

Common position of national authorities within the CPC Network concerning the commercial practices and the terms of service of Airbnb Ireland

Under the Consumer Protection Cooperation (CPC) Regulation (2006/2004/EC), Member State authorities¹, with the facilitation of the European Commission, have the duty to work together to enforce EU consumer law in the Single Market. CPC authorities, with the Norwegian Consumer Authority acting as a coordinator, have taken the following common position regarding the protection of consumers using the services of Airbnb vis-a-vis the following two topics. This common position is without prejudice to other legal issues or terms that national authorities may want to raise in national proceedings.

A. UNFAIR COMMERCIAL PRACTICES

1. Obligation to provide adequate and complete price information to consumers on Airbnb's offers

CPC authorities have examined several language versions of Airbnb's accommodation platform, and have found that Airbnb displays search results in different manners depending on the search criteria given by the consumer. These criteria can be more or less specific. The consumer can choose to enter a destination, number of nights and guests on the first page, or make a more general search based on the destination only, where the default number of guests is one.

When entering specific search criteria, several offers are displayed on the search results page, and the prices are presented per night. In addition to this, the consumer is informed at the very bottom of the search result page that he must *«Enter dates to see full pricing. Additional fees apply. Taxes may be added after login»*. The price that is presented to the consumer on the search page does not include Airbnb's mandatory service fee and local taxes that are collected by Airbnb at some destinations. The service fee, normally ranging between 6-12% of the price per night, and local taxes collected by Airbnb, are added to the total price only once the consumer proceeds to the booking page.

Whenever a consumer is making a general search on a destination without entering any dates, the search results are also displayed with a price per night. However, at the bottom of the search result page it also reads: *“Enter dates to see full pricing. Additional fees apply. Taxes may be added after login”*. On the following page after an offer is selected, the consumer can enter more criteria, including dates and the number of guests. When entering such criteria in the second booking step, the price per night is higher than the initial price shown on the search result page as mandatory fees and taxes, if applicable, are at this subsequent stage included in the price.

In addition, the general home page of Airbnb automatically displays the price per night *“€ (price) per night”*, name and picture of a number of selected properties. When clicking on any of these properties, the prices per night displayed are sometimes higher than the initial quote in the home page.

It is important to note that Article 7(4)(c) of Directive 2005/29/EC² on Unfair Commercial Practices, requires traders to provide the total (or final) price at the very moment consumers are presented

¹ Including Norway and Iceland

²[Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation \(EC\) No 2006/2004 of the European Parliament and of the Council \('Unfair Commercial Practices Directive'\)](#)

with an invitation to purchase, or - where the nature of the service means that the price cannot be reasonably calculated in advance - the manner in which the price is calculated. In this connection, when the price displayed is an "entry-level" one, then it should be characterised as such (e.g. "as from"). The final price must include all applicable charges and taxes (e.g. V.A.T. or local tax) which are unavoidable and foreseeable when the offer is published. Thus, where it is possible for the price elements to be combined, there will only need to be one price displayed. When such charges cannot reasonably be calculated in advance, consumers should be properly informed that these may be payable and be provided with the criteria that is used to calculate the variable charges, if appropriate.³

CPC authorities consider that whenever offers are displayed on a search page of Airbnb with a price per night either as the result of a specific or general search, the omission to disclose service, cleaning or other applicable fees or taxes that can reasonably be calculated in advance, constitutes an unfair commercial practice within the meaning of Directive 2005/29/EC.

It is noted that in some language versions the indication that "additional fees apply", appears only in the bottom of the page. CPC Authorities underline that according to the UCPD Guidance⁴, the way the information is presented can have a significant impact on how consumers respond. Given its importance for the consumer's purchasing decision, information about the full price and main characteristics of the service should be prominently displayed. Therefore, all available information on the price should appear together in a clear and prominent way and not separately as a small reference at the bottom of the webpage.

Legal framework:

- Directive 2005/29/EC on unfair commercial practices
 - Article 2(b)
 - Article 2(i)
 - Article 2(k)
 - Article 3(1)
 - Article 5
 - Article 7

2. Identification of traders and commercial content

It is understood, from Airbnb's Hosting Standards⁵, that certain professional providers are allowed to use Airbnb's platform to offer their accommodation services. However, when searching for accommodation on Airbnb's website, the search result shows accommodation provided by both private individuals and professional providers with no distinction between the two.

