

ITALY¹

INTRODUCTION

This country fiche provides a summarised overview of the national regulatory framework impacting upon short-term letting² services in the collaborative economy.³ While the collaborative economy model is now present in many different areas (e.g. car-sharing platforms like Uber in the transport sector or bike-sharing schemes in leisure), this report concentrates exclusively on the accommodation sector.

The document at hand focuses on the subjects of market access, liability and tax. As such, this country fiche describes the rules applicable to providers of short-term lettings (such as home owners) and platforms that offer a service enabling short term rentals through their website (for instance, Airbnb).

MARKET ACCESS AND LIABILITY LEGISLATION - PROVIDERS OF SHORT TERM LETTINGS IN THE COLLABORATIVE ECONOMY

NATIONAL LEVEL

In IT, the tourism sector is under the 'exclusive' legislative competence of the Regions⁴. Tourism is part of the so called 'residual' legislation.⁵ Therefore, Regions are empowered to legislate in this sector with no need for national laws setting general principles⁶.

Furthermore, administrative functions are also attributed to Municipalities, which can adopt their own regulations to control tourist rentals (e.g. implementing tourist tax or requiring lessors to register in special municipal registers for tourist locations). Consequently, every Region legislates differently and so do the municipalities.

However, the State still has the role of orienting and promoting tourism in the country⁷. Additionally, the Tourism Code plays an important role setting out principles constituting the basis for regional regulation⁸.

With regard to market access, touristic rental contracts⁹ and home exchanges/swaps contracts¹⁰ are both regulated by the Civil Code. This could also be the case for touristic rental contracts concluded through online platforms such as Airbnb. However, many Italian Regions have adopted laws that regulate hotel and non-hotel tourist accommodation.

REGIONAL LEVEL

¹ Country report last updated 07/06/2019.

² In this regard, we refer to short term rentals of one's house, usually offered by the house owner on a daily or weekly basis.

³ For the purposes of this report, the collaborative economy is defined as the economy of sharing: a market place where consumers decide to co-use, rather than own certain goods and rely on each other to get the services they need. Cf: http://ec.europa.eu/growth/single-market/services/collaborative-economy_en.

⁴ Article 117 of the Constitution of the Republic of Italy, amended by constitutional law n. 3/2001.

⁵ Article 117 of the Constitution of the Republic of Italy defines the division of legislative competence between State and Regions. There is a list of matters in which the State has exclusive competence; there is a second set of matters, denoted as concurrent legislation, for which legislative powers are invested in the Regions except as far as the determination of fundamental principles is concerned, which is reserved for laws of the State; in all other matters, the Regions have the power to legislate (residual competence).

⁶ Article 117 (4) of the Constitution of the Republic of Italy.

⁷ Camera dei Deputati, Servizio Studi, Turismo, 29 april 2015: <http://www.camera.it/temiap/allegati/2015/05/08/OCD177-1264.pdf>.

⁸ Legislative Decree 79/2011.

⁹ Civil Code norms on rentals, Articles 1571-1654).

¹⁰ Article 1322 of the Italian Civil Code (Contractual Autonomy).

In this part, information is provided in relation to Tuscany and Lazio. This is not to imply that there are no other rules in other regions, but for the purposes of this document Tuscany and Lazio were selected to provide a sample of the regional rules.

TUSCANY

In 2016, the Tuscany Region enacted new legislation regulating touristic rentals.¹¹ This law has been recently amended following a complaint that the Italian Government on 27th February 2017 lodged with the Italian Constitutional Court, with a view to declaring the Tuscan legislation void.¹² Specifically, Article 70 of the 20 December 2016 Law on Touristic Rentals has been substantially modified as it was considered to be in violation of the State competence in the field of civil law.¹³

Under the current legal framework, collaborative economy providers have to communicate by electronic means to the Municipality where the apartments are located the information concerning the rental activity, which will be used for statistical purposes, and if they rent as professional¹⁴ providers.¹⁵ A regional implementing regulation, recently enacted by the Tuscany Region Giunta (the Executive body of the Region) specifies that the collaborative economy provider has to send the communication through electronic platforms (owned by the municipalities and by the Metropolitan City of Florence) to the competent Municipality within 30 days from the signature of the first touristic rental contract; in case any amendments to such information are needed, they have to be submitted within 30 days from the event for which those changes have to be made. The obligation to send the communication takes effect from 1 January 2019.¹⁶ The information to be submitted is quite basic (I.D., name of the lessor if the rental activity is made by natural or legal persons, professional operators / legal representative, information concerning the property, website/s on which the property is advertised).

