

TURNING THE SHARING ECONOMY INTO A FAIR ECONOMY IN VIENNA



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The "sharing economy" is frequently seen as beacon of hope promoting social responsibility and efficient use of resources. Neighbourhood gardens, private car and food sharing or Vienna's City Bikes also stand for values and attitudes that are critical of consumerism and growth orientation. This development is positive as the use of idle resources is significantly improved. But all this is not really new – just think of libraries, public swimming pools, traditional farm machinery pools or cooperatives.

By contrast, the commercial sharing economy uses "sharing instead of owning" as its business model. The massive spread of the internet and smart phones makes it possible to bring together potential providers and customers within seconds – and, what is more, on a global scale. New enterprises, for example in the field of accommodation (such as Airbnb, wimdu, 9Flats) and transport (Uber, Flynt, Checkrobin), are internet platforms allowing micro-entrepreneurs to get in contact with their customers via apps.

Regardless of the ongoing scientific discussion about the exact conceptual definition of the terms "sharing economy", "crowd working" or "on-demand economy", it is clear that it is necessary to differentiate when dealing with these phenomena. Vienna is favourable to the innovative and participatory original idea of sharing offers in the non-profit sector. In the profit-oriented sector, especially in the field of accommodation, however, numerous media reports highlight the limits and difficulties of this new type of economy. This is exactly why the City of Vienna actively addresses this topic.

WHAT ARE THE AIMS OF THE CITY OF VIENNA?

Vienna is favourable to innovative ideas – if they benefit

the people. We want that courageous entrepreneurs can do business. The limits are drawn, however, where the interests of the citizens, consumers and fair competition are affected. Vienna was guided by the following objectives in developing its strategy:

- In its RTI strategy "Innovative Vienna 2020" , Vienna welcomes innovation and new ideas if they contribute to solving problems and are in line with the needs of society. Moreover, Vienna commits to an innovative administration of the city. As a result, Vienna does not aim at regulating the sharing economy to death. Wherever regulations need to be adapted because of technological developments and Vienna has jurisdiction as a province, we will amend them. For areas in which the federal level is competent, we will enter into a dialogue with the federal government.
- In "Vienna's economic policy guidelines" , Vienna commits to fair competition and the principle of "good jobs". This means that the same rules apply to all, no matter whether business is done online or offline. It also means that social benefit fraud and dumping are unacceptable for us.
- Regulations have to be complied with, and therefore, efficient enforcement has to be ensured.
- There must be no business at the expense of the general public. Therefore, the rule for Vienna's municipal housing system is: Subletting or allowing third parties to use the rented object is not permitted under section 11 of the Tenancy Act (Mietrechtsgesetz – MRG). Likewise, there is a general ban on subletting rooms in non-profit student hostels. Non-compliance may result in the termination of the tenancy agreement. Furthermore, the housing market has to be considered, and applicable safety standards and consumer protection

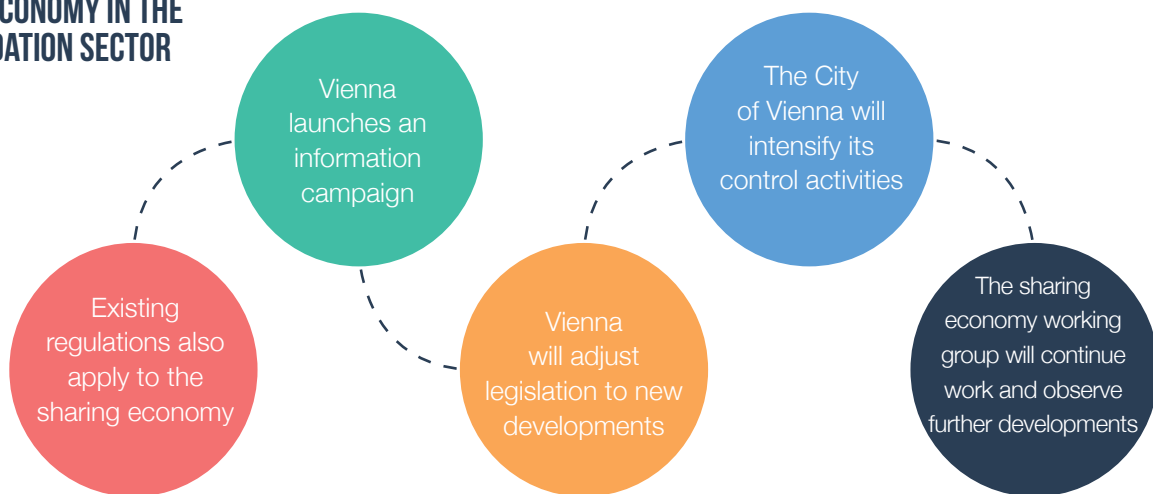
regulations are binding.