It should be noted that under Articles 6(1)(f) and 7(1) , (2), (4)(b) of the UCPD⁶ a commercial practice is misleading if it is likely to deceive consumers on the nature and identity of the trader or if it omits such type of characterisations. To comply with the UCPD, collaborative economy platforms should

³ Guidance on the implementation/application of directive 2005/29/EC on unfair commercial practices p. 77-79, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0163&from=EN>

⁴ Guidance on the implementation/application of directive 2005/29/EC on unfair commercial practices p. 52, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0163&from=EN>

⁵ <https://www.airbnb.com/help/article/1526/what-are-airbnb-s-standards-for-hotels>

⁶ [Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation \(EC\) No 2006/2004 of the European Parliament and of the Council \('Unfair Commercial Practices Directive'\)](#)

therefore prevent third party traders from offering accommodation/properties on the platform without clearly disclosing their professional motives. In particular, with a view to avoid omitting material information, the collaborative economy platform should, as a minimum, enable relevant third party traders to indicate to users that they are traders, and the platform should inform consumers whether and, if so, what criteria it applies to select the suppliers operating through it and whether and, if so, what checks it performs in relation to their reliability⁷.

With a platform like Airbnb, which enables accommodation sharing, the distinction between professional providers and private host peers may influence the decisions of consumers using the platform to book accommodation. In fact, on the one hand the distinction has implications for the question of whether the transaction is protected by consumer protection rules and, on the other, many consumers using Airbnb are looking for private homes with personal involvement and not necessarily for professional property owners.

CPC authorities find that the lack of distinction between private host peers and professional providers on Airbnb's website is likely to deceive consumers in relation to the nature of the trader, as set out in art 6 (1) (f) and 7(1) and (2), and is likely to cause a transactional decision that would not have been taken otherwise.

In order to comply with the Directive 2005/29/EC, Airbnb would need to change the manner in which listings are presented in accordance with the legal requirements described above.

CPC authorities would also like to draw Airbnb's attention to the UCPD's requirements to clearly distinguish editorial content from advertising content. Consumers expect search engines to display 'natural' or 'organic' results relevant for their search query based on sufficiently impartial criteria.

It is not clear to the CPC authorities whether Airbnb has sponsored content in the search results as of now, but for future reference please note that, as explained in the UCPD Guidance, consumers should not be misled on the nature of the listing⁸. For instance, it should be clear whether listings / search results are "natural" or "sponsored" or whether there are other serious limitations in the scope of the search.

Legal framework:

- Directive 2005/29/EC on unfair commercial practices
 - Article 2(b)
 - Article 5
 - Article 6
 - Article 7

3. Provision of email address and link to the ODR platform

Airbnb Payments provides payments services to users, including payment collection services, payments and payouts, in connection with and through the Airbnb Platform. Moreover, the Payments Terms of Service constitute the agreement which applies between the users and Airbnb Payments.

⁷ Guidance on the implementation/application of directive 2005/29/EC on unfair commercial practices, p.119
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0163&from=EN>

⁸ Guidance on the implementation/application of directive 2005/29/EC on unfair commercial practices, p.120,
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0163&from=EN>

Under article 14 (1) of Regulation (EU) No 524/2013 (Regulation on consumer ODR)⁹, Airbnb Payments shall provide an easily accessible electronic link to the ODR platform on the website in addition to its e-mail address.

Currently in Payments terms of service there is reference to the address and the phone number of Airbnb Payments UK Ltd. but no provision of an email address. In addition, the link to the ODR platform is not included in the term that refers to the dispute resolution ("*23. Dispute Resolution and Arbitration*"), as it should be. On the contrary, the link is mentioned in the general provisions ("*24. General Provisions*"), making it difficult for the consumer to find and access it.

In order to comply with the Regulation on consumer ODR, Airbnb should include a link to the ODR platform on the website and in the "dispute resolution" section of its terms and provide the e-mail address of Airbnb Payments UK Ltd. that is dedicated to dispute resolution purposes.