Administrative pecuniary sanctions apply to providers of touristic rentals in the following cases: 1) if s/he provides services that pertain to hotels, camping sites, tourist resorts, etc (so called: tourist accommodation (*It: strutture ricettive*), as defined by Article 3 of the Law), the provider may be liable to pay a monetary fine of between EUR 1.000,00 and EUR 6.000,00; 2) if s/he fails to communicate to the Municipality the information as provided for by Article 70, paragraph 2¹⁷, or their communication is incomplete, the provider (peer or professional) may be liable to pay a monetary fine of between EUR 250 and EUR 1500.¹⁸

The Municipality of Florence follows the same rules as the region of Tuscany.

LAZIO

¹¹ Regional Law 20th December 2016 No. 86, Article 70 (Touristic Rental - Regional Law 20th December 2016 No. 86, *Testo unico del sistema turistico regionale* http://www.consiglio.regione.toscana.it/upload/pdl/2016/pdl135_burt.pdf.

¹² The Italian Government argued that the law is incompatible with Article 117(2)(l) of the Italian Constitution since the Tuscan law introduces a (new) definition of "renting activity". Art 117(2)(l) of the Italian Constitution provides that the power to enact laws related to the legal system is the exclusive competence of national authorities. Cf. https://www.gazzettaufficiale.it/atto/vediMenuHTML?atto.dataPubblicazioneGazzetta=2017-05-10&atto.codiceRedazionale=17C00086&tipoSerie=corte_costituzionale&tipoVigenza=originario

¹³ Preamble of the Regional Law 18th May 2018 No. 24 (*Disposizioni in materia di sistema organizzativo del turismo, strutture ricettive, locazioni e professioni turistiche. Modifiche alla l.r. 86/2016* <http://www.regione.toscana.it/documents/10180/15357186/PARTE+I+n.+19+del+25.05.2018.pdf/a4e919d7-7121-4c6a-a6c7-16e862536226>).

Article 70 of the amended Regional Law No. 86 stated that only furnished homes and apartments can be rented for touristic purposes without providing any extra or complementary services (such as food and cleaning). Moreover, a peer provider could rent out either two apartments in a year or more than two apartments in a year (in which case s/he could rent them out max. 80 times a year). A professional provider could rent out an indefinite number of apartments.

¹⁴ A professional provider is defined for the purposes of this study as an individual acting in a professional capacity.

¹⁵ Regional Law 18th May 2018 No.24, Article 70 (*Disposizioni in materia di sistema organizzativo del turismo, strutture ricettive, locazioni e professioni turistiche. Modifiche alla l.r. 86/2016*).

¹⁶ http://www.regione.toscana.it/bancadati/atti/Contenuto.xml?id=5193707&nomeFile=Delibera_n.1041_del_24-09-2018

¹⁷ Article 70, par. 2, as amended by the Regional Law 18th May 2018, No. 24 (*Disposizioni in materia di sistema organizzativo del turismo, strutture ricettive, locazioni e professioni turistiche. Modifiche alla l.r. 86/2016*), states that the communication should include the information about the renting activity, used for statistical purposes, as defined

¹⁸ Article 70 par. 6 of the Regional Law 20th December 2016 No. 86, as modified by Article 26 of the Regional Law 18th May 2018, No. 24 (*Disposizioni in materia di sistema organizzativo del turismo, strutture ricettive, locazioni e professioni turistiche. Modifiche alla l.r. 86/2016*).

