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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council on data collection and sharing relating to short-term accommodation rental services and amending Regulation (EU) 2018/1724

[...]

{COM(2022) 571 final} - {SEC(2022) 393 final} - {SWD(2022) 349 final} -
{SWD(2022) 350 final}

Subsidiarity Grid

- As proposed by the Committee of the Regions with guidance in blue
- Obviously, the answers to the questions below, the explanatory memorandum and – if applicable – the impact assessment should be consistent. This may require some iterations.
- Please try to stay under 10 pages.

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
The legal basis used for this proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU) Article 114 TFEU, according to which the EU may adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the single market.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
In the case of internal market legislation, the Union's competence is shared (Article 4 TFEU).
<i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU¹. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU² sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU³ sets out the areas for which the Unions has competence only to support the actions of the Member States.</i>
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2⁴:
<ul style="list-style-type: none"> - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
The Commission consulted a broad range of stakeholders, including online intermediaries platforms active in the tourism ecosystem, hotels and their associations, hosts, consumers, Member States at all levels and non-governmental organisations and cross-EU networks. A Eurobarometer survey was carried out; in September 2021, an inception impact assessment was launched and a public consultation ran for 12 weeks (almost 6 000 replies were received, including from citizens and hosts). Two workshops with all relevant stakeholders were organised respectively in October and December 2021. In addition, two targeted surveys were launched in 2022: a consultation of public authorities, including local and regional authorities, (80 replies) and a consultation of online platforms (15 replies from platforms of all sizes).

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

The explanatory memorandum of the proposal and the impact assessment contain a section on the subsidiarity principle. The impact assessment includes some specific developments on subsidiarity in the appropriate sections.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

Divergent and burdensome frameworks concerning data generation and data sharing put in place by Member States are affecting the ability of online platforms to operate cross-border. At the same time, the current interventions at national, regional and local level are often ineffective, including because authorities have in general difficulties obtaining data from platforms and hosts. An EU legal basis will enable data sharing by online platforms operating across the EU and ensure that the data exchanged is standardised and interoperable. Common EU standards for registration schemes will ensure that the procedure for registration is simple, contributing to reduced fragmentation and administrative burdens for online platforms and hosts. The common EU framework will offer national and local authorities the level of transparency they need to enforce the rules and adopt informed policy responses in line with existing EU law.

The cross-border nature of online STR services offered by platforms and the fragmentation of data sharing requirements implies that the objectives cannot be reached effectively by Member States alone. Union action therefore constitutes the only way to ensure that a harmonised framework for data generation (through registration) and data sharing is established, which also enables public authorities to procure reliable data on STRs and online platforms to operate and grow in the single market without facing numerous and diverging data sharing requests.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

The objectives of the proposal cannot be achieved sufficiently by the Member States acting alone. EU action is necessary because more transparency in the STR sector can only be accomplished by a harmonised European legal framework. Divergent data requests and transparency obligations on national, regional and local level lead to a fragmentation of the single market and cause significant administrative burdens and costs to online STR platforms. In addition, without the cooperation of online platforms, which operate mostly cross-border, public authorities struggle with the enforcement of the obligation on hosts to register. A harmonised framework on European level ensures that public authorities can procure sufficient, timely and granular data from online STR platforms to better inform their policy-making on a local level.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

Online platforms intermediating STR services which have a high traffic share (to 97% of total traffic) and hold the vast majority of data operate cross-border. Online platforms are increasingly confronted with a variety of national and local rules concerning data sharing requirements and other transparency obligations. This is an EU-wide phenomenon which appears to affect the large majority of platforms: requests come from almost all over the EU and from all levels of public authority (national, regional or local level).

