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**EXECUTIVE REPORT ON THE
REGULATORY IMPACT ANALYSIS
OF THE DRAFT DECREE OF THE
COUNCIL OF MINISTERS AMENDING
DECREE 79/2014 OF 10 JULY 2014,
REGULATING TOURIST
APARTMENTS AND DWELLINGS IN
THE COMMUNITY OF MADRID.**

EXECUTIVE SUMMARY SHEET

Proposing Body	Ministry of Culture, Tourism and Sports/ Directorate General for Tourism and Hospitality	Date	June 2025
Title of the Regulation	Draft Decree of the Governing Council amending Decree 79/2014 of 10 July 2014, of the Governing Council, regulating tourist apartments and dwellings in the Community of Madrid.		
Type of report	Executive ☒ Extended ☐		
TIMELINESS OF THE PROPOSAL			
	Decree 79/2014 of 10 July 2014, regulating tourist apartments and dwellings for tourist use in the Community of Madrid, facilitated the timely regulatory coverage of tourist apartments, already recognised in Law 1/1999, of 12 March 1999, concerning the Regulation of Tourism in the Community of Madrid, and concerning the new arrangement of accommodation of dwellings for tourist use. Several years after its publication, difficulties were noted in the application of some of the articles of Decree 79/2014 of 10 July 2014, and furthermore judicial rulings were handed down that affected its content. Therefore that Decree was amended by Decree 29/2019 of 9 April 2019. Following this amendment, various judgements of the High Court of Justice of Madrid annulled part of the content of certain provisions of Decree 79/2014 of 10 July 2014.		
Objectives	The present draft decree fulfils the following objectives: - To adapt Decree 79/2014 of 10 July 2014 to the judgements of the High Court of Justice of Madrid, 794/2021 of 10 June 2021 (Ordinary Procedure 737/2019), 795/2021 of 15 June 2021 (Ordinary Procedure 1240/2019), 800/2021 of 17 June 2021 (Ordinary Procedure 735/2009) and 992/2021 of 30 July 2021 (Ordinary Procedure 743/2019), which declared the following paragraphs invalid: Article 2(4), the subsection containing the following text: <i>'Technicians competent to sign the Tourist Accommodation Suitability Certificate (CIVUT) shall hold a degree in architecture or technical architecture'</i>, since it introduces requirements that entail unnecessary limitations that unjustifiably restrict the entry of other operators.		



Article 17(1) and (3) in the subsection: 1 *"Owners of tourist dwellings or their representatives"*, and 3 *"The obligation to submit the declaration of responsibility will be on the owners or representatives"*, since the obligation to submit the declaration of responsibility imposed on owners of dwellings (and any representatives that these owners may have) who do not conduct the business was unjustified and contrary to the regulations governing free access to the specific business activity of providing tourist accommodation services.

Article 18(5), in the subsection: *"Owners or, where appropriate, their representatives must have civil liability insurance covering the risks to users of bodily harm, material and economic damage caused by the exercise of their business activity"*, with regard to the requirement to take out civil liability insurance covering the risks from users of bodily harm, material and economic damage caused by the exercise of their activity, insofar as this obligation is imposed on *"owners or, where appropriate, their representatives"*, when they are not, at the same time, the providers of the service.

- It is included that municipalities, within the scope of their competences, may establish limitations that observe the principle of proportionality based on compelling reasons of general interest in relation to the maximum number of dwellings for tourist use per building, referring to the environment, area, zone or time periods.
- To update the requirements for tourist apartments and dwellings, in accordance with the pronouncement of the Supreme Court Judgement 1237/2019 of 24 September 2019, Administrative Chamber, Section 3 (Appeal 2861/2018), which considers that the imposition of conditions setting standards for habitability and fitting-out of dwellings for tourist purposes is justified in order to guarantee a certain quality of the tourist product in defence and protection of users' rights.
- In order to provide greater legal certainty, this includes the prohibition of conducting the business activity of dwellings for tourist use in state-subsidised housing units, and, in the case of tourist dwellings subject to horizontal property regulations, the use of housing for tourist purposes may be approved, limited, conditioned or prohibited in the terms established in said regulations.
- Furthermore, these regulations include, for operators of the tourist accommodation business activity, the obligation to carry out only by electronic means any procedural step related to the procedure for declaration of responsibility, since, the very nature of their business activity and more specifically the current prevalence of



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	publication and marketing by electronic means, necessarily implies the availability of minimum technical and economic capacities for this purpose. - A maximum period of six months is established in the procedures for recognition of exemptions and declaration of responsibility for both tourist apartments and tourist dwellings, to decide and issue notice of the corresponding declaratory resolution that the business activity of tourist accommodation is not permissible.
Main alternatives considered	Preparation of a new draft of the regulations was considered, but in view of the articles that were intended to be amended, it is considered sufficient to amend the regulations.
CONTENT AND LEGAL ANALYSIS	
Type of regulation	Decree.
Structure of the regulation	The draft decree consists of an expository part and an operative part, consisting of a single article, with eleven paragraphs, a transitional provision and two final provisions.
Reports on the draft.	During the regulatory procedure, the draft shall be the subject of the following reports: - Report on coordination and regulatory quality of the General Technical Secretariat of the Regional Department of the Presidency, Justice and Local Administration. - Gender-based impact report of the Directorate General for Women (formerly, DG for Equality) of the Regional Department of Family, Youth and Social Affairs. - Report on the impact on children, adolescents and families of the Directorate General for Children, Family and Promotion of Childbearing of the Regional Department of Family, Youth and Social Affairs. - Report on the quality of the services, by the Directorate General for Citizen Services and Transparency of the Regional Department of the Presidency, Justice and Local Administration. - Report of the Consumer Council of the Community of Madrid. - Report of the Directorate General for Budget. - Report of the Directorate General for Human Resources. - Report of the Directorate General for Cooperation with the State and the European Union. - Reports of the General Technical Secretariats of the Regional Departments. - Report of the General Technical Secretariat of the Regional Department of Culture, Tourism and Sport. - Report of the Attorney General's Office of the Community of Madrid.



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	- Expert Opinion of the Legal Advisory Committee of the Community of Madrid.
Procedures for participation: public consultation/ public hearing and information	Pursuant to Article 5 (4) of Decree 52/2021 of 24 March, in conjunction with Article 60(4) of Law 10/2019 of 10 April 2019, concerning transparency and participation of the Community of Madrid, the directorate making this proposal has taken the view that the public consultation procedure may be dispensed with, given that the grounds set out in Sections (d) and (e) of that Article are satisfied: d) If it does not impose relevant obligations on its target groups. e) When it regulates partial aspects of a subject. In compliance with Instruction 1/2024 of 23 April 2024 of the Regional Department of the Presidency, Justice and Local Administration, the Governing Council, at its session of 11 September 2024, has been informed about the content of this regulation prior to the public hearing and information procedures. The public information and hearing procedures referred to in Articles 4(2) (d) and 9 of Decree 52/2021 of 24 March 2021 and Article 60(2) of Law 10/2019 of 10 April 2019 have been completed and published on the Community of Madrid Transparency Portal from 18 September to 8 October 2024, during which period allegations were submitted. Pursuant to Article 8(e) of the Articles of Association of the Federation of Municipalities of Madrid, this Federation has received a hearing. Subsequently, and as a result of the substantial amendments to Articles 7(4), 11(1) and (4), and 17(1) and (3) of the draft decree, which are mentioned in the "content" section of this RIA report and in order to comply with the principle of transparency, the public hearing and information procedures have been resumed, for a period of fifteen working days (from 13 November to 3 December 2024 inclusive). This draft decree is subject to the procedure set down in Directive (EU) 2015/1535 of the European Parliament and of the Council, of 20 February 2018, which establishes a procedure for the provision of information in the field of technical regulations and of regulations related with information society services.
IMPACT ANALYSIS	
Compliance with the distribution of powers	Article 148.1.18a of the Spanish Constitution states that "The Autonomous Communities may assume powers in the following matters: Promotion and planning of tourism in their territories". The Community of Madrid has exclusive competence in the promotion and planning of tourism in its territory and in the promotion of the economic development of the Community of Madrid, in keeping with the



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	objectives set by national economic policy, pursuant to Article 26, paragraphs 1.17 and 1.21 of the Statute of Autonomy, approved by Organic Law 3/1983 of 25 February 1983.	
Economic and budgetary impact	General impact on the economy	There is no direct impact on the economy in general from the content of the draft decree
	With regard to competition	☒ The Regulation has no significant impact on competition. ☐ The Regulation has positive effects on competition. ☐ The Regulation has negative effects on competition.
	With respect to administrative burdens	☐ the Regulation decreases the administrative burdens. Estimated quantification: 564,642 euros. ☐ The Regulation incorporates new administrative burdens Estimated quantification ☐ the Regulation does not affect the administrative burdens.
	With respect to budgets, the Regulation ☐ Affects the budgets of the Community of Madrid. ☒ Does not affect the budgets of the Community of Madrid.	☐ Entails an increase in public spending. ☐ Impact on personnel expenses, endowments or remuneration. ☐ Entails public revenue. ☒ It does not imply an increase in the expenditure budget.
Gender-based impact	☐ Negative. ☒ None. ☐ Positive	



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Impact on children and adolescents, and on the family	☐ Negative. ☒ None. ☐ Positive
Other impacts or considerations	Not covered.



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I. INTRODUCTION.

This RIA report has been prepared pursuant to Article 6 of Decree 52/2021 of 24 March regulating and simplifies the procedure for drafting general regulatory provisions in the Community of Madrid.

Its structure corresponds to the model for "executive report" since it has been drawn up based on the current regulations and introducing improvements in the regulation, focused on compliance with several judgements issued by the High Court of Justice of Madrid, Administrative Chamber, Section 8, and on updating the requirements for tourist apartments and dwellings for tourist use, so that the draft regulation does not result in significant impacts of an economic or budgetary nature, since there is no increase in expenditure or reduction of revenue, nor does it have a social impact, nor a gender-based impact, while also having little significant impact on administrative burdens, as can be seen throughout this MAIN.

II. AIMS, OBJECTIVES, TIMELINESS AND LEGALITY OF THE DRAFT DECREE.

1. Aims and objectives and timeliness.

This regulatory amendment is considered necessary because it establishes the essential updated regulation for the organisation of tourist apartments and dwellings for tourist use in the Community of Madrid.

It is relevant in view of its inherent public interest, since it fully complies with the judgements handed down by the High Court of Justice of Madrid, Administrative Chamber, Section 8, ruling on administrative appeals brought against Decree 79/2014 of 10 July 2014 of the Governing Council regulating tourist apartments and dwellings in the Community of Madrid.

As a result of the foregoing, those parts of the articles expressly declared invalid by those judgements are amended, as well as those articles that, for reasons of coherence and consistency, require a homogenisation of the term used, such as that of the operators conducting the tourist accommodation business activity or, where appropriate, their representatives, are amended. This improves the internal consistency of the regulation.

Moreover, this results in an updating of the requirements for tourist apartments and dwellings for tourist use, taking into account the pronouncement of the Supreme Court Judgement 1237/2019, (Administrative Chamber, Section 3), of 24 September 2019, (Appeal 2861/2019), which considers justified the imposition of conditions that set standards for the habitability and fitting-out of dwellings for tourist purposes, in order to guarantee a certain quality of the tourist product in defence and protection of the rights of users.

It should be borne in mind that the Supreme Court has indicated, for example, in its Judgement 1550/2020 of 19 November 2020 (Cassation appeal 5958/2019), that it is up to municipalities, through urban planning instruments or municipal ordinances, to introduce, where appropriate, the corresponding requirements on the compatible or complementary use of this type of dwellings or to introduce other types of sectoral limitations different from those of regional tourism planning.

In addition, the prohibitions on carrying out the activity of Tourist Dwellings are included both for dwellings subject to state-subsidised housing scheme, and for dwellings located in buildings whose statutes of the owners' association include a prohibition on economic or commercial activity.



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2. Main alternatives considered.

Regarding the possibility of drawing up a new draft decree repealing Decree 79/2014 of 10 July 2014, of the Governing Council, regulating tourist apartments and tourist dwellings in the Community of Madrid, or the possibility of proceeding with its partial reform, this second option is considered to be the most appropriate, for the following reason: amendment of Decree 79/2014 of 10 July 2014, is considered sufficient to update and adapt the existing text of the regulation to the economic, social, technological and regulatory developments that have occurred in the tourism sector since its last reform and to enforce the aforementioned judicial decisions.

3. Legality of the regulation.

- Competence.

The draft legislation complies with the current legal regulations, which are established by Law 1/1999 of 12 March 1999 on Organisation of Tourism in the Community of Madrid, and the provisions of the first final provision of the aforementioned Law, which 'authorises the Government to issue as many provisions for the application and development of this Law as are necessary'.

- Competence for the approval of the regulation.

On the other hand, as stated in Article 22.1 of the aforementioned Statute of Autonomy, the Government of the Community of Madrid is responsible for the exercise of regulatory power in matters not reserved to the Assembly, and Law 1/1983 of 13 December 1983, on Government and Administration, in its Article 21 (g), attributes to this same body the exercise of regulatory power in general, as well as in cases where it is not specifically attributed to the President or to the Heads of Regional Departments

- Justification of the status of the regulation.

With regard to the regulatory status, Article 50 of Law 1/1983 of 13 December 1983, in conjunction with Article 21(g) thereof, requires the form of "Decrees of the Governing Council" for provisions of a general nature issued by that collegiate body.

- Legal nature of the draft regulation.

The draft decree is characterised by its vocation for permanence, for innovating in the legal system and for addressing many unidentified intended addressees, so that it is of the same legal nature as the administrative regulation, since it is a legal provision of a general nature dictated by the public administration and with subordinate value to the law, as is the regulation that it amends.

- Entry into force and validity.

The decree, in accordance with its first final provision, shall enter into force on the twentieth day following that of its publication in the "Official Gazette of the Community of Madrid."

It is considered necessary to establish a *vacatio legis* of twenty calendar days, to give the interested parties sufficient time for adaptation as a result of its inclusion in the draft decree, for the operators of the tourist accommodation business, the obligation to carry out only by electronic means any procedure related to the procedure of declaration of responsibility.

The draft consists of an expository part and an operative part, consisting of a single article, with a total of eleven paragraphs, a transitional provision and two final provisions.

The main amendments introduced with respect to the current regulation are as follows:

As regards references to representatives, these references are deleted, since the operators of the business can act on their own or through a representative, without having to make express mention of them in the text.

Thus, the Legal Advisory Committee, in its Expert Opinion 111/19 of 21 March on the draft Decree of the Governing Council amending Decree 79/2014 of 10 July 2014, stated that it is necessary to clarify that authorisation to represent may be granted either by law or by the consent of the person represented, by means of the legal act of power of attorney. The first scenario is legal authorisation for representation, and the second scenario is voluntary authorisation for representation. These two types of representation are referred to in Article 1259(1) of the Civil Code, which stipulates that "none may contract in the name of another without being authorised by the latter or without holding the power of their legal representation by law".

These two types of authorisation for representation have a different basis for individuals. In voluntary authorisation for representation, the representative replaces a representative who has full capacity to act when he or she is unwilling or unable to act personally; in legal authorisation for representation, on the other hand, the representative compensates for the lack of capacity to act of the individual represented that prevents him or her from acting legally on his or her own behalf, such as parental authority, guardianship, court-appointed guardian, missing person's defence and absent person's representative.

Legal entities, in addition to their legal capacity, have the capacity to act, and they act through bodies through which they express their will; this constitutes representation by a body, and it can be classified as legal authorisation for representation, because it is the law that regulates the administrative bodies. They can also voluntarily attribute their representation to a proxy, however.

Section 1. Rewording of Article 2:

Article 2, with the heading of "Definitions", is organised in accordance with the Guidelines on regulatory method, approved by the Resolution of the Governing Council of 22 July 2005; in particular, in accordance with Guideline 31, the article is divided into lower case letters, arranged alphabetically: (a), (b), (c). As regards its content, **letter (c)** defines the usual practice of tourist [accommodation] activity as follows: "The activity of providing tourist accommodation is usually carried out from the moment that the person concerned submits the mandatory declaration of responsibility for the start of business activity provided for in Articles 11 and 17, publicising this in any medium". Accordingly, it is necessary for the submission of the declaration of responsibility to be prior to the publicity.

With regard to **letter (d)**, its text is in line with Judgements 795/2021 of 15 June 2021 and 800/2021 of 30 July 2021 of the High Court of Justice of Madrid, Administrative Chamber, Section 8, which declared the last paragraph, relating to the Tourist Accommodation Suitability Certificate (CIVUT), to be invalid, which stated the following: "The technicians competent to sign that Tourist Accommodation Suitability Certificate (CIVUT) shall hold of a degree as architect or technical architect", thus avoiding the introduction of requirements entailing unnecessary limitations that unjustifiably restrict the entry of other operators.



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Pursuant to those judgements, the requirement that the certificate be drawn up by an architect or technical architect shall be abolished, and it may be issued by a competent professional technician as soon as he or she has the technical knowledge necessary for that purpose.

It is relevant to bring up the **Judgement of the National High Court** of 28 November 2018 (Record 757/2015) ninth legal basis, which, in light of the Judgement of the Constitutional Court 143/2017 of 14 December 2017, and analysing the provisions included with the competence to issue the report on the assessment of buildings included in Law 8/2013, of 26 June 2013, on Urban Rehabilitation, Regeneration and Renewal, stated that:

'...the Autonomous Communities are therefore responsible for the regulation of technical building inspections by virtue of the competences on housing and urban planning. Therefore, after the annulment of Article 30 of the recast text of the Law on Land and Urban Regeneration, and its First Final Provision, there is no legal regulation of the State that establishes the professions that can carry out technical building inspections or regulates the qualifications that professionals must have in order to conduct technical building inspections. Therefore, there is no legal reserve for this activity in favour of any profession to carry out technical building inspections".

Pursuant to the aforementioned Judgement 795/2021 of 15 June 2021, the High Court of Justice of Madrid considers that this doctrine is entirely applicable to the present case, since there is no legal provision of the State or the Community of Madrid requiring reserve for the issuance of these certificates in favour of technical architects or architects.

Section 2. Rewording of Article 7.

Section 4 lays down a maximum period of six months for resolving and giving notice of the exemption decision, given that the procedure includes verification actions by the tourism inspectors. In addition, it is added, for greater legal certainty, that the effects of administrative silence are those set out in Article 24 of Law 39/2015 of 1 October 2015.

Thus, Article 24(1) of Law 39/2015 of 1 October 2015 establishes, as a general rule, that in procedures initiated at the request of the interested party, the expiry of the maximum period without having given notice an express decision makes it legitimate for the interested party to understand the request as upheld due to administrative silence.

Accordingly, and for these purposes, silence will mean a decision against the applicant when these procedures involve the conducting of activities that might harm the environment.

Applications for recognition of exemption from certain tourism requirements must be filed using the standardised form available on the website of the Administration of the Community of Madrid: <https://www.sede.comunidad.madrid>, and submitted together with the declaration of responsibility for the start of the activity. For legal certainty, it is established that the tourism activity is not permitted to start until the exemption is recognised.

Section 3. Rewording of Article 10.

Article 10, in its new wording, updates the minimum requirements required for each category of tourist apartments, with 4, 3 or 2 keys and with 1 key, introducing in the different sections references to lighting and ventilation, to a system of temporary shading for areas of the bedrooms and living room, to furniture and basic equipment of the bedrooms and bathrooms and to the minimum height from floor to ceiling in the bathrooms.

When lighting and ventilation are mentioned, they are accompanied by the term "adequate", and must comply with the applicable sectoral regulations pursuant to Article 5 of Decree 79/2014 of 10 July 2014.

In addition, it is only in bathrooms that the option is given, for tourism purposes, that the ventilation be direct and natural, or by ducts or by forced air,, provided that the sectoral regulations in this matter are respected, as set out in the aforementioned Article 5 of Decree 79/2014 of 10 July 2014.

Article 5 states that all sectoral regulations must be complied with, and tourist apartments that are used for an economic activity of accommodation must comply, among others, with the minimum conditions of habitability of the Technical Building Code and, where appropriate, with the urban planning regulations of the corresponding municipal development plan that require these apartments to obtain the authorisation certificate.

The authorisation for urban planning purposes with respect to conducting activities, in this case tertiary use of accommodation, is the licence or the corresponding authorisation certificate (declaration of responsibility, etc.). Article 151 of Law 9/2001, of 17 July 2001, on Land of the Community of Madrid, states that licences are required, without prejudice to other public interventions required by the legislation applicable to these apartments. These are complementary, not alternative authorisations.

The minimum requirements applicable to the type of accommodation that is tourist apartments are updated in the interest of the highest quality in the provision of the accommodation service, examples of which are those mentioned in the previous paragraph, and in the interest of the protection of the rights of users, as well as of compliance with Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services on the market, and Law 20/2013 of 9 December 2013 on the guarantee of market unity.

The aim of the amendment to Article 10 is to have a positive effect on the users of tourist apartments by setting the current minimum conditions for tourist habitability that tourist apartments must meet.

It is recalled that the requirements contained in the regulation are minimal so that the operator conducting the business activity has the freedom to expand them and thus provide a greater service, thus increasing competitiveness.

