



Information gathering for assisting the European Commission in complying with its obligations under Article 40 (“reporting”) of Regulation (EU) 2017/2394 on Consumer Protection Cooperation

Case study on accommodation booking platforms



TETRA TECH



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1. Introduction

This case study focuses on accommodation booking platforms and the Consumer Protection Cooperation (CPC) actions in this sector to date. The case study explores the trends affecting the industry, challenges for consumers and infringements of their rights, as well as compliance of traders, in relation to the CPC action.

The case study draws evidence from desk research, consumer complaints data and interviews with a diverse group of relevant stakeholders, including European Commission officials, trade representatives, and consumer associations.

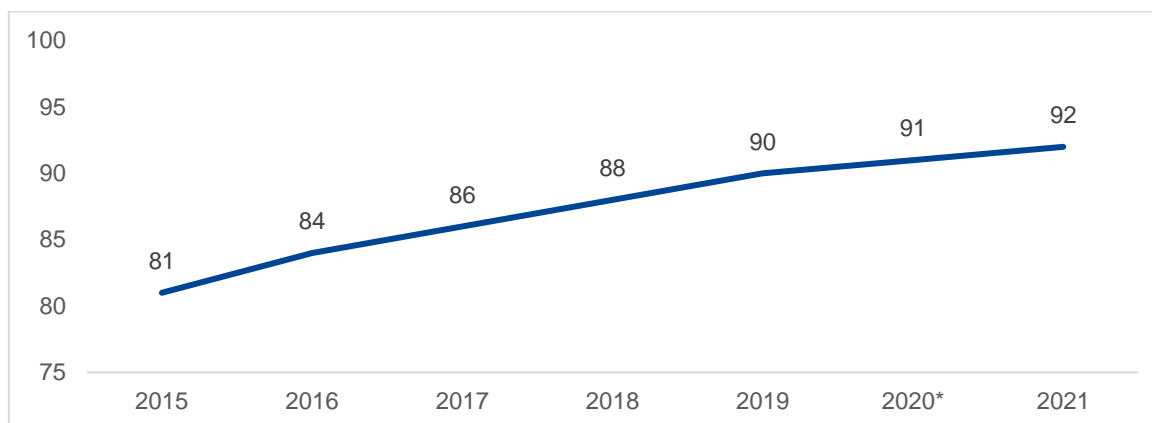
2. Market trends and changes in consumer behaviour

2.1. Market trends

2.1.1. Digitalisation

While digitalisation is an overall trend of the economy, not specific to the online accommodation booking market, according to a trade representative, it is positive for the latter¹. Increasing Internet penetration² has had a huge impact on the online accommodation booking market, which has been gaining a similar pace across the European Economic Area (EEA). According to Eurostat data, by 2021, the share of EU households with internet access had risen to 92%, more than 10 percentage points higher than in 2015 (81%, see Figure 1)³.

Figure 1: Internet access of households, EU27, 2015-2021 (% of all households)



¹ Interview conducted with a trade representative in May 2022.

² Internet penetration is the relationship between the number of Internet users in each country and its demographic data. Andrea Calderaro, 2010, The Digital Divide, Framing and Mapping the Phenomenon.

³ Eurostat, 2021, Digital economy and society statistics – households and individuals, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Digital_economy_and_society_statistics_-_households_and_individuals#Internet_access.

(*) estimated. Source: Eurostat (online data code: ISOC_CI_IN_H)

Digitalisation is a notable **factor** explaining the rise and growth of the collaborative economy, which the European Commission defines as a new way to offer and use products and services through online platforms⁴. In addition, with new technologies, the cost of doing business has decreased significantly, allowing these platforms to grow at an unprecedented pace. The collaborative economy covers many sectors and has had, in the past decade, a significant impact on the tourist accommodation market⁵.

2.1.2. Market players and business models

While the online accommodation booking market remains fragmented, with many established local players, there is a **high business concentration** as several **online booking platforms** presently control most of it⁶. Table 1 presents the main businesses and their market share. Yet, it is based on an analysis of hotel chains’ aggregated data of distribution channels used for bookings, so it is mainly based on hotel bookings.

Table 1: Main businesses and their market share (as of 2019)

Online accommodation booking platform	Market share
Booking.com ⁷	67.7%
Expedia ⁸	12.8%
Hotel Reservation Service (HRS)	6.3%
Remaining	13.2%

Source: Statista

In fact, the three world-level platforms that dominate the sector and have become major booking intermediaries for other travel services⁹ are the following:

- **Booking Holdings Inc.**, and **Expedia Group Inc.**, are the world’s top two online travel agencies (OTAs).

⁴ European Commission, The collaborative economy, available at: file:///C:/Users/ninon.gautier/Downloads/collaborative-economy-factsheet_en.pdf.

⁵ World Tourism Organization (UNWTO), 2019, New Business Models in the Accommodation Industry – Benchmarking of Rules and Regulations in the Short-term Rental Market, Executive Summary, available at: <https://www.e-unwto.org/doi/pdf/10.18111/9789284421190>.

⁶ Mordor Intelligence, 2021, Global online accommodation booking market – Growth, trends, COVID-19 impacts, and forecasts (2022-2027), available at: <https://www.mordorintelligence.com/industry-reports/global-online-accommodation-booking-market>.

⁷ Booking.com’s main business is as an aggregator and metasearch engine primarily for hotel and accommodation bookings, which has become the biggest online travel booking platform in Europe.

⁸ Expedia’s business is closer to traditional travel agencies that include flight, car rental and vacation package bookings. Parent group Expedia Group additionally own several other brands including Hotels.com and eBookers, bringing their total relative market share up to over 16%. See Statista, Relative market share of major online travel agencies (OTAs) in Europe in 2021, 2 August 2022, available at: <https://www.statista.com/statistics/870046/online-travel-agency-ota-market-share-in-europe/#statisticContainer>.

⁹ Fitness check of the EU legislation for the enforcement cooperation of consumer authorities (CPC) – Market Analysis.

- Peer-to-peer market players are on the rise, with a strong reliance on **Airbnb**. According to market analysis conducted by the CPC, peer-to-peer accommodation-sharing platforms challenge both OTAs and hotels, especially among younger travellers.

In addition, TripAdvisor is one of the most influential¹⁰ travel and accommodation booking portals online¹¹ (see 2.2.2).