Legal framework:

- Regulation (EU) No 524/2013 on Consumer ODR
- Article 14(1)

B. AIRBNB'S TERMS OF SERVICE

Directive 93/13/EC on Unfair Contract Terms applies to all contracts between consumers and businesses. Article 3 of this Directive provides that standard terms which create a significant imbalance in parties' rights and obligations, to the detriment of the consumer, are unfair and therefore invalid. Article 5 requires that terms are drafted in plain and intelligible language so that consumers are informed in a clear and understandable manner about their rights. Pursuant to the Directive, contractual terms that mislead consumers on their rights are likely to be unfair.

Moreover, article 25 of Directive 2011/83/EU on Consumer Rights provides that professionals, cannot, through the use of contract terms, limit consumer rights stemming from other bodies of EU law. They are also prevented from using contract terms to implement unfair commercial practices in their relations with consumers, given that such conduct is prohibited by Directive 2005/29/EC.

Airbnb supplies services to users residing in the European Union (and in other EEA countries) and, therefore, shall use terms of services in its contracts that are in compliance with European legislation.

Within this context, CPC authorities assessed the Airbnb's contract terms in their English version and identified the following terms as unclear or likely to create a significant imbalance between the operator and consumers. As a result, they encourage Airbnb to change or clarify those terms.

It should be noted that some language versions may vary from one country to another. Therefore, depending on the various language versions, some contractual terms may be assessed differently. CPC Authorities could address, as appropriate, issues which are specific to the language version applicable in that Member State.

1. Jurisdiction, applicable law clause

Airbnb's Terms of Service:

21. Applicable Law and Jurisdiction

⁹ [Regulation \(EU\) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation \(EC\) No 2006/2004 and Directive 2009/22/EC \(Regulation on consumer ODR\)](#)

21.3 *If your Country of Residence is outside of the United States and China, these Terms will be interpreted in accordance with Irish law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. The choice of law does not impact your rights as a consumer according to the consumer protection regulations of your country of residence. If you are acting as a consumer, you agree to submit to the non-exclusive jurisdiction of the Irish courts. Judicial proceedings that you are able to bring against us arising from or in connection with these Terms may only be brought in a court located in Ireland or a court with jurisdiction in your place of residence. If Airbnb wishes to enforce any of its rights against you as a consumer, we may do so only in the courts of the jurisdiction in which you are a resident. If you are acting as a business, you agree to submit to the exclusive jurisdiction of the Irish courts.*

Airbnb's Payments Terms of Service: 21. Applicable Law and Jurisdiction

21.3 *If you are contracting with Airbnb Payments UK, these Payments Terms will be interpreted in accordance with English law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. The choice of law does not impact your rights as a consumer according to the consumer protection regulations of your country of residence. If you are acting as a consumer you agree to submit to the non-exclusive jurisdiction of the English courts. Judicial proceedings that you are able to bring against us arising from or in connection with these Payments Terms may only be brought in a court located in England or a court with jurisdiction in your place of residence. If Airbnb Payments wishes to enforce any of its rights against you as a consumer, we may do so only in the courts of the jurisdiction in which you are a resident. If you are acting as a business, you agree to submit to the exclusive jurisdiction of the English courts.*

Explanation:

Consumers residing in the EU are entitled to bring proceedings against the other party to a (business-to-consumer) contract before the Courts of the Member State where they are domiciled. Clauses which, instead, convey the impression that a foreign court other than the one where the consumer is domiciled has by default jurisdiction over the contract are unfair under Directive 93/13/EC and they are contrary to EU law.

In this connection, we request that Airbnb removes the sentences "*If you are acting as a consumer, you agree to submit to the non-exclusive jurisdiction of the Irish courts*" in p. 21.3 of its terms of service and "*If you are acting as a consumer you agree to submit to the non-exclusive jurisdiction of the English courts*" in p. 21.3 of its payments terms of service, as they are in contradiction with the applicable EU rules on jurisdiction which are correctly formulated in the second part of these terms. In case some of these statements are not intended to apply to EU consumers, then it would be advisable to create a separate paragraph only applicable to EU consumers, to avoid any confusion.

