that when the laws are diverse, even at a local level, it creates more legal differences and a market that is more fragmented. When a law is difficult to apply or if what it covers is unclear, it creates uncertainty and affects market access. The cost of identifying different rules and complying with them makes scaling up and standardisation of an offer more difficult. This affects all actors but small providers (SMEs) in particular are more affected by legal differences.

To illustrate this she pointed to some regulatory measures on STR that have a high impact, such as rules that do not distinguish what applies locally for short-term stays and what general rules may apply, at national level, for medium-length stays; registration requirements that are too difficult; and bans or limitations on the number of nightly stays permitted. These measures can create unfair competition if they are not applicable to all providers.

To ensure that restrictions on market access achieve policy objectives, data is needed to confirm the consequences of STR restrictions. For example, if a ban on STR is in place, the data can be used to answer questions such as: Does it result in the accommodation being used for long-term rentals? Are rents lower in areas where there is no STR? Are there lower investments and/or renovations in an area with fewer tourists? What is the impact on gentrification? Data is essential to carry out a thorough case-by-case analysis, otherwise the general analysis will be based on perceptions and not on evidence.

Part 3: Freedom –v- Control - Striking the right balance

The Commission introduced the general principle of freedom to provide services, based on the Treaties (TFEU) and the Services Directive. Service providers should not be subject to market access or other requirements unless they are non-discriminatory, necessary to attain a clearly identified public interest objective and proportionate to achieving this interest. It also emphasised in particular, that measures must be justified by an overriding reason in the general interest and be proportionate to the objective (i.e. it may not be possible to replace the measure by a less restrictive one). This also requires Member States to provide an analysis of the appropriateness and proportionality of the restrictive measures based on precise evidence and substantiated arguments. In addition, Member States have to ensure that procedures and formalities applicable to access a service activity are sufficiently simple, easy to complete at a distance and by electronic means, through the relevant point of single contact and with the relevant authorities.

- **What are the opportunities if the balance is right?**

Two views from the platform perspective and a further view from the host perspective, were presented.

A representative of EU Travel Tech advised that it is important to note that STR is not an issue in itself, it has existed for a long time. Issues have sprung from the rapid growth of STR in the last two decades that has led to changes that require a regulatory reaction. Therefore, there is a need to find solutions that work for everyone – platforms, hosts, citizens, local authorities and hotels.

In their view, an EU approach is needed, particularly given the context as travel is by essence cross border. It is also needed to avoid litigation about the interpretation of the EU framework. This could be done by setting up a mandatory registration scheme (e.g. to oblige all to register, either at EU, national or local level following a standardised format with requirements on platforms to delist) and measures to address the current situation with data sharing, which is very fragmented and costly for platforms. A standardised approach has the potential to make the Single Market a reality. Different rules limit expansion for platforms across the EU. At EU level, a streamlined definition of peers and professionals (e.g. based on type of occupation, level of income etc.), guidelines on proportionality tailored to the STR sector and possibility a notification system, which could act as a filter, could contribute toward this.

From another perspective, the co-founder and Vice President of Fairbnb.coop provided an overview of their business model, which is a global platform that provides local sovereignty and redistributes profits in the communities. In their view, regulation needs to address ‘pain points’. It needs also to be future proof. This means it adopts a holistic approach with global common sense and top down approaches on social/ecological boundaries (e.g. exclusion of social housing), global standards, accountability of platforms, local diversity, fostering tourism including in areas in the periphery or limiting it in certain areas and sovereignty (enabling local communities to set rules).

Where the EU could help, would not be in creating the same rules, but rather encouraging a consistent system. This could be composed of a global standard, such as a registration scheme, that could harmonise the exchange between cities and regulators. In addition, a central API (application programme interface) developed at EU level could help ensure the STR market is compliant. This would increase communication and enable authorities to enforce the rules. For example, in Amsterdam there is a limit on the number of stays. The local authorities in Amsterdam would want to know when check-in happens and the central API would make it possible to get that information from Fairbnb easily. Without this, to be compliant with all local regulations, Fairbnb needs to build this information exchange system in every city. This is expensive and a barrier to them growing cross-border.