- In its Tourism Strategy 2020, Vienna commits to high-quality tourism and thereby ensures a high level of acceptance for tourism in Vienna.

VIENNA ACTS AND WILL TAKE THE FOLLOWING MEASURES

anybody staying at an accommodation undertaking or, for less than three months, in private accommodations located in the territory of Vienna against payment of a consideration (accommodation) has to pay local tax (apart from certain derogations, such as school attendance, vocational training and university students). The providers of such accommodation have to collect the local tax from the persons accommodated and pay it to the municipal administration (section 13 WTFG). For that purpose, a local tax account (Ortstaxe-konto) has

INFOGRAPHIC: FROM THE SHARING ECONOMY TO A FAIR ECONOMY IN THE ACCOMMODATION SECTOR



EXISTING REGULATIONS ALSO APPLY TO THE SHARING ECONOMY

The City of Vienna points out the existing regulations that also apply to rental transactions via platforms. For the accommodation sector, the following list illustrates some of these rules:

LOCAL TAX (ORTSTAXE)

The assessment basis of the local tax is the accommodation price according to section 12(1) of the Vienna Tourism Promotion Act (Wiener Tourismusförderungsgesetz – WTFG). Under section 11 WTFG,

to be opened with Municipal Department 6 (Accounting Services, Duties and Charges).

PROVISIONS OF TRADE LEGISLATION

There are several forms of accommodation provision, each of which is subject to specific conditions.

- Merely letting rooms as an activity that does not fall under the scope of the Trade, Commerce and Industry Regulation Act (Gewerbeordnung – GewO);
- Letting private accommodation as a secondary

domestic occupation under the terms of section 2 (1) (9) GewO 1994;

- Providing accommodation in the form of a bed & breakfast establishment as an unregulated trade – section 111 (2) (4) GewO 1994;
- Providing accommodation as a regulated trade.

THE APPLICABLE REGULATIONS HAVE TO BE COMPLIED WITH

- The question whether subletting is permitted at all (in no case in the municipal housing system according to section 11 MRG and at non-profit student hostels) has to be clarified by the tenant with his/her landlord. Owners of apartments should act in line with the rulings of the Supreme Court, i.e. the consent of all other apartment owners has to be obtained under certain circumstances.
- Applicable provisions of registration law have to be observed.
- Tax regulations (income tax, value-added tax) have to be respected as taxes on the income generated must be paid at any rate.
- Monthly accommodation statistics have to be filed with Municipal Department 23 (Economic Affairs, Labour and Statistics).

VIENNA LAUNCHES AN INFORMATION CAMPAIGN

The City of Vienna assumes that many private sharing economy providers, in particular providers of accommodation, are not sufficiently aware of the legal framework. Therefore, communication and information activities will be intensified on the regulations to be observed.

WWW.SHARING.WIEN.AT

information on sharing economy rules
in the accommodation sector

Vienna uses numerous information channels:

- Vienna will produce and make available an animated video in analogy with the videos on the approval of trade facilities.
- The tenants of community-owned apartments will receive information.
- They may use the diagrams supplied by us.
- Vienna will request the platforms to contribute to the relevant communication activities. Airbnb already responded to the debate in Vienna by referring to the local tax.