Legal Framework:

- Unfair Contract Terms Directive 93/13/EEC
 - Article 3
 - Article 6 (2)
 - Annex 1.i
 - Annex 1.q
- Regulation No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
 - Articles 17 (1) (c), 18, 19 and 25 (4)
- Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I)

- Article 6 (1) and (2)

2. Survival of the terms

Airbnb's Terms of Service:

15. Term and Termination, Suspension and other Measures

15.8 Unless you reside in Germany, if you or we terminate this Agreement, the clauses of these Terms that reasonably should survive termination of the Agreement will remain in effect.

Airbnb's Payments Terms of Service:

20. Termination, Suspension, and other Measures

20.8 Unless you reside in Germany, if you or we terminate this Agreement, the clauses of these Payments Terms that reasonably should survive termination of these Payments Terms will remain in effect.

Explanation:

Contractual terms must be drafted in a clear manner and not give rise to doubts about their content. It must be clear which terms apply to a contract and which terms survive its termination, before the consumer is bound by it. Accordingly, providers must not have unlimited power to define the scope of application and determine the content of the terms of a contract during its execution. Although we would generally not expect any of these terms to survive termination of the Agreement, in order to comply with EU law, Airbnb should clarify, explicitly, which are the terms that will survive such termination, providing also adequate justifications as to why.

Legal Framework:

- Unfair Contract Terms Directive 93/13/EEC
 - Article 3
 - Article 5
 - Article 6
 - Annex 1.i

3. Waiver by the provider of all liability and consumer's obligation to indemnify the provider

Airbnb's Terms of service:

1. Scope of Airbnb Services

1.7 Due to the nature of the Internet, Airbnb cannot guarantee the continuous and uninterrupted availability and accessibility of the Airbnb Platform (...)

Airbnb Experiences: Guest Release and Waiver

Assumption of Risks

You understand and acknowledge that the Experience(s) you sign up to do may be hazardous and may carry the risk of injury or illness, including sickness, physical injury, property damage, disability, permanent paralysis, and death.

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU KNOWINGLY, VOLUNTARILY AND FREELY ASSUME ALL RISKS, BOTH KNOWN AND UNKNOWN, OF PARTICIPATING IN EACH EXPERIENCE, INCLUDING EACH EXPERIENCE IN YOUR IMMERSIVE EXPERIENCE, EVEN IF THOSE RISKS ARISE FROM THE NEGLIGENCE OR CARELESSNESS OF THE HOST OR OTHERS, OR DEFECTS IN THE EQUIPMENT, PREMISES, OR FACILITIES USED DURING THE EXPERIENCE, OR OTHERWISE, AND YOU ASSUME FULL RESPONSIBILITY FOR PARTICIPATION IN THE EXPERIENCE.

Release and Waiver

(...)

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU RELEASE AND PROMISE NOT TO SUE YOUR HOST(S) FOR ANY CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES (WHETHER ECONOMIC OR NON-ECONOMIC), DAMAGES, EXPENSES, COSTS OR LIABILITY OF ANY NATURE WHATSOEVER ARISING FROM OR IN CONNECTION WITH YOUR EXPERIENCE(S) AND/OR TRIP, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR ANY OTHER LEGAL THEORY.

(...)

Disclaimer of Warranties

TO THE MAXIMUM EXTENT PERMITTED BY LAW, HOSTS PROVIDE THE EXPERIENCE(S) AND/OR TRIP "AS IS," WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE FOREGOING AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, HOST(S) EXPRESSLY DISCLAIM ANY WARRANTIES OF SAFETY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, AND AS TO THE ADEQUACY OF THE DIRECTIONS AND WARNINGS PROVIDED TO YOU.

Indemnification

You agree that if, despite this Guest Release and Waiver, you or anyone on your behalf make a claim against the Host(s) relating to an Experience and/or Trip, you will indemnify and hold the Host(s) harmless from any liability, demand, loss, damage, or costs which the Host(s) may incur as the result of such claim.

