# 11th HOTREC Regulatory Bulletin – December 2018

The final Bulletin for 2018 is a prelude of what is possible to happen in 2019. As we expect to see more and more destination authorities taking decisive measures against illegal STR, this will necessarily involve terms and provisions for more platforms than Airbnb.

In the case of future policies by destination authorities, there was a big step forward by the Sharing Cities Alliance in November 2018. Established in 2017 and run by an independent foundation, the Sharing Cities Alliance is a global network of 40+ cities relying on city-to-city collaboration, and empowering city governments to address the challenges arising from the sharing economy. Their most recent update of the Declaration of Principles and Commitments of the Sharing Cities includes two new principles which respond to growing concerns over the activity of Airbnb-style platforms.

First, the new Article 1 clarifies that cities should distinguish between the different models of digital platforms regarding their functioning and impacts, in order to design public policies according to these differentiations. Here there is an explicit mandate for separating digital platforms with key qualities (e.g. predominance of peer-to-peer relationships, participative community governance, openness and transparency of data, responsibility towards negative impacts) from platforms which are not built on truly collaborative models.

Second, the new Article 8 holds cities responsible for guaranteeing respect for their legal jurisdictions given the potential disruption from the digital platforms. Here there are some important questions that destination authorities all over Europe should strive to answer in 2019:

1. What does it take to establish negotiation frameworks with platforms to ensure respect for legality and local regulations?
2. How can transparency be ensured in operations and transactions in relation to data transfer from the platform?
3. How can cities work together to encourage changes in regulatory and framework policies in the digital sphere, in order to facilitate compatible economic activity and protect users' rights, as well as defending the habitability of the urban sphere?

## Growing competition for Airbnb entails additional concerns for destination authorities

It would take more time for Airbnb to reach the peak in its most mature markets, if there was not increasing competition from Booking.com and Expedia. The most recent annual monitoring report by Morgan Stanley raised this point in November 2018. Access to alternative accommodation options through OTAs is already a significant factor for growth slowing down in the case of Airbnb, besides brand awareness peak and various pending issues (e.g. privacy, legality, security).

Booking.com has done a lot recently so as to reconfirm this point. Late in October 2018 they made a firm statement that they develop tools to facilitate the appearance of new service providers involved in the STR sector. Among several features, such Booking.com partners can now:

1. Save time by using a templated guest messaging system and an automatic scheduling system, to help streamline operations
2. Set cancellation policies or special offers across all properties in their portfolio with just a few clicks
3. Report guest misconduct and block them from making future booking while keeping detailed information of property guests (e.g. verified phone numbers, address details)
4. Add a personalized message about themselves, their properties and the neighborhoods where these properties are

For the Vice President of Booking.com, "the short-term rentals industry is only going to continue to grow, as will the travel industry" under the transformative impact of technology. In fact, that is an obvious reason for destination authorities so as to accelerate their own efforts and protect both local communities and consumers.

## Expedia eyes penetration into urban markets & Airbnb acquires property management companies

Together with Booking.com, Expedia also feels confident to compete for a much bigger share of the STR market. The value of HomeAway's online booking is up to $11 billion within three years since Expedia bought HomeAway, but this value is basically based on bookings of vacation rentals. According to the CEO of Expedia, HomeAway is now ready to penetrate further into cities and that would be a matter of responding to changing consumer needs rather than cannibalizing hotel bookings: "In the end we want a big marketplace, and we've automated the traditional role of a travel agent".

Airbnb does not remain idle at the same time. In December 2018, there were two announcements of Airbnb buying companies of property management services in France and Australia. Such a move possibly reflects the platform's ambition to break into the real estate market as an active provider of private accommodations rather than simply as a facilitator of professional hosts and companies.

## Proposals for new STR rules aim to equip the City of New York with essential information.

Late in December 2018 there will be a public hearing on a new series of proposed STR rules. If approved, these rules would be an addition to legislation passed by City Council in July, requiring New York City hosts to register information with the Office of Special Enforcement. New proposals incorporate a new dilemma for digital platforms: to deal with fines for each listing that fails to comply with the law or to work closely with the city's administration by submitting monthly reports including various information (e.g. a host's personal information, a host's volume of transactions, whether a listing included an entire apartment and for how long this was being advertised)

## Illegal short-term rentals won't go unpunished in San Francisco

That was the message by the City Attorney after the San Francisco Superior Court approved in November 2018 a fine of $2.5 million for penalties and investigation. The particular settlement refers to a couple of owners who turned 14 city apartments into illegal hotels – through Airbnb – among the 17 buildings they manage in San Francisco. Airbnb was also quick to admit that "these are not the type of hosts we want on our platform and are glad the city has the tools it needs to enforce the rules", since it has already agreed a 'one host, one home' policy that discourages hosts with multiple listings.