VIENNA WILL ADJUST INDIVIDUAL REGULATIONS TO NEW DEVELOPMENTS

The Vienna Tourism Promotion Act (WTFG) will be amended:

- Introduction of a new reporting obligation for platform operators as accommodation agencies. The data to be reported will include the name of the accommodation provider as well as the addresses of all accommodations.
- Explicit stipulation of the reporting requirement for accommodation providers obliging them to provide information on the accommodation addresses: at present, the reporting requirement applies to the management of accommodations subject to local tax.
- Section 19 WTFG currently obliges proprietors of travel agencies, transport companies, accommodation establishments, restaurants and bars, event operators under the terms of the Event Operator Act (Veranstaltungsbetriebsgesetz – Act of 24 July 1945, State Law Gazette No. 101) and licensed tourist guides to provide the information required for tourism promotion to the Vienna Tourist Board upon request. Platform operators will be included into this provision.
- Fines will be raised (420 euro at present), for example, for providers who do not register accommodations.

VIENNA WILL INTENSIFY CONTROL ACTIVITIES

- Municipal Department 6 (MA 6) will send a letter to the platform operators demanding the disclosure of data.
- MA 6 will take focused actions in Vienna.
- In case of specific suspicions, the competent authorities (in particular, MA 6 and MA 63 – Commerce and Trade, Legal Aspects of Food Safety) will closely co-ordinate their actions.

THE TOPIC OF THE SHARING ECONOMY CONTINUES TO BE ON THE AGENDA

Vienna will also address the issue proactively in future. We will actively participate in the discussion at the EU level, continue to engage in exchanges with other cities in the EU, follow the rulings of the ECJ and maintain the monitoring activities of Municipal Department 23 in order to be able to take appropriate measures, if necessary.

INNOVATION IN THE CITY – TAPPING THE POTENTIALS OF THE SHARING ECONOMY

PILOT PROJECTS WELCOME

The sharing economy will continue to develop – the possibilities offered by the new technologies are far from being fully exploited. Vienna is open to pilot projects unless they conflict with the strategic objectives of the city.

DEREGULATION – PROPOSALS WELCOME

As laid down in the coalition government agreement, the City of Vienna is open to specific deregulation requests. Regulations are not an end in themselves but serve to balance different interests. Interest groups and stakeholders will be invited to make proposals that will be examined by us.

ENABLING THE USE OF MODERN TECHNOLOGIES

Together with the federal government, we want to enable the use of modern technologies in the transport trade.

THE VIENNESE APPROACH: TRADITION AND MODERNITY

With the present strategy, Vienna steers a middle course. While some cities, such as Berlin, opted for a ban and others, like Amsterdam, entered into co-operation agreements and even organise the collection of the local tax together with platform operators, the Viennese approach combines tradition and modernity: the concept of "private accommodation provision" has stood the test of many decades. At the same time, we also want to stay a city of high quality – with regard to the quality of living, the quality of jobs and the employees' social security and protection under labour law, the protection of consumers and the quality of Vienna as a tourism destination. This requires fair competition as a basic condition. In parallel, innovations supporting those objectives are to be promoted. Vienna is open to pilot projects, regulatory simplifications and the use of modern technologies.

THE SHARING ECONOMY BACKGROUND INFORMATION

HOW DID VIENNA PROCEED?

The sharing economy is a relatively young phenomenon – and Vienna started to address it early on. The past 18 months were used well (see info box) and the interest groups affected were involved widely. Our aim is to balance different interests in order to promote a city with high quality as its trademark: quality of living,

– and subsequently broadened to include goods transport and on the other hand, the subject of tourist accommodation is on the agenda in Vienna.

The working group set up at the Chief Executive Office discussed these three sectors.

PASSENGER TRANSPORT

In this segment, UBER is the biggest provider. According to information provided by the company and the relevant division of the Vienna Economic Chamber as

INFOGRAPHIC: SHARING ECONOMY – WHAT HAS BEEN DONE SO FAR

24TH JUNE 2014

Workshop to collect information on overnight stays

OCTOBER 2014

11TH MAY 2015

Presentation of the study "The big transformers. Sharing and on-demand economy on the rise"

Award of a study contract to Europaforum Wien

JUNE 2015

2ND NOVEMBER 2015

International conference "Local Heroes & Global Players. How fair is sharing economy?" in Vienna.