You affirm that you HAVE READ THIS GUEST RELEASE AND WAIVER AND FULLY UNDERSTAND THE ASSUMPTION OF RISK, RELEASE, WAIVER, AND CONSENT CONTAINED IN IT. YOU FURTHER UNDERSTAND THAT YOU HAVE GIVEN UP RIGHTS BY AGREEING TO THESE TERMS, AND HAVE DONE SO FREELY AND VOLUNTARILY AND WITHOUT INDUCEMENT.

Explanation:

Suppliers cannot limit the basic legal rights of consumers to sue the host in case of personal harm or other damages suffered, especially when these are caused by negligence, wilful conduct or other wrong doings. Moreover, suppliers cannot limit or totally exclude their liability in connection to the performance of any of their contractual obligations, while they impose a general and absolute obligation on the consumer to assume all possible risks. Any term that creates a significant imbalance of rights between the operators and consumers can be considered as a breach of EU consumer law. Consumers should be able to exercise their rights that relate to the non or partial performance of the operator's contractual and other legal obligations. This implies that standard terms and conditions should be drafted in a way to acknowledge that the liability of operators may also be triggered when their actions or omissions have contributed to the conduct or the damage/loss on which a claim is based.

Airbnb should remove the above terms of "Airbnb experiences" in all language versions, as it has already done for German consumers.

Legal Framework:

- Unfair Contract Terms Directive 93/13/EEC
 - Article 3
 - Article 5
 - Annex 1.a
 - Annex 1.b
 - Annex 1.o
 - Annex 1.q

4. Power to unilaterally change terms and conditions

Airbnb's Terms of Service:

6. Service Fees

6.2 Any applicable Service Fees (including any applicable Taxes) will be displayed to a Host or Guest prior to publishing or booking a Listing. Airbnb reserves the right to change the Service Fees at any time, and we will provide Members adequate notice of any fee changes before they become effective.

13. Taxes

13.6 Airbnb reserves the right, with prior notice to Hosts, to cease the Collection and Remittance in any jurisdiction for any reason at which point Hosts and Guests are once again solely responsible and liable for the collection and/or remittance of any and all Occupancy Taxes that may apply to Accommodations in that jurisdiction.

Airbnb's Payments Terms of Service:

1. Scope and Use of the Payment Services

1.2 Airbnb Payments may restrict the availability of the Payment Services, or certain services or features thereof, to carry out maintenance measures that ensure the proper or improved functioning of the Payment Services. Airbnb Payments may improve, enhance and modify the Payment Services and introduce new Payment Services from time to time.

Explanation:

The total price of a service should be provided before the consumer is bound by the contract and any subsequent change in the fees shall not bind the consumer. Consequently, a term cannot oblige the consumer to accept the changes that Airbnb imposes in the service fees after the booking of a listing. Likewise, any change in the terms of a contract that has not been given with a reasonable notice, and that binds the consumer, may be considered unfair. Therefore, Airbnb cannot change its policy on Collection and Remittance of taxes or on Payment Services without clearly informing the consumer in advance and without giving, under reasonable notice to the consumer, the possibility to cancel the contract.

Legal Framework:

- Unfair Contract Terms Directive 93/13/EEC
 - Article 3
 - Annex 1.j
 - Annex 1.k
 - Annex 1.m – Annex 2.b (in case of payment or other services of financial nature)

Caveat: It should be noted that in cases where Airbnb enforces the above term of service 6.2 and proceeds with the collection of Service fees that are different to the once displayed prior to the booking of a listing, it infringes not only Unfair Contract Terms Directive, but also Consumer Rights Directive (2011/83/EU) and Unfair Commercial Practices Directive (2005/29/EC).

5. Power to remove user generated content

Airbnb's Terms of Service:

5. Content

5.8 You will not post, upload, publish, submit or transmit any Member Content that: (i) is fraudulent, false, misleading (directly or by omission or failure to update information) or deceptive; (ii) is defamatory, libelous, obscene, pornographic, vulgar or offensive; (iii) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (iv) is violent or threatening or promotes violence or actions that are threatening to any other person; (v) promotes

illegal or harmful activities or substances; or (vi) violates Airbnb's Content Policy or any other Airbnb policy. Airbnb may, without prior notice, remove or disable access to any Member Content that Airbnb finds to be in violation of these Terms or Airbnb's then-current Policies or Standards, or otherwise may be harmful or objectionable to Airbnb, its Members, third parties, or property.