In addition, it should be noted that in order to keep the aforementioned minimum requirements included in the new decree updated, the justification for the *ex post* evaluation every three years is included in this RIA report. This is because we consider that the tourism sector is highly innovative and responsive to society's habits and is therefore constantly changing, hence it seems advisable that the regulation can be subject to such an *ex post* evaluation, since assessing the results of its application can provide very relevant information of the future, thus allowing the reform of those aspects that could become outdated due to the rapid evolution of the sector.

The reasons of general interest that underpin the need to regulate the obligations and requirements of this regulation are the protection of consumers and users of tourist services. Thus, in order to protect the rights of consumers and recipients of tourism services provided in this type of establishment, we establish a series of minimum tourism requirements.

In general, these establishments are located in urban spaces, in general, in the centre of cities, and therefore they have an impact on the urban environment that must be taken into account.

It is essential that the services in the two types of accommodation be provided in compliance with the obligations and requirements contained in the regulation, while at the same time ensuring the correct conservation of the surrounding urban environment. And this conservation of the existing urban ecosystem entails peaceful coexistence with the neighbours in the environment where the establishments are located and with local businesses, which specifically characterises the urban neighbourhoods and especially neighbourhoods near the city centre.



Section 4. Rewording of Article 11.

Article 14(3) of Law 39/2015, of 1 October, on the Common Administrative Procedure of the Public Administrations, makes it possible to establish by regulation the obligation to communicate with the Administration exclusively by electronic means when the interested parties, due to their economic or technical capacity, professional dedication or other accredited reasons, have guaranteed access and availability of the precise technological means.

As a result of the above, Article 11(1) states, for the operators conducting the business activity of tourist apartments, the obligation to carry out exclusively by electronic means any procedural step related to the procedure of declaration of responsibility, since, the very nature of their activity and more specifically the current prevalence of publication and marketing of these by electronic means, necessarily entails the availability of minimum technical and economic capacities for it.

In addition, Article 11(4) establishes, among other circumstances, the impossibility of conducting the business activity of tourist accommodation if the declaration of responsibility or the documentation that is required to prove compliance with the declaration is not submitted to the directorate competent in matters of Tourism, and the maximum period of six months to resolve (respecting the principle of contradiction) and give notice on the resolution regarding the declaration; the effects of administrative silence shall be those pursuant to in Article 25 of Law 39/2015, of 1 October 2015.

Article 11(4) now reads:

4. Failure to submit the declaration of responsibility or the documentation required to prove compliance with the declaration to the Directorate General responsible for Tourism, as well as the existence of inaccuracies, falsehoods or omissions of an essential nature in the data contained therein, will determine the impossibility of carrying out the activity of tourist accommodation, from the moment that such facts are known, without prejudice to the civil, criminal or administrative responsibilities that may be incurred.

Likewise, the decision declaring such circumstances may determine that the interested party is obligated to restore the legal situation prior to the commencement of the corresponding activity, and, when relevant, that said party is not able to initiate a new procedure with the same purpose for the period determined by law.

The maximum period for giving notice of the aforementioned administrative decision shall be six months, after which, if no decision has been issued and no notice given, the effects of the administrative silence shall be those set out in Article 24 of Law 39/2015 of 1 October 2015.

Section 5. Rewording of Article 11 bis.

A new Article 11 bis has been added, which indicates the content of the declaration of responsibility for the activity of tourist apartments for the purposes laid down in Article 69 of Law 39/2015 of 1 October 2015.

Section 6. Rewording of Article 14.

Pursuant to Decree 113/2024, of 18 December 2024, of the Governing Council, which adapts the regulations of the Community of Madrid to the new terminology to refer to persons with disabilities, and abolishes the express mention of Law 8/1993 of 22 June 1993, on the promotion of accessibility and removal of architectural barriers of the Community of Madrid, given the intended permanence of the draft regulation.



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Apart from that, the heading of Article 14 has been updated to “Accessible apartments”, and the minimum number of apartments accessible to persons with disabilities has likewise been updated in accordance with the provisions of the current regulations on this matter.

Section 7. Rewording of Article 17.

Article 17(1) stipulates that operators conducting the business activity of tourist dwellings are obliged to carry out any procedural step related to the procedure for declaration of responsibility exclusively by electronic means, since the very nature of their activity, and more specifically the current prevalence of their advertising and marketing by electronic means, necessarily entails the availability of minimum technical and economic capacities for this purpose, in accordance with the provisions of Article 14(3) of Law 39/2015 of 1 October 2015.

In addition, **Article 17(4)** establishes, among other circumstances, that it is not possible to conduct the activity of tourist accommodation if the declaration of responsibility or the documentation that is required to prove compliance with the declaration has not submitted to the competent management in matters of Tourism, and the maximum period of six months to resolve (in compliance with the principle of contradiction) and to give notice of the resolution of the declaration, the effects of administrative silence being those contained in Article 25 of Law 39/2015 of 1 October 2015.

Also, in this **Article 17**, all references to owners of tourist dwellings are replaced by the reference to operators of the business activity of tourist accommodation, as a result of the judgements 794/2021 of 10 June 2021 and 992/2021 of 30 July 2021, of the High Court of Justice of Madrid, Administrative Chamber, Section 8, which declared the invalidity of Article 17(1) and (3) of Decree 79/2014 of 10 July 2014.

As indicated in Judgement 794/2021 of 10 June 2021, and by way of summary, we can indicate the following:

The reference to "owners or representatives" is not used uniformly to refer to the owners, or their representatives, of the dwellings but also, confusingly, to the operators conducting the business activity.

Such references are confusing because the legal operator does not acquire certainty - nor, therefore, legal certainty - about the precise meaning of the term or, therefore, about who is included or not included in the obligation imposed in the provisions, since it could be either the owner of the accommodation or the operator conducting the business activity or both. **The obligation contained in Article 17 (1) and (3) is not legally sound.**

The Court adds that, apart from cases in which both roles (owner of the accommodation and operator of the business activity) are held by the same person, **the defendant fails to explain why—given that it is possible to separate the role of property owner from that of business operator, each being held by different individuals—it is only the former, who is not involved in the business activity, and not the person actually responsible for carrying it out, who, under the contested provision, is required to submit the declaration of responsibility to begin the activity.** It is also the owner who would bear the consequences, either for failing to comply with this obligation—despite not even operating the business in question—or, if they did comply, for the activity not in fact meeting the requirements set out in the declaration of responsibility or those established by the applicable sectoral regulations.

It should be recalled at this point that the now contested subsection modifies the identification of those required to submit the declaration of responsibility in Decree 79/2014: in that provision it was "the owners of tourist dwellings", which identification has been replaced by the disputed mention of "the



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owners of tourist dwellings or their representatives". It should therefore be concluded that **the regulation contained in the new Decree 29/2019 is unjustifiably restrictive of the right to free access to the business activity of providing tourism services** at issue here since, **while the "owner" of a dwelling did not, in the previous regulation, have to be in the meaning of proprietor but by any other person that authorises its use or enjoyment** (that of usufructuary, to give an example that contrasts the beneficiary of enjoyment of the asset with the much more extensive status as beneficiary of the bare ownership); **the current regulation designates the owner as responsible for that activity, through the submission of the corresponding declaration, even when the owner is not the operator conducting the business activity**. Therefore, **the rights of the non-owner holding the dwelling who wishes to be, at the same time, the operator of the business activity are restricted, since the non-owner holding the dwelling may not conduct this activity professionally unless the owner of the dwelling has previously submitted the required declaration of responsibility**.

The Court adds that, in support of the above conclusion, it is necessary to attend to **the authentic interpretation of the term "declaration of responsibility"** in Article 3(9) of Law 17/2009 of 23 November 2009, which clearly **binds only the operator of the business activity** and which reads as follows: "For the purposes of this Law, the following terms and definitions apply: (...) 9. "Declaration of responsibility": the document signed by the operator of a business or professional activity in which they declare, at their own responsibility, that they comply with the requirements laid down in the regulations in force, that they have the documentation that proves this and that they undertake to maintain their compliance during the term of the activity". On the basis of the foregoing, there can be no doubt in this Chamber that **the obligation imposed by the contested decree on the owners of the dwellings (and their possible representatives), who do not operate the business activity, is unjustified and does not comply with the legislation governing free access to the specific activity of providing tourist accommodation services** at issue here.

Section 8. Rewording of Article 17 bis.

Article 17 bis has been amended, in accordance with Guideline 23 on regulation method, for reasons of consistency, since the content of the declaration of responsibility for the activity of tourist dwellings has been inserted, for the purposes laid down in Article 69 of Law 39/2015 of 1 October 2015, prior to the legal system of that regulation.

Section 9. New Article 17 ter, on the legal scheme.

Article 17 ter (1) provides that, in the case of dwellings for tourist use subject to the system provided for in the horizontal property regulations, the dedication of the dwelling to tourist use may be approved, limited, conditioned or prohibited in accordance with the terms laid down in those regulations.

The current wording of that article arises as a result of Organic Law 1/2025 of 2 January 2025 on measures relating to the efficiency of the Public Justice Service, the fourth final provision of which has amended Law 49/1960 of 21 July 1960 on Horizontal Property, in particular Article 17(12) thereof, which has been worded as follows:

12. The express resolution approving, limiting, conditioning or prohibiting the conducting of the activity referred to in Article 5(e) of Law 29/1994 of 24 November 1994 on Urban Leases, under the terms established in the sectoral tourism regulations, whether or not it entails amending the Deed of Establishment or the Articles of Association, shall require the favourable vote of three fifths of the total number of owners who, in turn, represent three fifths of the participation shares. Likewise, this same majority will be required for the resolution establishing special shares of costs or an increase in the share of common expenses of the dwelling where such activity is conducted, provided that these modifications do not involve an increase of more than 20%. These agreements shall not have retroactive effect.



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Article 17 ter (4) contains a prohibition on use of state-subsidised dwellings for tourist purposes. This prohibition derives from the regulation contained in Article 7 of Decree 74/2009 of 30 July 2009, which approves the Regulation of State-Subsidised Housing of the Community of Madrid, which establishes the following:

Article 7. Dedication

State-subsidised dwellings must be dedicated to the habitual and permanent residence of their legal occupants, and under no circumstances may they be dedicated to use as a second residence or any other use; moreover it shall not forfeit this character if its intended beneficiary, their spouse or the relatives of one or the other up to the third degree living together with the intended beneficiary exercise a profession, trade or small industry in the dwelling that is compatible with residential use, without prejudice to obtaining any mandatory licences or other authorisations.

As long as the dwelling does not remain unoccupied for more than three consecutive months per year, it is considered to be a permanent home, unless there is due cause duly authorised by the Ministry responsible for housing.

Finally, **Article 17 ter (5)** provides that municipalities, in the exercise of their urban planning powers and applying objective and clear criteria, may establish proportionate limitations for compelling reasons of the public interest, as regards the maximum number of dwellings for tourist use per building, environment, area, zone or may also define the periods of time that such dwellings will be used for tourist use.

Housing has different aspects under constitutional law and, according to the Constitutional Court itself, it has been set up subject to different areas of competence of the State, the Autonomous Communities and the municipalities.

And as stated by the Supreme Court in its Judgement 1550/2020 of 19 November 2020 (Cassation appeal 5958/2019), the municipalities are entitled, in the exercise of the power of planning, to determine the design and uses of the spaces and their facilities that make up the specific model of the city, which serve as an essential framework for coexistence.

Section 10. New Article 17 quater.

Article 17 bis is now designated as Article 17 quater, which lists requirements that must be accredited by the Tourist Accommodation Suitability Certificate (CIVUT), relating to the lighting and ventilation of the bedrooms, the living room, the kitchen and bathrooms and some type of temporary shading system that completely prevents the entry of light to adapt it to the new wording of Article 18, with the following new passages:

- a) Section (a) has been amended to add the term "sanitary" for hot water.
- b) Section (b) has been redrafted.
- c) New Sections (c) and (d) have been inserted.
- d) Sections (c), (d) and (e) have been renamed as paragraphs (e), (f) and (g).

Section 11. Rewording of Article 18 (1), (3), (4), (5) and (6).

Since of **Section 5** of Decree 79/2014 of 10 July has been declared invalid by Judgement 794/2021 of 10 June 2021 of the High Court of Justice of Madrid, Administrative Chamber, Section 8, the reference to *"the owners of tourist dwellings, where appropriate, their representatives"* is replaced by *"the operators conducting the tourist accommodation business activity"*,

This measure can also be applied to **Sections 4 and 6**, since reference was also made to *"owners of tourist dwellings, where applicable, their representatives"*.

With regard to **Section 1**, the minimum content, including its surface areas, that tourist dwellings must have for each of their rooms is included: rooms, bathrooms, living room and kitchen, in terms similar to the requirements for tourist apartments, and **Section 3** introduces the new passage on the duty to provide bed linen, tablecloths and bathroom textiles, tableware, glassware and kitchen utensils.

Regarding the updating of the minimum requirements that must be met by the classification of dwelling for tourist use, we refer to the indications above in the justification contained in this report regarding tourist apartments.

As new passages **in Section 4**, the text of the current letter (a) is replaced by that of letter (b), amending the maximum housing capacity of dwellings from the current "twenty-five square metres" to "twenty-five square metres and fifty square centimetres of floor space", thus taking into account the Ministerial Order of 29 February 1944. The maximum accommodation capacity of tourist dwellings is increased from ten square metres of floor space to twelve square metres of floor space, thus increasing the quality and comfort of accommodation.

Two convertible places with convertible beds are permitted in the living/dining room with integrated kitchen or, where appropriate, the living/dining room of the dwellings, provided that their surface area and distribution allow this, which shall be included in the calculation for the maximum capacity of the dwelling, in order to reword the passage in accordance with that already included in Article 12 of Decree 79/2014 of 10 July 2014 with respect to the capacity of tourist apartments.

Finally, **Section 5** increases the information that operators of tourist accommodation business activities must provide to tourists using the tourist dwellings, including information on municipal regulations on waste disposal and on the protection of the environment against noise and vibrations. In addition, the visible place for posting an evacuation plan for the building and the dwelling is specified, which will be on the door of said dwelling in order to reinforce the right of tourists using the property to receive useful, accurate and truthful information in accordance with the provisions of Article 8(a) of Law 1/1999, of 12 March 1999, and of the equivalent rights to which they are entitled as consumers.

A **single transitional provision** that establishes a period of three years from the entry into force of the decree for the adaptation of tourist apartments and tourist dwellings that have started their business activity by submitting a declaration of responsibility, to the provisions of Articles 10, 14, 17 quater and 18 of Decree 79/2014 of 10 July 2014.

In addition, it adds that the adaptation period of three years will not apply in cases where the establishment carries out substantial refurbishment of its facilities prior to the end of that period, and the provisions of the Decree shall instead be enforceable immediately.

A **first final provision** concerning the regulatory authorisation of the head of the competent department for tourism to issue provisions regulating secondary operational issues that do not form part of the essential core of this Decree.

And, finally, a **second final provision** containing the entry into force of the decree, which will take place 20 days after its publication in the Official Gazette of the Community of Madrid.

III. COMPLIANCE WITH THE PRINCIPLES OF GOOD REGULATION.

Below we analyse compliance with the principles of good regulation included in Article 129 of Law 39/2015 of 1 October 2015, on the Common Administrative Procedure of Public Administrations, and in Article 2 of Decree 52/2021 of 24 March 2021.



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This draft complies with the principles of necessity and effectiveness, since the reason for the general interest is to have in place in the Community of Madrid a regulatory framework for the organisation of these types of tourist accommodation that eliminates unnecessary obstacles and is agile and up-to-date in addressing the present needs of the sector and users.

By the same token, this draft complies with the principle of proportionality, since it establishes the essential regulation for the planning of tourist apartments and tourist dwellings in the Community of Madrid, and there are no other measures less restrictive of rights or that impose fewer obligations on the target groups.

Moreover, this draft complies with the principle of legal certainty, since it brings the content of the decree into line with the judgements of the High Court of Justice of Madrid, as cited *above*, pending compliance with the entirety of the rulings of that court, and thus creating a clear regulatory framework for tourism that is more easily comprehensible for businesses and users.

It also complies with the principle of transparency, since access to this regulation and to the documents specific to its drafting process is easy, universal and up-to-date because they are published on the Transparency Portal of the Community of Madrid.

As regards the principle of efficiency, it should be noted that administrative burdens are reduced, pursuant to Articles 11(1) and 17(1), which make it mandatory for operators of the tourist accommodation business or their representatives to carry out any procedural steps relating to the submission of the declaration of responsibility exclusively by electronic channels.

IV. identification of the prevailing competency title;

Article 148.1.18a of the Spanish Constitution states that "The Autonomous Communities may assume powers in the following matters: Promotion and planning of tourism in their territories".

Article 22(1) of the Statute of Autonomy of the Community of Madrid, approved by Organic Law 3/1983 of 25 February 1983, in conjunction with Article 21 (g) of Law 1/1983 of 13 December 1983 on the Government and Administration of the Community of Madrid, indicates that the Government of the Autonomous Community of Madrid is responsible for executive and administrative functions, as well as the exercise of regulatory powers.

The Autonomous Community of Madrid has exclusive competence to promote the economic development of the Community of Madrid, within the objectives set by the national economic policy and with regard to the promotion and planning of tourism within its territory, pursuant to Article 26 (1.17) and (1.21) of that Statute.

Royal Decree 697/1984, of 25 January 1984, on the transfer of functions and services from the State to the Community of Madrid in the field of tourism, includes in its Annex I (b), among others, the planning of tourism activity in the Community of Madrid, as well as the regulation of the tourism industry within its territorial scope.

Article 6(f) of Law 1/1999 of 12 March 1999 establishes that, within the territory of the Community of Madrid, the head of the department responsible for tourism and, where appropriate, the head of the Directorate General for Tourism, shall be responsible for the planning of the tourism sector, which is understood to mean the regulatory power and control of the business activity.

In accordance with the aforementioned legislation, the draft decree complies with the order of distribution of competences established in the Spanish Constitution, in the Statute of Autonomy of the Community of Madrid and in the specific regulations on the matter.

In the light of the foregoing, it is established that the Community of Madrid has material jurisdiction to regulate the draft legislation.

V. REGULATIONS THAT ARE AMENDED.

The regulation that is amended is Decree 79/2014 of 10 July 2014 of the Governing Council, which regulates tourist apartments and dwellings in the Community of Madrid

VI. BUDGETARY IMPACT. ECONOMIC ANALYSIS. SOCIAL IMPACTS REQUIRED BY A REGULATION WITH LEGAL FORCE.

1. Budgetary impact.

The adoption of this regulation has no impact on the budgets of the Community of Madrid and, in particular, from the point of view of human resources, it is not clear that it has an impact on Chapter 1 of the expenditure budget of the Community of Madrid.

In any event, expenditure arising as a result of the adoption of the draft decree will be covered by the appropriations available in the current budget and those properly budgeted in future years, within the expenditure ceilings allocated to the relevant budget section.

2. Economic analysis.

The adoption of this regulation is estimated to have no significant impact on the economy, and any effects on competition in the market will occur in the context described below.

If we consider the following data on the economic and business aspects of the tourism sector in the subsector of establishments providing tourist apartments and tourist dwellings in the Community of Madrid, it should be stressed that the market that this regulation will affect has a minimum impact, in relation to its total current and potential impact.

In order to implement this adaptation, the regulation includes in its single transitional provision that tourist apartments and dwellings for tourist use that have begun their activity by submitting a declaration of responsibility, will have the period of three years from the entry into force of the decree to adapt to the provisions of Articles 10, 14, 17 quater and 18.

In this regard, consistent and uniform minimum quality requirements are established on the basis of Madrid's regional regulations and their principles of efficient economic regulation, favouring competition and market unity.

In the Community of Madrid, the offer of tourist apartments and tourist dwellings constitutes a very important part of the offer of tourist accommodation (up to 34% of the total places available in 2023, according to data from the National Institute of Statistics, "INE").

In October 2023 (annual maximum), there were 4,847 tourist apartments available in the Community of Madrid, which represents an increase of 6.5% compared to the previous year, with a total of 13,504 places. This form of accommodation is concentrated in the capital city, with 91.4 % of the offer located in the capital.

As regards tourist demand, in 2023, 726,192 travellers were accommodated in tourist apartments, which is 9.2 % more than in 2022. Moreover, 51.9% of these travellers came from international markets. Visitors who chose this type of accommodation generated 2.4 million overnight stays in the



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Community of Madrid, with a longer average stay, while the international market accounted for 57.1% of these overnight stays.

The demand for this displays some seasonal variation, since it is lower in the winter months and in August. Regarding variation by day of the week, these apartments record occupancy rates per apartment of around 70% on average throughout the year, approaching 75% on weekends. This type of accommodation employs an average of 574 people.

For its part, the National Statistics Institute (INE) estimates that 16,970 tourist dwellings are available in the Community of Madrid, which is 7.7 % more than in 2022. These dwellings for tourist use represent 64,811 places in the Community of Madrid.

As regards the tourism demand for this type of accommodation, it is estimated that in 2022 (most recent available data) visitors accommodated in tourist dwellings registered 7.6 million overnight stays, of which 68.7 % were from international markets.