Establishment of a working group at the Chief Executive Office on the initiative of Renate Brauner

UP TO 31ST DECEMBER 2015

Internal working group of the City Administration and meetings with interest and stakeholder groups (Vienna Economic Chamber, Austrian Hotel Association, Viennese Apartment Manager Association, Austrian Association of Private Accommodation Providers, VIDA trade union, Vienna Business Agency, Chamber of Labour, Tenancy Association, Vienna Tourist Board and Federal Finance Ministry) as well as talks with further experts (University of Economics and Business, VOR transport association, Europaforum Wien)

job quality, product and service quality as well as quality of the tourism destination.

THE SHARING ECONOMY IN VIENNA

In Vienna, there are mainly two phenomena that have to be highlighted and that were studied in greater detail. On the one hand, the issue of passenger transport was raised – also because of foreign media reports

well as information accessible from the website of the platforms in question, UBER co-operates with three to four licensed taxi and chauffeur service companies but not with private individuals in Vienna (i.e. the business model of "UBER Pop" with private individuals as drivers is not applied in Vienna).

GOODS TRANSPORT

The best-known platform for goods transport services currently active in the Austrian market is Checkrobin. The company itself states that it has arranged a total of 128,443 deliveries (as per 17 Feb. 2016). The

relevant division of the Vienna Economic Chamber was not able to provide figures, in particular on turnover and market share in Vienna.

ACCOMODATION

The best-known provider in the accommodation sector is Airbnb. Monitoring data are available from Municipal Department 23 – Economic Affairs, Labour and Statistics.

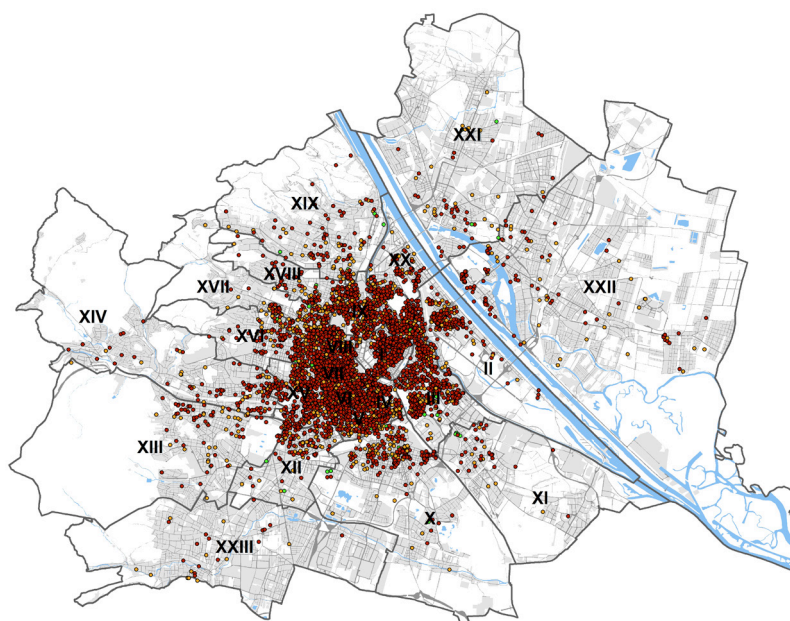
257 accommodations. Prices range from EUR 9 to EUR 1,750 and amount to approximately EUR 70 per day on average.

In substance, the idea of "living like a local" corresponds to the letting of private accommodation as a secondary domestic occupation with close contacts to the family association that has existed in Austria for decades. It is possible to let legally one's own accommodation for a limited period (e.g. during one's own

INFOGRAPHIC: ACCOMMODATION OFFERED VIA AIRBNB IN VIENNA

All accommodations offered by type of accommodation

- Entire accommodation
- Shared room
- Private room



As per January 2016, 5,618 accommodations were offered in Vienna (October 2014: 1,298, i.e. +333%). The offering developed rapidly until summer 2015 and has stagnated afterwards. Entire accommodations account for around 70%, while only 2% are shared rooms. Accommodation is mainly offered in areas of the city where tourism activities already exist (in particular in the districts Innere Stadt, Leopoldstadt, Landstraße, Margareten, Neubau, Alsergrund, Rudolfsheim-Fünfhaus). High concentration can be observed: 914 accommodations offered are already located in just 50 streets. The top-10 providers offer a total of

vacation) or part of one's own accommodation (with restrictions). At least at present, this would not conflict with increasing housing needs in a growing city.