<p>These cross-borders aspects have been quantified to the maximum possible extent.</p>
<p>(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty⁵ or significantly damage the interests of other Member States?</p>
<p>The absence of EU level action would affect the proper functioning of the single market, in particular in relation to the provision of services intermediating the provision of STR services. The majority of online platforms intermediating the offer of STR services operate across the EU and are confronted with several and diverging requirements and requests concerning information sharing on hosts and their activity and the display of information on STR services. Differences in national laws exist and are likely to increase, as national laws will continue to develop, given that some Member States have legislated or intend to legislate on the intermediation of STR services. Online platforms will also continue to be confronted with more and diverging data requests as a result of the growing need for transparency in the STR segment.</p>
<p>(c) To what extent do Member States have the ability or possibility to enact appropriate measures?</p>
<p>According to the e-Commerce Directive, information society services are in principle subject to the law of the Member State in which the service provider is established; the adoption of national measures that restrict the cross-border provision of such services is subject to strict substantive and procedural conditions. Requests to online platforms for personal data on hosts are subject to GDPR compliance. In addition, Member States may introduce registration schemes and market access requirements affecting the provision of short-term rental services. However, these requirements are subject to compliance with the requirements of the Services Directive.</p>
<p>(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?</p>
<p>Differences in national laws exist and are likely to increase, as national laws will continue to develop, given that some Member States have legislated or intend to legislate on the intermediation of STR services. Online platforms will also continue to be confronted with more and diverging data requests as a result of the growing need for transparency in the STR segment.</p>
<p>(e) Is the problem widespread across the EU or limited to a few Member States?</p>
<p>The problem is widespread across the EU. There are overall 23 Member States with some type of registration procedures and/or requirements that would enable them to gather information from platforms. Among Member States where registration systems are in place (22), these vary in scope, procedures, requirements and enforcement mechanisms, including the level of cooperation required by platforms. A growing number of public authorities are putting in place regulations to collect specific STR data from online platforms. Also outside these frameworks, authorities increasingly reach out to platforms with requests for data.</p>
<p>(f) Are Member States overstretched in achieving the objectives of the planned measure?</p>

⁵ https://europa.eu/european-union/about-eu/eu-in-brief_en

<p>Member States are overstretched in achieving the objectives of the proposal because they don't have the possibility to create a common legal framework on an EU level that allows to streamline data requests and registration schemes.</p>
<p>(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?</p>
<p>The consultations indicate that public authorities are strongly in favour of requiring online platforms to share data on STRs to increase transparency and facilitate public policy and enforcement activities. The majority of respondents also consider that such measures should be put in place and/or facilitated at EU level.</p>
<p>2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?</p>
<p>(a) Are there clear benefits from EU level action?</p>
<p>The main benefit for online platforms results from the replacement of uncoordinated data requests by more streamlined and proportionate requests, which can be translated into cost savings on the long term. Savings for online platforms are expected to be substantial. A streamlined data-sharing framework will enable online platforms put in place an automated way to process incoming data requests from public authorities, thus making the cost to process a single request very limited and negligible. This proposal will also increase legal certainty for all online platforms by providing a closed list of data sets that that public authorities can request from them, and ensure that the obligation to share data is compliant with EU law.</p> <p>The main benefits for public authorities are the reduction of costs to obtain detailed, traceable, interoperable and timely data. This would enable better policy-making, more targeted and proportionate rules, and greater enforceability of their STR rules, helping public authorities better achieve public policy objectives.</p> <p>Hosts will enjoy a more predictable framework and an easier and faster registration procedure.</p>
<p>(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?</p>
<p>The reduction of fragmentation will reduce existing barriers to market integration and support the capacity of local platforms to expand their operations to other markets and develop economies of scale.</p>
<p>(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?</p>
<p>The current interventions at national, regional and local level are often not effective, and authorities are complaining that they have difficulties in enforcing existing data generation and sharing requirements and therefore in obtaining data from platforms and hosts. The approximation of rules applicable to intermediary services will avoid the diversity of rules and requirements in the single market and facilitate data-sharing by platforms with public authorities and the cross-border provision of STR services. The data sharing framework proposed is expected to have a positive effect on market access, as it will provide the authorities with the complete and reliable data they need, supporting Member States in</p>

<p>discharging their obligation to enact and maintain proportionate rules.</p>
<p>(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?</p>
<p>The benefits of EU-level action for hosts, online STR platforms and public authorities outweigh the loss of competence of the Member States. The proposal strikes a careful balance between the interests of the stakeholders involved, while maintaining some flexibilities for Member States. The increased level of transparency resulting from EU action will support public authorities in evidence-based policy development and enforcement.</p>
<p>(e) Will there be improved legal clarity for those having to implement the legislation?</p>
<p>The proposal will lead to improved legal clarity for those having to implement the legislation. Public authorities will benefit from an EU-wide legal basis to request and obtain data from platforms. The data sets that public authorities can request from online STR platform will be pre-defined in a closed list (maximum harmonisation). The registration procedures will be streamlined and simplified, to the benefit of hosts.</p>
<p>3. Proportionality: How the EU should act</p>
<p>3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?</p>
<p>Yes. The explanatory memorandum and the impact assessment clarify that this Proposal primarily aims at streamlining data requests across the EU to facilitate compliance of short-term rental platforms with such data requests. An EU framework for data collection (by public authorities) and data sharing (by online platforms), will increase legal certainty and ensure that the data exchanged is standardised and interoperable. Member States are not required to put in place registration procedures for hosts, unless they wish to obtain data from platforms. Where a registration system is in place, an EU obligation for authorities to issue registration numbers and for online platforms to enable all hosts to display listings with such registration numbers, will ensure that such requirements for hosts are easily enforceable. It will also facilitate data exchanges based on this registration number. The common EU framework will hence offer national and local authorities the level of transparency they need to enforce the rules and adopt informed policy responses in line with existing EU law.</p> <p>The Proposal gives Member States and public authorities a certain degree of flexibility with regards to registration schemes (whether to introduce them or not, and at which level) but also with regards to the information and evidence that each authority can request from hosts (subject to compliance with the principles of non-discrimination and proportionality, established by the TFEU and the Services Directive). This ensures that the needs of Member States and local authorities are respected and taken into account. The measures proposed also strike a balance between the interests of all stakeholders involved, by requiring concrete action from public authorities, hosts and online platforms, ensuring the proportionality of the foreseen intervention.</p>