Thus, the demand for accommodation in tourist apartments and dwellings for tourist use is very relevant for Madrid's tourism sector, accounting for 28.5% of total overnight stays in the region, and is, therefore, very relevant for Madrid's economy, since according to different studies (source: Exceltur and McKinsey), the tourism business in the Community of Madrid represents 7% of the Gross Domestic Product (GDP) of the region and generates 6.7% of employment. If the indirect and induced effect of the tourism business is taken into account, its impact on the regional economy reaches 18 %.

For purposes of illustration, it is appropriate to include in this part of the RIA report the following paragraph:

Strengths and weaknesses of the tourism sector of the Community of Madrid, plans and lines of work.

The development of the tourism policy of the Community of Madrid has as priorities in the short and medium term: (i) to advance in the implementation of a model of sustainable tourism management in the region that integrates all public and private agents in Madrid's tourism sector; and (ii) the improvement of the positioning of the Community of Madrid on the international tourism market, especially in distant markets (which is where there has historically been a greater margin for improvement, which generates greater spending on their travel and which has been most affected by the pandemic).

At the same time, it is important to continue support for tourists who reside nearby since they benefit all our tourist regions and municipalities.

Below we will present the main strengths and weaknesses of the Madrid tourism sector.

In terms of strengths, the following should be noted: (i) the quality and variety of the tourist offerings associated with urban tourism (museums, cultural and leisure options, shopping tourism, gastronomic tourism, etc.); (ii) the quality and variety of the tourist offerings in destinations other than the capital (natural spaces, nature tourism, active tourism, sports tourism, wine tourism, etc.); (iii) the capacity and quality of the tourist accommodation offerings, especially in the hotel segment (more than two thirds of the hotel beds in the region correspond to four- and five-star establishments); (iv) the positioning and outstanding offerings as a tourist destination for congresses and meetings at the international level, as well as in the international trade fairs sector; (v) the perception on international markets of being a safe destination and high competitiveness in terms of quality – the price of tourist services compared to the main European destinations; (vi) the excellent air links with the main European markets of origin, and also with North American and Ibero-American markets; (vii) the excellent air links with the main national



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markets of origin, and Madrid's status as the central hub of the Spanish high-speed rail network; (viii) the greatest attraction of tourist investments among Spanish destinations in recent years and one of the foremost destinations in this regard on the European context; (ix) the international leadership in the tourism recovery process after the impact of the pandemic on the sector, as well as national leadership in terms of the average daily expenditure by foreign tourists; and (x) as well as numerous tourist projects under development that will further enrich the offerings and the positioning of the destination (cultural, hotels, sports, leisure offerings, air links, etc.).

On the other hand, the weaknesses of the tourism sector in the Community of Madrid include the following: (i) insufficient air links with the main Asian source markets (China, Japan and South Korea); (ii) the need for greater diversification of source markets as there is still a great dependence on the national and European market; (iii) the need to improve the positioning as a tourist destination on distant international source markets (Middle East, Asia and America); (iv) the difficulty of filling different types of positions in the hotel and hospitality sector; (v) the need and desirability of increasing tourist flows to the rest of the municipalities and tourist regions of the Community; (vi) a certain degree of seasonal nature of demand - despite the favourable trend during recent years, with less business activity during the summer months and January and February; and (vii) the growth capacity of the average stay at the destination, both for domestic and international tourists.

To address the weaknesses and needs of the tourism sector in the Community of Madrid, the regional government implements different lines of action to achieve progress toward the following objectives: (i) to make progress in the definition and implementation of a sustainable tourism management model with a greater participation of the agents involved in conducting the tourist activity; (ii) to improve the positioning and raise the profile of the Community of Madrid on the national and international tourism market, making it an aspirational destination as part of a comprehensive value proposition; (iii) to enhance the value proposition of the destination and the attractiveness of the tourist offerings and services at the destination in collaboration with the tourism sector; (iv) to achieve greater revitalisation and territorial cohesion of the tourist destination Community of Madrid and improve the competitiveness and innovation in Madrid's tourism sector; (v) to balance the distribution of the tourist flows in the Community of Madrid from a territorial and seasonal standpoint; (vi) to boost the advertisement, dissemination and marketing of the destination through greater digitalisation and understanding of the tourism market; and (vii) to prioritise the attraction of tourists of high added value and increase the social and economic profitability of tourist business in the region.

In order to respond to the goals set by the regional tourism policy, different lines of work and plans have been developed in different areas such as tourism advertisement and dissemination, support for tourism companies in the region to improve their competitiveness or the design and development of plans for the revitalisation and improvement of the tourism offerings in different areas and municipalities of the Community of Madrid. The following are some of the most relevant:

With regard to tourism advertisement and marketing, different plans and actions are developed regularly, such as, for example, major online and offline advertising campaigns for the comprehensive positioning of the destination on distant international markets; sponsorship and support for major cultural and sporting events and activities that contribute to the international profile of the Community of Madrid as a tourist destination; sponsorship and support for cultural, sporting, gastronomic or leisure activities and events in different municipalities for the revitalisation and distribution of tourist flows throughout the region; specific action plans for the advertising and marketing of tourism products and services in collaboration with sector associations; product development and advertising campaigns for tourism products serving as structure in the region (World Heritage Sites in Madrid, Villas of Madrid, "CiclMadrid" Camino de Santiago in Madrid, Wine Routes in Madrid, Historic trains, etc.); specific advertising campaigns for the tourist regions of the Community of Madrid (Sierra Norte, Sierra de Guadarrama, Sierra Oeste and Las Vegas-Alcarria, link to the MadRural brand); travel programmes for familiarisation (press and tour operators) on international markets and with priority products;



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attendance at large-scale international tourism trade fairs and specialised trade fairs, workshops and marketing sessions on priority markets and with priority products; creation and marketing of tourist products and experiences at the destination in collaboration with the sector; creation of audiovisual advertising materials and publications, guides, as well as advertising material and tourist maps for Madrid's tourist products and destinations; or provision of customer services and information to tourists at different locations, among others.

Furthermore, specific plans are developed with the different municipalities and tourist areas of the Community of Madrid with the aim of improving their competitiveness on the tourism market and making progress toward the sustainable management of the destination. This work is carried out through the Regional Tourism Bureau of the Community of Madrid, which represents more than 100 Madrid municipalities. This work model translates into different product creation initiatives, the sustainable development of the territories and the promotion and positioning of our tourist regions or territories on the tourism market: Sierra Norte, Sierra de Guadarrama, Sierra Oeste, Las Vegas and Alcarria. Accordingly, different projects are being implemented that impact the sustainability of the destination and its management model, from the design and marketing of tourist products that serve to lend structure to the territory, tourist propositions through non-motorised itineraries (such as CiclaMadrid or the Camino de Santiago in Madrid), the improvement of the accessibility of the tourist offerings or encouragement of responsible tourism.

It is necessary to highlight the ongoing collaboration with the State Secretariat for Tourism on the implementation of tourism stimulation plans aimed at municipalities of the Community of Madrid through the Ordinary Programme of Tourist Sustainability Plans at Destinations, which aims to "move towards the transformation of tourist destinations towards a model based on environmental, socio-economic and territorial sustainability". These plans are intended for: (i) more iconic destinations that are becoming obsolete and (ii) rural areas that are undergoing depopulation. They have resources that have so far been barely utilised, with a tourism potential yet to be exploited.

Detection and measurement of administrative burdens.

This draft regulation has been drawn up on the basis of the principle of minimum intervention, so that it does not create any "administrative burden" for its intended recipients that is not strictly necessary.

In the draft decree, the reduction of administrative burdens, in an estimated quantity of 564,642 euros, is found in Section 1 of Articles 11 and 17, since here it includes, for the operators of the business activity of tourist accommodation or their representatives, the obligation to carry out any procedural steps related to the procedure of declaration of responsibility exclusively by electronic means.

The three factors to be taken into account for measurement of these burdens (unit cost, frequency and population) are set out as follows in accordance with the criteria set out in Annex V to the methodological guide for preparation of the RIA report (Resolution of the Governing Council of 11 December 2009) and in the document of 18 November 2009, Simplified method for measuring administrative burdens and reducing them. Shared Public Administration System:

-Unit cost:

EUR 80 (submitting an application in person).

EUR 2 (submission of an application electronically).



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-Frequency: Once.

- Population: In principle, in September 2024, the Community of Madrid had a total of approximately 11,859 registered tourist dwellings, of which approximately 7,239 are held by individuals and approximately 4,620 are held by a legal entity, which means that the total of the possible target population amounts to approximately 7,239 individuals holding tourist dwellings, as the obligation for legal entities already exists pursuant to Article 14 of Law 39/2015 of 1 October 2015.

In short, and on the basis of the foregoing, the "unit cost" for each individual holding tourist dwellings to submit to the Directorate General for Tourism an electronic rather than walk-in application would be the difference between the values of both: $€80 - €2 = €78$ in savings and the "total cost" of the aforementioned administrative burden would amount to $€564,642$ ($€78 \times 7,239$ individuals).

3. Social impacts.

The draft decree will be submitted to the report of the following Directorates General, in accordance with the current framework for the distribution of competences:

a) Gender-based impact on childhood and adolescence and on the family.

1. The gender-based impact report has been issued by the Directorate General for Women (previously, Directorate General for Equality) of the Regional Department of Family, Youth and Social Affairs, on 19 June 2024, pursuant to Article 6(1)(e) of Decree 52/2021 of 24 March 2021, in conjunction with Article 19 of Organic Law 3/2007 of 22 March 2007 for the effective equality of women and men, and Article 9(1)(b) of Decree 241/2023 of 20 September 2023 of the Governing Council, which establishes the organisational structure of the Regional Department of Family, Youth and Social Affairs.

The report states that: "After having examined the content of said draft, this Directorate General for Equality reports that there is a gender-neutral impact and that, therefore, it is not expected to have an impact on effective equality between women and men.

2. The report on the impact on children, adolescents and the family has been issued by the Directorate General for Children, the Family and the Promotion of Childbearing of the Regional Department of the Family, Youth and Social Affairs, dating from 19 June 2024, in accordance with Article 6(1)(e) of Decree 52/2021 of 24 March 2021 in conjunction with Article 22 quinquies of Organic Law 1/1996 of 15 January 1996 on the Legal Protection of Children, partially amending the Civil Code and the Law on Civil Procedure, the tenth additional provision of Law 40/2003 of 18 November 2003 on the Protection of Large Families, Article 47 of Law 4/2003 of 22 March 2003 on the Rights, Guarantees and Comprehensive Protection of Children and Adolescents of the Community of Madrid and Article 7(15) of Decree 241/2023 of 20 September 2023, of the Governing Council.

This report states that, having examined the content of this draft decree, this directorate will not comment on it, since it is considered that it does not have any impact on family, childhood and adolescence.

b) Where appropriate, other social and environmental impacts, such as impacts on equal opportunities, non-discrimination and universal accessibility for persons with disabilities and on health.

No impacts have been identified that should be reported by other directorates of the Community of Madrid, without prejudice to the fact that the general technical secretariats or other bodies, in their observations, may reveal such impacts.



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VII. PROCEDURES AND CONSULTATIONS CARRIED OUT.

Pursuant to Decree 52/2021 of 24 March 2021, this draft decree must be processed in accordance with the following procedure.

1. Public consultation.

Pursuant to Article 5 (4) (d) and (e) of Decree 52/2021 of 24 March 2021 and Article 60 (4) of Law 10/2019 of 10 April 2019 on transparency and participation of the Community of Madrid, the directorate making the proposal has decided to dispense with the public consultation procedure, given that the following reasons, stipulated in the following paragraphs of Article 5 (4), are found to apply:

d) If it does not impose relevant obligations on its target groups.

e) When regulating partial aspects of a matter, since this draft decree has as its main purpose to amend the current Decree 79/2014 of 10 July 2014, in order to fully comply with the aforementioned judicial rulings and to incorporate, in an incidental way, some technical adjustments in its articles.

2. Mandatory reports.

In this section, and given that Article 8(4) of Decree 52/2021 of 24 March 2021 provides for the simultaneous processing of all mandatory reports, the draft is subject to the following reports:

Report on coordination and regulatory quality of the General Technical Secretariat of the Regional Department of the Presidency, Justice and Local Administration.

Pursuant to Article 8(4) of Decree 52/2021 of 24 March 2021, in conjunction with Article 4 (2) thereof, with Article 25 (3) (a) of Decree 229/2023 of 6 September 2023 of the Governing Council, which establishes the organisational structure of the Regional Department of the Presidency, Justice and Local Administration, and with Article 34 of Law 11/2022 of 21 December 2022 on Urgent Measures for the Promotion of Economic Activity and Modernisation of the Administration of the Community of Madrid, the corresponding report on regulatory coordination and quality was requested through our General Technical Secretariat, which was issued on 26 June 2024.

The report makes a number of comments in relation to the wording and content of both the draft regulation and its RIA report.

Regarding the **draft decree**:

1. In the part relating to the **preamble**, the following comments have been made:

It is suggested to assess the **unification of the twenty-second paragraph with the twenty-seventh** for the justification of the principle of transparency, given the interrelationship between the two paragraphs. The following alternative text is proposed for the justification of the principle of transparency:

In accordance with the principle of transparency, the consultation and public information procedures have been carried out pursuant to Article 60(2) of Law 10/2019 of 10 April 2019 on transparency and participation of the Community of Madrid, and pursuant to Article 9 of Decree 52/2021 of 24 March 2021, and, once approved, the regulation will be published on the Community of Madrid's Transparency Portal.

We do not accept these comments, since, according to the Legal Advisory Committee of the Community of Madrid, for example, in its Expert Opinion 223/24 of 25 April, the principle of



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transparency must not be linked to the hearing and public information procedures, as these are different issues.

2. In relation to the comments on **technical quality and guidelines for regulatory method:**

In accordance with Rule 61 of the Guidelines, the following composition is suggested for Section 1 of the single article:

One. Article 2 shall read as follows:

"Article 2. Definitions.

1. Definition of "Tourist apartment": tourist apartments are deemed to be properties that consist of complex housing units equipped with facilities, amenities and services suitable for immediate occupancy, and which are intended by their owners or representative for regular use as temporary tourist accommodation and not as a permanent residence for the users, for a fee, and which comply with the operating unit principle.

[...]"

This structure is also suggested for sections Two, Four, Five and Six of the single article, and the text of the amended articles should be included in them:

Article 10. *Minimum requirements by category.*

Article 17. *Legal system.*

Article 17 bis. *Requirements recognised by the Tourist Accommodation Suitability Certificate (CIVUT).*

Article 18. *Minimum requirements and conditions.*

The comment is included.

Under Rule 102 of the Guidelines, it is suggested, as a general recommendation, to write out the numbers which can be written with three or less words. Thus, it is suggested, for example, in Article 10, to replace "4", "16", "13", "30", "12", "25", "2", "10", "11", "3", "23", "7", "10" and "21" with "four", "sixteen", "thirteen", "thirty", "twelve", "twenty-five", "two", "ten", "eleven", "three", "twenty-three", "seven", "ten" and "twenty-one".

It is also suggested to replace "m²" with "square metres".

Both comments are included.

It is also suggested to replace the British quotation marks with the Latin or Spanish ones. By way of example, the following text is proposed in the proposed wording of Article 10(1)(b):

4.- In "studio"-type apartments, the minimum surface area shall be thirty square metres of floor space.

The comment is included.

Throughout the draft decree, when Arabic ordinal numbers are used, in accordance with Rule 31 of the Guidelines, it is suggested to replace their current spelling (1st, 2nd, 3rd) with (1st, 2nd, 3rd) [N.T.- This difference does not exist in English].

The comment is included.

In accordance with Rule 69 of the Guidelines, it is suggested to review the use made of the expression "this decree" in Articles 2(4) and 17 (1).

The comment is accepted.



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3. Comments on the **title, descriptive part and operative part:**

It is suggested, in general, to simplify the wording and content of the preamble, since it contains information that in some respects may be too specialised; for example, in relation to the quotation and detailed description of three judgements of the Supreme Court, which is more typical of the RIA report, where these have already been included.

The comment is not accepted, as it is considered appropriate to maintain this for familiarity with it, and, in addition, these judgements set out the reasons for amending the draft regulation.

In the third paragraph of the descriptive part, it is suggested to replace “had as its objective” with “has as its objective”.

The comment is not accepted, since the verbal tense refers to the past because the regulation was issued in 2014 and referred at the time to the objective that it intended to achieve, and not to the present moment.

In the fourth paragraph of the preamble, it is suggested to delete, as unnecessary, “corrected by Decree 37/2019 of 23 April”.

The comment is accepted, and the clause is deleted.

The 12th paragraph of the preamble states that:

This decree clarifies that it is the different urban plans or municipal ordinances that are able to include the requirements on the compatible or complementary use of the accommodation type of tourist dwellings, or to add other sectoral limitations, while always respecting the principles of proportionality, objectivity, necessity and legal certainty. These requirements are different from those for tourism planning of the autonomous community, which refer to the conditions and requirements for the provision of this type of tourist accommodation service.

On this issue, it should be recalled that the competences of the municipalities on dwellings for tourist use are established in the corresponding legislation, that is, in Law 9/2001 of 17 July 2001, on Land of the Community of Madrid, and in the urban development plan. In this regard, for example, the Special Plan for regulating the use of tertiary services in the accommodation type, in the districts of Centro, Arganzuela, Retiro, Salamanca, Chamartín, Tetuán, Chamberí, Moncloa-Aravaca, Latina, Carabanchel and Usera, approved by Resolution of plenary of the Madrid City Council of 27 March 2019.

It is therefore suggested to review the relevance of this paragraph, since the amendment of Decree 79/2014 of 10 July 2014, is based on different areas of competence, in particular, as indicated in Section 3(1) of this report, on those areas of competence attributed to the Community of Madrid in the field of tourism.

The comment is not accepted, since the permanent nature of the different areas of competence is considered adequate to emphasise this ability to place restrictions on tourist dwellings that municipalities have with their urban planning or municipal ordinances, while always respecting the limits that the regulations establish and those indicated in case law.

It is suggested to consider abolishing the twenty-eighth paragraph of the preamble, which describes the structure of the draft, as its content is more specific to the RIA report.

The comment is not accepted, and this paragraph is maintained.



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In the last paragraph of the descriptive part, it is suggested to capitalise the word "head of regional department".

The comment is not accepted, given that, according to Expert Opinion 333/24, of 6 June: In general, in accordance with the criteria for the use of capital letters in legal texts and in accordance with the general linguistic rules of the Royal Spanish Academy, references to the regional department or head of regional department must be in lower case, although the subject matter of their competence must be expressed with an upper-case initial.

Unlike the other articles of the draft decree, where the concept of "owner" has been replaced by that of "operators conducting the business activity of tourist accommodation", the proposed wording of Article 2 (1) still retains the use of the former concept, which suggests that it should be revised.

The comment is accepted.

In the numerous precepts of the proposed wording of Articles 10, 17 and 18 in which the following concept is used, it is suggested to define more precisely the concept of "spaces that allow for their adequate lighting and ventilation", since the current wording lacks well-defined features. In this regard, doubts arise such as the following: Does this refer to windows?, is a minimum size required for such spaces, or could any opening or hole in the façades fulfil this function?, is it mandatory or is it prohibited to cover such spaces with glass, window panes or other type of enclosures?

In this sense, it is pointed out that, for example, the Urban Development Plan of Madrid establishes, in its Article 7.3.8.1, that "all the habitable areas of the dwellings will meet the condition of exterior area. The minimum surface area of the lighting spaces shall be 12 per cent (12 %) of the floor area of the habitable area.'

On the other hand, different regional regulations regarding tourist dwellings mention that the ventilation and lighting of habitable areas must be "natural", "adequate" or "sufficient", without referring to the concept of "space" (Article 6 of Decree 256/2019 of 10 October 2019 regulating tourist dwellings in the Region of Murcia; Article 11(4) of Decree 101/2018, of 3 July 2018 regulating dwellings and rooms of private homes for tourist use in the Basque Country, and Decree 3/2017 of 16 February 2017 regulating establishments in the type of accommodation of tourist dwellings in the Community of Castile and Leon).

The comment is accepted in the sense of not referring to the concept of "space" as indicated in the aforementioned regional regulations.

Similarly, it is suggested to specify whether the dimensions of the beds included in Articles 10, 17 and 18 are exact or minimum measurements.

The comment is accepted by adding "at least" in the corresponding sections, with the same criterion used in the drafting of the recent Decree 19/2023 of 15 March 2023, of the Governing Council regulating the organisation of hotel establishments in the Community of Madrid, even though the title of the aforementioned articles specifies that the requirements contained are "minimum".

We have deleted the proposed wording of Article 14 referring to Law 8/1993 of 22 June 1993, on the Promotion of Accessibility and Elimination of Architectural Barriers of the Community of Madrid, which is in force, and therefore it is suggested that this amendment be justified in the RIA report.



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Given that it is a general regulation intended to endure, this article makes a generic reference that encompasses the current regulation and also the subsequent amendments that might be made.

The proposed wording of Article 14 (5) refers to a rule laid down in national regulations by virtue of their exclusive powers: the articles of association of the owners' associations may expressly prohibit the activity of tourist accommodation, or, in general terms, prohibit economic activity. It is suggested to assess whether it can remain in the articles, since it is a national area of competence.

This provision is included in Article 17(5), not in Article 14(5). The comment is accepted, and the article is amended.