The Lazio Region enacted a piece of legislation, amended in June 2017, which specifies that the assets which can be used for collaborative economy purposes are home/apartments which are furnished¹⁹.

Both professional and peer²⁰ providers have to communicate²¹ the start of a short-term apartment rental service. This communication is made to the relevant office of the Municipality²² where the apartments are located, in an application which is called "S.C.I.A."²³. The information to be submitted is quite basic (I.D., name of the undertaking if the rental activity is made by professional operators, name of the legal representative, hosting capacity, etc.), but needs to be accompanied by relevant documents, such as a floor plan and a declaration of a registered technician on compliance with the required standards.²⁴

The registration²⁵ procedure, which is conducted online with use of e-identification and e-signature, has the characteristics of a notification, as the operator can commence his activity upon its submission without having to wait for the authority's approval. Moreover, the registration procedure only differentiates between peers²⁶ and professionals insofar as it requires professionals to submit information regarding the name of the company and its legal representative. Additionally, professionals must register with the Chamber of Commerce and they must inform the competent Municipality of the beginning of their activity. This is only a technical difference and does not imply differentiating the actual requirements. A provider can choose to rent as a professional or non-professional in case s/he rents one or two apartments/houses, while s/he has to be a professional if s/he rents three or more apartments/houses.²⁷ For rentals by a non-professional provider, the regional regulation prescribes the maximum number of two apartments and a period of inactivity of at least 100 days a year, but this provision was declared null and void by the Administrative Tribunal of Rome.²⁸

The competent authorities have 60 days to check all the information provided and, if necessary, can take any enforcement steps. S.C.I.A. has a duration of three years.

The law does not specify the way in which the registration fees are calculated in individual cases, but in establishing the fee, the administrative costs of the procedure, the involvement of any experts and the importance of the issue should be taken into account.

Non-compliance with the registration requirement is subject to financial penalty amounting to 5,000-10,000 euro and results in immediate termination of the activity in question.²⁹

¹⁹ Article 7 of the Regional Regulation 7 August 2015 No. 8 (Extra-hotel Touristic Rental - Regional Regulation 7 August 2015 n. 8 (Extra-hotel Touristic Rentals). *Nuova disciplina delle strutture ricettive extraalberghiere*", as replaced by Article 14 of Regional Regulation 16 June 2017 No. 14 (Amendments to Regional Regulation 7 August 2015 No. 8).

²⁰ Private individuals offering services on an occasional basis, according to the Commission Communication *A European agenda for the collaborative economy*, Brussels, 02.06.2016, COM(2016) 356 final.

²¹ Art 14 of the Regional Regulation 7 August 2015 n. 8 (Extra-hotel Touristic Rentals), as replaced by Article 14 Regional Regulation 16 June 2017 No. 14 (Amendments to Regional Regulation 7 August 2015 No. 8).

²² i.e. Sportello Unico per le Attività Ricettive – SUAR or to Sportello Unico per le Attività Produttive – SUAP.

²³ Segnalazione Certificata di Inizio Attività.

²⁴ Article 14, par. 2, as replaced by Regional Regulation 16 June 2017 No. 14 (Amendments to Regional Regulation 7 August 2015 No. 8). A copy of the communication to be transmitted to the Municipality, together with the ID card, has also to be sent to the Regional Agency for Tourism to the following email address: organizzazioneufficiperiferici@regione.lazio.legalmail.it

²⁵ Article 14 Regional Regulation 7 August 2015 n. 8, as replaced by Article 14 Regional Regulation 16 June 2017 No. 14 (Amendments to Regional Regulation 7 August 2015 No. 8).

²⁶ For rentals by a non-professional provider, the regional regulation prescribed the maximum number of two apartments and a period of inactivity of at least 100 days a year, but this provision was declared null and void by the Administrative Tribunal of Rome. Article 7.2 a) of the amended Regulation 7 August 2015 n. 8 (Extra-hotel Touristic Rentals); the sentence of the Administrative Tribunal of Rome n. 6755 of 16 June 2016.

