
Part 2

Platforms and the Collaborative Economy

5 Collaborative economy in the tourism industry: The new deal for consumers in the European Union

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The objectives of this chapter are to:

- Identify the main elements of the collaborative economy and their impact on tourism in the European Union.
- Point out the benefits of the sharing economy for tourists in the European Union.
- Indicate the nature of the guest-tourist as a consumer and holder of special rights in the European Union.
- Determine consumer rights in the European Union regarding international jurisdiction and applicable law.
- Analyze whether the clauses of international jurisdiction and applicable law of the service contracts established by the platforms are adapted to consumer rights in the European Union.

Keywords: collaborative economy, European Union, consumer protection law, consumer rights.

Introduction

Europe is the most touristic continent in the world, receiving more than 50% of all international tourists (Santolli, 2017) according to the World Tourism Organization. People from all over the world want to go to the most famous tourist attractions in Europe and what once seemed a distant dream to international tourists due to the high prices of hotels and air tickets, is now possible thanks to the competitive prices of international airlines such as Ryanair, Vueling and EasyJet (O'Connell & Williams, 2005) and the alternative to traditional accommodation providers: collaborative economy platforms such as Airbnb, HomeAway or Wimdu. This short research paper will be focused on this type of platform, which provide mainly hosting services, and the legal aspects of their terms and conditions of service.

The collaborative economy in the tourism industry is a growing business model, which allows consumers around the world to rent a spare room, an entire house or an apartment, for a short period of time, at a lower price than the accommodation offered by the traditional service providers such as hotels. However, this phenomenon was not born as a trending idea or an alternative way of getting an extra income, but of the pure necessity of generating cash in a period when the economy was stagnating, and the owners of properties needed to be creative with the available resources. The collaborative economy is characterized by generating economic benefit (Botsman & Rogers, 2010) from assets that would otherwise be given little or no use by their owners or holders. However, the concept of 'resources' covers much more than just assets, since resources can refer to spaces, skills and any kind of goods, which, if not made available to the collaborative economy, would be largely unused.

This legal analysis was carried out in 2019. The clauses that were taken from the terms and conditions of service of the Airbnb, Toprural, Homelidays and Escapade platforms to carry out this analysis have changed since that date, as well as the their corporate composition; their closing or merged to another company, and any other external factor after December 30, 2019 was not taken into account to perform this analysis. This is underpinned by the fact that the reality of the platforms develops in a more agile and changing way that the study on their legality, however, this analysis sets out the situation of the four platforms chosen up to a specific date by setting a precedent for their compliance or non-compliance with European Union consumer protection regulations.

It is necessary to clarify that the platforms are not lessors, they do not own the properties to be rented; they are merely intermediaries between the owners of the properties and the future guests (Fainmesser, 2014). Their main service is to act as intermediaries for the provision of short-term lodging, but they can also provide underlying services that can be connected to the lodging or can be totally independent (European Commission, 2016). These underlying services range from making reservations in different types of establishments to booking adventure experiences, sports activities or activities related to the local culture. The platforms are set up in accordance with a sales strategy that suggests tourists must have a complete experience in the place where they are staying, and they offer tourists options that allow them to get to know the place they are visiting quickly and on a budget.

From the tourist's position, the growth of the accommodation on offer was a refreshing alternative to hotels; together with the newest trend in property matters: using and enjoying the property, without even thinking about acquiring it. Therefore, from a tourist decision-making point of view, selecting specific accommodation depends on two basic conditions, the location and the price, which are directly related to the level of comfort you seek for your stay. The first condition, the location, is key to determining if the potential guest chooses a property offered by the collaborative economy in the tourism industry. The proximity of tourist areas, the availability of efficient means of transport, the physical conditions of the roads and the local aid available to tourists are essential factors when choosing a tourist destination and later planning a holiday. Regarding the second condition, the price, it is reasonable to point out that the primary fixed costs such as public services and taxes are borne by the owner, because in order to be the holder of the property, he is responsible for at least the maintenance of the dwelling.

Thus, the owner of the property obtains an additional and efficient profit (Ranchordas, 2015) from an asset that, if not made available to the collaborative economy would not produce higher returns than those arising from a common lease agreement (Alfonso, 2016). When the owner assumes these costs, the price of the accommodation decreases, which allows the future guest to take this type of stay into consideration and weigh it according to his economic capacity. It should also be said that although the prices for tourists decrease, the prices for tenants rise, so much so that in Madrid and Barcelona, for example, in some neighborhoods, family homes were replaced by tourist houses (Gil & Fernandez, 2018).