The proposed wording of Article 17(9) contains an authorisation for municipalities to "establish proportionate limitations for compelling reasons in the public interest, as regards the maximum number of dwellings for tourist use per building, environment, area, zone or time periods".

This is a provision not expressly contained in Law 1/1999 of 12 March 1999, nor in Law 9/2001, of 17 July 2001, on the Land of the Community of Madrid, so it is suggested to justify in the RIA report the introduction of this mechanism for regulation and limitation of an economic activity through a regulatory instrument.

The justification for maintaining Article 17(9) is to emphasise the municipal competence in this area, since it is urban planning or municipal ordinances that determine urban planning. In addition, the Supreme Court stated, for example, in its Judgement 1.550/2020 of 19 November 2020 (Cassation appeal 5958/2019), that the municipalities are entitled, through urban planning instruments or municipal regulations, to introduce, where appropriate, the corresponding requirements on the compatible or complementary use of this type of dwelling or to introduce other types of sectoral restrictions different from those of regional tourism planning.

In Article 18, the concepts of "'living-dining room' "and "living-dining room" are used interchangeably. [N.T.- In English, there is no difference.] It is suggested to unify the terminology used.

The comment is observed by unifying the concept of "living-dining room" in the text.

In Article 18(4)(c), as a new development compared to the current regulation, the floor space in a habitable area is increased from 10 to 12 square metres of floor space to allow for the accommodation of two more persons than those stipulated in Articles 18(4)(a) and (b). It is suggested that this amendment be mentioned and justified in the RIA report, which does not currently include any reference to this circumstance.

Increasing the requirement for habitability from ten to twelve square metres of floor space in Article 18 (4) (c) of the draft Decree is justified by establishing a ratio that improves the quality and comfort of accommodations in the establishment.

To this end, the new urban planning rules of the Madrid General Urban Development Plan (PGOUM), published on 27 November 2023 in the Official Gazette of Community of Madrid, have been observed, which incorporates a minimum accommodation programme that increases the minimum floor space for the accommodations. It should be noted that the Madrid General Urban Development Plan (PGOUM) classifies tourist dwellings as tertiary use, accommodation type, and requires them to comply with the conditions laid down for "dwellings" in the first section of Chapter 7(3) of the aforementioned plan.



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This new development strengthens the right of the users of these establishments to receive tourist accommodation service at a level of quality that is proportionate to this plan, in accordance with Article 8 (d) of Law 1/1999 of 12 March 1999 regulating the organisation of tourism in the Community of Madrid. In addition, taking into account Article 4(1)(a) of the aforementioned regulation, it is beneficial for the development and competitiveness of this business activity, since it enhances the quality of this tourist service.

In the proposed wording of Article 18, the current Section 6 is deleted, which establishes the obligation to provide tourist users, prior to the hiring of dwellings for tourist use, with information regarding the accessibility of the dwelling for tourist use.

It is suggested that this amendment be mentioned and justified in the RIA report, which does not currently include any reference to this circumstance.

Section 6 has not been deleted, but it has been considered to extend the specifications by regulating the following aspects: information relating to the accessibility of the tourist dwellings, emergency telephones, areas for restricted use, aspects relating to the use of the facilities, rooms and equipment of the dwelling, as well as the admission and existence of pets in the dwelling, restrictions for smokers, garbage disposal areas on public roads and municipal regulations on the protection of the environment against noise and vibration, evacuation plan for the building and the dwelling and the need to make official complaint sheets available to tourist users.

In the proposed wording of Article 18(1)(b), the section between "(b)" and "Bathrooms" should be deleted.

The comment has been accepted, and this section has been deleted.

As regards the **RIA report**, the following comments have been made:

1. In relation to **the EXECUTIVE SUMMARY SHEET**, all comments have been accepted, except for the suggestion of simplification of the sections "Situation that is regulated" and "Objectives that are pursued", since the target recipients of the regulation will have full knowledge of the situation that is intended to be regulated and the objectives that are intended to be achieved.
2. Suggestions have been made in relation to the **text body of the RIA report**, which have been accepted in their entirety.
3. With regard to **procedural steps**, suggestions were made that have been accepted.

Report on service quality by the Directorate General for Citizen Services and Transparency of the Regional Department of the Presidency, Justice and Local Administration.

Decree 85/2002 of 23 May 2002 regulating the systems for assessing the quality of public services and approves the Quality Criteria for Administrative Action in the Community of Madrid, stipulates in Article 4(g) that the Directorate-General for Citizen Services and Transparency is responsible, pursuant to Article 8(1) of Decree 52/2021 of 24 March 2021, Article 9(2)(f) of Decree 229/2023 of 6 September 2023, for issuing reports on new administrative procedures and, where appropriate, on standard forms, which are referred to, respectively, in Criteria 12 and 14 for Quality in Administrative Action approved by this Decree. In accordance with the aforementioned regulations, the corresponding report will be requested.

In accordance with the aforementioned regulations, the corresponding report has been requested, which was issued on 28 June 2024. In that report, the following comment was made: "(...) this



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Directorate, following the appropriate technical examination and, in the exercise of the powers laid down in the aforementioned regulations, **issues a favourable opinion** on the draft regulation referred to above".

It further adds that: "We attach forms validated by this Directorate General, which have been sent to the Agency for the Digital Administration of the Community of Madrid for their technical development".

Following the hearing and public information procedures, some adjustments of an administrative procedural nature have been added to Articles 7, 11 and 17 of the draft decree, which make it necessary to repeat the hearing and public information procedures and to request a new report.

This report was issued on 25 October 2024, with the following comment: Pursuant to Article 14(3) of Law 39/2015, the draft Order (sic) submitted for report must prove, in Articles 11(1) and 17(1), that the group of individuals for whom the order is intended has access to and availability of the electronic means necessary for the electronic processing that is imposed as mandatory.

It adds that "We have attached forms validated by this Directorate General that have been submitted to the Agency for the Digital Administration of the Community of Madrid for technical development".

According to Guideline on regulatory method No 26. Referring to the drafting criteria, it states that "The basic guiding criteria in the drafting of an article are: each article shall have one topic; each paragraph, one statement; each statement, one idea. The articles should not contain justifications or explanations, since the appropriate place for these is the descriptive part of the provision".

For this reason, this is found in the descriptive part of this draft decree and justified in this RIA report.

Report of the Directorate General for Budgets of the Regional Department of Economy, Employment and Finance.

Pursuant to Article 5(1)(k) of Decree 230/2023 of 6 September 2023 of the Governing Council, which establishes the organisational structure of the Ministry of Economy, Finance and Employment, in relation to Article 4(2)(c) of Decree 52/2021 of 24 March 2021, a budgetary impact report was requested and was issued on 21 June 2024.

In that report, said directorate **issues a favourable report** on the Draft Decree amending Decree 79/2014 of 10 July regulating tourist apartments and dwellings in the Community of Madrid.

Report of the Directorate General for Human Resources of the Regional Department of Economy, Employment and Finance.

Pursuant to Article 7 (1)(3) of Decree 230/2023 of 6 September 2023, of the Governing Council, which establishes the organisational structure of the Regional Ministry of Economy, Finance and Employment, in conjunction with Article 4(2)(c) of Decree 52/2021 of 24 March 2021, a report was requested from the aforementioned Directorate General, which was issued on 17 July 2024.

The Directorate General gave a favourable opinion on the draft Decree of the Governing Council, which amends Decree 79/2014 of 10 July 2014 of the Governing Council regulating tourist apartments and tourist dwellings in the Community of Madrid. However, it makes the following comments:

On page 13 of the RIA report, there is an error: where it read single final provision, it should instead read first final provision.

The comment is accepted, and the error is corrected on page 14.



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IV.- Impact on Chapter 1. "Staff expenditure"

The RIA report expressly states that the adoption of this regulation has no impact on the budgets of the Community of Madrid and, consequently, it is not clear that it has an impact on Chapter 1 of the budget of the Community of Madrid.

The comment is accepted and supplemented by the reference to Chapter 1.

Gender-based impact report of the Directorate General for Women (formerly, Directorate General for Equality) of the Regional Department of Family, Youth and Social Affairs.

As noted above, the following reports have been issued:

1. Gender-based impact report issued by the Directorate General for Women (formerly, the Directorate General for Equality) of the Regional Department of Family, Youth and Social Affairs of 19 June 2024, which states the following:

After having inspected the content of said draft, this Directorate General for Equality reports that there is a gender-neutral impact and that, therefore, it is not expected to have an impact on effective equality between women and men.

2. Impact report on the impact on children, adolescents and families issued by the Directorate General for Children, Family and Promotion of Childbearing of the Regional Department of Family, Youth and Social Affairs, dated 19 June 2024, which concludes by stating, that, in view of its content, no comments have been made to the draft, since it is estimated that it does not generate any impact on family, children and adolescents.

Reports of the General Technical Secretariats of the Regional Departments.

The reports of the general technical secretariats of the regional departments have been issued, pursuant to Article 4(3) of Decree 52/2021 of 24 March 2021:

Regional Department of Education, Science and Universities, on 24 June 2024. **No comments.**

Regional Department of the Presidency, Justice and Local Administration, on 26 June 2024. **No comments.**

Regional Department of Digitalisation on 26 June 2024. **No comments.**

Regional Department of Family, Youth and Social Affairs, on 27 June 2024. **No comments.**

Regional Department of Housing, Transport and Infrastructure, on 28 June 2024. **No comments.**

Regional Department of Health, on 3 July 2024. **No comments.**

Report of the General Technical Secretariat of the **Regional Department of the Environment, Agriculture and the Interior**, dated 21 June 2024, which indicates that, after consulting the directorates of said Regional Department we refer to the comments made by the **Security and Emergency Agency, Madrid 112.**

In relation to the single article, Section 5, it is proposed to introduce a new letter(f) in Article 17 bis, referring to the requirement to have at least one smoke detector in the dwelling, or one per floor, in the event that the dwelling has more than one floor.



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This proposal is included in the draft for the amendment of the Basic Fire Safety Document (DB SI) of the Technical Building Code (CTE), Section SI4, relating to detection facilities for use as "Residential Dwelling", which is still pending approval.

In view of the foregoing, it is proposed that Section 5 be worded as follows:

Five. Article 17 bis shall read as follows:

"1. The Tourist Accommodation Suitability Certificate (CIVUT) certifies compliance with the following requirements:

- a) Provision of heating and a sanitary hot and cold water supply.*
- b) Provision in the bedroom or in the bedrooms and living-dining room of spaces that allow adequate lighting and ventilation and some system of temporary shading of the spaces that completely prevents the entry of light.*
- c) Provision of adequate lighting and ventilation in the kitchen.*
- d) Provision of direct natural ventilation or ventilation by ducts or by forced air in the bathroom or bathrooms.*
- e) Provision of a manual fire extinguisher, positioned no more than 15m from the exit door.*
- f) Provision of at least one independent smoke detector per floor located on the ceiling, close to the entry to the bedrooms. More detectors may be provided, avoiding toilets and kitchen.***
- g) Provision of basic emergency signage indicating the exit door to the dwelling.*
- h) Provision of an evacuation plan for the building and for the dwelling in a visible place.*

2. The Tourist Accommodation Suitability Certificate (CIVUT) shall be available to the users of tourist dwellings.

This comment is not accepted, since if it were not included in the final text of the basic fire safety document (DBSI) of the technical building code (CTE), then we would be imposing a requirement above the sectoral regulation itself. And if it is approved at the time, it is not necessary to expressly mention it since it would apply when taking into account Article 5 of the decree currently in force that refers to all the sectoral rules that apply.

Report of the General Technical Secretariat of the **Regional Department of Economy, Finance and Employment** dated 28 June 2024, in which no comments have been made on the content of the regulation.

However, we attach the report on comments by the **Directorate General for the Economy**, issued on 25 June 2024, which states the following:

The Community of Madrid, in the exercise of its exclusive competence in the field of tourism, has a wide margin of discretion to define and regulate Tourist Dwellings within its territory, a regulation that is to be found in Decree 79/2014 of 10 July 2014 of the Governing Council.

As regards the legal system for these types of tourist offerings, the current legislation stipulates that **the activity of tourist accommodation is conducted on a regular basis from the moment that the interested party engages in advertisement by any channel**. This declaration prevents the use of the dwelling by its owner as a permanent residence, or for any other purpose other than tourist use. **It does not, therefore, provide for the compatibility of tourist and residential use.**

The draft Decree now under consideration makes the same statement as the legislation in force; namely, it includes the usual practice of marketing on tourist channels or by any other means, within the very concept of tourist dwelling, and considers that this activity is carried out on a regular basis from the submission by the interested party of the required declaration of responsibility for commencement of business activity and from its advertisement by any means. This means, for example, that a small-scale



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property owner with a second home in the Sierra de Madrid who would like to rent their dwelling on occasions and for short periods of time, from the moment they submit the declaration of responsibility for start of activity (mandatory to start renting) and advertise the dwelling by any means (electronic platform such as Airbnb or Booking, or any other, in any format), they become the owner of a dwelling for permanent tourist use.

In order to protect private property and the freedom of citizens to choose to what use to dedicate their properties, this Directorate General considers it necessary to define a new form of tourist dwelling, making its use compatible with residential use.

In this way, the owner who wishes to rent their home on a temporary basis is protected, making the start of the activity subject only to prior notification, requiring the requirements of a normal use of dwelling, always in accordance with the advertising carried out.

In addition, for both types of accommodation, it is proposed to the Department of Tourism to allow the assignment of the dwelling in its entirety or **per room**.

The foregoing comments in their entirety aim to achieve maximum competition in the tourist accommodation sector, while preserving the owner's freedom to make a profit from their dwelling in a context of legal uncertainty resulting from the recent Law 12/2023 of 24 May 2023, known as the "Law on the Right to Housing".

The comment regarding the compatibility of tourist use and residential use of the dwelling is not accepted since, according to our regulations, the accommodation service is carried out in an establishment that is a premises or an facility, understood as a unit, and furthermore the municipality would not grant a license for the economic activity of dwelling for tourist use in a dwelling with simultaneous use as habitual residence.

The noteworthy applicable legislation includes Law 1/1999 of 12 March 1999 on the organisation of tourism in the Community of Madrid, specifically:

Article 14. Definition.

Tourist establishments are premises or facilities open to the public and adapted in accordance with the applicable regulations, in which tourist services are provided.

Article 30. Principle of operating unit.

1. Companies providing tourist accommodation services shall operate under the principle of an operating unit.

2. Operating Unit means the subjection of the activity of tourist accommodation to a single business operator in each establishment or unitary set of structures, building or homogeneous part thereof, which corresponds to any of the types of accommodation provided for in this Law.

Furthermore, this Directorate General considers that it must be maintained, since, in the current regulation, Article 2 of Decree 79/2014 of 10 July 2014, defines dwellings for tourist use as those dwellings, studios, apartments or houses that, on a regular basis, furnished and equipped in conditions for immediate use, are marketed and advertised in channels of tourist offerings or by any other means of marketing or advertising, to be assigned in their entirety for the purpose of tourist accommodation and in exchange for a price. In addition, the accommodation service shall be provided on the basis of the principle of operating unit, at a price, on a professional basis and without the character of permanent residence for users, pursuant to Article 3 of that decree, adding that, in accordance with Article 6 of that decree, tourist apartments and tourist dwellings, as types of tourist accommodation, may not be used by users as permanent residence or for any purpose other than tourist accommodation.

Conversely, the comment relating to the assignment per room is not accepted, in accordance with the following explanation:

Article 1 of Law 29/1994 of 24 November 1994 on Urban Leases lays down the legal system applicable to leases of urban properties intended for housing or for uses other than housing.

Article 3 of that law includes as rental for use other than housing, among others, the rentals of urban properties concluded by season, whether summer or any other.

For its part, Article 5 identifies leases excluded from the scope of the law, including Section (e), which states that:

e) The temporary assignment of use of the entirety of a dwelling furnished and equipped in conditions for immediate use, marketed or advertised in channels of tourist offerings or by any other means of marketing or advertising, and conducted for profit, when it is subject to a specific legal system, derived from sectoral regulations for tourism.

In this respect, and with regard to the sectoral regulations for tourism of the Community of Madrid, this consists of Decree 79/2014 of 10 July 2014, which is applicable to the temporary assignment of use of the entirety of a dwelling that meet the conditions stipulated in the aforementioned Section 5 of Law 29/1994, of 24 November, since it will be the temporary assignments of partial use of dwellings that will be governed by the Law on Urban Leases.

Report of the Consumer Council of the Community of Madrid.

Pursuant to Article 28 (2) (b) of Law 11/1998, of 9 July 1998 on Consumer Protection in the Community of Madrid, the corresponding report will be requested to be issued by the Legislation Committee of that body, pursuant to Article 4 and 14(1) (a) of Decree 1/2010 of 14 January 2010, of the Governing Council, approving the Regulations of the aforementioned Law.

The Legislation Committee of the Consumer Council of the Community of Madrid, meeting by electronic means on 26 June 2024, considers that the draft assessed will have a positive effect on consumers and users, and therefore REPORTS FAVOURABLY on the Draft Decree, which amends Decree 79/2014 of 10 July 2014, regulating tourist apartments and dwellings in the Community of Madrid.

The resolution was adopted by a majority, with the representative of the business associations abstaining and the representative of the trade unions voting against.

Nevertheless, the following comments have been made on the draft decree:

1. Article 18 bis.

The amendment to Article 18 bis is positive for consumers and users, since it sets the minimum conditions of habitability that a tourist dwelling must meet, and which are very similar to those required of tourist apartments. In this regard, it specifies the beds that they must have, the adequate ventilation and lighting and the minimum height of the bathrooms at 2.2 meters.

In spite of the foregoing, and given that the regulation is amended, the obligation should be established that the tourist dwelling must have an air conditioning system, as is mandatory for all tourist apartments,



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as well as the obligation for tourist dwellings to have Wi-Fi, as is mandatory for apartments with 4, 3 and 2 keys, and, as it is proposed to require also of those with 1 key.

These comments are not accepted, given that a large number of tourist dwellings are located in the old town of cities where it is not technically possible to install air-conditioning. Moreover, there may be some tourist dwellings located in small villages in the Sierra de Madrid where there is no Wi-Fi coverage.

It is recalled, however, that the requirements contained in the standard are minimal, so that the operator conducting the business activity has the freedom to include them and thus give a greater service, increasing their competitiveness.

It is pointed out that the introduction of new requirements for tourist dwellings through the draft decree has to be very careful with the respect to the Directive 2006/123/EC on services on the internal market, and the laws guaranteeing market unity and open market. In addition, in 2023, an EU Pilot has already been proposed by the European Commission on the Tourist Accommodation Suitability Certificate (CIVUT), which inquired into whether this was also required in long-term (non-tourist) rentals despite having given a positive report on the Decree during its procedural phase.

Report of the Directorate General for Cooperation with the State and the European Union.

Pursuant to Article 4 (3) of Decree 52/2021 of 24 March 2021 of the Governing Council regulating and simplifies the procedure for drawing up general regulatory provisions in the Community of Madrid, in conjunction with Article 7 (2)(n) of Decree 229/2023 of 6 September 2023, of the Governing Council, which establishes the organisational structure of the Regional Department of the Presidency, Justice and Local Administration, the corresponding report on technical regulations was requested and was issued on 5 July 2024.

The aforementioned Directorate General reported as follows:

Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015, which establishes a procedure for the provision of information in the field of technical regulations and for rules on information society services, serves as a tool for information, prevention and dialogue in the field of technical regulations related with information society products and services. It aims to anticipate and prevent the creation of trade barriers in the internal market.

This regulation applies to all draft technical regulations, including those which include technical specifications, rules relating to services, and regulations prohibiting the manufacture, import, marketing or use of a product, or prohibiting the supply or use of a service or establishment as a service provider. In accordance with the Directive, "product" refers to any industrially manufactured product and any agricultural product, including fishery products. In relation to services, the Directive only applies to information society services defined as any service provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

A "technical specification" is a specification contained in a document which lays down the characteristics of a product such as dimensions, labelling, packaging, level of quality, conformity assessment, etc. This term also covers production methods and processes.

The Draft Decree for which the report is issued has as its purpose to amend Decree 79/2014 of 10 July 2014, of the Governing Council regulating tourist apartments and dwellings in the Community of Madrid. The text of the Decree, which was amended by Decree 29/2019 of 9 April 2019, was notified to the European Commission in accordance with the procedure laid down in the Directive on technical regulations on 17 November 2017, and the Commission assigned to it notification number 2017/527/ES. In the procedure provided for in the Directive, the European Commission requested additional information on several points of the text until, in the end, it was approved.



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The text that is submitted now includes new technical specifications, in particular in Articles 10, 17 bis and 18, concerning the technical requirements that apartments and dwellings must meet to be suitable for tourist use. It is therefore necessary to notify the European Commission of the text of the draft, as an amendment to a technical regulation under the procedure laid down in Directive 2015/1535.