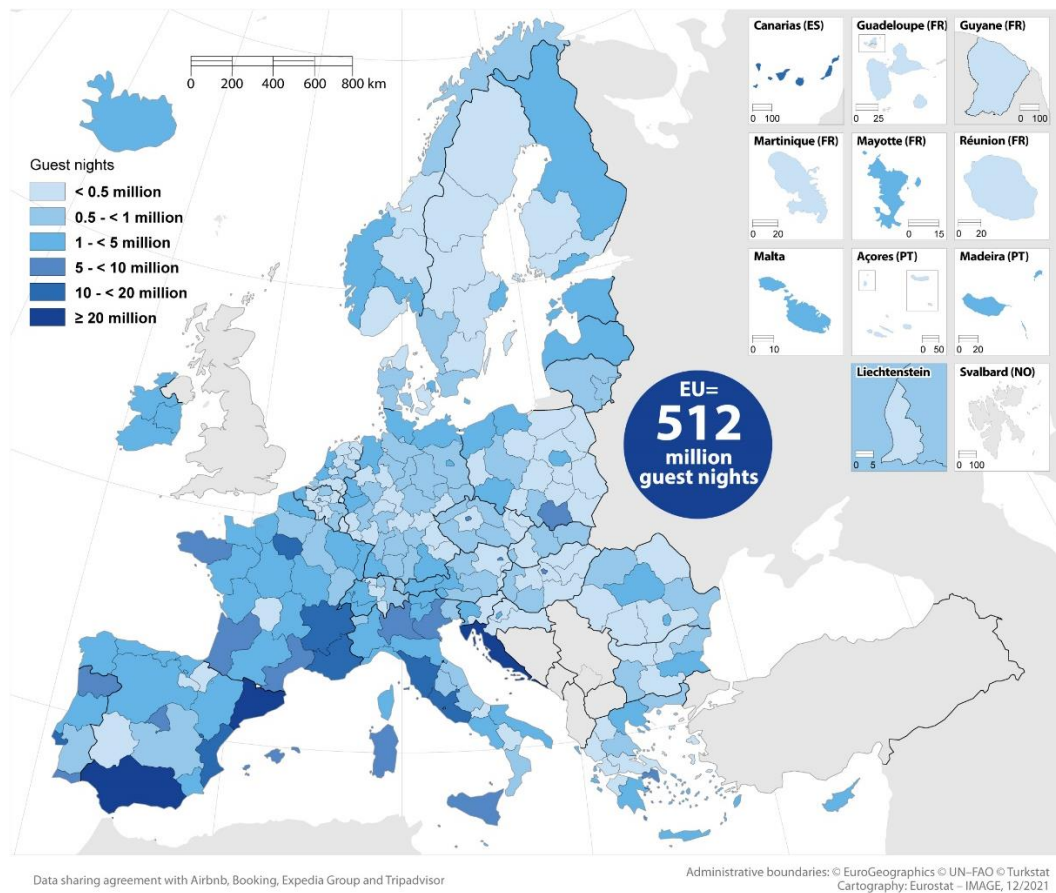
Eurostat data show that in the EEA, in 2019, guests spent 512 million nights in accommodation booked on Airbnb, Booking, Expedia Group, or TripAdvisor (see Figure 2 below). This means that on average, around 1.5 million guests slept in a bed booked through one of these four platforms every day¹².

¹⁰ Oxford Economics found that TripAdvisor’s reviews and scores influenced around 10.3% of all global spending on tourism in 2017. See Rob Gill, 22 May 2018, Wait, did TripAdvisor really influence 10% of global tourism spending in 2017? Available at: <https://www.phocuswire.com/Wait-did-TripAdvisor-really-influence-10-of-global-tourism-spending-in-2017>.

¹¹ Mordor Intelligence, 2021, Global online accommodation booking market – Growth, trends, COVID-19 impacts, and forecasts (2022-2027), available at: <https://www.mordorintelligence.com/industry-reports/global-online-accommodation-booking-market>.

¹² Eurostat, 2021, Short-stay accommodation booked via collaborative economy platforms: first data, available at: <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20210629-2>. At the EU level, the Commission has reached a landmark agreement with the four major international platforms (Airbnb, Booking, Expedia Group and TripAdvisor) on the exchange of information, allowing Eurostat to publish data on short-stay accommodations offered via these platforms across the EU. European Commission, 2020, Commission reaches agreement with collaborative economy platforms to publish key data on tourism accommodation, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_194.

Figure 2: Guest nights spent at short-stay accommodation booked via collaborative economy platforms, NUTS 2¹³, 2019



Source: Eurostat

The accommodation industry has notably seen the emergence of new business models, whereby individuals and professionals are able to advertise their spare rooms or properties for rent, on digital platforms that serve as intermediaries¹⁴. These demand aggregation platforms use three predominant plans for making a profit¹⁵:

- The **agency business model** – Booking.com uses commissions as a revenue model, which depend on the size of the accommodation providers and how well they want to rank on the pages. Airbnb’s revenue comes from both commissions from hosts and fees from guests¹⁶.
- The **merchant business model** – Expedia buys rooms early and in bulk for a lower price and then resells them to travellers, often bundling them with airfares, car rentals, etc.

¹³ Nomenclature of territorial units for statistics – The current NUTS 2021 classification is valid from 1 January 2021 and lists 242 regions at the NUTS 2 level. See Eurostat, NUTS - Nomenclature of territorial units for statistics > Background, available at: <https://ec.europa.eu/eurostat/web/nuts/background/>.

¹⁴ European Parliament, 2018, Consumer Choice and Fair Competition on the Digital Single Market in the Areas of Air Transportation and Accommodation, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2018/626082/IPOL_STU%282018%29626082_EN.pdf.

¹⁵ InnovationTactics.com, 2017, Business models compared: Booking.com, Expedia, TripAdvisor, available at: <https://innovationtactics.com/business-models-tripadvisor-booking-com-expedia/>.

¹⁶ Daniel Pereira – The Business Model Analyst, 2022, Airbnb Business Model, available at: https://businessmodelanalyst.com/airbnb-business-model/#How_Airbnb_makes_money.

- The **advertising-based business model** – TripAdvisor gets paid for each click to one of the accommodation pages, regardless of if it leads to a booking.

More generally, these new business models have created **policy disruption**, raising legal questions in terms of consumer protection, among others. In 2016, the European Commission indicated that the emergence of these new business models was a good time for the Member States to revisit existing legislation and to ask if their aims are still valid and if the restrictions imposed are proportionate¹⁷. As a result, there have been new measures, notably relating to consumer protection¹⁸. In practical terms, the new business models did/do not fit the existing regulatory framework and there is a considerable grey area between private and commercial providers. This grey zone caused most disputes in existing regulatory regimes and led to concerns of unfair competition¹⁹. The 2019 amendments²⁰ to the Consumer Rights Directive²¹, therefore, require online marketplaces to provide information on whether, according to the third-party trader’s declaration, the third-party trader is a private or professional host (applicable since 28 May 2022).

In addition, traders consulted indicated that the prominent **market trend** is consumers moving to the **mobile channel**, using the platforms’ apps, across multiple devices, no more a desktop²². Yet, from a regulatory perspective, the desktop is the starting point, while the reality is the mobile app. Traders commented that the use of mobile devices limits the space to provide the type of information related to transparency requirements from a compliance perspective²³.