The representative from the local accommodation association in Portugal, who represents hosts including SME hosts, advised that Portugal should be an inspiration for future regulations on STR. In Portugal, there are quantitative restrictions where studies justify this on a zone-by-zone basis and which are not applied in a blanket manner for an entire city. Even with this system in place, any restrictions need to be justified using data and take a holistic view.

In relation to data, the representative indicated that EUROSTAT’s efforts are positive as the data they share was not previously available. They also indicated that thanks to that

data, as well as the information from the easy registration scheme used in Portugal, data on STR is now available. This data underlines the importance of STR, as 40% of nightly stays in Portugal were in STR accommodation while in the countryside and in coastal areas, STR accounts for around 70-80% of all accommodation. This helps make informed decisions on STR that are not polarised.

In addition to the data, the holistic view of STR is needed and requires an understanding of STR in context, which, ultimately, can help to put the right types of rules in place. For example, STR is not just an alternative form of accommodation, but rather can be one of the first choices for tourists. In addition, STR has been relevant to coastal areas for much longer than its relevance to urban areas. It has provided opportunities in terms of sustainability for local areas, whereas alternative uses, such as use as secondary homes are limited to use for just 30 days per year.

The EU could help with providing an easy, universal registration scheme. However, care needs to be taken to ensure that it does not become an authorisation scheme but rather, that it should be used to get the necessary data on how STR operates in the local area and for understanding the legal scope of rules on STR. In addition, more clarity is needed on the Services Directive. It should be enforceable by market players, platforms and authorities. It should clarify what justification and proportionality mean with examples. It should be coupled with a mechanism for notification, which can encourage effective implementation by local authorities and control of regulations *ex ante*. In addition, quantitative restrictions must be justified via data and studies, including evaluating the contribution of STR to sustainable tourism in a city and avoiding confusion between regulating tourism and regulating how to deal with pressures in specific zones, as these are two different things. In addition, restrictions should be examined on a zone-by-zone basis, which cannot apply uniformly across a city, to ensure that proportionate measures are applied according to the pressures faced in each individual zone. The requirements should not assume that the same rule should apply to hotels as well as STR, but rather consider requirements based on size, categories, relevant tax frame etc.

- **Forthcoming ideas from the Urban Agenda's Culture & Cultural Heritage partnership**

The external expert for URBACT and the Urban Agenda Culture & Cultural Heritage Partnership provided some insights on the likely recommendations that shall be presented to the Commission. The proposal is for a new regulatory system that goes beyond a merely reactive approach. This should be based on a 'three Ps strategy': Prepare, Preserve and Platformise.

Preparedness requires a proactive approach to regulation, to achieve a sustainable tourism sector. Tools need to be given to local communities to deal with tourism, which are practical, so that they know how to deal with STR before it becomes a problem (i.e. a risk-prevention approach).

Preservation requires evaluation of whether there are specific communities or areas that have, or are likely to have, high pressure from STR. In particular, assessing this via multiple levels (local, regional, national and EU) and using collaboration between authorities, through a common framework, can contribute to this.

Platformisation requires having a framework that enables alternative types of STR platforms to operate, including those that may be created by the municipality.

- **Striking the right balance: how could the EU help?**

The panellists included representatives from the Ministry of the Interior and Kingdom Relations in the Netherlands; from the city of Prague and Member of the Union of Towns and Municipalities of the Czech Republic; from the City Councillor for Finance, Economy and Employment and the City Councillor for Tourism and Commerce in Porto, Portugal, and the Councillor to the Mayor in Cannes, France.

Each panellist described the growth of STR in their area and the public policy objectives pursued by the rules.