In order to give the notification it is necessary to add an express reference to the notification of the regulation in accordance with the procedure set out in Directive 2015/1535. In addition, the text of the decree to be sent must be as final as possible, so that no amendments will be made that may affect its consideration as a technical regulation. In that case, a new notification would have to be made. The notification of the Decree, which is made through the Ministry of Foreign Affairs, European Union and Cooperation, must be accompanied by documentation: the text of the Decree must be sent to this Directorate General in Word and pdf format, together with the attached form duly completed, the Report justifying the amendment, as well as the reference texts of this regulation. Once the regulation has been communicated to the European Commission, a three-month "status quo" period begins in which the regulations cannot be adopted and during which both the Commission and the Member States may offer comments. After three months, once the final text has been published, it must be sent again to the Commission.

In the light of the information provided by the Directorate-General for Cooperation with the State and the European Union, once the hearing and public information procedure has been completed and this RIA report and the draft decree have been updated, the procedure for notifying the European Commission will be carried out.

3. Hearing and public information procedures.

In compliance with Instruction 1/2024, of 23 April 2024, of the Regional Department of the Presidency, Justice and Local Administration, the Governing Council, at its session of 11 September 2024, has been informed about the content of this regulation prior to the public hearing and information procedures.

Once the above procedures have been completed, the hearing and public information procedures set out in Article 4(2)(d), 9 of Decree 52/2021, of 24 March 2021, and Article 60(2) of Law 10/2019, of 10 April 2019, have been published on the Transparency Portal of the Community of Madrid from 18 September to 8 October 2024 (both inclusive), during which allegations have been submitted.

Pursuant to Article 8(e) of the Articles of Association of the Federation of Municipalities of Madrid, this Federation has received a hearing.

Subsequently, and as a result of the substantial amendments to Articles 7(4), 11(1) and (4), and 17(1) and (3) of the draft decree, which are mentioned in the "content" section of this RIA report, and in order to comply with the principle of transparency, the public hearing and information procedures were resumed, within 15 working days, which included the days from 13 November to 3 December 2024.

Within the two periods mentioned above, the following allegations/contributions have been made via the General Electronic Register of the Community of Madrid:

- 1.- City Council of Madrid.
- 2.- City Council of Valdemorillo.
- 3.- ASpace Madrid.
- 4.- AIRBNB MARKETING SERVICES, S.L.
- 5.- BOOKING.COM.



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- 6.- Professional Association of Property Administrators (CAFMADRID).
- 7.- Workers' Commissions (CCOO) of Madrid.
- 8.- AEHM – Madrid Hotel Business Association, and CEIM – Madrid Business Confederation.
- 9.- MADRID ALOJA.
- 10.- Ms. María del Mar Arce Marce Martínez.
- 11.- Consumers' and Users' Organisation (OCU).

1. CITY COUNCIL OF MADRID.

1. It is proposed to amend **Article 2(3)** of the draft decree "Definition of the regular conduct of tourism business activity", by deleting the reference to the need to advertise by any means, deleting the phrase, since advertising cannot always be proven.

RESPONSE:

The proposal is rejected, since advertising is an essential element of the legal construct of "habitual conduct of the business activity" in keeping with Article 5(e) of Law 29/1994 of 24 November 1994 on Urban Leases, which indicates the exclusion from its scope of the temporary assignment of use of the entirety of a dwelling furnished and equipped in conditions for immediate use, marketed or advertised on tourism channels or by any other method of marketing or advertising, and conducted for profit, when subject to a specific legal system, derived from sectoral regulations for tourism.

2. It is proposed to add a **new section in Article 2** of the draft decree, after the definition of the conduct of tourism activity, containing the definition of what is meant by "operator conducting the tourist accommodation activity", with the following wording: Those who conduct this business activity directly; those who submit on their own behalf a declaration of responsibility for the conduct of the activity or those who commission third parties to market this business.

RESPONSE:

The proposal is rejected since the proposed definition does not create legal certainty because it does not cover all the cases, since the operators conducting the business activity are all those who, by any valid legal authorisation, can access the business activity of providing these tourist accommodation services.

3. It is proposed that **Article 7 (2) and (4)** relating to "General exemptions" be amended to read as follows:

2. Special consideration will be given to the recognition of these exemptions for establishments located in buildings which, in whole or in part, are particularly protected due to their architectural, historical or artistic values. The recognition of these exemption shall require a mandatory report from the body responsible for the protection of historical heritage.



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4. The maximum period for notification of the express decision shall be six months. If this period elapses without decision having been issued and notified, then the effects of administrative silence shall be ...'.

RESPONSE:

The proposal in Article 7(2) is rejected, since the wording of the draft regulation on exemptions clearly refers only to the minimum requirements for tourism contained in the regional regulations on tourism, which makes it unnecessary to procure a mandatory report from an advisory body apart from the body responsible for tourism, such as the body responsible for the protection of historical heritage.

In order to emphasise the foregoing, the term "for tourism" is added to "minimum requirements" in the wording of this section.

In addition, it should be borne in mind that Article 5 of Decree 79/2014 of 10 July 2014 refers to sectoral regulations, since it is set out in Section 1 thereof that tourist apartments and dwellings for tourist use must comply with the sectoral regulations applicable to each specific matter (which is also understood to include the matter of protection of historical heritage).

With regard to Article 7(4), it is rejected as it is considered unnecessary to specify further in the draft Decree, since Law 39/2015 of 1 October 2015 on the Common Administrative Procedure of Public Administrations regulates administrative silence exhaustively. It should be borne in mind that, as a general rule, if the maximum period lapses without having been notified of an express decision, then the interested party or interested parties are justified in interpreting this as acceptance by administrative silence. However, silence shall indicate a negative decision when involving the conduct of activities that may harm the environment. It is therefore considered more appropriate to refer to Article 24 of Law 39/2015 of 1 October 2015.

4. It is proposed that **Article 11(2)** of the draft decree be amended to include the requirement that the declaration of responsibility should identify the number and date of the municipal licence authorising the conducting of the activity. This would prevent the marketing of **dwellings for tourist use** that, without having the corresponding **license**, could be registered in the aforementioned registry; thus the text would read:

2. The operators of the tourist accommodation activity or their representatives are obliged to submit to the Directorate General responsible for tourism, a declaration of responsibility for the start of the tourist accommodation activity, according to the standardised form available on the website of the Community of Madrid: <https://www.sede.comunidad.madrid>, **identifying the number and date of the municipal authorisation certificate to conduct the activity**, without prejudice to other authorisations, or reports established by the different sectoral and municipal regulations that might be applicable.

RESPONSE:

The proposal is accepted since by collecting the data of the municipal authorisation to conduct the accommodation activity it facilitates the " ex-port inspection" of the declaration of responsibility submitted.

The form has been adjusted as indicated.

5. It is proposed in **Article 17 of the draft decree:**



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- **Section 2** reiterates the reference in Article 11(2) to inclusion in the declaration of responsibility of the number and date of the municipal authorisation certificate for conducting the business activity of dwellings for tourist use.

- In **Section 3**, it is necessary to amend the wording to expressly mention the municipal authorisation certificate for conducting the business activity.

- In **Section 11**, a specific regulation must be included on the marketing of tourist dwellings, worded as follows: "The marketing channels and platforms for dwellings for tourist use must **indicate in the advertisement** the registration number in the Register of tourist enterprises of the Community of Madrid, as well as the identification number and date of the municipal licence for conducting the business activity".

RESPONSE:

The proposal in Article 17(2) is accepted.

The proposal in Article 17(3) is rejected, as the express reference to the municipal authorisation certificate for conducting the business activity is unnecessary since it is included in the mention of the "required documentation" and, moreover, it is not applicable in all cases, since it is not required in all the municipalities of the Community of Madrid.

As regards the proposal for a new Article 17(11), it is rejected, since it is outside the scope of this draft decree, since its content is incorporated into Royal Decree 1312/2024 of 23 December 2024 regulating procedure for the Single Register for Leases and creates the Single Digital Window for Leases for the collection and exchange of data relating to services for rental of short-term accommodations.

In particular, Article 6 of that Royal Decree provides that the obligations of online platforms for short-term rentals include, in letter (b), ensuring that landlords provide **the registration number** assigned to their units and that it is **clearly displayed as part of their advertisements** before allowing the rental services of the housing units to be offered on their platforms.

It should be clarified that the aforementioned registration number implies, in accordance with Royal Decree 1312/2024 of 23 December 2024, that the tourist rental unit is compliant in that it has a regional declaration of responsibility, and therefore has a registration number in the Register of tourist enterprises of the Community of Madrid, as well as, where appropriate, the municipal authorisation certificate for conducting the business activity.

6. It is proposed to add a **letter h) in Article 17 bis** of the draft decree, including an additional requirement that holding of a authorisation certificate to conduct the activity is considered as demonstrated in the Tourist Accommodation Suitability Certificate (CIVUT).

RESPONSE:

The proposal is not accepted given that, according to this draft decree, it is the regional tourist administration that must verify the availability of, where appropriate, the "authorisation certificate" for the dwelling, and not the professional technician who issues the Tourist Accommodation Suitability Certificate (CIVUT), which validates compliance with the minimum requirements for the *on-site* inspection of the dwelling and not compliance with the possession and validity of legal documents such as the aforementioned authorisation certificates.

7. It is proposed in **Article 18** of the draft decree:



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- that Section 1 include a minimum size for the areas that make up the accommodation units of tourist dwellings.

- that a final subsection be added to Section 5, reading as follows:

5. Operators of the business activity of tourist accommodation or, when applicable, their representatives must have civil liability insurance in place to cover the risks from users in terms of personal injury, material damage and economic losses resulting from the business activity. Accordingly, the civil liability insurance must cover the economic losses injuries and damage and inconvenience to third parties that are caused by anti-social behaviour of the users, without prejudice to the fact that the cost of this behaviour can be passed on to users.

- In Section 6, it is necessary to amend the sentence: "information relating to the accessibility of the tourist dwelling" by: "information relating to the accessibility conditions of the tourist dwelling" or "information relating to compliance with accessibility for the tourist dwelling".

- In addition, in Section 6, it is necessary to amend the sentence "waste disposal areas on public roads" by the following "separation of waste into the different fractions and waste disposal areas on public roads or in the building itself in compliance with municipal regulations on waste", and information on municipal regulations on the protection of the environment against noise and vibrations.

RESPONSE:

The proposal for Article 18(1) is not accepted since the minimum requirement in Section 4 of this Article is considered sufficient, since it sets out the maximum tourist accommodation capacity according to the square metres of floor space of each habitable area of the tourist dwelling, and since the tourist dwelling must also comply with its sectoral rules in order to be considered a dwelling.

With regard to the proposal for Article 18(5) concerning the requirement to take out insurance, the introduction of the proposed subsection is rejected, since considering the comment as a whole, it seems more appropriate to delete Article 18(5) of this draft decree and to add a "transversal" article to the imminent amendment to Law 1/1999 of 12 March 1999 on "civil liability insurance and other guarantees", which, pursuant to Law 17/2009 of 23 November 2009 on free access to and pursuit of service activities, applies to providers of tourist services (including tourist accommodation enterprises), as referred to in Law 1/1999 of 12 March 1999.

This new article would also complement Article 8 (g) of Law 1/1999 of 12 March 1999, which includes among the rights of users of tourist services the right to have the health and safety of their persons and the safety of their property guaranteed while in tourist facilities and services under the terms laid down in the regulations in force.

As regards the proposals for Article 18 (6), now (5), they are accepted, amending the phrases with the proposed content.

8. It is proposed to add in the **single additional provision** of the draft decree, that the results of the report will be made public through the Transparency Portal of the Community of Madrid.

RESPONSE:

The Single Additional Provision imposes on the Directorate General responsible for tourism the obligation to issue a report assessing the results of its application, in order to assess possible amendments to provisions that are outdated by the rapid evolution of the tourism sector.



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This provision is deleted as a result of a comment made by the Legal Advisory Commission in its Expert Opinion 113/2025 of 6 March 2025 on the draft decree of the Governing Council, which establishes the organisation of tourist camps and areas for the reception and overnight stay of motor homes, campers and similar vehicles in the Community of Madrid, since, insofar as it refers to an internal obligation of the Administration, a corresponding provision would not be necessary, and it would be more correct to mention it in the Report, as is the case in the present report, pursuant to Article 3(3) of Decree 52/2021, which provides that the RIA report will indicate whether the regulation should be subject to 'ex post' evaluation by the regional department promoting the regulatory initiative, as well as the terms and deadlines foreseen for carrying this out.

Therefore, since this single additional provision has been deleted, the proposal is not accepted.

9. Pursuant to Article 28 (3) of Law 40/2015, of 1 October, on the Legal System of the Public Sector, a legislative amendment would be desirable that provides greater detail and clarifies the liability arrangements in those cases in which municipal regulations on environmental protection, waste management, noise pollution and vibrations are not complied with, both for those who have declared their activity and by those who have failed to comply with this obligation and are operating in the informal sector. The draft only includes the obligation to inform about compliance with these environmental regulations, but does not specify that, in case of non-compliance, the liability of the operators of the business activity is a joint and several liability with that of the person causing the emission or disturbance with their behaviour.

RESPONSE:

The proposal for a future legal amendment is taken into consideration.

2. CITY COUNCIL OF VALDEMORILLO.

1.- In **Article 2**, it must be pointed out that there is a great deal of uncertainty at present with the term "competent professional technician", since it allows for anyone with any qualification to be regarded as such. That is why it would be advisable to specify, without alluding to any specific profession, the qualifications that may give rise to being considered a technician with sufficient professional competence.

RESPONSE:

The proposal is not accepted as it is not possible to specify a complete list with lasting value of qualifications which may give rise to being considered as a technician with sufficient professional competence.

The wording is amended as follows: professional technician competent to certify, after carrying out an *in situ* verification, that a tourist dwelling complies with the requirements laid down in Article 17 ter.

2. In the drafting of these amendments, the comment of the Safety and Emergency Agency Madrid 112 has not been accepted, namely to "provide at least one independent smoke detector per floor located on the ceiling close to the entry to the bedrooms. More detectors can be arranged, avoiding toilets and kitchen". This is because it was proposed for amendment in the basic fire safety document (DBSI) 4 that is pending approval, and since the decree refers to all the sectoral rules that apply.



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RESPONSE:

The proposal is not accepted since the aforementioned comment of the Agency for Safety and Emergencies Madrid 112 has already been given a response that is included in this RIA report. This is in light of the fact that if it were not to be included in the final text of the technical building code (CTE) basic fire safety document (DBSI), then we would be requiring a requirement above the sectoral regulation itself. And if it is approved at the time, it is not necessary to expressly mention it, since it would apply when taking into account Article 5 of our current decree that makes the reference to all applicable sectoral regulations.

3. With regard to **Article 10**, it should be noted that in the general conditions for tourist apartments (both four keys and with three and two keys) **DBHS-3 Indoor air quality of the technical building code (CTE) for dwellings does not in any case allow exclusively natural ventilation**, and ventilation must have at least the degree of hybrid. Article 3(1)(1): "Dwellings must have a general ventilation system that can be hybrid or mechanical", even in the comments it stipulates "it is not accepted that ventilation be exclusively natural in order to ensure its proper functioning at all times and to prevent its failure, for example at times of thermal inversion".

We recommend that the condition be provided for in the same way as in the technical building code (CTE) itself, i.e. hybrid or mechanical ventilation, avoiding the terms "by ducts" or "by forced air", which are more usual in the medical field than in the technical sector.

RESPONSE

The proposal is not accepted since the reference in the aforementioned article to ventilation is accompanied by the term "adequate", which is equivalent to that required in the applicable sectoral regulations pursuant to Article 5 of Decree 79/2014 of 10 July 2014, which stipulates that "Tourist apartments and dwellings must comply with the sectoral regulations applicable to the matter, in particular regulations on safety, urban planning, accessibility, health, environment and horizontal property".

In addition, it is only in the bathrooms that the option is given, for tourist purposes, that the ventilation is of a direct natural nature, or by ducts or by forced air, provided that the sectoral regulations of this matter are respected, as stated in the aforementioned Article 5 of Decree 79/2014 of 10 July 2014

4. As regards **Article 17** (this is an error, the correct citation is **Article 18**), it is proposed that, in some way, bedrooms should be limited to those spaces authorised in the original dwelling in order to ensure minimum technical conditions, since the conditions in tourist dwellings are much less stringent than those in tourist apartments, as air conditioning is not required and there is no size requirement.

RESPONSE:

The proposal is not accepted since the reference in Article 18(4) mentioning surfaces is only for tourist purposes regarding accommodation capacities that always have to be understood in conjunction with Article 5 of Decree 79/2014 of 10 July 2014, which states that all sectoral regulations must be complied with, and for tourist dwellings, even though they carry out an economic activity of accommodation, they do not cease to be dwellings and must comply, among others, with the minimum conditions of habitability in the technical building code (CTE) and, where appropriate, with the urban planning regulations of the corresponding municipal development plan.

5. As regards the **ventilation and lighting of kitchens** (including extractor hood) and bathrooms, we



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refer to the previous section requesting in this regard that the current issues of the technical building code (CTE) be complied with and that its designation as hybrid or mechanical ventilation (and not the so-called natural direct ventilation, or by ducts, or mechanical ventilation) match the CTE.

RESPONSE:

The proposal is not accepted since the reference in the aforementioned article to ventilation is accompanied by the term "adequate", which is equivalent to that required in the applicable sectoral regulations applicable pursuant to Article 5 of Decree 79/2014 of 10 July 2014.

In addition, it is only in the bathrooms that the option is given, for tourist purposes, that the ventilation is of a direct natural nature, or by ducts or by forced air, provided that the sectoral regulations of this matter are respected, as stated in the aforementioned Article 5 of Decree 79/2014 of 10 July 2014

6. With regard to **lighting, the dimensions of the lighting spaces and the dimensions of the spaces** of the dwellings would also have to be complied with, at least the requirements referred to in the Order of 29 February 1944 establishing the minimum hygienic conditions to be met by the dwellings, which would be the subsidiary regulation in force in the event that this is not established in the urban planning regulations of each municipality.

Moreover, establishing as dwellings those with less than 25 m² of floor space would contravene the aforementioned Order of 29 February 1944 establishing the minimum hygiene conditions to be met by dwellings, since the sum of surface areas of living quarters, kitchen, bedroom and toilet already gives us a floor space of at least 25.5 m².

RESPONSE:

In this regard, the Legal Advisory Commission of the Community of Madrid, in its Expert Opinion 103/18, of 1 March, on the draft Decree of the Governing Council abolishing the certificate of habitability within the Community of Madrid, states the following:

Certainly the Order of 29 December 1944 contemplates minimum hygiene conditions that constituted remarkable progress in the achievement of decent housing, which explains its validity to this day in those Autonomous Communities that have not legislated regarding the conditions of habitability of housing.

(...) the Community of Madrid is competent to establish the minimum habitability conditions for dwellings without prejudice to the municipal competences which, as laid down in Article 25(1) of the Law on the Bases for Local Regulation, are to be developed in "(...) the terms of the legislation of the State and the Autonomous Communities".

In this regard, it accepts the proposal to include in Article 18(4)(a) the dimensions of the spaces of the dwellings pursuant to Order of 29 February 1944 regulating the minimum hygiene conditions to be met by dwellings.

When lighting and ventilation are mentioned, they are accompanied by the term "adequate", and must comply with the applicable sectoral regulations pursuant to Article 5 of Decree 79/2014 of 10 July 2014. Accordingly, it has been incorporated as follows:

For dwellings between twenty-five meters and fifty square centimetres of floor space and forty square meters of floor space, up to four people in at least two habitable areas.

On the other hand, the reference in the articles to lighting and ventilation accompanied by the



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term "adequate" accords with legal certainty insofar as it is adapted by reference to the requirements of the sectoral regulations applicable at all times pursuant to Article 5 of Decree 79/2014 of 10 July 2014.

This Article 5 states that all sectoral regulations must be complied with, and as for tourist dwellings, even through they carry out an economic activity of accommodation, they are still dwellings and must comply, among others, with the minimum conditions of habitability of Technical Building Code (CTE) and, where appropriate, with the urban planning regulations of the corresponding municipal development plan.

It is necessary to mention that conducting the business activity of tourist dwellings requires a licence or declaration of responsibility, without prejudice to the other public procedures required by the applicable regulations, as has already been indicated.

The certificate of authorisation for urban planning purposes to conduct business activities, in this case tertiary use of accommodation, is the license or another similar one (declaration of responsibility, etc.). Article 151 of Law 9/2001 of 17 July 2001, on Land of the Community of Madrid, clearly states that licences are required, without prejudice to other public procedures required by the applicable regulations. These are complementary, not alternative authorisations.

7. For all these technical issues, it would be appropriate to obtain a report from the body that safeguards the regulations of the technical building code (CTE) and the Official College of Architects of Madrid.

RESPONSE:

The proposal is not accepted since the mandatory reports requested pursuant to Article 8(4) of Decree 52/2021 of 24 March 2021, are considered sufficient, together with the successful completion of the hearing and public information procedures referred to in Article 4(2)(d), 9 of Decree 52/2021 of 24 March 2021, and Article 60(2) of Law 10/2019, of 10 April 2019, and their publication on the Transparency Portal of the Community of Madrid from 18 September to 8 October 2024, during which time any potentially affected citizens have been allowed to submit allegations, as well as any other people and entities (including professional associations) that consider it appropriate.

8. It is proposed to correct in the text of the Draft Decree on page 2, the designation of "living-dining room" to "living-dining room", [N.T.- In English, there is no difference between these terms] as noted in Report 50/2024 on Coordination and Regulatory Quality of the General Technical Secretariat of the Regional Department of the Presidency, Justice and Local Administration.