Explanation:

A contract clause cannot confer unlimited and discretionary power to operators to determine the suitability of user-generated content. Standard terms and conditions should contain a sufficiently detailed indication of the main grounds on which content can be removed, but, also, of how consumers are informed and can appeal to the removal of content. This however, should not prevent operators from providing in their standard terms very clearly that user generated content can be removed without notice, when this is needed to stop rapidly illegal conducts.

To this end, Airbnb's terms set out with a sufficient level of details the grounds for removal of user generated content, but still need to acknowledge its obligation to notify the consumer in advance, and the latter's right to appeal against such decision.

Legal Framework:

- Unfair Contract Terms Directive 93/13/EEC
 - Article 3
 - Annex 1.m
- E-Commerce Directive 2000/31/EEC
 - Article 14 (1) (b)

6. Power to unilaterally suspend or terminate the contract, for any reason

Airbnb's Terms of Service:

9. Booking Modifications, Cancellations and Refunds, Resolution Center

9.5 In certain circumstances, Airbnb may decide, in its sole discretion, that it is necessary to cancel a confirmed booking and make appropriate refund and payout decisions. This may be for reasons set forth in Airbnb's Extenuating Circumstances Policy or (i) where Airbnb believes in good faith, while taking the legitimate interests of both parties into account, this is necessary to avoid significant harm to Airbnb, other Members, third parties or property, or (ii) for any of the reasons set out in these Terms.

15. Term and Termination, Suspension and other Measures

15.3 Unless your Country of Residence is the United States, without limiting our rights specified below, Airbnb may terminate this Agreement for convenience at any time by giving you thirty (30) days' notice via email to your registered email address.

15.4 Airbnb may immediately, without notice terminate this Agreement if (i) you have materially breached your obligations under these Terms, the Payments Terms, our Policies or Standards, (ii) you have violated applicable laws, regulations or third party rights, or (iii) Airbnb believes in good faith that such action is reasonably necessary to protect the personal safety or property of Airbnb, its Members, or third parties (for example in the case of fraudulent behavior of a Member).

Airbnb's Payments Terms of Service:

20. Termination, Suspension, and other Measures

20.3 Airbnb Payments may immediately, without notice terminate this Agreement if (i) you have materially breached your obligations under this Agreement; (ii) you have provided inaccurate, fraudulent, outdated, or incomplete information; (iii) you have violated applicable laws, regulations, or third-party rights; or (iv) Airbnb Payments believes in good faith that such action is reasonably

necessary to protect other Members, Airbnb, Airbnb Payments, or third parties (for example in the case of fraudulent behavior of a Member).

20.4 In addition, Airbnb Payments may limit or temporarily or permanently suspend your use of or access to the Payment Services (i) to comply with applicable law, or the order or request of a court, law enforcement, or other administrative agency or governmental body, or if (ii) you have breached these Payments Terms, the Airbnb Terms, applicable laws, regulations or third-party rights, (iii) you have provided inaccurate, fraudulent, outdated, or incomplete information regarding a Payment Method or Payout Method, or (iv) Airbnb Payments believes in good faith that such action is reasonably necessary to protect the personal safety or property of Airbnb, its Members, Airbnb Payments, or third parties, or to prevent fraud or other illegal activity.

20.5 In case of non-material breaches and where appropriate, you will be given notice of any measure by Airbnb Payments and an opportunity to resolve the issue to Airbnb Payments' reasonable satisfaction.

Explanation:

The consumer, before signing the contract, must be informed of the conditions that can lead to its termination. Those conditions should be explained in clear and intelligible manner and they must not allow for termination of the contract subject to a condition whose realisation depends on the operators alone.

It is, therefore, important that Airbnb characterises with greater precision the cases to which unilateral termination applies. Where, for instance, reference is made to "Policies" or "Standards" the relevant rules should be listed or, at least, made directly available to consumers through a hyperlink.