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

The intervention is limited to those aspects that Member States cannot achieve satisfactorily on their own. A legislative instrument, and specifically a Regulation, would be the most appropriate instrument to address more effectively the problems related to fragmented, burdensome and inefficient efforts to generate and share STR data across the EU, and would enable the coherent application of rules in the inherently cross-border STR sector. Nevertheless, the proposal grants enough flexibility to Member States with regards to whether participating in the data-sharing framework and ensures that certain specificities that apply in Member States and at the level of local authorities are taken into account, subject to compliance with EU law. The initiative creates financial and administrative cost for online platforms, public authorities and hosts; however, these are commensurate with the objective to be achieved and need to be measured against benefits, including costs savings.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

Yes, the intervention is limited to those aspects that Member States cannot achieve satisfactorily on their own. The EU framework will be applicable across the EU and will in particular simplify/streamline the landscape of reporting obligations on platforms. This harmonised framework will also prevent differentiated implementation of the obligation on platforms between Member States as the conditions for data sharing are the same for all (no selective avoidance).

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

A legislative instrument will be able to address more effectively the problems related to fragmented, burdensome and inefficient efforts to generate and share STR data. Limiting Union action to promoting voluntary industry-action and certain accompanying measures is possible but unlikely to be effective, as this would essentially rely on the industry's own incentives and willingness to change the status quo. A Regulation is in addition the preferred instrument, as it is directly applicable in Member States, establishes the same level of obligations for private parties, and enables the coherent application of rules in the inherently cross-border STR sector. This will also address and prevent fragmentation of the single market.

(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)

Member States may decide whether to introduce registration schemes or not – and hence

whether to adopt the framework or not. The adoption and maintenance of registration schemes is only necessary where public authorities in a given Member State wish to obtain data from online platforms. In addition, the proposal grants flexibility with regards to the information and evidence that each authority can request from hosts (subject to compliance with the principles of non-discrimination and proportionality, established by the TFEU and the Services Directive). This ensures that the needs of Member States and local authorities are respected and taken into account.

- (d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?

Under the preferred option:

- a) **Online platforms** will mainly incur one-off adjustment costs linked with the adaptation of their IT infrastructure and the connection to the single digital entry point (estimated at around EUR 30 000 per online platform), while yearly maintenance is estimated at EUR 36 000. For small and micro-enterprises that would qualify for the more lenient reporting obligations, the costs are estimated at EUR 2 400 a year. These costs are likely to be offset by the savings gained from reducing the time spent for processing and challenging in court uncoordinated and varied data-sharing requests.
- b) **Public authorities** implementing the framework will incur one-off administrative costs (estimated at EUR 3 million) to adapt to the new registration system and the single entry point. Yearly costs for hosting and maintenance of the IT infrastructure are estimated at EUR 96 000 per Member State, for a cumulative cost of EUR 2.4 million. Where the framework is implemented at regional or local level, the costs for the registration system and links to the national single entry point will be borne by the relevant authorities. These short-term costs are expected to be offset by the long-term benefits that the framework will bring to public authorities in terms of time and efficiency gains (facilitated collection of data and enforcement).
- a) For **hosts**, one-off registration costs for current hosts would amount to EUR 97.44 million, while registration costs for new hosts would amount to EUR 5.96 million. However, savings are estimated to be higher than EUR 1480 million (due to monetisation of time saved in the registration process) for the new hosts that will be starting their activities in the first 5 years after implementation. Based on the assumption that 87% of the hosts are peers and 13% professional hosts, the cumulative cost savings for citizens over five years are estimated at around EUR 1287.6 million.

- (e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

Yes. The proposal provides Member States and public authorities a certain degree of flexibility as to whether or not adopt the proposed data-sharing framework. Only Member States whose public authorities (national, regional or local) wish to obtain data on STRs for policy making and enforcement purposes (e.g. to ensure a sufficient supply of affordable long-term rental housing) from online platforms would be required to establish or maintain a mandatory registration scheme for hosts who offer their STR services via online platforms.