RESPONSE:

The proposal is accepted, and the text of the descriptive part of the draft decree shall be corrected, adjusted to the recommendations of the Spanish Royal Academy (RAE) that it should be quoted without a hyphen: "dining room". [N.T. - This point also applies only in Spanish.]

3. ASpace Madrid.

1. In Article 14 of the draft decree, we propose:

- the replacement of "*regulations in force on the subject*" by "*regulations in force on universal accessibility*".



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- An increase in the number of accessible apartments.
- Properly equipped toilets for people with a high degree of dependency are envisaged.

RESPONSE:

In relation to these proposals it should be noted that:

- It is more appropriate to retain the current wording of "regulations in force on the subject", since it covers the specific subject of universal accessibility and any other related subject, regardless of how they are referred to over time.
- It is more appropriate to continue referring to the minimum number of apartments accessible to people with disabilities pursuant to the regulations in force on this matter, since this generic referral emphasises the legal rights of people with disabilities, while at the same time respecting the commercial policy of each establishment and avoiding situations where it is impossible for some establishments to comply since the number of accessible apartments exceeds those that are legally permissible in light of the peculiar structural characteristics of said establishments.
- In accordance with the wording of Article 14 and its reference to the regulations in force on the subject, it is already understood that these regulations set out the characteristics that the toilets must have in apartments accessible to persons with disabilities.
- In addition, Article 5 of the current Decree 79/2014 of 10 July 2014 regulating tourist apartments and dwellings for tourist use in the Community of Madrid makes a general reference to the "Sectoral Regulations", stating that tourist apartments and dwellings for tourist use must comply with the sectoral regulations applicable to the matter, namely the regulations on safety, urban planning, accessibility, health, the environment and horizontal property.

2. A **Section 2** is proposed for **Article 14**, which, in an identical way to the provisions of Article 18, would set out the characteristics (requirements and conditions) that apartments must have in order to be considered accessible: minimum measurements, characteristics of the furniture, height of the bathroom and facilities, width of doors, rails on the toilet, shower cabin, and everything included in the regulations on universal accessibility in all its aspects, and which allows the apartments to be used by any person with disabilities, regardless of the type of disabilities: motor, cognitive, sensory, behavioural or multiple disabilities.

RESPONSE:

The proposal cannot be accepted, because if it were accepted, the text of this "tourist" draft regulation would become a detailed compendium of what is regulated in the regulations on this sector, exceeding its purpose, which is to regulate the legal framework and the minimum requirements that must be met by tourist apartments and dwellings for tourist use in the territory of the Community of Madrid.

4. AIRBNB MARKETING SERVICES, S.L.

1. It is proposed to amend Law 9/2001 of 17 July 2001 on the Land of the Community of Madrid, amended by Law 11/2022 of 21 December 2022 on Urgent Measures for the Promotion of Economic Activity and the Modernisation of the Administration of the Community of Madrid (dubbed the Omnibus Act), to include tourist dwellings that had an authorisation certificate prior to the entry into force of a new plan as "not covered by a regulations", so that they would remain subject to the restrictions specific to that situation, while remaining in use, along the same lines as the Catalan regulations.



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RESPONSE:

The proposal is not accepted since the procedure for drawing up the Draft Decree contained in this RIA report refers to the amendment of Decree 79/2014 of 10 July 2014 regulating tourist apartments and dwellings for tourist use in the Community of Madrid, and its purpose does not include amending Law 9/2001 of 17 July 2001 on the Land of the Community of Madrid.

5. BOOKING.COM.

1. It is necessary to respect the legitimate rights acquired by owners, many of whom rely on the income provided by second homes in order to be able to maintain them. It is important that the future law protects those who currently carry out this economic activity and does not introduce retroactive restrictions that jeopardise their businesses.

A provision regulating the legal construct of "**Assimilated to not covered by regulation**", regulated in various Autonomous Communities, could be applicable to the Community of Madrid, and could thus save the approximately 8,000 dwellings for tourist use that were made illegal by the Madrid City Council's 2019 Accommodation Plan, since this plan created the obligation for them to have an independent entry.

RESPONSE:

The proposal to regulate the legal construct of "**Assimilated to not covered by regulation**" referring to the approximately 8,000 dwellings for tourist use that were made illegal by the 2019 Accommodation Plan of the City Council of Madrid, has no place in the present draft decree regarding regional tourism, since the articles of the this draft do not impose any retroactive restriction nor can it be the purpose of the draft to resolve situations arising from the illegality of the tourist dwellings resulting from regulatory changes made by the City Council of Madrid.

The urban competence for municipal planning establishes the regulatory scenario where, if appropriate, a new provision could discuss a possible solution, if possible, assessing the inclusion of the legal construct of "Assimilated to not covered by regulation" in the terms proposed.

In relation to this topic, it can be added that the General Urban Development Plans of some cities in Spain regulate the situation of existing uses that are 'not covered by regulation' through amendments to municipal urban development plans.

2. Respect the competencies of the three levels of administration and the owners' associations. It would be appropriate for the future regulation to clearly recognise municipal powers to impose proportional limits based on their urban planning powers. In this way, it would be appropriate:

- a. To establish what limits City Councils can impose and in which cases.
- b. To clarify that the limits imposed by the municipalities or owners' associations should not be retroactive

RESPONSE:

The proposal is not accepted since the draft decree does not have a basis for the power to recognise, establish or clarify how municipalities will act by establishing "limits" when exercising their own powers in the field of urban planning.



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Our regulation contains the legal elements necessary so that municipalities can establish proportionate limitations for overriding reasons of general interest by applying objective and clear criteria within their competences.

With regard to the retroactive nature of the limits, it is understood that the contents of the provisions that regulate these limits is sufficient.

6. CAFMADRID (PROFESSIONAL ASSOCIATION OF PROPERTY MANAGERS).

1. In relation to **Article 2(4)** on the issuance of the Tourist Accommodation Suitability Certificate (CIVUT), even though, in compliance with Judgement 795/2021 of 15 June 2021, the degrees of "architect and technical architect" have been deleted as authorisations to be considered as competent technicians, the minimum requirements to be considered as competent optional technician are not regulated and, in this regard, the requirements to be able to certify that the dwelling for tourist use meets the requirements established in Article 17 bis of the decree.

The absence of a minimum regulation could result in any person, even without technical knowledge, being able to issue the Tourist Accommodation Suitability Certificate of Suitability (CIVUT) and give approval to a dwelling despite not meeting the requirements for this.

RESPONSE:

The proposal is not accepted since, as stated above, it is not possible to specify a complete list that would endure over time of the qualifications that could determine whether an individual is considered to be a technician with sufficient professional capacity.

2. It is suggested in relation to **Articles 11(4) and 17(3)** concerning the declaration of responsibility that, in order to ensure compliance with the applicable regulations, a licence for the activity must be made available when the planning regulations so require for the start of the activity.

Accordingly, once the tourist dwelling is registered in the Registry of Tourist Enterprises of the Community of Madrid, it must be transferred to the respective municipalities so that the data can be coordinated, thereby increasing the monitoring of both administrations of compliance with the regulations by the operators of tourist dwellings and preventing that a tourist dwelling possessing the Tourist Accommodation Suitability Certificate of Suitability (CIVUT) cannot be dedicated to tourist use if it does not possess the mandatory licence for the activity.

RESPONSE:

The proposal cannot be reflected in the text of the regulation, namely, whether the public administration must require both the submission of the declaration of responsibility and the licence for the activity, when the municipal regulations include this requirement. This form of action is incompatible with the legal framework of the declaration of responsibility, which is based on ex-post inspection.

It should be borne in mind that the registration of dwellings for tourist use in the Register of Tourist Enterprises of the Community of Madrid is voluntary and does not serve as the basis or authorisation. Therefore, the way to monitor that a dwelling for tourist use that has the Tourist Accommodation Suitability Certificate (CIVUT) cannot be dedicated to tourist use if it does not possess the mandatory licence for activity is that the dwelling meets the corresponding requirements during the "ex-post inspection", which is conducted after the submission of the declaration of responsibility.

Finally, it should be noted that the aforementioned transfer of information from the Register of



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Tourist Enterprises of the Community of Madrid to the municipalities already has its place in the principle of collaboration of Law 40/2015 of 1 October 2015 on the Legal System of the Public Sector, and hence there is no need to include it in the draft decree.

3. In relation to **Article 18 (2)** concerning the availability of a permanent telephone number for the users of the tourist dwelling, we consider it necessary that in buildings established on a horizontal property basis, the president or the property manager be provided with a permanent telephone number to communicate to the owner of the dwelling any incidents that may be caused in the building by the users of such dwellings.

RESPONSE:

The proposal is not accepted given that it is outside the material scope of this draft regulation, since it refers to the proper functioning of the horizontal property system and the relations between the owners and the bodies of the president and administrator, which are regulated in Law 49/1960 of 21 July 1960 on Horizontal Property.

4. With regard to **Article 18(5)** on the obligation to have civil liability insurance, we consider it necessary that, in buildings established under the horizontal property system, this insurance must also cover damage caused by users of dwellings to the common elements, facilities or services of the building.

RESPONSE:

Considering the comment as a whole, it seems more appropriate to delete Article 18(5) of this draft decree, referring to the requirement of insurance, and to add a "transversal" article to the imminent amendment of Law 1/1999 of 12 March 1999, referring to "civil liability insurance and other guarantees", which, pursuant to Law 17/2009 of 23 November 2009 on free access to service activities and exercise thereof, applies to the providers of tourism services (including tourist accommodation enterprises) referred to in Law 1/1999 of 12 March 1999.

This new article would also complement Article 8 (g) of Law 1/1999 of 12 March 1999, which includes among the rights of users of tourist services the right to have the health and safety of their persons and the safety of their property guaranteed while in tourist facilities and services under the terms laid down in the regulations in force.

5. In relation to **Article 18(6) (currently 18(5))** concerning the information to be provided by the operator or representative of the tourist dwelling to users, we consider it necessary that, in buildings established under the horizontal property system, it also be required that the user be informed of the statutes and rules of the internal arrangements of the owners' association in order to ensure, inter alia, the good use of common facilities and services as well as good coexistence between the users and the residents of the building.

RESPONSE:

In relation to this proposal, it should be noted that its content is already included in the current Article 5(3)(2) of Decree 79/2014 of 10 July 2014, of the Governing Council regulating tourist apartments and dwellings for tourist use in the Community of Madrid, which includes in Section (b) that users are obliged to comply with the ground rules of community life or civic rules provided for by municipal ordinances and the rules of internal system that have been approved by the owners' associations, as well as any other rule may be applicable to them. To this effect, owners of tourist apartments or dwellings or their representatives shall provide users, prior to



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their stay, with an information sheet detailing said rules; these must be expressly accepted by the users.

7. WORKERS' COMMISSIONS (CCOO) OF MADRID.

1. We request the withdrawal of this Draft Decree of the Governing Council, which amends Decree 79/2014 of 10 July 2014 regulating tourist apartments and tourist dwellings in the Community of Madrid. And we likewise request that a current decree be drafted that covers all social and tourist needs, a decree that has the participation of the social agents involved, both in the tourism business and among the citizens who are suffering from the transformation of residential housing into tourist accommodations.

RESPONSE:

The proposal is not accepted, since as can be seen in this RIA report, the procedure for drawing up this draft decree amending Decree 79/2014 of 10 July 2014, complies with the principle of transparency by allowing easy, universal and up-to-date access to and participation in this regulation and the documents specific to its drafting process, through its publication on the Transparency Portal of the Community of Madrid.

Moreover, for the reason that it falls outside the competence of the Autonomous Community for regulation of the accommodation type of tourist dwelling, it is necessary to regulate restrictions on the transformation of residential dwellings into tourist dwellings, given that it falls within the exclusive competence of the municipality as it concerns the "legal system for land use".

In light of the foregoing, Article 17(10) of this draft decree clarifies that it is the different urban plans or municipal ordinances that have the power to include requirements for the compatible or complementary use of the accommodation type of tourist dwelling, or to add other sectoral restrictions, while always respecting the principles of proportionality, objectivity, necessity and legal certainty, and insofar as these restrictions are different from those of the regional tourist planning, which refer to the conditions and requirements for the provision of the service of this type of tourist accommodation.

2. There is a lack of resources and measures to enforce the regulation. If, as recognised by institutions of the magnitude of the Madrid City Council, 90 % of the Flats for Tourist Use are illegal due to a lack of resources for their registration and inspection. How then will they verify that the lighting and ventilation criteria are met?

RESPONSE:

With regard to the resources and measures to enforce the regulation, it should be noted that Article 21 of Decree 79/2014 of 10 July 2014 refers to the penalty system applicable to tourist apartments and dwellings for tourist use, which is governed by the provisions of Chapter II, entitled "Penalty system for tourist activities", of Title IV, with the heading "Quality Control", of Law 1/1999 of 12 March 1999.

3. It seems inappropriate to allow three years for the necessary reforms to be carried out, and in many cases these modifications are not feasible. This measure will result in an extension of 3 years for the illegal flats, after this time we will see whether the flats have been reformed.

RESPONSE:



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The Section 1 of the Single Transitional Provision governing adaptation stipulates that tourist apartments and tourist dwellings which have commenced their activity by submitting a declaration of responsibility shall have three years to comply with Articles 10, 14, 17 ter and 18. In other words, this period applies only to establishments that comply truthfully with sectoral and tourism regulations, as stated in their declaration of responsibility, while this period does not apply to declarations of responsibility which are false, since they do not possess the presumption of validity because they are contrary to the legal system.

With regard to the three-year period for undertaking reforms, it should be noted that the same period has been allowed for in the single transitional provisions for adapting facilities in Decree 19/2023 of 15 March 2023 regulating the organisation of hotel establishments in the Community of Madrid and Decree 48/2023 of 26 April 2023 regulating the organisation of establishments for rural tourist accommodation in the Community of Madrid.

4. Some mechanism should be established by which the owners of the dwelling assume responsibilities when dedicating dwellings to tourist use.

RESPONSE:

With regard to the responsibilities and the mechanism for their assumption by the operators of the tourist dwellings for the exercise of this accommodation activity, it should be noted that dwellings of a tourist nature are sufficiently covered by the applicable penalty system, which is currently governed by the provisions of Chapter II, entitled "Penalty system for tourist activities" of Title IV, entitled "Quality control" of Law 1/1999 of 12 March 1999, to which Chapter IV of Decree 79/2014 of 10 July 2014 refers.

8. HOTEL BUSINESS ASSOCIATION (AEHM) AND MADRID BUSINESS FEDERATION (CEIM).

1. It is suggested that the definition of dwellings for tourist use in Article 2 be amended, so that only properties that possess a prior urban planning compatibility report issued by the competent municipal authority, and, where appropriate, possess the certificate of the owners' association allowing such use, can be considered as dwellings for tourist use. Accordingly, following wording is proposed:

2. Definition of tourist dwelling: flats, studios, apartments or houses that do not belong to a building operated entirely for use as tourist dwellings, are used on a regular basis, furnished and equipped under conditions for immediate use, which possess the municipal planning compatibility report allowing such use, and, where appropriate, possess the certificate of the owners' association where they are located, are marketed and advertised through channels for tourist offerings or by any other method of marketing or advertising, in order to be assigned in their entirety at a price, on a regular basis, under conditions of immediate availability, and for tourist, holiday or leisure purposes. For the purposes of this definition, a building entirely dedicated to the use as tourist dwellings shall mean any separate and independent permanent structure designed to be used as a dwelling or to serve agricultural, industrial or service purposes or, in general, to carry out any economic or social activity, the dwellings of which are dedicated to tourist use, regardless of whether they belong to the same owner and are operated by the same business entity.

In addition, it is suggested for systematic coherency, that exclusions should be included in the definition of tourist dwellings, with the following wording:

The following may not be considered to be dwellings for tourist use:

State-subsidised dwellings may not be dedicated to this purpose in their entirety or per room, pursuant to their specific regulations.

Dwellings located in properties whose deeds of establishment or articles of incorporation of the owners' association expressly prohibit the business activity of tourist accommodation, pursuant to Law 49/1960 of 21 July 1960 on horizontal property.

Housing units located in tourist accommodation establishments which are required to occupy all of the



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building, or an independent part of the building.

Dwellings recognised to be in a situation of "assimilated to outside of regulation" unless expressly authorised by the competent municipal body for the change of activity, in accordance with urban and environmental regulations.

RESPONSE:

The proposal cannot be reflected in the text of the regulation if the public administration must require the submission of all of the following: the declaration of responsibility, a prior report on urban planning compatibility issued by the competent municipal authority and, where appropriate, a certificate from the owners' association permitting such use. This form of action is incompatible with the legal regime of the declaration of responsibility, which is based on ex-post inspection.

It should be noted that Article 2 of the draft Decree must be understood in conjunction with Article 5 of the draft Decree, which lays down the obligation to comply with the sectoral regulations applicable to each subject, including city planning or horizontal property, and Article 69 (1) of Law 39/2015 of 1 October 2015, which defines as a declaration of responsibility the document signed by an interested party stating, at their own responsibility, that they comply with the requirements laid down in the regulations in force to obtain recognition of a right or power or to exercise such right or power, that they have the documentation proving this and will provide it to the Administration upon request, and that they undertakes to maintain compliance with the above obligations for the period of time inherent in that recognition or exercise.

The second suggestion that the proposed exclusions should be included in the definition of dwellings for tourist use cannot be reflected in the text of the regulation since, in addition to not offering any argument to support the justification of the "systematic coherence", it seems more appropriate to include the "restrictions" of the most prominent "sectoral regulations" in Section 6 (National regulations on horizontal property), Section 9 (Regional regulations on state-subsidised dwellings) and Section 10 (municipal urban planning regulations) in Article 17 referring to the "Legal regime for tourist dwellings", as a set of regulations that apply to it, than to include the "exclusions" proposed in Article 2 regulating the definitions, including the definition of dwellings for tourist use.

2. It is proposed to specify the definition given to the "regular exercise" of tourist business activity in **Article 2(3)**, including the following assumptions in the text:

It will be presumed that there is regular exercise when any of the following circumstances occur with respect to the property:

- a) That it is assigned for tourist use by tourist dwelling management companies.
- b) That it is made available to tourist users by the owners or operators, regardless of the period of time contracted and whenever services specific to the hospitality industry are provided.
- c) When tourism marketing channels are used. Tourism marketing is deemed to exist when it is carried out through tour operators or any other tourist sales channel, including the Internet or other new technology systems.

RESPONSE:

With regard to the proposal, it cannot be reflected in the text of the regulation, since the definition in Article 2(3) is clear and precise as it contains the "specific element" of the submission of the declaration of responsibility for commencement of activity and the "generic element" of advertising by any means, thus covering all possibilities existing at any time without the need to include a more or less extensive list of "assumptions" that demonstrate in all cases that if the conditions mentioned in the assumptions are met, then it is really of a "regular" nature.



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3. The following wording is proposed for **Article 17(1)**, which sets out the legal system for dwellings for tourist use:

1. The operators of the tourist accommodation activity or their representatives are obliged to submit to the Directorate General responsible for tourism a declaration of responsibility for the start of the tourist accommodation business activity, in accordance with the official form included in Annex III, accompanied by the Tourist Accommodation Suitability Certificate (CIVUT) regulated in Article 2(4) and Article 17 bis of this Decree, without prejudice to other authorisations, permits, licences, declarations of responsibility, notifications or reports established by the various applicable sectoral and municipal regulations.

The declaration of responsibility shall contain an express proclamation on the following topics:

- a) That the responsible person possesses the availability of the dwelling(s) for use by tourists and the documentation demonstrating this according to the individual case (deed of ownership of the property, lease agreement, management authorisation between the owner and the company, or other valid document for that purpose).
- b) That the dwelling(s) meet the requirements indicated in the regulations for classification in the category and capacity stated, and that such requirements will continue to be met during the entire term of the activity.
- c) That the responsible person has a favourable municipal report on urban planning compatibility allowing tourist use.
- d) That they have a licence for the occupancy of the dwelling.
- e) That they have the authorisation for the exercise of activity from the owners' association
- f) That they have a civil liability insurance policy or other equivalent guarantee to cover injuries and damages that may be caused over the course of the activity".

RESPONSE:

The proposal cannot be reflected in the text of the regulation, since it wrongly considers that the public administration must "guarantee", prior to provision of the accommodation service, compliance with certain administrative and urban planning requirements. This form of action is incompatible with the legal framework of the declaration of responsibility based on ex-post inspection.

Nevertheless, regarding the content of the proposal that the tourist dwelling have an authorisation for the exercise of business activity from the owners' association, it must be indicated that the recent Organic Law 1/2025 of 2 January 2025 on efficiency measures in the Public Justice Service, in its fourth final provision, amends Law 49/1960 of 21 July 1960 on Horizontal Property with respect to tourist dwellings, which has led to this authorisation being incorporated both into the descriptive part and into Article 17 ter (1) of the operative part of the text of the regulation.