2.2. Consumer behaviour, needs, demand, and expectations

2.2.1. Societal changes

Societal changes also contribute to the rapid expansion of the accommodation booking platforms. Millennials are the leading generation active on these platforms due to their familiarity with the latest technological innovations, shifting the value system from materialism to experientialism and their willingness to share with others²⁴.

¹⁷ European Commission, 2016, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions – A European agenda for the collaborative economy, COM(2016) 356 final.

¹⁸ World Tourism Organization (UNWTO), 2019, New Business Models in the Accommodation Industry – Benchmarking of Rules and Regulations in the Short-term Rental Market, Executive Summary, available at: <https://www.e-unwto.org/doi/pdf/10.18111/9789284421190>.

¹⁹ European Commission, 2020, Commission reaches agreement with collaborative economy platforms to publish key data on tourism accommodation, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_194.

²⁰ Article 4, Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, OJ L 328, 18.12.2019, pp.7-28.

²¹ Article 6a, Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ L 304, 22.11.2011, pp.64-88.

²² Interview conducted with a trade representative in May 2022. See also Mordor Intelligence, 2021, Global online accommodation booking market – Growth, trends, COVID-19 impacts, and forecasts (2022-2027), available at: <https://www.mordorintelligence.com/industry-reports/global-online-accommodation-booking-market>.

²³ Interviews conducted with trade representatives in May 2022.

²⁴ European Commission, 2020, Commission reaches agreement with collaborative economy platforms to publish key data on tourism accommodation, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_194.

In addition, consumers want to have information in their pocket, rather than getting it from a desktop. They therefore increasingly use the platforms’ mobile apps to book their accommodation²⁵ (see **Error! Reference source not found.**).

2.2.2. Use of consumer reviews

TripAdvisor claims 80% of travellers spend around four weeks researching a destination, taking the time to read reviews, and hunting for unique tips to improve their trip before booking. The 2019/2020 Market Monitoring Survey²⁶ showed that 71% of consumers considered reviews as important when choosing holiday accommodation, which makes TripAdvisor leading the way²⁷.

Consumer reviews are a form of market-based autoregulation by the accommodation booking platforms. They are a public good for all users, which generates a welfare improvement for consumers²⁸. The benefit of (authentic) consumers’ ratings are that they are quick, and (ideally) transparent. If one were to complain about the quality of service in a hotel to public authorities, the procedure would be time-consuming and less transparent to other potential consumers. The European Commission therefore recommended considering whether rating systems might be an appropriate means to protect consumers. This reflection “can contribute to higher quality services and potentially reduce the need for certain elements of regulation, provided adequate trust can be placed in the quality of the reviews and ratings”²⁹. It is indeed critical that these reviews represent real consumer experiences with the services so that they can rely on them to make an informed decision³⁰. The need to have trust in reviews is vital, and it might be that regulation is needed to ensure that these are accurate³¹. Directive (EU) 2019/2161³², amending the unfair commercial practices directive (UCPD), prohibits the following:

- Stating that reviews of a product are submitted by consumers who have used or purchased the product without taking reasonable and proportionate steps to check that they originate from such consumers.
- Submitting or commissioning another legal or natural person to submit false consumer reviews or endorsements, or misrepresenting consumer reviews or social endorsements, to promote products.

²⁵ Interview conducted with a trade representative in May 2022.

²⁶ European Commission, 2020, Market Monitoring Survey – Overview Report 2019/2020, available at: https://ec.europa.eu/info/sites/default/files/mms-overview-report-19-20_en.pdf.

²⁷ Mordor Intelligence, 2021, Global online accommodation booking market – Growth, trends, COVID-19 impacts, and forecasts (2022-2027), available at: <https://www.mordorintelligence.com/industry-reports/global-online-accommodation-booking-market>.

²⁸ Bertin Martens, 2016, An Economic Policy Perspective on Online Platforms. Institute for Prospective Technological Studies Digital Economy Working Paper 2016/05, JRC101501.

²⁹ European Commission, 2016, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions – A European agenda for the collaborative economy, COM(2016) 356 final..

³⁰ European Commission, 8 April 2022, Commission staff working document – Biennial overview of actions carried out by national authorities under Regulation (EU) 2017/2394 on consumer protection cooperation and key market trends that might affect consumers’ interests in the future, SWD(2022) 108, available at: https://ec.europa.eu/info/sites/default/files/swd_2022_108_f1_staff_working_paper_en_v3_p1_1903309.pdf.

³¹ European Parliament, 2018, Consumer Choice and Fair Competition on the Digital Single Market in the Areas of Air Transportation and Accommodation, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2018/626082/IPOL_STU%282018%29626082_EN.pdf.

³² Annex 1, Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, OJ L 328, 18.12.2019, p.7-28.

According to a stakeholder consulted, the issue of the reviews worries the CPC network³³.

2.2.3. Demand for sustainable practices

A trader representative interviewed indicated that there is an increasing appetite to have more information on sustainable options³⁴. As a result, Booking.com has added filters on sustainability for instance³⁵.

Eco-friendly tourism and sustainable booking practices are indeed on the rise. Global travellers prefer eco-friendly accommodation bookings with about 70% of them choosing to “go green”. Many people choose to enrich their holiday stay experiences with sustainable hotels and their environmentally friendly business practices³⁶.

2.3. Impact of the COVID-19 pandemic on market trends and consumer behaviour

The COVID-19 outbreak has had a huge impact on the market globally. It was “a big earthquake for lots of different companies”³⁷. To illustrate the size of the impact overnight, one trade representative indicated that their revenue fell by 80%³⁸. Nevertheless, players like Airbnb showed resilience thanks to some of the new market trends that are linked to the lockdown but continuing now (presented in the three first points below). According to trade representatives interviewed, there are **five market trends related to the COVID-19 crisis** that impacted the industry:

- New destinations in **more rural and smaller areas**, especially during lockdowns, as a pandemic escape when people wanted to be away from others, are an obvious trend. Even if city travel is beginning to pick up again, cities have not completely seen the tourists coming back yet. As a reaction in May, Airbnb announced changes to the search criteria, by category of stay, such as farm stays, stays on vineyards, etc. It means that some of these destinations that were previously hidden from consumers will now appear on the search, by looking for a theme, which is a big shift to the organisation of the platform.
- Another important trend is the strong **rise of short-term rental and longer stays** (not for just a few days, but 28 days or more) compared with traditional accommodation since more and more people can work from anywhere. These consumers do not want to stay at a hotel but at a real “home”.
- There has been also an increase in **domestic travel** or “staycations”, due to people finding it hard to travel across borders, but also more travel within Europe, even now. Eurostat data confirmed that platform tourism in the EU has been shifting to domestic destinations as the COVID-19 pandemic hit, with 58.3% of nights booked in the tourists’ home countries in 2020, compared with 33.2% in 2019³⁹.