²⁷ Article 7, par. 1 of the Regional Regulation 16 June 2017 No. 14 (Amendments to Regional Regulation 7 August 2015 No. 8). See also Regional Circular 313062, 20/06/2017: http://www.regione.lazio.it/binary/rl_main/tbl_documenti/TUR_C_313062_20_06_2017.pdf.

²⁸ Article 7.2 a) of the amended Regulation 7 August 2015 n. 8 (Extra-hotel Touristic Rentals); the sentence of the Administrative Tribunal of Rome n. 6755 of 16 June 2016.

²⁹ Article 31 of the Regional Law n. 13/2007 - L.R. 6 agosto 2007, n. 13 Organizzazione del sistema turistico laziale. Modifiche alla legge regionale 6 agosto 1999, n.14 Organizzazione delle funzioni a livello regionale e locale per la realizzazione del decentramento amministrativo e successive modifiche.

MARKET ACCESS AND LIABILITY LEGISLATION - COLLABORATIVE ECONOMY PLATFORMS

NATIONAL LEVEL

IT does not have a special regime for online platforms/mobile applications in general or specifically for those active in the accommodation sector, besides the general legislation implementing the E-commerce Directive. Additionally, aside from the obligations resulting from this directive, no other specific obligations were identified.

Furthermore, the Italian law makes a distinction between “offline” and online travel agencies in terms of the applicable authorisation requirements. The differentiation is made based on the fact that an “offline” agency must comply with sector-specific authorisation framework; whilst for an online holiday rental/real estate agency, such a licencing procedure may not be in place. Tourist agencies³⁰ are required to register with the competent administrative office at regional/municipal level. Similar requirements have not been identified for online platforms.

Case law has arisen in IT regarding the conditions under which platforms which provide short-term rental services and home-swapping activities (or through which they are provided) can be held liable. The Italian Supreme Court³¹ stated that liability should not be imposed on an internet host provider in the case of breach of privacy made through the upload of a video on the internet. The Supreme Court in its legal reasoning affirmed that liability can be only with the party uploading the video and not with the online platform.

TAXATION RULES - SHORT TERM LETTINGS IN THE COLLABORATIVE ECONOMY

NATIONAL LEVEL

Italy introduced specific tax rules applicable to collaborative economy providers in the accommodation sector on 24 April 2017. Article 4 of the 24 April 2017 Financial Law specifies that collaborative economy providers (only peers and not professionals), directly or through intermediaries, such as real estate or online platforms, will be subject to a 21% flat tax rate. The online platforms will be responsible for automatically collecting the money and transferring it to the Italian Revenue Agency (i.e. *sostituto d'imposta*).³² General rules on income tax, sales tax and trade tax continue to be fully in force for the professional providers and for contracts which last more than 30 days.

For VAT, where the provider is an individual acting in a professional/commercial capacity, he/she must register for VAT and the touristic rental contract will be subject to his professional / corporate taxation.

CITY LEVEL

Both the cities of Rome and Florence apply a tourist tax per night per client of touristic facilities.

In Rome the tourist tax applicable to short term rentals is EUR 3.50 per guest (non-city residents) up to a maximum of 10 nights.³³

In Florence the tourist tax applies to every non-city resident visiting Florence and since January 2018 applies also to those who choose to experience the city on Airbnb. The tourist tax is EUR 3.00 per guest per night for a maximum of 7 nights. Airbnb will automatically collect and remit tourist tax in Florence as a reservation is made. This is due to an agreement between Airbnb and the City of Florence.

³⁰ The Regional Law 20th December 2016 No. 86, The Regional Regulation for offline travel agency dated 24 October 2008, n. 19.

³¹ In its sentence n. 5107, February 3 2014.

³² http://www.gazzettaufficiale.it/atto/stampa/serie_generale/originario.

³³ https://www.comune.roma.it/web-resources/cms/documents/informativa_condivisa_per_sito_060608.pdf: Municipal Regulation 30 March 2018, n. 32.