4. It is proposed to supplement **Article 18(5)** with the following wording:

The minimum amount of the insured capital shall be determined according to the maximum admissible places in the accommodation covered by the declaration of responsibility, and no deductible will be allowed to be subtracted from these amounts. The minimum amounts shall be:

Up to 25 places: 150,000 euros

Up to 50 places 300,000 euros

Up to 100 places: 400,000 euros

Up to 200 places: 500,000 euros

Up to 300 places: 600,000 euros

Up to 500 places: 750,000 euros



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Up to 700 places: 900,000 euros

Up to 1000 places: 1,000,000 euros

Up to 1.500 places: 1,200,000 euros

Up to 5,000 places: 1,800,000 euros

From 5,000 places: 2,000,000 euros

The operator of the tourist accommodation must have in their possession, throughout the course of their activity, the documents accrediting that they have signed the policy, and must provide these documents to the competent tourism administration on request

This prevents the proliferation of insurance policies with different coverage that ends up, after daily practice, being reconfigured into some type of "minimum" or "standard" insurance policy that is used, in the end, by all entrepreneurs or owners who market this type of dwellings, without **taking into account in detail the number of places, which, obviously, increases the risks and economic damages to be covered by the corresponding policy.**

RESPONSE:

Considering the comment as a whole, it seems more appropriate to delete Article 18(5) of this draft decree and add a "transversal" article to the imminent amendment of Law 1/1999 of 12 March 1999, which refers to "civil liability insurance and other guarantees", which, pursuant to Law 17/2009 of 23 November 2009 on free access to service activities and exercise thereof, applies to the providers of tourism services (including tourist accommodation enterprises) referred to in Law 1/1999 of 12 March 1999.

This new article would also complement Article 8 (g) of Law 1/1999 of 12 March 1999, which includes among the rights of users of tourist services the right to have the health and safety of their persons and the safety of their property guaranteed while in tourist facilities and services under the terms laid down in the regulations in force.

5. It is proposed to amend the wording of **Articles 5 and 19** since, unlike Decree 19/2023 of 15 March 2023 of the Governing Council regulating the organisation of hotel establishments in the Community of Madrid, Title II of which establishes in **detail the set of rights and obligations that users of this type of tourist accommodation have**, Decree 79/2014 has only one article, Article 5, applicable both to tourist apartments and to dwellings for tourist use, and Article 19, referring to the price arrangements.

The amendment should be utilised to include a similar regulation so that this form of tourist accommodation has the same rights and obligations in this area as hotel establishments.

The following wording is proposed:

The operators of the business activity shall be obliged to provide proof of payment for the services and of advance payments made, where appropriate, with the following content, without prejudice to compliance with applicable tax regulations:

1. Identification of the operator conducting the business activity with the dwelling.
2. Identification of the dwelling and its registration code in the Andalusian Tourism Register. [sic].
3. Identification data; the user.
4. Number of persons accommodated:
5. Entry and exit dates.



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6. Price of the contracted service and date of payment.

The operators of the business activity who, in accordance with tax regulations, are obliged to issue invoices, must comply with the requirements applicable to them.

The operators of the business activity shall inform the users whether the business is a member of the Consumer Arbitration System.

With regard to the **payment of the price**, the following should be specified:

Tourist users must pay the price corresponding to the services used at the place and time agreed with the operators of business activity, and upon presentation of the invoice, and in no case shall the formulation of a claim exempt them from the aforementioned payment.

In the absence of an express agreement, it will be understood that the payment must be made in the establishment itself and at the time when the invoice was submitted to the establishment for payment.

Payment of the price shall be made, in accordance with the applicable regulations, in cash, by credit or debit card, or by any other valid means of payment whose use has been accepted by the operator of the business activity.

Lastly, **the system for reservations** must be fleshed out as follows:

The system for reservations and cancellations shall be determined by agreement between the parties, and the customer's express acceptance must be kept on file. Non-compliance with the agreed conditions and, in any case, confirmation of reservations for places in excess of those available, shall be considered a serious infringement pursuant to Article 58 of Law 1/1999 of 12 March 1999.

RESPONSE:

The proposal cannot be reflected in the text of the regulation, given that the content of "proof of payment", "payment of the price" and "reservation system" is more specific to hotel establishments, and it is therefore not considered appropriate to transpose them as suggested.

With regard to the rights and obligations of users, it should be recalled that Article 5 of the current Decree includes those listed in Articles 8 and 9 of Law 1/1999 of 12 March 1999 on the Regulation of Tourism of the Community of Madrid (LOTCM), which applies to users of tourist products in general.

6. In relation to **free Wi-Fi service**, one of the services that **were most advertised with the new decree regulating the activity of hotel establishments**, Decree 19/2023 of 15 March 2023, was that, since its entry into force, all hotel establishments in the Community of Madrid should have **free Wi-Fi service in all rooms**, regardless of category or classification.

This **is not the case in Decree 79/2014, where Wi-Fi is only provided for tourist apartments**, and it is not specified that this service is included in the fee paid by the client.

Therefore, in order for this **type of tourist accommodation to be subject to the same conditions as hotel establishments**, we propose the addition of an article applicable to both tourist apartments and



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tourist dwellings so that this type of accommodation also has a mandatory and free WIFI service, with the following content:

In all tourist apartments, regardless of their classification, and also in tourist dwellings, a mandatory minimum requirement is the Wi-Fi service in all rooms that customers will be able to access free of charge.

RESPONSE:

Any new requirements for tourist dwellings to be introduced through the amendment of the current decree must be handled very cautiously. In 2023, an EU Pilot 2023/10440 – the legal framework applicable to short-term rentals of accommodation in Spain – (clarification on legal position) has already been brought up in respect of Decree 79/2014 of 10 July 2014 by the European Commission on the Tourist Accommodation Suitability Certificate (CIVUT) in which it asked whether it was also required for long-term (non-tourist) rentals despite the fact that a favourable report was made at the time in the procedure for drawing up the above-mentioned Decree.

Consequently, this proposal is partially accepted as it is considered appropriate to include in the new wording of Article 10 concerning tourist apartments with a single key, the requirement of connection to electronic means (wireless access to Wi-Fi Internet) and thus the same requirement to be general in all categories.

7. It is proposed to amend **Article 17(7) regulating** the Legal System, as they consider that **for those tourist dwellings located in buildings for exclusive use, the regulations for tourist apartments should apply**. The opposite would imply the existence of non-symmetrical regulations between two forms of accommodation that would not compete on equal terms, since the location in buildings of exclusive use is a special and exclusive characteristic of tourist apartments, which must also comply with much stricter regulations in terms of accessibility, additional services, air conditioning or accessibility for people with reduced mobility, among others, in clear differentiation with respect to dwellings for tourist use.

This wording is proposed:

[...]

7. For tourist dwellings established in buildings for exclusive use, the regulations for tourist apartments shall apply.

RESPONSE:

The proposal cannot be reflected in the text of the regulation since the concept from municipal urban planning of an entire or exclusive building is compatible with regional tourism regulations, except in the case set out in Article 17 of the current Decree 79/2014 of 10 July 2014 which regulates tourist apartments and dwellings in the Community of Madrid, which establishes that if the number of tourist dwellings incorporated into a single building, entrance or equivalent belongs to the same owner (operator conducting the tourist accommodation activity according to the wording of the draft decree amending the current decree), then the regulations for "tourist apartments" will apply.

Article 2 of Decree 79/2014 of 10 July 2014, states that "tourist apartments" are deemed to be properties that consist of complex accommodation units equipped with facilities, amenities and services suitable for immediate occupancy, and which are intended for regular use as temporary



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tourist accommodation, without being a permanent residence for the users, for a fee, and which comply with the operating unit principle.

With regard to the configuration of tourist apartments, Article 8(1) of Decree 79/2014 of 10 July 2014 establishes that tourist apartments shall be located in the entirety of a building, or in an independent part of a building, with entrances and stairs for exclusive use, and must comply with the minimum requirements for the classification as included in this Decree.

8. The following amendment is proposed to **Article 18(5)** with regard to minimum requirements and conditions, as they consider that it should be made explicit that **the amount of insurance cover should be in line with the number of places of the accommodation, as indicated in the declaration of responsibility**, in order to ensure the correct protection of the peoples accommodated. They therefore propose the following addition to the article which would read as follows:

5. Operators of the business activity of tourist accommodation or, when applicable, their representatives must have civil liability insurance in place to cover the risks from users in terms of personal injury, material damage and economic losses resulting from the business activity. ***The amount of this insurance cover must be in accordance with the maximum places of the accommodation, as stated in the declaration of responsibility.***

RESPONSE:

Considering the comment as a whole, it seems more appropriate to delete Article 18(5) of this draft decree and add a "transversal" article to the imminent amendment of Law 1/1999 of 12 March 1999, which refers to "civil liability insurance and other guarantees", which, pursuant to Law 17/2009 of 23 November 2009 on free access to service activities and exercise thereof, applies to the providers of tourism services (including tourist accommodation enterprises) referred to in Law 1/1999 of 12 March 1999.

This new article would also complement Article 8 (g) of Law 1/1999 of 12 March 1999, which includes among the rights of users of tourist services the right to have the health and safety of their persons and the safety of their property guaranteed while in tourist facilities and services under the terms laid down in the regulations in force.

9. It is proposed to amend the **First Final Provision** referring to the Regulatory Authorisation to apply a penalty system that reflects the current reality of the tourism sector in the Community of Madrid, which would be worded as follows:

"The head of the competent department in the field of tourism is empowered to develop within a maximum period of one year the penalty systems applicable to tourist apartments and dwellings, as well as to issue all necessary provisions for the regulation of secondary, operational and non-core issues of this decree".

RESPONSE:

The proposal cannot be reflected in the text of the regulation since:

Article 41(d) of Law 1/1983 of 13 December 1983, on the Government and Administration of the Community of Madrid, attributes to the regional department heads the exercise of regulatory power within the scope of their duties, and, according to the criterion maintained by the Attorney General of the Community of Madrid, the feasibility of this type of regulatory authorisation is affirmed when they are limited to "the regulation of secondary issues, purely operational and not forming the essential core of the regulation that the Government must itself carry out".



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In addition, it should be noted that we consider it sufficient that the penalty system applicable to tourist apartments and dwellings for tourist use is the one currently governed by the provisions of Chapter II on the penalty system for the tourist sector of Title IV of the Quality Control Law 1/1999, of 12 March, which is referred to by Decree 79/2014 of 10 July 2014, in Chapter IV thereof.

9. MADRID ALOJA.

1. It is suggested that the actions be taken back, and the "mandatory" procedure for prior public consultation be drawn up. As an alternative, it is suggested that the final RIA report should have a more extensive reasoning justifying the failure to carry out this mandatory procedure, since it cannot be understood that the almost complete amendment of Articles 10, 17 and 18 of the Decree in force could be regarded as a "technical adjustment" or an ancillary amendment.

RESPONSE:

The suggestion is not accepted in light of the sufficient discussions in the RIA report on the specific cases in Article 5(4)(d) and (e) of Decree 52/2021, of 24 March 2021 regulating and simplifies the procedure for drawing up the general regulatory provisions in the Community of Madrid, to dispense with this public consultation procedure, since it does not impose relevant obligations on its target groups and regulates partial aspects of a matter, in light of the fact that this draft decree has the main purpose of amending the current Decree 79/2014 of 10 July 2014, to fully comply with the aforementioned court judgements and to incorporate, in an ancillary way, some technical adjustments in its articles.

In any event, the most relevant circumstance for this purpose is that the draft has been submitted twice to the public information and hearing procedure, thereby amply ensuring public participation, taking as a starting point a text drawn up by the Public Administration.

2. It is suggested to carry out a **thorough analysis of the impact that this regulation will have on the Madrid economy** and competition on the market.

The following factors are neglected in the RIA report:

- the economic effect that the regulation will generate by requiring the adaptation of part of the inventory of accommodation units.
- the impact it will have on the supply chain and the value chain in the tourist apartments and dwellings sector.
- the impact on prices and ADRs⁹ (average daily rate) of the sectors concerned. An increase in the quality standards of the service should lead to an increase in the price of the service.
- The owners and/or operator of the business activity can pass this increase on to the price of their reservations to compensate for the costs arising from adapting to the regulations.
- The number of operators that could leave the market given the legal uncertainty surrounding the tourist dwelling sector and the lack of guarantees of profitability in light of investments needed to adapt to the new requirements, while it is also foreseeable that in the short term communities can prohibit this type of economic activity without no need for unanimity, as hitherto.
- The establishment of an average amount of expenditure required by an operator to meet the minimum requirements applicable before the draft decree is drawn up.

All these are issues that should be properly incorporated into the RIA report. Without quantitative data and an economic assessment of the measures it is practically impossible to determine that the measures required are the least burdensome and/or proportional to the economic context of the Region of Madrid.



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According to the report of the Director General for Economic Affairs of the Community of Madrid, the draft "does not provide for the compatibility of tourist and residential use". It seems reasonable to consider that, if that is the case, many operators would like to preserve the residential use of the dwelling. This would mean an expulsion from the tourist rental market, significantly reducing the number of properties dedicated to tourist use and thus reducing the percentage contribution of tourism to Madrid's economy. This would also mean a reduction in the employment generated by this industry which has also not been quantified in the RIA report (unlike that for tourist apartments). In short, a reduction in the contribution of this sector to the economy and GDP of the Community of Madrid.

It seems to be proven that the regulation will have a considerable effect on the economy of Madrid. Therefore, we insist that the relevant economic evaluation of the measures, the new requirements and the impact that the decree would have on the economy be conducted.

RESPONSE:

The suggestion is not accepted since the approval of this draft decree will not significantly affect the economy, since the possible adjustments to be made are economically minimal, such as the minimum requirement of a system of temporary shading of spaces in the bedrooms and dining room, and in some cases non-existent, such as references to ventilation or lighting, as they are already required by its sectoral regulations. In addition, it will have no effect on competition on the market, since no measure is taken that increases barriers to entry or creates new restrictions binding for operators affecting competitiveness.

It is possible that the draft legislation, however, with the objectives mentioned in the RIA report such as including prohibitions on carrying out the activity of tourist dwellings both in state-subsidised dwellings, and in dwellings located in properties whose articles of association of the owners' association prohibit economic or commercial activity, may generate an indirect positive effect, to the extent that it might serve as a tool to increase the "legal certainty" necessary to create a regulatory framework consistent with the rest of the legal system, as well as the stability and certainty (currently so necessary in this area), while enabling more agile decision-making in accordance with the law on the part of the individuals and enterprises for which it is intended.

3. It is suggested to carry out a **comprehensive analysis of the impact that this regulation will have on the "restrictions" on economic activities**, the competition between competing subsectors of tourist accommodation, the competition of tourist apartments and tourist dwellings in the Community of Madrid with respect to the rest of the nation and the European Union.

RESPONSE:

The suggestion is not accepted because it is based on the incorrect statement that much of the content of the text, such as the mechanism for restriction, which empowers local authorities, may have effects on competition. And this inaccuracy is stated in Article 17(10) of the draft decree, which does not grant a "new authorisation" to municipalities, since it only "emphasises" the power to restrict tourist dwellings of the municipalities through their urban planning or municipal ordinances, while at the same time respecting the limits established by the regulations and the case law.

With regard to the impact of competition, we refer to the response given in the previous suggestion.

4. **The inclusion of the new requirements in Articles 10, 17 and 18 is not justified.** It is suggested



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that the final RIA report should introduce the **elements of judgement, reasoning and assessment by which it is concluded that the measures, requirements and demands of the draft decree are optimal, appropriate, necessary and proportionate.**

This suggestion is supported by the following paragraphs (xiv) and (viii) of Section 3(3)(2) of the Report issued by the Office for Regulatory Quality:

(xiv) In **Article 18(4)(c)**, as a new feature compared to the current regulation, the space in a habitable area is increased from 10 to 12 additional square metres of floor space to allow the accommodation of two more persons than those provided for in Articles 18(4)(a) and (b). It is suggested that this amendment be mentioned and justified in the RIA report, which does not currently include any reference to this circumstance.

RESPONSE:

It is not true that the justification for this requirement is lacking since the current RIA report contains the following response: Increasing the requirement for habitability from ten to twelve square metres of floor space in Article 18 (4) (c) of the draft Decree is justified by establishing a ratio that improves the quality and comfort of accommodations in the establishment.

To this end, the new urban planning rules of the Madrid General Urban Development Plan (PGOUM), published on 27 November 2023 in the Official Gazette of Community of Madrid, have been observed, which incorporates a minimum accommodation programme that increases the minimum floor space for the accommodations. It should be noted that the Madrid General Urban Development Plan (PGOUM) classifies tourist dwellings as tertiary use, type of accommodation, and requires them to comply with the conditions laid down for "dwellings" in the first Section of Chapter 7(3) of the aforementioned plan, specifically in Article 7(3)(3).

This new development strengthens the right of the users of these establishments to receive tourist accommodation service at a level of quality that is proportionate to this plan, in accordance with Article 8 (d) of Law 1/1999 of 12 March 1999 regulating the organisation of tourism in the Community of Madrid. In addition, taking into account Article 4(1)(a) of the aforementioned regulation, it is beneficial for the development and competitiveness of this business activity, since it enhances the quality of this tourist service.

(viii) In the numerous precepts of the wording of **Articles 10, 17 and 18** in which this concept is used, we suggested that the concept of "**spaces that allow adequate lighting and ventilation**" be defined more precisely, since it currently worded without well-defined features

RESPONSE:

It is not true that the justification for this requirement is lacking since the current RIA report gives the following response: The comment is accepted in the sense of not referring to the concept of "space" as indicated in the aforementioned regional regulations.

It is also suggested to review the use of indeterminate legal concepts and wording that may be vague or ambiguous.

RESPONSE:

With regard to this suggestion for review, it should be noted that it is only a general suggestion and that the comments on regulatory quality and guidelines for regulatory method from the Coordination and Regulatory Quality Report of the General Technical Secretariat of the

Regional Department of the Presidency, Justice and Local Administration have been taken into account in the terms that can be seen in the RIA report.

5. It is suggested to amend the **term “owners”** in favour of “operators conducting the business activity”, in the draft decree in its single article, Section “One” referring to the definition of tourist apartment.

RESPONSE:

This suggestion has already been accepted in the draft decree.

6. **With regard to the minimum and objective nature of the requirements of draft Article 18** in the references to beds, precise measurements are given that could exclude those of larger dimensions.

This new wording is suggested for the second subsection of **Article 18(1)(a)**:

The areas shall be equipped with two single beds of at least 0.8 × 1.9 m, or a double bed of at least 1.35 × 1.9 m, one or more bedside tables or elements with similar functions, chairs or armchairs and wardrobe or elements with similar functions .

This consideration is supported by paragraph (ix) of Section 3(3)(2) of the Report issued by the Office of Regulatory Quality referred to above.

RESPONSE:

It should be noted that, in the latest version of the Memorandum on the RIA, the aforementioned suggestion of the Office for Regulatory Quality, referring to specifying whether the dimensions of the beds included in Articles 10, 17 and 18 are exact or minimum measures, had as its response that the comment was addressed by adding "at least" in the corresponding sections, with the same criterion used in the drafting of the recent Decree 19/2023, of 15 March 2023, of the Governing Council regulating the organisation of hotel establishments in the Community of Madrid.

7. The draft decree, in its single article, Section 4, sets out **the documents that must accompany the declaration of responsibility and the Tourist Accommodation Suitability Certificate (CIVUT) before the start of the business activity**. In view of the judgement of the High Court of Justice of Madrid 794/2021, it is not disputed that the Tourist Accommodation Suitability Certificate (CIVUT) itself needs to be submitted or that it is regarded as an unnecessary administrative burden. On the contrary, it is suggested that the administrator/operator of the business activity be released from the burden of other documents when these documents are already available to public administrations.

This new wording is suggested for Section 4 of the single Article, as regards **Article 17(1)**:

1. The operators conducting the activity of tourist accommodation or their representatives are obliged to submit to the Directorate General responsible for Tourism a declaration of responsibility for starting the business activity of tourist accommodation, according to the official form included in Annex III, accompanied by the Tourist Accommodation Suitability Certificate (CIVUT) regulated in Article 2 (4) and Article 17 bis of this decree, without prejudice to other authorisations, permits, licenses, declarations of responsibility, notifications or reports established by the different applicable sectoral and municipal regulations, unless these documents are already in the possession of the Public Administration.

RESPONSE:

The suggestion is not accepted since it is unnecessary to incorporate the text "...unless these documents are in the possession of the public administration". in the aforementioned section to



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ensure effective compliance with Article 28 of Law 39/2015 of 1 October 2015 on the Common Administrative Procedure of Public Administrations, a rule of superior force than the regulation and is part of our legal system.

8. The draft decree in its single article sets out the wording of the new **Article 17 (4). Section 8 (now 9)** prohibits the use for tourist purposes of state-subsidised dwellings.

In order to protect the content of this provision in the regulation, further justification is suggested in the RIA report as regards the three months per year during which a state-subsidised dwelling may be left unoccupied by its owner. Otherwise, the prohibition could be disproportionate and result in impacts not intended by the Administration nor by this Association.

It is suggested to prevent any type of interpretation and to justify more extensively in the final RIA report the total and absolute incompatibility of dedication of a state-subsidised dwelling to tourist activity.

In addition, it is suggested to assess the inclusion of the content of these articles in the next amendment of Law 1/1999 of 12 March 1999 on the Organisation of Tourism in the Community of Madrid. In this way, the status of the provision can be raised to that of a rule with the status of a law, affording it a greater degree of protection.

