

4th 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

Deutscher Ferienhausverband thanks for the opportunity to comment on the Draft Regulation No1/2019 of the Formentera Island Council.

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. We are deeply concerned that the trend to impose **unjustified** and **unproportionate** 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, as further regulation will presumably lead to a decrease of short term rentals as an affordable and popular accommodation that is especially attractive to families.

As a sector, we would like to draw attention to a report¹ 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 which points out the problems these regulations might cause.

- **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”.** The Deutscher Ferienhausverband sees this as an unproportionate regulation on vacation rentals which is a threat to competition and fair access to the 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 which would be another unproportionate effect.**
- **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.**
- **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.**

Deutscher Ferienhausverband agrees with the concerns listed in the statement by the CNMC. In the light of the above, we are 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.**