³³ Interview conducted with a CPC network representative in May 2022.

³⁴ Interview conducted with a trader representative in May 2022.

³⁵ Interview conducted with a CPC network representative in May 2022.

³⁶ Mordor Intelligence, 2021, Global online accommodation booking market – Growth, trends, COVID-19 impacts, and forecasts (2022-2027), available at: <https://www.mordorintelligence.com/industry-reports/global-online-accommodation-booking-market>.

³⁷ Interview conducted with a trader representative, in May 2022.

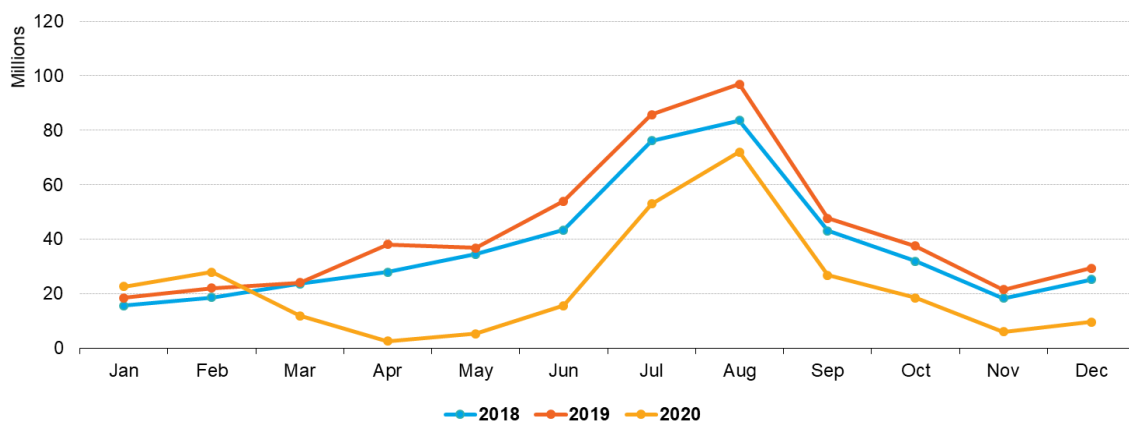
³⁸ Interview conducted with a trader representative, in May 2022.

³⁹ Eurostat, 2022, Short-stay accommodation offered via online collaborative economy platforms – the impact of the Covid-19 pandemic, available at: <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Short->

- Consumers have gotten used to a high degree of **flexibility** during the pandemic. It is now hard to find a room that is not easily refundable because consumers consider it a priority. Online booking platforms now provide more flexibility to consumers as a default option, while flexible travel plans were already part of Booking’s offering for instance, whose cancellation policy was important during the pandemic⁴⁰.
- Consumers have strong **expectations in terms of information**, sanitary-wise, on whether they can travel, and what are the host’s health protections. There are now labels at the national, regional, and even European levels. Online accommodation booking platforms need to consider these expectations but constitute good tools to address these questions, since they can provide transparency, through new filters on websites to answer these needs for instance.

While the COVID-19 pandemic indeed hit the tourism sector hard, according to Eurostat data (see Figure 3 below), traders consulted indicated that there is now an increased appetite for travel, after two quiet years. There is a “massive” uptick in bookings after the initial fallout of the pandemic, with consumers making up for the fact that they have not travelled in two years⁴¹.

Figure 3: Monthly guest nights in the EU, 2018-2019 vs 2020 – Nights spent in short-stay accommodation offered via online platforms



Source: Eurostat (experimental statistics)

3. Challenges for consumers and consumer protection infringements

3.1. Main challenges that consumers face

Consumers suffer from information asymmetries and at times from the seller’s market power. They are usually the weaker party in transactions. It is therefore important that the

[stay accommodation offered via online collaborative economy platforms - impact of the Covid-19 pandemic&stable=0&redirect=no.](#)

⁴⁰ Interviews conducted with trader representatives, both in May 2022.

⁴¹ Interview conducted with a trader in May 2022.

terms of the contracts they sign are fair. Yet, **unfair terms** are frequent due to this imbalance in power and knowledge. Therefore, EU law precisely defines and extensively regulates business-to-consumers (B2C) unfair terms and practices, within the so-called consumer acquis⁴². The Unfair Contract Terms Directive (UCTD)⁴³ protects consumers against unfair standard contract terms imposed by traders. It applies to all kinds of contracts on the purchase of goods and services, including online bookings of accommodation services.

Yet, the emergence of digital platforms offering accommodation services has brought about new challenges⁴⁴. The above market trends increasingly expose consumers to unfair online commercial practices, which can spread rapidly across the entire market due to the high business concentration⁴⁵.

According to the European Parliament, unfair business practices include, for example, personalised pricing⁴⁶, a form of discrimination that involves charging different prices to consumers according to their willingness to pay⁴⁷. This is a concern in terms of discrimination, and because it tends to have adverse effects on weaker parties. Personalised pricing is nevertheless difficult to tackle under competition law⁴⁸. Nevertheless, since 28 May 2022 and the entry into application of Directive (EU) 2019/2161⁴⁹, traders must inform consumers, where applicable, that the price was personalised based on automated decision-making⁵⁰.

Under consumer law, certain forms of **price information** may be misleading⁵¹. This was one of the platforms’ practices that were the target of the CPC network’s actions. The CPC authorities raised the following concerns in terms of displaying the total price: platforms did not always include all fixed charges, such as local taxes, in the prices that appear in the search results (drip pricing)⁵². Such components would add up as consumers

⁴² European Parliament, 2018, Consumer Choice and Fair Competition on the Digital Single Market in the Areas of Air Transportation and Accommodation, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2018/626082/IPOL_STU%282018%29626082_EN.pdf.

⁴³ Council of the European Communities, 1993, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (J L 95, 21.4.1993, pp.29-34), Article 3(1).

⁴⁴ World Tourism Organization (UNWTO), 2019, New Business Models in the Accommodation Industry – Benchmarking of Rules and Regulations in the Short-term Rental Market, Executive Summary, available at: <https://www.e-unwto.org/doi/pdf/10.18111/9789284421190>.

⁴⁵ Fitness check of the EU legislation for the enforcement cooperation of consumer authorities (CPC) – Market Analysis.

⁴⁶ European Parliament, 2018, Consumer Choice and Fair Competition on the Digital Single Market in the Areas of Air Transportation and Accommodation, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2018/626082/IPOL_STU%282018%29626082_EN.pdf.