In the Netherlands, STR affects smaller towns/areas especially those along the coast and not only big cities such as Amsterdam. For Porto, the effects of STR have been positive, with increased tourism and opportunities for new types of commerce and investment. In addition, they have seen that STR is flexible, can be more easily converted to long-term rentals and have good experiences with its growth and use. Similarly, Cannes has had a positive experience. They advised that they welcome nearly 3 million visitors a year (traditional tourists and those that may visit for professional events/activities) and have found that STR provides an interesting complement to more traditional tourism accommodation, increasing capacity by providing more than 9,000 units of STR accommodation that cater for about 40,000 visitors. The growth of STR in the Czech Republic has mainly concerned Prague, Brno and Český Krumlov (a Unesco heritage site). Data from November 2019 shows problems with STR as with its growth, tourism has increased dramatically from 2016 to 2018, with 300,000 more tourist visits each year and a total of 9 million tourists visiting Prague in 2018. This has led to a growth in the number of STR apartments by around 34% from 2016-2018 compared to a growth in the capacity of hotels by 1.4%.

The panellists described how rules had been put in place to manage STR. Porto explained their positive experience since putting in place local regulations in 2009. They have approached STR providers as businesses since the beginning. This has enabled them to collect taxes without a problem and focus the rules on the impact STR has on the urban environment. In Cannes, they had to deal with issues such as concerns about the quality of services, complaints about nuisance caused by noise and a lack of balance in the distribution of STR, which does not protect citizens and is considered to lead to a lack of housing and a house prices increase. In the Czech Republic, tensions have arisen as tourists like to stay in the city centre meaning that in Prague, like in other capital cities, entire blocks and houses are rented out as STR and are not residential. This has a negative impact on the liveability of the city centre and neighbourhoods.

For the larger cities, the EU framework was more familiar. In contrast, for smaller cities, it was acknowledged that EU law was considered remote from the situation on the ground.

In addition, panellists provided their view on how the EU could help them further their public policy objectives in a balanced manner. The ideas exchanged included EU guidelines that provided clarity on measures that could be used to regulate STR. This could be in the form of a toolbox that are not hard rules, but which provide guidance on a consistent approach and the process to be followed. Alternatively, it could be a minimum framework on proportionality, focussing on the procedure to assess the proportionality. In both cases, this would leave room for adaptation to the different situations in cities and would not deal with something that should be addressed locally. The principle that what is illegal offline, should also be illegal online, should apply. Understanding how the

situation is managed in other Member States could also help identify the appropriate regulatory framework. It could also help with the approach to be taken in relation to digital services, particularly to ensure that rules can be enforced.

On the other hand, the assistance of the EU to get cooperation on data sharing was said to be the key aspect. This is the case where this can help public authorities understand the current situation (e.g. the amount of STR accommodation being offered, the number of people staying and for how long) and understand the evolution. Having this data was key to understanding the STR ecosystem and informing solutions that ensure that STR can be provided as an economic activity (which is needed/desirable) with the freedom of property owners (owners and hosts) and combined with legitimate public policy objectives.

Some attempts are made to gather this data already. For example, Porto gathers this data through open data sources and web-scraping, to visualise where STR is located and occupancy rates. This is already used to regulate STR based on what really is happening in the local areas. Having a universal registration system has given the structured information needed to evaluate the situation on STR, with a similar approach used to gather information from hotels. In Porto, the registration system captures 97.5% of all apartments offered for STR and so reduces the number of apartments that are offered on the black market. Similarly, Cannes gathers the information from partnerships with large platforms. It is used to collect information on tourism taxes and enables a better knowledge of STR activities. However, it was expressed that there was a clear need to have more information and to gather this in a harmonised and balanced way (for the benefit of both public authorities and platforms), and to address the enforcement gap. Informal arrangements to gather data are not always successful, with the example of Prague sending requests for further data to 12 digital platforms and not receiving any responses. This lack of response creates problems with tax collection. Even when data is received, its patchwork nature casts doubt on the accuracy of what is collected. This results in an imbalance with hotels, where data is received in a more structured and controlled manner that has been established over the years.

Summary of the discussion in the chat during the workshop

The side discussion in the chat focussed on different relevant topics.

