



European
Holiday Home
Association

European Commission
DG Internal Market, Industry, Entrepreneurship and SMEs (DG GROW)

Unit E1 – Services Directive and Policy

To: [REDACTED]@ec.europa.eu

Cc: [REDACTED]@ec.europa.eu

By email

10 February 2020

Re: The Services Directive Notification (IMI report No 92633.1) on “Draft Regulation No 1/2019 of the Formentera Island Council regulating the marketing of tourist accommodation in residential dwellings” by Spain

Dear [REDACTED],

On behalf of the European Holiday Home Association (EHHA), which is a united voice for short-term rentals, we would like to draw your attention to the Services Directive notification (IMI report No 92633.1) on “Draft Regulation No 1/2019 of the Formentera Island Council regulating the marketing of tourist accommodation in residential dwellings” (Proyecto de Reglamento 1/2019 del Consell Insular de Formentera por el cual se desarrolla la actividad de comercialización de estancias turísticas en Viviendas)¹ as notified by Spain on 11 November 2019.

The draft Regulation No 1/2019 as approved by the Formentera Island Council in January, 2019 is based on the Law 8/2012 of 19 July 2012 on tourism in the Balearic Islands and its implementing legislation which foresee excessive and restrictive measures to short-term rentals in the islands. The sector is deeply concerned that the trend to impose **discriminatory, unjustified, unproportionate and unsuitable** measures to short term rentals in the Balearic Islands continues which as a result puts in jeopardy the whole short-term rental business and at the same time consumers choice.

Although the Formentera Island Council affirms that the notified articles are not discriminatory, EHHA is convinced that the regulation does *de facto* discriminate by imposing a ban that only targets people who want to use their property rights fully and offer their dwellings for touristic uses. Moreover, the Formentera Island Council did not provide any concrete evidence or a causal link which would demonstrate that allowing: (i) persons other than the property owners, and (ii) persons that own more than three dwellings to offer short-term rental services, are a serious threat to the rights of other owners or residents of the same building. In addition, the Formentera Island Council did not demonstrate that the alleged negative externalities associated with touristic accommodations (e.g. public order problems, etc.) would be exclusively generated by the provision of short-term rental services, whereas such externalities are generally common to all kinds of accommodations. Banning or imposing restrictive policy measures with bias against short-term rental services without assessing the variety of factors that contribute to context, raises a question of suitability of the law² as targeting solely the short-term rental sector would not contribute meaningfully to overall policy goals.

¹ Proyecto de Reglamento 1/2019 del Consell Insular de Formentera por el cual se desarrolla la actividad de comercialización de estancias turísticas en Viviendas, website: <http://www.caib.es/eboibfront/es/2019/10968/620758/correccion-de-errores-del-texto-publicado-relativo>

² ECJ Case C-377/17 of 4 July 2019, website: <http://curia.europa.eu/juris/document/document.jsf?jsessionid=6CA03958B344BE806B9444D00E377B14?text=&docid=215785&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=800712>



Although the Formentera Island Council did not notify articles 2.3, 2.4, 2.5, 2.6, 5.1, 5.7, 6, 7, 8, 9, 10, 12, 13, 14, 16, 17, 21, 24, and 25 of the Draft Regulation, these provisions set a series of restrictions and limitations to the short-term rental services, that, EHHA believes, violate the EU principles such as the freedom to provide services and the freedom of establishment. These provisions impose, among others: (i) detailed requirements for short-term rentals³; (ii) time consuming registration requirements⁴; (iii) zoning and other types of similar local rules⁵; and (iv) specific requirements for STR platforms⁶.

In addition, as a sector, we would like to draw your attention to a report⁷ on the Draft Regulation No 1/2019 issued by the Spanish Competition Authority (Comisión Nacional de los Mercados y la Competencia - CNMC) on 27 June 2019:

- **Limitation of zones for some operators.** Article 2.2 of the Draft Regulation No 1/2019 indicates that vacation rentals must be located in residential dwellings (suelo residencial) only in areas declared suitable (these are defined by the Territorial Island Plan of Formentera (Plan Territorial Insular)). The CNMC considers that such limitations imposed solely to short-term rentals will “safeguard traditional tour operators, mostly present in tourist areas where these other competitors are excluded, creating geographic barriers within the local and regional market”.
- **Limitation of number of short-term rentals.** In addition to the aforementioned Territorial Island Plan, Articles 2.2, 5 and 15 limit a number of short-term rentals in residential dwellings (they had to have a residential use before 27 October 2010) to 8.504. CNMC highlighted that the number of tourist accommodation in residential dwellings has not been justified, nor the difference between the number of hotels, hostels and tourist apartments (12.081) and short-term rentals.
- **Limitation on duration of stay.** Article 2.4 limits the maximum duration of each short-term rental stay to 30 days and article 3.2.d limits the marketing of a rental in one's primary dwelling to 60 days a year. These restrictions are already noted in the Law 8/2012 on tourism in the Balearic Islands. The CNMC recommends to re-think these limitations through the necessary regulatory adjustments.
- **Authorization scheme.** Article 12 notes that the short-term rental activity is subject to a formal declaration to initiate the activity, however, CNMC highlights that there are several other requirements in addition to fulfil that turns the declaration into an authorization regime.
- **Limitation of number of authorizations by the same owner.** Article 18.2 notes that the same owners cannot submit another formal declaration to initiate a short-term rental activity if they are also owners of three houses already marketed as short-term rentals. CNMC considers that such limitation has not been justified properly.

³ Articles 6, 7, 25 of the Draft Regulation (e.g., number of bathrooms dwellings have to have, requirements to have water sensors that impede leakage of water, type of light bulbs, provision of a first kit aid, type of plants dwellings may have, etc.).

⁴ Articles 9, 10, 11, 12, 13, 16, 17, 18, 24 of the Draft Regulation (registration consists of submitting a statement of responsibility, which has to be accompanied by a number of ancillary documents and certificates).

⁵ Articles 2, 3, 5, 8 of the Draft Regulation (e.g., limitations to certain seasons of the year, requirement for STR to have an access directly from the public domain).

⁶ Articles 21 and 22 of the Draft Regulation (e.g., platforms are held liable for any STR advertisement which does not display the registration number)

⁷CNMC. IPN/CNMC/019/19 Informe sobre el Proyecto de Reglamento del Consell Insular de Formentera por el que se desarrolla la actividad de comercialización de estancias turísticas en viviendas. Website: https://www.cnmc.es/sites/default/files/2576500_11.pdf



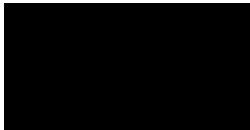
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- **Requirement for marketing companies.** According to the article 21, marketing companies must have a civil liability insurance of a minimum amount of 300,000€ and they must designate an address in the island different to the marketed dwellings. CNMC considers that a high amount of the insurance is not justified and the obligation to designate the address in the island violates the EU freedom to provide services.
- **Further quality requirements for short-term rentals.** Articles 6, 10 and 11 establish very specific obligations on what kind of equipment have to be present in short-term rentals (for example, a toaster or a specific number of forks). CNMC highlights that such exhaustive obligations to presumably keep up the quality are not justified and limit the existence of different types of accommodation with different facilities and prices. CNMC is convinced that such obligations create market access barriers and limit the choice for consumers.

In the light of the above, EHHA is concerned that the Draft Regulation No 1/2019 further deepens the existing unjustified and unproportionate measures to short term rentals in the islands and in this regard impedes the proper functioning of a fair competition.

We remain open at your disposal should you have any questions.

Yours sincerely,



, EHHA