⁴⁷ Organisation for Economic Cooperation and Development, OECD Home > Directorate for Financial and Enterprise Affairs > Competition > Personalised Pricing in the Digital Era, available at: <https://www.oecd.org/daf/competition/personalised-pricing-in-the-digital-era.htm>.

⁴⁸ European Parliament, 2018, Consumer Choice and Fair Competition on the Digital Single Market in the Areas of Air Transportation and Accommodation, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2018/626082/IPOL_STU%282018%29626082_EN.pdf.

⁴⁹ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, OJ L 328, 18.12.2019, pp.7-28.

⁵⁰ Article 6(1) (ea), Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ L 304, 22.11.2011, pp.64-88.

⁵¹ European Parliament, 2018, Consumer Choice and Fair Competition on the Digital Single Market in the Areas of Air Transportation and Accommodation, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2018/626082/IPOL_STU%282018%29626082_EN.pdf.

⁵² European Commission, December 2020, Factsheet – Booking.com enforcement action – Commitments obtained by the European Consumer Protection Cooperation (CPC) authorities, available at: https://ec.europa.eu/info/sites/default/files/factsheet-booking.com_enforcement_action_.pdf.

clicked through and moved to a later stage. Hidden booking fees may constitute infringements of EU consumer law in situations where the consumer has invested considerable time in making a booking before they discover there is a processing fee for instance⁵³. Following a dialogue with the CPC authorities, Airbnb, Booking.com, and Expedia Group committed to making changes in the way they present offers, discounts, and prices to consumers. For instance, Expedia Group⁵⁴ improved the presentation of prices and discounts and implemented an improved audit system for special price offers across its EU/EEA sites⁵⁵. According to a CPC representative, there is now a clear presentation of prices from the beginning on these platforms⁵⁶. With the changes, consumers should be better able to make informed comparisons in line with the requirements of EU consumer law⁵⁷. Nevertheless, one trader argued that the price display was already quite transparent before these changes and that the impact on consumers would be limited⁵⁸.

The question of **low transparency on ranking criteria for search results** on the platform is another potentially harmful practice within the online platform economy, which the CPC actions targeted⁵⁹. Consumers did not realise that hotels and hosts that pay a fee to online accommodation platforms appear in a better position in the “preferred” search results. The CPC network also raised concerns regarding discounts, as platforms proposed alternative dates for the same property and presented the price as a discount by using a strikethrough or terms such as “% off” or “great offer”. They also had concerns regarding time-limited offers and pressure selling techniques as certain prices appeared as being offered for a limited time, even though they remained available after the expiry of the offer. The online accommodation booking platforms committed to making the search results more transparent, so it is clearly presented when an offer displayed on the website is in effect the best possible offer or if it has been promoted by the trader because it is a paid advertisement.

In addition to those practices that the CPC network has addressed with Airbnb, Booking.com, and Expedia Group, there are practices that aim to lock in the consumers and keep them single homing on the platform, namely, using only a single platform, by exploiting information asymmetries⁶⁰. This limits consumer choice by nudging them to follow default options. When large online platforms exploit their gatekeeper position and market power to lock in their end-users, this limits competition, raises barriers to entry and eventually incurs higher prices for consumers, but also businesses, other platforms, and

⁵³ European Parliament, 2018, Consumer Choice and Fair Competition on the Digital Single Market in the Areas of Air Transportation and Accommodation, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2018/626082/IPOL_STU%282018%29626082_EN.pdf.

⁵⁴ The changes are applicable to the Expedia brands – Expedia, ebookers and hotels.com.

⁵⁵ European Commission, 8 April 2022, Commission staff working document – Biennial overview of actions carried out by national authorities under Regulation (EU) 2017/2394 on consumer protection cooperation and key market trends that might affect consumers' interests in the future, SWD(2022) 108, available at: https://ec.europa.eu/info/sites/default/files/swd_2022_108_f1_staff_working_paper_en_v3_p1_1903309.pdf.

⁵⁶ Interview conducted with a CPC network representative in May 2022.

⁵⁷ European Commission, Consumer rights and complaints > Enforcement of consumer protection > Coordinated actions > Accommodation booking, available at: https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/accommodation-booking_en.

⁵⁸ Interview conducted with a trade representative in May 2022.

⁵⁹ European Commission, 26 April 2018, Commission Decision of 26.4.2018 on setting up the group of experts for the Observatory on the Online Platform Economy, available at: file:///C:/Users/ninon.gautier/Downloads/c_2018_2393_f1_commission_decision_en_v7_p1_974037_0A886D2E-CCB9-CEC2-695E673C5CA73A42_51795.pdf.

⁶⁰ David S. Evans and Richard Schmalensee, 9 June 2016, The New Economics of Multisided Platforms: A Guide to the Vocabulary.

society⁶¹. Nevertheless, online platforms can also enhance consumer choice because they provide a convenient means for new businesses to enter the relevant market. For example, Airbnb has facilitated the emergence of more accommodation choices for travellers. Online accommodation booking platforms can also serve to increase information about different options so that consumers can choose the best deal⁶². Consumers booking an accommodation online bear different costs depending on whether they use a platform. Search engines reduce **information costs prior to the transaction**. However, consumers may also face costs after a transaction as the service may not correspond to the one agreed or to their expectations, or an accident may happen in the course of service delivery. These **ex-post costs** are due to uncertainties that emerge after a transaction. In the field of accommodation, online platforms increase transparency of prices thanks to that reduced search costs. In addition, more investment in ex-ante information may reduce ex-post risks⁶³. Airbnb recently introduced an additional protection for guests if the listing is not how it appears on the platform for instance, essentially a contractual obligation, that Airbnb enters for guests⁶⁴.

Potentially harmful practices within the online platform economy also include access to and use of personal data⁶⁵.

3.2. Consumer protection under COVID-19

The role of online booking platforms was a significant source of confusion to consumers under the COVID-19 crisis. Consumer rights issues arose in matters not governed by EU legislation, such as hotel bookings, private accommodation rentals, and third-party booking agents' terms. In its 2020 report, the European Consumer Centre (ECC) Ireland⁶⁶, for instance, expressed concern over the lack of clarity under EU law of platforms' responsibilities and liabilities, coupled with the unresponsiveness of some during the most difficult parts of the pandemic. Issues they observed included:

- Some third-party agents removing their consumer contact channels,
- Their direct customers being passed around between the booking platforms and accommodation providers,
- Not taking responsibility for finding solutions for mediating contact between customers and the end-service providers,
- Charging administrative fees for reimbursements,
- Not transferring refunds to end-customers,
- Not communicating service providers' essential updates,
- Not updating the status of reservations.

⁶¹ European Commission, Directorate-General for Communications Networks, Content and Technology, Study on "Support to the observatory for the online platform economy": final report, Publications Office, 2021, <https://data.europa.eu/doi/10.2759/801457>.