In relation to the **legal framework at EU or national level**, the comments on the existing framework and awareness of it, led to suggestions that cities or regions should be able/encouraged to ask the EU about compliance with the Services Directive before enacting regulation. Better compliance could be ensured by fines/sanctions for non-compliance. Some comments suggested that cities are aware of the rules and notification procedures, but the problems relate to the fact that platforms and hosts do not comply with the laws.

In relation to **future EU or national regulation**, comments suggested that registration was a key requirement with respect to regulation and enforcement, including one that could be established at the EU level. Any EU intervention should facilitate freedom of establishment and freedom to provide services. It should help local public authorities have clarity about what rules are possible in line with the Services Directive and other rules, such as property law and minimum rights for peer-to-peer provision of STR services so they are protected from excessively burdensome restrictions. The EU intervention should not distort the market or favour one form of accommodation over another. It should also consider the diversity of the STR market and not be urban

focussed, as it was suggested that the majority of STR are offered in rural and economically underdeveloped areas within communities that are highly dependent on tourism. The effects of STR also differ from city to city. In addition, any EU rules should take into account the fact that not all EU countries have a smooth running administrative system.

It was expressed that **rules** should be based on evidence, consider all interests, be proportionate and appropriate to solve underlying issues. The ability for professional hosts to escape the rules more easily should also be considered. Some comments highlighted that distortion of competition could result from urban planning rules. Examples include cases where, in zones where regulation is put in place to avoid the loss of residential areas, STR can be prohibited but office use permitted. Similarly, in some cities in Portugal there can be ‘containment zones’ where new STRs cannot be registered, but there are no restrictions on new hotels being established.

In discussing **the differentiation between peers and professional hosts**, the factual situation was noted, highlighting that the majority of property managers in Germany and Spain are SMEs. The discussion argued in favour of a distinction, for example, to enable customers to distinguish types of hosts when they see an offer on a platform. Suggestions were made that the line could be drawn based on existing differentiations (e.g. those that rent for more than one month in Catalonia or those that rent for more than 3 months in France), be based on the number of properties and how long they are rented out during the course of the year. On the other hand, it was argued that the peer/professional debate was superficial given that the overall intention was to restrict access to the market.

A tension was noted between the Single Market logic of the EU and the objective of social, economic and territorial cohesion, which is equally a key objective of EU policies. The right of (local) public authorities to regulate for public interest objectives in fields that fall under their competence (e.g. housing and planning) is a key component of achieving territorial cohesion and is a matter of subsidiarity. A wide range of views about the impact of STR on housing were expressed. Some expressed the need to avoid penalising STR providers due to under-effective policies in providing affordable housing. The example of Valencia (Spain) was given where it was expressed that even though urban land is available for the construction of social housing the focus of rules is to tackle a lack of affordable housing through restrictions on STR. Therefore, there should be more efforts to verify if public authorities have met their legal obligations to construct sufficient social housing and taken a holistic view, as the lack of public housing cannot only be attributed to STR, even if STR could contribute to an imbalance in the market. In Amsterdam, another example provided, advised that 15,000 hotel beds are permitted in the inner city area, despite there being only a population of 8,000. However, STR that accounts for only a small percentage of the overnight stays in the area is blamed for over-tourism. Other opinions underlined that a lack of affordable housing also affects rural areas and the issue goes beyond the provision of public housing by local authorities, as the lack of affordable housing also affects the middle classes who do not benefit from social housing.

Support was expressed for the use of **APIs** to assist with reporting of individual stays in real-time, created by a trusted EU third party. An example of its use in Amsterdam to provide the data for the EU Data Space for Tourism was provided.

Other comments related to **the level playing field between STR and hotels, and the extent of their similarities**. It was noted that STR and hotels should function

simultaneously as alternatives, as they cater for different types of guests and provide diversity in the tourism market. It was also acknowledged that there should be rules applicable to STR services, but these rules need to be proportionate.

Data sharing through platforms was another discussion point. Comments noted the importance of platforms sharing details about hosts, the use of data sharing to eliminate illegal listings and that data is key to understand the benefits of STR. It was expressed that where STR is strictly controlled, those who lack data, just rely on how they think STR affects housing rather than examining its actual effect.