LEGAL SITUATION A CONCISE OVERVIEW

LEGAL SITUATION IN GENERAL

PROVIDERS

On principle, it is permitted to offer and mediate services via internet platforms. Up to the "commercial threshold", this can be done without further conditions. Examples are the letting of private accommodation as a secondary domestic occupation, transportation of passengers or parcels against a minor cost contribution amounting to the kilometre allowance and similar services. With a view to fair competition, commercial activities require a business license irrespective of whether services are offered over internet platforms or in another way.

LEGAL SITUATION IN THE ACCOMODATION SECTOR

The most important regulations in this field include:

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- Providing accommodation as a regulated trade.

The question whether subletting is permitted at all (in no case in the municipal housing system according to section 11 MRG and at non-profit student hostels) has to be clarified by the tenant with his/her landlord/landlady (e.g. prohibition in the tenancy agreement). Owners of apartments should act in line with the rulings of the Supreme Court, i.e. the consent of all other apartment owners has to be obtained under certain circumstances.

In addition, applicable provisions of registration and tax law (income tax, value-added tax) have to be observed. Furthermore, monthly accommodation statistics have to be filed with Municipal Department 23 – Economic Affairs, Labour and Statistics (Tourismus-Statistik-Verordnung 2002 – Tourism Statistics Ordinance, as amended by Federal Law Gazette II No. 24/2012).

LEGAL SITUATION IN THE PASSENGER TRANSPORT SECTOR

If the commercial threshold is exceeded, the transport services relevant in this context belong to the taxi or

chauffeur service sector. After considering quality, safety and traffic requirements, the City of Vienna does not have any objections in principle that taxi or chauffeur service companies accept assignments via internet platforms. The specific regulations applying to the taxi sector (e.g. taximeters) and the chauffeur service sector (e.g. locations where passengers may be picked up, obligation to return to the proprietor's establishment) are laid down in the Viennese Operating Regulations for Taxis, Chauffeur Services and Guest Transfers (Wiener Taxi-, Mietwagen- und Gästewagen-Betriebsordnung). Moreover, taximeters must be calibrated in line with current legislation (section 8 of the Metrology Act — Maß- und Eichgesetz).

LEGAL SITUATION IN THE GOODS TRANSPORT SECTOR

The carriage of goods on motor vehicles or motor vehicles with trailers that have a maximum total permissible weight not exceeding 3,500 kg is an unregulated trade ("Güterbeförderung mit Kraftfahrzeugen oder Kraftfahrzeugen mit Anhängern, deren höchst zulässiges Gesamtgewicht insgesamt 3.500 kg nicht übersteigt"). These "small transporters" have to comply with the applicable regulations of the Law on the Carriage of Goods by Road (Güterbeförderungsgesetz), such as entry of "zur Verwendung für die gewerbsmäßige Beförderung bestimmt" (to be used for commercial transport) in the registration certificate and the obligation to carry an authenticated copy of their record in the Austrian Business Information System (GewerbeinformationsSystem Austria — GISA; trade licence). If the commercial transport of goods is not carried out by means of motor vehicles but, for example, on foot or by bicycle, a trade licence is required, too. In such cases, the unregulated trade of "courier service" could be used.

According to the general consensus, the consideration

paid for the non-commercial transport of parcels must not exceed the official Austrian kilometre allowance. Ultimately, the intention of making a profit will have to be assessed on a case-by-case basis. The City of Vienna does not have any objections to the acceptance of such transport assignments via internet platforms.

SOURCE DIRECTORY

¹ <http://www.nnovation2020.wien.at>

² <https://www.wien.gv.at/wirtschaft/standort/wipo-leitlinien-2015.html>

³ <http://www.tourismusstrategie2020.wien.info/>

⁴ Eine Stadt, zwei Millionen Chancen. Das rot-grüne Regierungsübereinkommen für ein soziales, weltoffenes und lebenswertes Wien.

⁵ Download <https://www.wien.gv.at/statistik/pdf/big-transformers.pdf>

⁶ Conference documentation:

<https://www.wien.gv.at/wirtschaft/standort/peer-economy-konferenz.html>

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City of Vienna – Municipal Department 23
Economic Affairs, Labour and Statistics
Meiereistraße 7/sector B
1020 Wien/Vienna