⁶² European Parliament, 2018, Consumer Choice and Fair Competition on the Digital Single Market in the Areas of Air Transportation and Accommodation, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2018/626082/IPOL_STU%282018%29626082_EN.pdf.

⁶³ Bertin Martens, 2016, An Economic Policy Perspective on Online Platforms. Institute for Prospective Technological Studies Digital Economy Working Paper 2016/05, JRC101501.

⁶⁴ Interview conducted with a trade representative, in May 2022.

⁶⁵ European Commission, 26 April 2018, Commission Decision of 26.4.2018 on setting up the group of experts for the Observatory on the Online Platform Economy, available at: file:///C:/Users/ninon.gautier/Downloads/c_2018_2393_f1_commission_decision_en_v7_p1_974037_0A886D2E-CCB9-CEC2-695E673C5CA73A42_51795.pdf.

⁶⁶ European Consumer Centre Ireland, 2020, Annual report 2020, available at: https://www.eccireland.ie/wp-content/uploads/2021/09/2020-Annual-Report_FINAL_06.09.2021.pdf.

Most issues in the sector related to modifying and cancelling third-party bookings and the fact that online booking platforms fall outside the scope of the Package Travel Directive, and/or are operated by non-professional hospitality services hosts. Other issues involved consumers not being aware that the accommodation provider and the booking agent, respectively, had separate and distinct cancellation policies. A significant number of complaints that ECC Ireland received from Irish consumers related to accommodation having to close (down) due to COVID-19 disruptions. Others pertained to unexpected supplementary charges, problems with reimbursements of deposits or other types of refunds, price increases or overcharging, rooms not being available at arrival, issues with accommodation contract terms and conditions, incorrect booking details and difficulties with the booking process. Extraordinary circumstances, such as the hotel being closed at the time of a pre-booked holiday due to COVID-19, contributed to consumer financial losses. Where the service is not delivered, the consumer is entitled to reimbursement, even when the booking is non-refundable. However, ECC Ireland found there was considerable confusion among hotel and other types of accommodation providers regarding consumers’ entitlements in these cases, as well as differing approaches to reimbursements, and deliberate delaying the processing of refunds. As travel restrictions, national lockdowns and border closures became a reality lasting for several months from March 2020, normal reimbursement procedures failed or suffered massive delays due to sheer volumes but also traders’ lack of cooperation. Alternatives such as vouchers or extended free rebooking became more widespread, which meant that most consumers were not refunded in 2020⁶⁷.

The European Commission’s New Consumer Agenda⁶⁸ notably aims to address the fallout of poor consumer treatment during COVID-19.

3.3. Trends in consumer complaints and infringements in consumer law

In general, members of the European Consumer Organisation (BEUC) confirmed that it is a sector where they have a high number of complaints. According to one member, in Spain, the main accommodation booking platform that consumers complain about is Booking.com. OCU, the largest consumer organisation in Spain, has received about one complaint about Booking.com per day (this year) on their website. For example, for the period January-May 2022, they have received 133 complaints about Booking.com⁶⁹.

Based on feedback received from BEUC members, the main problems consumers complain about when it comes to accommodation booking platforms are the following:

- Cancellations by the platform with no reason and without notice to consumers,
- Refunds, which consumers received late, or not at all,
- Consumers being ping-ponged (again) against the platform and the booking accommodation about who is responsible for the refund,
- Failure to comply with bookings, by not having the accommodation available or ready,

⁶⁷ European Consumer Centre Ireland, 2020, Annual report 2020, available at: https://www.eccireland.ie/wp-content/uploads/2021/09/2020-Annual-Report_FINAL_06.09.2021.pdf.

⁶⁸ European Commission, 13 November 2020, Communication from the Commission to the European Parliament and the Council – New Consumer Agenda (COM(2020) 696 final).

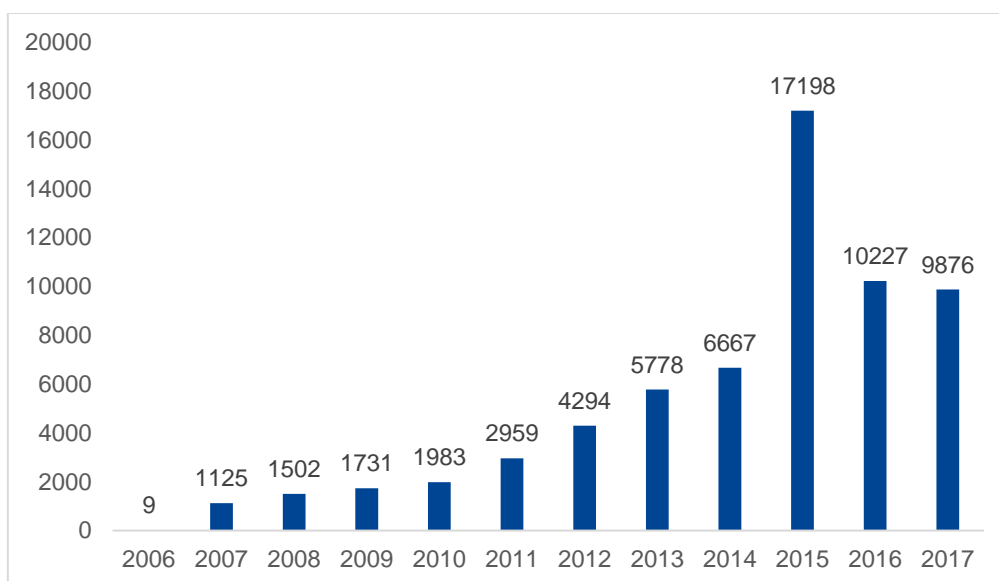
⁶⁹ Searching for ‘Booking.com’ on OCU’s webpage with public complaints gives 13 pages of 10 results each, plus an additional 3 results. OCU, 2022, Reclamaciones públicas enviadas a través de nuestra plataforma online, available at: <https://www.ocu.org/reclamar/lista-reclamaciones-publicas?company=300000199>.

- Breach of contract or low quality of service (lack of conformity between information provided during the booking and the accommodation or lack of key information),
- Problems related to payments, with the booking not confirmed, but the money deducted, or confirmed, but then the platform informs the consumers that no reservation was made.

One of the main problems with these complaints is the great difficulty that consumers face to simply reach these platforms, due to a lack of direct phone or the messages sent by consumers coming back to them with an automatic reply informing them that a reply will be provided within a few weeks.

Between 2006 and 2018 the European Consumer Complaints Registration System (ECCRS) gathered consumer complaints data collected from competent national authorities⁷⁰. Figure 4 **Error! Reference source not found.** below provides an overview of the evolution in the number of consumer complaints relating to hotels and other holiday accommodations between 2006 and 2017⁷¹. It demonstrates a rapid increase in the number of complaints until a peak in 2015. Yet, it is important to note that this does not only cover hotels and other holiday accommodations booked via online platforms.