## In nine months, Airbnb pays €5.5 million in tourist taxes to the Lisbon and Porto City Councils

Airbnb announced in mid-December that from January to September 2018 it had paid €3.7 million in tourist taxes to the City of Lisbon and €1.8 million to the City of Porto. From May 2016, when Airbnb began to collect and remit the tourist tax to the City of Lisbon, to the end of September 2018, the platform had paid €9.3 million. Whereas in Lisbon the tourist tax was set at €1 per night, the City of Porto charges €2 per night. Consequently, the revenue already accounts for €1.8 million within the six months (April-September) of law enforcement in Porto.

## A new law in France defines clear obligations and high penalties for digital platforms

A new housing law (Loi Elan) was officially published on November 24, 2018. As part of terms and provisions in relation to the STR sector, homeowners are still allowed to rent their primary residences for a maximum of 120 days per year, with fines up to €10,000 per property. Moreover, blocking listings which reach this number is an explicit requirement for digital platforms otherwise they are subject to fines of up to €50,000 euros per advertised listing. In addition, there are fines up to €5000 for those owners who fail to register their STR properties in areas where registration is compulsory (e.g. Paris, Lyon, Bordeaux, Nice, Toulouse, Strasbourg, Biarritz...) and up to €12,500 per property for platforms who permit these offers without registration number. This law gives more power to city councils, that can ask for the exact number of rental days to owners and to platforms, once again with fines (up to €10,000 for owners, and up to €50,000 per property for platforms) in case of failure to submit it. The recipients of the fines are the City councils.

## Dublin City Council seeks €400,000 for anti-Airbnb taskforce

According to the head of the planning department, developing effective tools for law enforcement is a key priority for the City of Dublin in relation to the "logistically very difficult" area of STR regulations. That is essentially the case only a few months before the application of a new law including mandatory registration for all homeowners advertising their primary residences in digital platforms along with caps of 90 rental days per year and 14 rental days at a time. According to a late November report to councilors, the City of Dublin is seeking €400,000 from the Department of Housing and Planning to set up a dedicated team that will monitor and police potentially illegal Airbnb-style rentals across the city.

## Disturbance complaints drive the City of Edinburgh to investigate a group of landlords

A series of law violations forced Edinburgh's Council to take action against and ban landlords who drew complaints from permanent residents in a block of flats. First, a series of investigations revealed that specific flats were being rented out for more than 200 nights per year. Second, the final verdict against the appeal filed by the landlords evaluated the case of a material change of use. Here, the key argument was that the intensity of the use of a property by recurrent visitors (e.g. the number of arrivals and departures, the likelihood of increased noisy activity late in the evening, increased activity as a result of the cleaning of the property) would be greater than that would be expected where the property in use by a single household.

## The federal government in Germany is silent on the tax questions concerning Airbnb

At the end of October 2018, a report was published in the Handelsblatt outlining a contradictory situation with regard to political approaches between different administrative levels. While the state governments in the major cities had in part succeeded in taking decisive steps to control the STR sector (in Hamburg, for example, the upper limit for annual letting was lowered from 180 days to 60 days), it remains unclear what progress has been made at the federal level to date. At the beginning of 2018, the Federal Fiscal Office, the authority responsible for enforcing the Tax Code, requested Airbnb to provide all data on the income of the hosts in order to be able to make a comparison with the corresponding tax documents. The Ministry of Finance has been refusing to clarify questions related to the type of data it was requesting from the platform and and what information it was receiving from the platform. According to the Handelsblatt, there are currently no plans on the part of the Ministry to discuss tax issues with Airbnb.

## Airbnb must provide the City of Munich with data on holiday apartments, judges the Administrative Court of Munich

Even though Airbnb is based in Ireland, the Internet platform in Germany must comply with national regulations, according to a court decision mid-December. As a result, the City of Munich shall know from Airbnb which providers offer apartments for more than eight weeks a year as holiday apartments. It also demands the names and addresses of the hosts for the period from January 2017 to July 2018. In case that Airbnb does not provide the data, the city threatens with a penalty payment of 300,000 euros as of its order of August 2018.

Other cities, which are also fighting against misappropriation, could also benefit from the ruling. However, since the legal situation in the cities is different, the ruling cannot be applied to them one-to-one.

## Norway is poised not to tolerate illegal hotels

The government in Norway is determined to address the concerns on the negative impact of the STR sector as expressed by various stakeholders including hotel and homeowners associations. Similarly to several other destinations "the problem is that many investors buy up lots of flats and in reality are running hotel operations themselves", according to the Minister of Trade and Industry.

Hence, the new draft law on residential real estate includes for a first time thresholds (e.g.):

1. A maximum of 90 days per year for STR in condominium apartments
2. A maximum of 30 days per year for STR in residential cooperatives
3. A maximum of 2 residential units per investor in a particular association of homeowners

These laws will most likely be in effect from January 1st 2020. In addition, from 2020 the ministry of Finance will make a law who gives platform companies in the housing sector a duty to report to the tax authorities.

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