

## OFFERING HOLIDAY HOMES ONLINE AND NEW DATA PRIVACY PROVISIONS CHECKLIST

- There are certain points you should note when you offer your holiday home(s) online:
- Your website should include a legal notice (publication information) stating who owns the website, with the owner's address (mailing address) and his email address. If you have a company identification number (*Unternehmensidentifikationsnummer* – UID) it should also be included. In case the property is listed in the Commercial Register, please include the responsible commercial registry and the Commercial Register number. The same applies to VAT numbers. This type of information creates additional confidence. – If the website is directed at guests from abroad, this information, to the extent available, should unquestionably be provided. Additionally, it should also indicate who is responsible for the content of the website.
- A data **privacy statement** must be published. Whenever anyone visits a website, data about the visitor is regularly recorded and evaluated according to specific criteria. The data protection declaration should therefore state which data is recorded and evaluated, and for what purpose. You will find details on the website of the Federal Data Protection and Information Commissioner (FDPIC), [www.edoeb.admin.ch](http://www.edoeb.admin.ch) – Data protection – E-commerce section. You can find important information on this subject in the "New Data Protection Legislation" section below.
- If the holiday home can be booked via the website, the data protection provision must also state how this personal data is processed.
- **Advertising via email:** the following points should be noted by anyone wishing to canvass (previous) tenants via bulk email (automated sending of 30 or more emails is enough to count as bulk email, according to Philippe Barman writing in "Jusletter", 2.4.2007): mailing without explicit consent is permitted if the advertising refers to the sender's own similar rental offers. The sender must be mentioned clearly and unambiguously in the emails. The recipient must be given the option of refusing further advertising at no cost and with no problems (e.g. via a link for this purpose in the email).
- Email advertising may be sent to prospects who have not yet booked only if they have explicitly stated their agreement to this in advance, e.g. by an explicit order or by clicking on a box for this purpose on the website. It is advisable to use the "double opt-in" method. After the prospect has ordered the newsletter, he receives an email to this effect which contains a link; he has definitely subscribed to the newsletter only after this link has been confirmed. The registration box must state which products and services are advertised in the newsletter (for example: "our services together with interesting tourism / cultural information about our region". It must also be mentioned that the registration data will be used to send the newsletter (only such data as is

necessary for sending the newsletter should be entered/recorded). It must also be stated that the newsletter can be cancelled at any time, with information on where this can be done.

- **Online bookings:** If the holiday home can be booked online, receipt of the booking must be confirmed to the customer immediately after the booking is placed. This confirmation of receipt must not be confused with the confirmation for the rental agreement. The confirmation of the rental agreement may also be issued later on.
- For online bookings, the **individual steps leading to the booking** must be stated in a diagram to ensure that the customer understands which step confirms the booking. And before the booking is sent off, the customer must be given the chance to review and correct all the information entered.
- The general conditions of agreement must be provided on the website in the form of a PDF file and a clearly visible link (button) must be created. The customer must be able to download and print out the conditions of agreement. In the event of an online booking, the sentence “The general conditions of the lease agreement apply” must be entered on the “booking page” (see below) prior to the button “Book: payment is required”. The customer must accept this sentence by clicking a corresponding box. The “general conditions of the lease agreement” must be provided as a link to the General Terms and Conditions to enable the customer to call up, save and/or print out the terms of the lease with a mouse click. An additional agreement for WLAN requires the same procedure. You can find information on the data privacy provision in the second section of this information sheet.
- If the rental agreement can be completed online, the customer will make an offer. According to the sample conditions of agreement, the customer is bound to such offer for five business days. This means that the lessor must accept and confirm the booking within these five business days (otherwise the customer is released from the offer).
- The booking button must be labelled with the text "Book: payment is required", even for websites purely targeting Swiss customers. See paragraph below.
- **Foreign customers:** If the website is also targeted at foreign customers and online bookings can be made via the internet, the booking button must be labelled with the text "Book: payment is required". You are advised to use this text only, due to provisions that are applicable throughout the EU. Otherwise, it is possible that no contract will be concluded.
- You should seek advice if you are "targeting your website at an international audience", i.e. by using features such as prices in euros, information on travelling to the destination from abroad, text in English, or by stating the international dialling code for the telephone number, etc.
- Correct advertisements and the booking procedure have become more complicated due to the Lugano Convention, which stipulates the competent courts in Europe, and the strict EU consumer protection provisions . This is why guidance is very important.

## **New EU data privacy legislation: important for all lessors who have guests from the EU/EEA**

The EU brought the **General Data Protection Regulation (GDPR)** into force as of 25 May 2018. This regulation is highly important for many providers of services to tourists in Switzerland. The General Data Protection Regulation is applicable to two different sets of circumstances:

**You have a website and a programme evaluates the behaviour of visitors to the site** (e.g. you have added Google Analytics or similar programmes to the site). The General Data Protection Regulation becomes applicable as soon as online visitors from the EU or EEA territories are recorded and analysed with these analytics tools. In this case, your webmaster should assist you with the data privacy provision compliant with the General Data Protection Regulation.

The second case is when **your offering** is addressed to parties resident in an EU or EEA state: e.g. prices stated in euros, or a note stating that payment may be made in euros, information on travelling from the EU into Switzerland, comments by lessees from EU and/or EEA territories, etc. Or, you work with **international booking platforms**, you post advertisements on websites of this sort or in foreign magazines, etc. Or, you advertise in Swiss publications which are targeted at potential tourists from the EU/EEA: if so, you are also subject to the General Data Protection Regulation.

The General Data Protection Regulation is applicable in all of these cases. – This still applies even if the lease agreement is governed by Swiss law.

The Swiss Tourism Federation assumes that you register bookings digitally or in a filing system (A to Z). A simple filing system (ring binder arranged in alphabetic order) is sufficient.

We advise you **not** to integrate the specimen data privacy statement **within the General Conditions to the Lease Agreement. Instead, the data privacy statement should be issued as a separate document (or at least should be appended at the end of the conditions of lease, with a different graphic presentation – different font, etc.)**. The specimen data privacy statement is designed for simple conditions and it must be adapted to your business model.

Many questions remain open regarding the General Data Protection Regulation and at present, it is impossible to foresee how the supervisory authorities and courts, etc. will handle the General Data Protection Regulation. For this reason, the Swiss Tourism Federation urgently advises you to monitor ongoing developments and to implement any adaptations yourself.

The Swiss Tourism Federation and the author have endeavoured to draw up a simple and correct specimen data privacy statement. However, there is legal uncertainty due to the many questions still remaining open and for this reason, each lessor uses the specimen data privacy statement at his own risk. Neither the Swiss Tourism Federation nor the author can be held liable for the consequences arising from use of the specimen data privacy statement. We recommend you to seek professional advice.