Figure 4: Number of consumer complaints relating to ‘hotels and other holiday accommodation’ (2006-2017)



Source: European Commission, Consumer Complaints Statistics

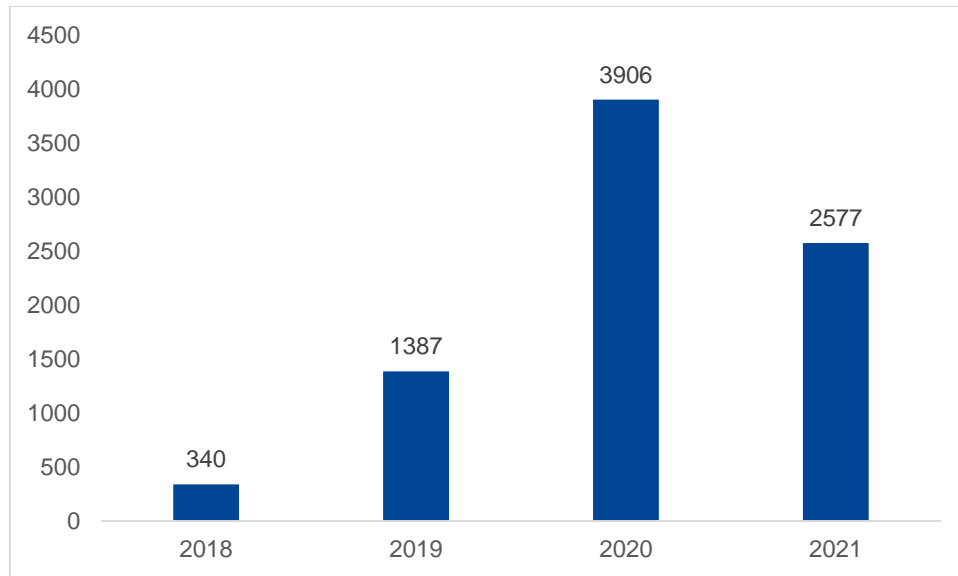
In addition, ECC Ireland indicated that the number of complaints and requests for assistance received collectively by the member offices of the ECC Net in 2020 increased by 20% for accommodation, compared with 2019⁷². Data from the ECC Net IT tool show a 182% increase in complaints regarding accommodation services booked via online intermediaries between 2019 and 2020 (Figure 5).

⁷⁰ European Commission, Consumer Complaints Statistics, Available at: [Consumer complaints statistics | European Commission \(europa.eu\)](https://ec.europa.eu/consumer/complaints-statistics/).

⁷¹ The data for 2018 were omitted as their uploading was discontinued as of 1 November 2018.

⁷² European Consumer Centre Ireland, 2020, Annual report 2020, available at: https://www.eccireland.ie/wp-content/uploads/2021/09/2020-Annual-Report_FINAL_06.09.2021.pdf.

Figure 5: Queries lodged after mid-April 2018 regarding accommodation services booked via online intermediaries



Source: ECC Net IT tool

Online accommodation booking platforms are of an intrinsic cross-border nature. Leading online platforms such as Booking.com are legally established in one Member State but provide access to consumers across the EU, both from their place of normal residency as well as while travelling across the EU⁷³. In 2020, ECC Ireland, for instance, received 155 accommodation-related cases, of which 65 came from Irish consumers regarding traders based in the EU, and 90 from EU-based consumers against Irish hospitality providers. 79 of all cases were resolved amicably, while 59 remained unresolved, and 17 were deemed unfounded. A lower-than-expected resolution rate for these complaints reflects the nature of the bookings in this sector, which means consumers’ entitlements are determined strictly by the terms agreed on under the contract⁷⁴. Fair redress systems are at a disadvantage on online markets due to competing systems put in place by large platforms, they are also not adapted to the development of cross border and international trade and of peer-to-peer trade. Some Member States are already enacting specific national legislation for online dispute resolution, which are fragmenting the Single Digital Market. In addition, consumers are increasingly exposed to traders who are domiciled and operational outside the EU, which poses additional enforcement challenges⁷⁵.

Nevertheless, infringements of EU consumer law affecting consumers could also be due to public action. For example, measures, which cities like Amsterdam, Barcelona, or Paris have taken to restrict Airbnb specifically⁷⁶, could be challenged for infringing the right to

⁷³ European Commission, 26 April 2018, Commission staff working document – Impact assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services, available at: https://eur-lex.europa.eu/resource.html?uri=cellar:99c9ae01-492c-11e8-be1d-01aa75ed71a1.0001.02/DOC_1&format=PDF.

⁷⁴ European Consumer Centre Ireland, 2020, Annual report 2020, available at: https://www.eccireland.ie/wp-content/uploads/2021/09/2020-Annual-Report_FINAL_06.09.2021.pdf.

⁷⁵ Fitness check of the EU legislation for the enforcement cooperation of consumer authorities (CPC) – Market Analysis.

⁷⁶ Amsterdam, Barcelona, and Paris have some of the strictest policies regarding who can/cannot rent out on Airbnb. Since 2017, Airbnb landlords in France are required to register their homes and display the registration number in their ads. In 2018, Amsterdam limited short-term rentals to 30 days a year. Since 1 April 2021, Airbnb hosts must obtain both a registration

provide services to consumers, which is protected by the Treaty on the Functioning of the EU⁷⁷. In these cases, foreign tourists wishing to visit Amsterdam or Paris are unable to receive a service (Airbnb accommodation) in that city⁷⁸.

4. Compliance of traders

According to trade representatives interviewed, while EU law provides the minimum requirements, the Member States can have their own, in some cases going beyond the EU requirements, or regulating aspects not covered by the relevant EU law. This makes consumer law complex and hard to interpret for traders and limits the benefits of the Single Market⁷⁹.

4.1. CPC actions

The CPC Network has completed three actions against three online booking platforms. While the first one, with Airbnb, was slightly different because of the platform’s different nature, the following ones, starting with Booking.com and relatively simultaneously Expedia Group, elaborated on the commitments that Booking.com had made with the British consumer authority. They covered the elements mentioned above, in relation to price information, distinction between private and professional hosts, etc. All stakeholders consulted considered this as a **collaborative process**, which generally worked well. Traders consulted considered the CPC Network as helpful in terms of centralised communication, to make sure they have one contact point and do not have to deal with several authorities in the 27 Member States⁸⁰. Even if the national authorities can still have national proceedings, the commitments ensure some EU-level agreement that online booking platforms can rely on⁸¹.