Nothing prevents an operator from providing in their standard terms that a contract can be terminated without notice when this is needed to stop an illegal conduct, especially those of certain gravity, and to protect other consumers or third parties from the consequences of such illegal conduct.

Nevertheless, no term should create a significant imbalance of rights between the operator and consumer, to the detriment of the latter. Therefore, for all other cases of unilateral termination, Airbnb's terms should more clearly recognise that reasonable notice must be given to consumers as, in cases of cancellation of a booking, the damage and inconvenience to the consumer concerned can be greater than the mere restitution of the sums paid (i.e. refund). For the same reasons, Airbnb should commit in the terms to notify to consumers the reasons for any decision of termination or suspension of the Agreement (or other "Measures") and it should grant the consumers the right to appeal against such decisions.

Legal Framework:

- Unfair Contract Terms Directive 93/13/EEC
 - Article 3
 - Annex 1.f
 - Annex 1.g
 - Annex 1.j
 - Annex 1.k
 - Annex 1.m – Annex 2.a (in case of payment or other services of financial nature)

7. Refunds and Pay-outs

Airbnb's Payments Terms of Service:

10.3 Refunds

10.3.1 Any refunds or credits due to a Member pursuant to the Airbnb Terms will be initiated and remitted by Airbnb Payments.

10.3.2 All refunds may be subject to the Airbnb Terms, Extenuating Circumstances Policy, and Guest Refund Policy. If a Guest or Airbnb decides for any reason to cancel a confirmed booking pursuant to the Airbnb Terms, Guest Refund Policy, or Extenuating Circumstances Policy, you agree that Airbnb Payments will not have any liability for such cancellations or refunds aside from its obligations to remit refunds or Payouts pursuant to these Payments Terms.

Explanation:

It must be clear what the terms applicable to a contract are, as well as the content itself, before the consumer is bound by it. Those terms must be drafted in a clear and intelligible manner and should not cause a significant imbalance of rights between operators and consumers, to the detriment of the latter.

Consequently, Airbnb's terms of service (*i.e.* term 10.3) should provide a greater level of details on the refund policy, including the timeframe which applies to refunds. Moreover, and in connection with the explanation provided in point 6 here above, Airbnb cannot limit or totally exclude its liability in connection to the cancellation of a booking, while it imposes a general and absolute liability on the consumer. This creates a significant imbalance of rights between Airbnb and the consumer to the detriment of the latter and, therefore, the term should be modified.

Legal Framework:

- Unfair Contract Terms Directive 93/13/EEC
 - Article 3
 - Article 5
 - Annex 1.i

8. Collection of damage claims

Airbnb's Terms of Service:

11. Damage to Accommodations, Disputes between Members

11.2 If a Host claims and provides evidence that you as a Guest have damaged an Accommodation or any personal or other property at an Accommodation ("Damage Claim"), the Host can seek payment from you through the Resolution Center. If a Host escalates a Damage Claim to Airbnb, you will be given an opportunity to respond. If you agree to pay the Host, or Airbnb determines in its sole discretion that you are responsible for the Damage Claim, Airbnb Payments will collect any such sums from you and/or against the Security Deposit (if applicable) required to cover the Damage Claim pursuant to the Payments Terms. Airbnb also reserves the right to otherwise collect payment from you and pursue any remedies available to Airbnb in this regard in situations in which you are responsible for a Damage Claim, including, but not limited to, in relation to any payment requests made by Hosts under the Airbnb Host Guarantee.

Airbnb's Payments Terms of Service:

10.2 Payment Authorizations

You authorize Airbnb Payments to collect from you amounts due pursuant to these Payment Terms or the Airbnb Terms. Specifically, you authorize Airbnb Payments to collect from you:

(...)

-Any amount paid through the Resolution Center in connection with your Airbnb Account. Airbnb Payments may do so by charging the Payment Method associated with the relevant booking, or any other Payment Method on file in your Airbnb Account (unless you have previously removed the authorization to charge such Payment Method(s)), or by withholding the amount from your future Payouts.

(...)