RESPONSE:

The suggestion is not accepted since the prohibition in Article 17(9) (currently, 10) is set out in a clear and concise manner, which means that the textual mention suffices that is found in the RIA report of the content of Article 7 Decree 74/2009 of 30 July 2009, approving the Regulation on State-Subsidised Housing of the Community of Madrid, which stipulates the following:

Article 7. Dedication

State-subsidised dwellings must be dedicated to the habitual and permanent residence of their legal occupants, and under no circumstances may they be dedicated to use as a second residence or any other use; moreover they shall not forfeit this character if their intended beneficiary, their spouse or the relatives of one or the other up to the third degree living together with the intended beneficiary exercise a profession, trade or small industry in the dwelling that is compatible with residential use, without prejudice to obtaining any mandatory licences or other authorisations.

A dwelling is considered a habitual and permanent residence as long as the dwelling does not remain unoccupied for more than three months in a row per year, unless there is due cause duly authorised by the Department responsible for housing

With regard to the additional suggestion, it is understood that the assessment of the inclusion of the content of this article in the nearest amendment to Law 1/1999, of 12 March 1999, on the Regulation of Tourism of the Community of Madrid would have to be considered during the procedure for approving the amendment of this legal provision, which is expected to begin in 2025.

9. It is proposed to eliminate **Article 17(9) (current 10)**, because it is not sufficiently justified. It is proposed to eliminate any assignment or authorisation by which local authorities may restrict for certain time periods or on a temporary basis the use of a dwelling for tourist purposes.

Providing municipalities with this power, regardless of whether they have to justify and reason the measures they adopt, can effectively pose a significant entry barrier to conducting of economic



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activities. The justification identified in the RIA report is insufficient, and it does not seem appropriate to argue that the reasoning for compliance with the principles of suitability, necessity and proportionality should only be developed by the local authority applying the provision. The Public Administration that authorises local authorities to implement this type of restriction should adequately justify the transfer of this power, and justify whether it is in accordance with the provisions of Law 20/2013.

It is suggested that, after having properly justified this mechanism in the RIA report, and, in the event that the articles are maintained, it should be added that the only mechanisms to implement the power authorised by the proposal of Article 17(9) are the mechanisms of urban plans and/or municipal ordinances.

We emphasise that it is not a minor issue since, otherwise, a large number of court disputes could be generated. To prevent this high level of litigation and the reduction of the material and human resources of the municipalities of the Community of Madrid, we suggest specifying adequately in the articles - and not only in the explanatory memorandum - the two legal routes through which local authorities can exercise this power.

As an alternative, it is proposed to replace the wording by:

"9. Municipalities, within the scope of their powers and applying objective and clear criteria, may establish, **through municipal ordinances or urban plans**, proportionate limitations for compelling reasons of public interest, as regards the maximum number of tourist dwellings per building, environment, area or zone."

RESPONSE:

The proposal is not accepted given that, as already stated in the RIA report, the justification for maintaining Article 17(9) (currently, Article 17(10)) is "emphasising" without "empowering" the municipal competence, since said section does not create a new authorisation on this issue, given that it is the urban development plan that determines the urban planning arrangements. In addition, the Supreme Court stated, for example, in its Judgement 1.550/2020 of 19 November 2020 (Cassation appeal 5958/2019), that the municipalities are entitled, through urban planning instruments or municipal regulations, to introduce, where appropriate, the corresponding requirements on the compatible or complementary use of this type of dwelling or to introduce other types of sectoral restrictions different from those of regional tourism planning.

And with regard to the alternative proposal for a new text that would expressly identify the planning instruments as urban plans and ordinances, it is sufficient to mention repeatedly in the RIA report that it is urban planning or municipal ordinances that can introduce, where appropriate, the corresponding requirements for the compatible or complementary use of this type of dwellings or introduce other sectoral restrictions different from those of regional tourism planning.

10. It is suggested that **Article 17(5) (currently 17 ter) be deleted from the draft decree,** given the legal uncertainty it creates.

This section is intended to regulate the prohibition on dedicating dwellings to tourist use where owners' associations prohibit tourist dwelling through an express ban or through a general ban on economic activities in their articles of association.

As an alternative, we suggest rewording of the section to include a new paragraph that excludes from the scope of application of the article any tourist dwellings that have legally started their activity prior to the statutory prohibition of the owners' association:



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1. *In the case of dwellings for tourist use subject to the regime of Law 49/1960 of 21 July 1960 on horizontal property, the dedication of dwellings to tourist use may be restricted or made conditional in the terms established in the aforementioned law and may even be prohibited in those properties whose articles of association or rules governing the owners' association contain an express prohibition for the business activity of tourist accommodation or a general prohibition of economic activity.*

Those tourist dwellings shall not be subject to the statutory prohibition or to the preceding paragraph that have commenced their activity prior to the statutory prohibition, if they had complied with the applicable sectoral and urban planning regulations.

RESPONSE:

The suggestion is not accepted on the grounds that it is now necessary to include this prohibition in order to provide greater legal certainty following Supreme Court Judgements Nos. 1232/2024 and 1233/2024, both of 3 October 2024, which have declared that owners' associations may prohibit the activity of tourist rentals by means of a resolution adopted by the qualified majority of three fifths of the number of owners and participation fees imposed by law, which respects the rule of proportionality of the measure in terms of the conflicting interests.

In addition, it is highlighted that a paragraph referring to Organic Law 1/2025 of 2 January 2025 on efficiency measures in the Public Justice Service has been incorporated into the descriptive part of the draft decree, which in its fourth final provision has amended Law 49/1960 of 21 July 1960 on Horizontal Property with the aim that in the case of tourist dwellings subject to its system, their dedication to such activity may not only be restricted or made conditional but also prohibited or approved, in the last case, at the request of the owner of the tourist dwelling who wishes to conduct this business activity. These resolutions of the owners' associations shall not have retroactive effect.

The alternative proposal for the inclusion of the aforementioned paragraph is also rejected, since it is understood that it is not necessary since the retroactive effects of the express prohibition must be situated within its appropriate regulatory scope, which is not that of this draft decree but as expressly reflected in Article 17(12) of Law 49/1960 of 21 July 1960 on Horizontal Property.

11. It is suggested to extend for two more years (a total of 5 years) the transitional system contained in the draft decree in its single article, in its new **single transitional provision**.

Cumulatively, it is suggested to establish a subsection in the second section of the single transitional provision to prevent its application to tourist dwellings and tourist apartments that had initiated the reforms referred to in the section prior to the entry into force of this draft decree.

It is therefore suggested that this new wording be adopted:

1. *Tourist apartments and dwellings that have started their activity by submitting a declaration of responsibility shall have a period of five years to adapt to the provisions of Articles 10, 14, 17a and 18.*
2. *The adaptation period laid down in the previous paragraph shall not apply in specific cases where the establishment initiates substantial reforms of its facilities prior to the end of the period indicated; in such cases, the provisions of this Decree shall be immediately enforceable, unless the reforms had been initiated prior to the entry into force of this Decree.*

RESPONSE:



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The suggestion is not accepted on the understanding that the period of three years is sufficient time to make the adaptations in accordance with Articles 10, 14, 17 quater and 18 of Decree 79/2014 of 10 July 2014, since these new requirements are minor, as can be seen in the descriptive part of the draft decree and in this RIA report.

The cumulative suggestion is not accepted since the specific case that it brings up is outside the scope of Section 2 of this single transitional provision, which refers to substantial reforms that are undertaken since the entry into force of the new decree, and therefore the new requirements are known, which makes it reasonable for the provisions of this decree to be immediately enforceable.

12. It is suggested to insert a new **second transitional provision** with the following wording:

Local authorities are authorised to establish, within a maximum period of 5 years from the entry into force of this Decree, where appropriate, the system that will be binding for those dwellings for tourist use that had been compliant with applicable sectoral regulations prior to the entry into force of Decree 29/2019, of 9 April 2019, of the Governing Council amending Decree 79/2014 of 10 July 2014, of the Governing Council, regulating tourist apartments and dwellings for tourist use in the Community of Madrid.

There are numerous dwellings for tourist use in the Community of Madrid that have become illegal as a result of inadequate regulations created by municipal authorities. By the same token, tourist dwellings that had been legal since there was no applicable urban planning provision, have ceased to be legal, contradicting the sectoral regulations of the Community of Madrid itself, as a result of the implementation of urban plans with retroactive provisions the legal coherence of which is questionable, given that this type of accommodation was subjected to stipulations impossible to fulfil.

This means that this draft decree constitutes an opportunity to obtain a specific assessment of the situation of these tourist dwellings declared illegal in an extraordinary manner. It is worth noting that this second transitional provision would only cover those dwellings for tourist use which did not have any urban development scheme before 1 January 2019, and which had submitted their declaration of responsibility in compliance with the only regulations applicable at that time, the sectoral regulations.

This does not constitute an *ad hoc* legalisation of these dwellings, which were declared illegal in an extraordinary manner and without legal support, but rather it constitutes an authorisation enabling local authorities to review the effect of the serious and extraordinary damage to the interests of economic operators who trusted in good faith in the public administrations of Madrid.

RESPONSE:

The suggestion is not accepted because it is understood that the its content is urban planning and does not fit with the draft decree whose subject is tourism.

13. It is suggested to delete **paragraph 24 (currently 26)** of the explanatory memorandum since it has not been established that they have considered other measures less restrictive of rights or imposing fewer obligations on the intended recipients.

And it is proposed to provide justification for the decision to refuse to assess the draft of a new regulation.

The RIA report does not even contain any reference to the assessment or rejection of other alternative measures. By the same token, the RIA report does not contain justification regarding the proportionality, suitability and less restrictive nature of the provisions that make up the draft decree.

The final RIA report must adequately either justify the absence of the relevant justifications or incorporate them where appropriate.

RESPONSE:

The suggestion relating to the 24th (now 26th) paragraph of the explanatory memorandum is not accepted, since no argument is given for its assertions that there is no substantiation. Therefore, the contents of this draft decree and this RIA report are not called into question, especially since the required coordination and regulatory quality reports have been requested for the preparation of the draft decree and this RIA report, and they have not made any comments on this matter.

With regard to the above-mentioned proposal, it should be noted that in the executive summary sheet of this RIA report the idea of creating a new draft regulation is included among the "main alternatives considered", but in view of the articles that were intended to be amended, it is considered sufficient to amend the regulation.

Moreover, in the RIA report in Section II, "Purposes, objectives, timeliness and legality of the proposal", the following paragraph is inserted:

2. Main alternatives considered.

Regarding the option of preparing a draft decree repealing Decree 79/2014 of 10 July 2014, or the option of its partial reform, the second option is assessed as the most appropriate for the following reasons:

- The amendment of Decree 79/2014 of 10 July 2014 is considered sufficient to update and adapt the existing text of the regulation to the economic, social, technological and regulatory developments that have occurred in the tourism sector since its last reform.
- The draft decree is considered to take into account the aspects of regulatory method.

14. It is suggested to include in the RIA report a sufficient **substantiation of the reduction of administrative burdens** supported by the new wording of Articles 11 and 17 with regard to the obligation of the interested parties to interact with the administration exclusively through electronic means. This new wording is therefore suggested for **Article 17(1)**:

The operators of the business activity of tourist accommodation or their representatives are obliged to submit to the Directorate General responsible for Tourism a declaration of responsibility for starting the activity of tourist accommodation, according to the official form included in Annex III, accompanied by the Tourist Accommodation Suitability Certificate (CIVUT) regulated in Article 2(4) and Article 17 bis of this decree, without prejudice to other authorisations, permits, licenses, declarations of responsibility, notifications or reports that may be established in the different applicable sectoral and municipal regulations, **unless these are already in the possession of the Public Administration.**

RESPONSE:

The suggestion is not accepted since, in accordance with the criteria set out in Annex V of the methodological guide for the implementation of the RIA report (Resolution of the Governing Council of 11 December 2009) and in the document of 18 November 2009, Simplified method for measuring administrative burdens and for their reduction. Shared system of public administrations, the reduction of administrative burdens, in Articles 11(1) and 17(1) comes about through the measurement of the "Unit Cost" factor, which is modified from EUR 80



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(submission of an application in person) to EUR 2 (submission of an application electronically).

In short, and based on the foregoing, the "unit cost" for each individual operating the tourist dwelling to submit an electronic application to the Directorate-General for Tourism and Hospitality instead of in person would be the difference between the values of both: EUR 80 – EUR 2 = EUR 78 in savings.

15. It is determined that , circumstances such as inaccuracy, falsity and omission of data indicated on the declaration of responsibility may be declared by resolution of the head of the Directorate General responsible for Culture. **It is proposed to specify that such a decision may only apply to those parameters of the declaration of responsibility in which that directorate general is competent to investigate and impose penalties.**

The head of the directorate general with powers from the Autonomous Community does not have the power to investigate the certainty of what has been stated by the interested party with regard to compliance with municipal requirements. In the opinion of this association, it is essential to separate the areas of action of each of the administrations linked to this activity. Therefore, **it is only conceivable that a dwelling may be removed from the register for failure to comply with municipal regulations following the opening of urban planning disciplinary proceeding resulting from a final decision issued by the City Council.** The current wording of the second paragraph of Article 17(3) leaves open the possibility that the head of the department competent for tourism, after the opening of the hearing procedure for the interested party, may adopt a resolution on statements included in the declaration of responsibility regarding which the head of this department does not have the competence to investigate and, where appropriate, adopt a resolution.

RESPONSE:

The suggestion is not accepted since in the event that it is found that there are inaccuracies, falsehoods or omissions, of an essential nature, in the data recorded in the declaration of responsibility, it will be the head of the competent Directorate General who, once a proceeding has been instituted in this regard, declares this circumstance, which will prevent the conducting of the tourist business activity.

10. Ms. María del Mar Arce Martínez.

It is requested that the option be expressly taken into account of including extra beds or convertible beds in "studio"-type tourist dwellings that have more than 40 m² in floor space or that it be worded in a similar way to the provisions for other accommodation types in the current regulations of Decree 159/2003, of 10 July 2003, on the Regulation of Hotel Establishments with the inclusion of an extra bed when the surface of the dwelling exceeds by 25% the minimum dimensions established for the integrated room and living room, and inclusion of two extra beds when it exceeds the minimum by 50%.

Moreover, **we urge the adoption of a more professional approach to the sector and the equivalence of accommodation types to create a fair, balanced regulatory framework that is adapted** to the new demands of family tourism and responsible tourism, by authorising extra beds in tourist dwellings subject to the same criteria of floor space and quality as apply to hotels and apartment-hotels.

RESPONSE:

In advance, it is appropriate to clarify that Decree 19/2023 of 15 March 2023 of the Governing Council regulating provisions common to hotel establishments is the regulation in force which



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has repealed the aforementioned Decree 159/2003 of 10 July 2003 on the organisation of hotel establishments in the Community of Madrid.

With regard to the proposal, it should be noted that it is accepted by adding the following text to Article 18(4) of the draft decree which regulates the maximum accommodation capacities of dwellings:

The operators of the tourist accommodation activity must respect the following maximum accommodation capacities:

- a) For dwellings between twenty-five meters and fifty square metres of floor space and forty square meters of floor space, up to four people in at least two habitable areas.
- b) For each additional 12 m² of floor space in at least one additional independent habitable area, two additional people shall be permitted.

Two convertible places equipped with convertible beds shall be permitted in the dining room with integrated kitchen or, where appropriate, the dining room of the dwellings, provided that their surface area and distribution allows for this, and this shall be taken into account for the maximum capacity of the dwelling.

11. Consumers' and Users' Organisation (OCU).

The text of the position adopted with regard to tourist apartments refers to the regulation of supply, to review the current regulation of tourist dwellings to ensure that it is necessary and proportionate, and to reduce the current heterogeneity of regulations, in accordance with the principles of efficient economic regulation.

- A) To give greater weight to the owners' association, who decide whether to allow tourist dwellings in their buildings, due to the possible inconveniences that they may suffer, since they are affected first hand.
To this end, we consider it appropriate to approve an increase in the community fees for these tourist dwellings by up to 20%, as allowed by the Law on Horizontal Property.
- B) If the tourist flats do not comply with the rules of the owners' association, it is necessary establish fast and effective mechanisms for suspending the respective license for a reasonable period of time.

RESPONSE:

"The regulation of the supply of tourist dwellings" in the municipalities is outside the regional competence for the regulation of the accommodation type of tourist dwelling, since it is an exclusive municipal competence, through its urban planning regulations, to regulate the legal system of land uses.

In light of the foregoing, Article 17(10) of this draft decree clarifies that it is the different urban plans or municipal ordinances that have the power to include requirements for the compatible or complementary use of the accommodation type of tourist dwelling, or to add other sectoral restrictions, while always respecting the principles of proportionality, objectivity, necessity and legal certainty, and insofar as these restrictions are different from those of the regional tourist planning, which refer to the conditions and requirements for the provision of the service of this type of tourist accommodation.



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This regulatory amendment is considered necessary because it establishes the essential updated regulation for the organisation of tourist apartments and dwellings for tourist use in the Community of Madrid.

It complies with the principles of necessity, effectiveness and legal certainty, as it is based on the general interest derived from complying with the judgements of the courts and making the technical adjustments mentioned earlier in this RIA report, thus creating a more straightforward regulatory framework for tourism that will be easier to understand for the companies and users involved, as well as the different agents involved in the management and development of tourism in the Community of Madrid.

With regard to reducing the current heterogeneity of regulations, it should be noted that this is a complex undertaking since, as stated in the descriptive part of this draft decree, different aspects of housing are regulated by the Spanish Constitution, and, according to the Constitutional Court itself, these aspects are regulated by different areas of competence of the state, the autonomous communities and the municipalities.

4. Notification to the European Commission.

Once the public hearing and information procedure has been completed, and this RIA report and the draft decree have been updated, the notification procedure will be carried out to the European Commission, pursuant to Directive 2015/1535.

5. Report of the General Technical Secretariat of the Regional Department of Culture, Tourism and Sport.

By virtue of Article 4(2)(e) and Article 8(5) of Decree 52/2021 of 24 March 2021, in conjunction with Article 13(d) of Decree 264/2023 of 5 December 2023, the General Technical Secretariat of the Regional Department of Culture, Tourism and Sport is responsible for this; after completion of the hearing and public information procedures, and before requesting, where appropriate, the report to the Attorney General's Office, the report of the General Technical Secretariat of the Regional Department of Culture, Tourism and Sport shall be requested.

6. Report of the Attorney General's Office of the Community of Madrid.

Pursuant to Article 4(2)(f) and Article 8(5) of Decree 52/2021 of 24 March 2021 in conjunction with Article 4(1)(a) of Law 3/1999 of 30 March 1999 on the organisation of the legal services of the Community of Madrid, the report of the Attorney General's Office of the Community of Madrid will be requested.

7. Expert Opinion of the Legal Advisory Committee of the Community of Madrid.

Pursuant to Article 4(2)(g) and Article 8(6) of Decree 52/2021 of 24 March 2021 in conjunction with Article 5(3)(c) of Law 7/2015 of 28 December 2015 on the abolition of the Advisory Council, the expert opinion of the Legal Advisory Committee of the Community of Madrid shall be requested.

8. Final draft Decree and final RIA report.

In view of the documentation, reports, observations and other procedures carried out, the final wording of the draft decree and its RIA report will be drawn up by the Directorate General for Tourism and Hospitality.



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9. Referral to the Commission of Deputy Heads of Regional Departments and General Technical Secretaries and approval by the Governing Council.

The complete file will be sent by the General Technical Secretariat of the Regional Department of Culture, Tourism and Sport, electronically, to the General Secretariat of the Governing Council, in accordance with Instruction 1/2017 of 7 April 2017 of the Head of the Regional Department of the Presidency, Justice and Spokesperson of the Government, for the purposes of its examination and subsequent submission to the Governing Council for final approval.

VIII. JUSTIFICATION, IF THE DRAFT DECREE IS NOT INCLUDED IN THE POLICY PLAN.

In accordance with Article 3 of Decree 52/2021 of 24 March 2021, which sets out the policy planning for a period of several years, coinciding with the duration of the legislature, the Policy Plan for the 13th Legislature has been approved by agreement of the Governing Council of 20 December 2023.

The Draft Decree that amends Decree 79/2014 of 10 July 2014 regulating tourist apartments and dwellings in the Community of Madrid, is included within the Policy Plan for the 13th Legislature.

IX. EX POST EVALUATION

Given the nature and content of the draft regulation, it is considered that its *ex-post* evaluation is necessary on the basis of its results, for the purposes of Article 6 (1) (i), in conjunction with Articles 3(3), 3(4) and 13 of Decree 52/2021 of 24 March 2021 of the Governing Council regulating and simplifying the procedure for drawing up general regulations in the Community of Madrid.

In this sense, the *ex-post* evaluation of this regulation will be carried out every three years, by means of a report from the head of the Directorate General responsible for Tourism, since it is considered that the tourism sector is highly innovative and responsive to the habits of society and, therefore, is constantly changing. In addition, this plan is contained in the single additional provision of the draft legislation.

In Madrid, at the date of signature
DIRECTOR-GENERAL FOR TOURISM AND HOSPITALITY

Signed: Laura Martínez Cerro.