While none of the stakeholders consulted mentioned major problems, both sides referred to the **time** and slowness of the procedure as a potential area for improvement. Each side nevertheless recognised the challenges of having to check feasibility of the commitments and deal with different departments, etc. on the traders’ side, and the difficulty of agreeing between 27 Member States on the CPC Network’s side⁸². CPC representatives were positive about traders’ involvement. Only one trader was not particularly cooperative in the beginning.

Stakeholders consulted generally considered the process to be effective and efficient, even though it required the involvement of a considerable number of resources on the traders’ side, from the beginning, as the commitments need to be feasible, to implementation. Yet,

number and a permit for a vacation rental in Amsterdam. See Investopedia, 26 May 2022, Top Cities Where Airbnb Is Legal or Illegal, available at: <https://www.investopedia.com/articles/investing/083115/top-cities-where-airbnb-legal-or-illegal.asp>.

⁷⁷ Treaty on the Functioning of the European Union, Article 56.

⁷⁸ European Parliament, 2018, Consumer Choice and Fair Competition on the Digital Single Market in the Areas of Air Transportation and Accommodation, available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2018/626082/IPOL_STU%282018%29626082_EN.pdf.

⁷⁹ Interviews conducted in May 2022.

⁸⁰ Interview conducted with a trade representative, in May 2022.

⁸¹ Interviews conducted in May 2022.

⁸² Interviews conducted in May 2022.

it is still more efficient to do it once than to do it differently 27 times⁸³. On the authorities’ side, one stakeholder reported that for Member States it is an easy way to solve issues with different traders at the national level, in an effective and efficient way.

4.2. Challenges

Online platforms have changed the structure and functioning of the EU’s Single Market in a relatively short time⁸⁴:

- Changing the bilateral structure of consumer contracts to a three-party contractual relationship,
- Collecting and transferring data on online platforms between consumers, traders, the platform itself and its third-party vendors,
- Blurring the lines for liabilities for the non-performance of contracts,
- Rising consumer-to-consumer transactions, which are not regulated.

In addition, other external factors come into play in terms of risks to consumers and challenges to enforcement, such as climate change. ‘Greenwashing’⁸⁵ is probably on the rise as consumers increasingly seek to buy environmentally sound products. A stakeholder consulted indicated that future actions of the CPC network would intend to deal with this challenge, including in the accommodation booking sector specifically. Nevertheless, in relation to the demand for sustainable practices mentioned above (see Section 2.2.3), measures in the field of planning and sustainability are somewhat lagging. There is therefore a great interest from the European Commission to deal with misleading environmental claims, for example, with more and more platforms using these. In January 2021, the CPC network released the results of a sweep⁸⁶ focusing on ‘greenwashing’⁸⁷. The sweep analysed green online claims from various business sectors, but not online accommodation booking platforms necessarily. National consumer protection authorities concluded that in 42% of cases the claims were exaggerated, false, or deceptive and could qualify as unfair commercial practices under EU rules.

In addition, for CPC authorities, a great area of concern is the continuing lack of transparency about traders’ business models and their intermediary roles, and how the consumers are informed about their relationship with the service providers. Such transparency proved to be essential in the COVID-19 crisis to strengthen and regain consumers’ trust in booking services⁸⁸.

Nevertheless, for now, the CPC Network is busy dealing with other major players, such as TripAdvisor or Google, as a follow-up to the actions with Booking.com, Expedia, and Airbnb

⁸³ Interviews conducted in May 2022.

⁸⁴ European Consumer Centre Ireland, 2020, Annual report 2020, available at: https://www.eccireland.ie/wp-content/uploads/2021/09/2020-Annual-Report_FINAL_06.09.2021.pdf.

⁸⁵ A practice by which companies claim they are doing more for the environment than they are, using marketing techniques to pretend compliance with sustainability requirements without striving for them. See European Commission, 2022, Greenwashing: your guide to telling fact from fiction when it comes to corporate claims, available at: https://climate-pact.europa.eu/news/greenwashing-your-guide-telling-fact-fiction-when-it-comes-corporate-claims-2022-06-30_en.

⁸⁶ A screening of websites to identify breaches of EU consumer law in online markets.

⁸⁷ The practice by which companies claim they are doing more for the environment than they are.

⁸⁸ European Commission, 8 April 2022, Commission staff working document – Biennial overview of actions carried out by national authorities under Regulation (EU) 2017/2394 on consumer protection cooperation and key market trends that might affect consumers’ interests in the future, SWD(2022) 108, available at: https://ec.europa.eu/info/sites/default/files/swd_2022_108_f1_staff_working_paper_en_v3_p1_1903309.pdf.

(which started back in 2018). The CPC Regulation requires the competent authorities to single out a specific trader for coordinated action. This could lead to a bottleneck of the enforcement mechanism, with the CPC Network dealing with one specific trader while their competitors can continue the same unfair practices until the CPC Network has the capacity to extend its action to them. The sections above have shown the large potential for unfair business practices to proliferate in the online sphere, which means that other practices could develop in the meantime, with the CPC Network eventually having to go back to the first traders for new commitments related to these. One example of this is the issue of the reviews, which were not part of Booking.com’s or Expedia’s commitments, and which the CPC Network could have to go back to in the future.

In general, timing is a common issue in coordinated actions, with some steps taking more time than they should. One CPC representative indicated the issue of resources, in particular staffing as there is a lot of work to do. This is probably where there is scope for improvement, through fixed procedures for instance. This authority affirmed that better planning could lead to 30% reduction of the time it currently takes⁸⁹.

In relation to compliance, as mentioned above, the trade representatives consulted reported challenges linked to the increasing use of mobile apps rather than a desktop. There is a question on how to reconcile the consumer information obligation traders have and the shift to mobiles. There is a need to think about this, especially with vocal assistance gaining more and more importance, as there is only so much one can say. They consider that thinking of user-friendly ways to inform the consumer should be a concern for the CPC Network⁹⁰.

5. Conclusion

CPC coordinated actions are effective enforcement mechanisms, especially for traders, as they are based on a tailored approach, apply to all the Member States, and allow for a common understanding of EU law. Yet, coordinated actions take time and generally happen one after the other with each trader, which means enforcement is gradual. New issues can arise in the meantime, or CPC authorities can discover new issues with other traders and may have to launch a new coordinated action with traders that have already implemented previous changes. Therefore, the CPC Network needs to prioritise which unfair business practices or traders they want to deal with first.

⁸⁹ Interview conducted with a CPC network representative in May 2022.

⁹⁰ Interview conducted with a trade representative, in May 2022.

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6.2. List of interviews

Type of organisation	Name of organisation	Interview date
European Commission	DG JUST	May 2022
National authority	Authority for Consumers and Markets (ACM)	May 2022
Online booking platform	Booking.com	May 2022
Online booking platform	Expedia	May 2022
Online booking platform	Airbnb	May 2022
Trade organisation	eu travel tech	May 2022
Consumer organisation	BEUC	May 2022