-Fees, costs and/or expenses associated with a Damage Claim, including any Security Deposit, as set out in the Airbnb Terms. If Airbnb Payments is unable to collect from your Payment Method used to make the booking, you agree that Airbnb Payments may charge any other Payment Method on file in your Airbnb Account at the time of the Damage Claim (unless you have previously removed the authorization to charge such Payment Method(s)). Airbnb Payments also reserves the right to otherwise collect payment from you and pursue any remedies available to Airbnb Payments in this regard in situations in which you are responsible for a Damage Claim, including, but not limited to, in relation to any payment requests made by Hosts under the Airbnb Host Guarantee

11. Security Deposits

11.1 If you as a Guest (i) agree to pay the Host in connection with a Damage Claim, or (ii) Airbnb determines that you are responsible for damaging an Accommodation or any personal or other property located at an Accommodation pursuant to the Airbnb Terms, you authorize Airbnb Payments to charge the Payment Method used to make the booking in order to collect any Security Deposit associated with the Listing, as well as any amount of the Damage Claim exceeding any Security Deposit. If the Listing does not have a Security Deposit, Airbnb Payments may charge the Payment Method used to make the booking for the amount of the Damage Claim. If we are unable to collect from your Payment Method used to make the booking, you agree that Airbnb Payments may charge any other Payment Method on file (and not otherwise unauthorized) in your Airbnb Account at the time of the Damage Claim.

11.2 Airbnb Payments also reserves the right to otherwise collect payment from you and pursue any remedies available to Airbnb Payments in situations in which you are responsible for a Damage Claim, including, but not limited to, in relation to any payment requests made by Hosts under the Airbnb Host Guarantee.

Explanation:

The consumer should not be deprived of its right to exercise any legal remedy, particularly by being bound to a procedure which is not provided for by legal provisions. Accordingly, in case of a dispute between the parties to the contract, the collection of evidence, the burden of proof and the collection of damages should follow the provisions of the applicable law and should not be defined at the discretion of Airbnb. Any different term would create a significant imbalance between the rights of operator and the consumers, to the detriment of the latter.

Legal framework:

- Unfair Contract Terms Directive 93/13/EEC
 - Article 3
 - Article 5
 - Annex 1.q

C. CONCLUSIONS

The current presentation of price and the lack of identification of traders (and commercial content) on Airbnb's webpages are misleading as set out in art 6 and 7 of the UCPD, and likely to cause

consumers to take a transactional decision that they would not have taken otherwise. Article 5 (4) of the UCPD provides that commercial practices which are misleading as set out in article 6 and 7 are unfair and prohibited, cf. art. 5 (1). Moreover, the non-provision of an email address and of an easily accessible link to the ODR platform breaches the provisions of Regulation (EU) No 524/2013 on Consumer ODR. Accordingly, the contested terms of service here above, were assessed as potentially infringing the provisions of Directive 93/13/EC on unfair contract terms.

We ask you to send us your reply to this common position within two months from today's date, setting out the changes you intend to make in order to fully comply with the existing EU consumer legislation and raising any questions you may have.

Please be informed that according to freedom of information legislation in several Member States, this letter is a public document from the time of it being sent to Airbnb. This entails that media and others may ask to see the letter and its content.

Nota Bene regarding the fairness of standard terms of service of Airbnb

The assessment made above is without prejudice to any future assessment of compliance of the contract terms with other applicable consumer laws. The list of contract terms hereby identified shall therefore be regarded as non-exhaustive.

It shall also be regarded as relevant on a case by case basis. This assessment is without prejudice to any subsequent differing assessment which may be made in judicial proceedings at a national level.

In this context, it is noted that it is for the national judges and competent national authorities or notified bodies to assess *in concreto* the unfairness of contract terms taking into account the nature of the service and all circumstances surrounding the conclusion of the contract. The European Court of Justice is the sole body competent to ultimately provide a binding interpretation of Union law.

It is also noted that the consumer protection rules laid down in the Directive 93/13/EC on unfair terms are minimum harmonisation rules and that national laws may therefore provide for stricter rules in compliance with the Treaty on the functioning of the European Union.

The European Commission is solely acting as a facilitator in this process.