

Informative Alert – March 2022

Approval of Decree Law 3/2022, of 11 February, on Urgent Measures for the Sustainability and Circularity of Leisure industry in the Balearic Islands



Abogados

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On February 11, 2022, Decree Law 3/2022, of Urgent Measures for the Sustainability and Circularity of Tourism in the Balearic Islands (the "Decree Law") was approved by the Government Council of the Balearic Islands.

This Decree Law is not a completely new regulation, but introduces a series of amendments to Law 8/2012, of July 19 (the "Tourism Law"), of Tourism of the Balearic Islands and other existing laws.

The most relevant things, for the purposes of this alert, are the emphasis on circularity or circular economy, as a fundamental lever for the achievement of sustainability goals, and a moratorium on the acquisition of tourist units in Mallorca, Ibiza, Formentera and Menorca for the next four years.

Circularity should be understood as any effort to abandon the linear nature of production (extract, produce, use and throw away) in favor of a new management in which the use of resources is minimized and their reuse is maximized.

The new obligations for the sector in terms of sustainability: evaluation and circularity plan

The main objective of the Decree Law is to promote circular measures applicable to all companies, tourist establishments, hotel accommodations, tourist apartments and rural tourism accommodations, regulated by the Tourism Law. These must apply circularity strategies, which must be reflected in a circularity plan. This plan is understood as the document that includes lines of action and circular strategies in the fields of water, energy, food, materials and waste.

This circularity plan consists of two essential elements: (i) circular planning, aimed at outlining lines of action and making them operational, and (ii) circular evaluation, aimed at measuring the progress of the circularity strategy. The plans will be valid for a maximum of five years and must be therefore renewed periodically.

They must include the necessary activities, investments, actions and protocols to achieve the objectives set out in the circularity plan and its periodicity; the necessary human and material resources, and the allocation of the economic resources necessary to achieve the proposed objectives.

The circularity plans, as well as their modifications, revisions and / or renewals, must be reflected in a document in physical or electronic format that must be available to the inspectors of the tourist administration and the legal representatives of the workers.

Tourist accommodations with minimum categories of four stars or four keys must prepare the first circularity plan before May 1, 2023. the rest of the tourist accommodations subject to this Decree Law, before January 1, 2024.

Other environmental and efficiency measures

Hotel establishments and tourist apartments must eliminate the thermal installations that work with fuel oil or gas oil. They must replace them with others using energy sources that reduce the environmental impact, unless a duly technical impossibility is accredited. The deadline for this implementation is May 1, 2026. They must also have double pushbuttons or pushbuttons with interruption of flushing in toilet cisterns and water-saving devices in the taps of sinks, bathtubs and showers.

The competent ministry in tourism matters "has to elaborate a strategic plan of circular destination" of the Balearic Islands. For its elaboration they will count with the participation of the competent ministries in matters of energy, waste, water, territory, agri-food and mobility, of the insular and municipal public administrations, as well as of the social and economic agents of the tourist sector. In addition, they must consider the particularities of each island, establishing a territorialization of the strategy and objectives.

The new hygiene obligations: the elevated beds

Nowadays, hotel establishments that have obtained a star rating in accordance with Decree 20/2015, of April 17 and Law 8/2012, are obliged to carry out at least one daily cleaning of the rooms. The new Decree Law reinforces this obligation by introducing a series of innovations in terms of hygiene and cleanliness of these establishments.

In addition, hotels -whether city hotels, rural hotels or aparthotels- and other establishments that have voluntarily obtained a star rating are required to ensure that all beds in the establishment (except extra beds) are mechanically or electronically elevatable.

This allows a better cleaning of the floor of the room and of the elements on which the bed rests, as well as a better occupational health of the cleaning staff.

The Decree Law establishes the percentages of elevatable beds and the timetable depending on the size and category of the hotels:

- ▶ Five-star establishments: 30% in 2023, 50% in 2024, 60% in 2025, 75% in 2026, 100% in 2027.
- ▶ Top four-star establishments: 25% in 2023, 40% in 2024, 50% in 2025, 75% in 2026, 100% in 2027.
- ▶ Four-star establishments: 20% in 2023, 30% in 2024, 40% in 2025, % in 2026, 75% in 2027, 100% in 2028.
- ▶ One-, two- and three-star establishments, including unrated rural hotels: 15% in 2024, 30% in 2025, 50% in 2026, 75% in 2027, 100% in 2028.

Failure to comply with these deadlines will be sanctioned with a fine of 500 euros for each elevating bed not installed on time.

Furthermore, the Fourth Additional Provision establishes that, within one year, the Balearic Institute of Occupational Health and Safety must prepare and promote a guide of measures and good practices in occupational health. These good practices will refer, among others, to ergonomics or to the workload of all departments. These good practices may have an impact on improving the quality and sustainability of the services provided by hotel accommodation tourist establishments and may also be adaptable and applicable to other sectors of the activity.

The new obligations for the sector in terms of operation and publicity

The Decree Law develops the publicity regime in a more exhaustive way than the previous regulation.

It is established that it will be considered as illegal offer, clandestine activity, and unfair competition, the advertising or the effective realization of a tourist activity without having presented the responsible declaration of initiation of activity. Or, in case of having presented it, but without fulfilling the legal requirements to exercise it. It will imply the initiation of the corresponding sanctioning file subject to the provisions of the Decree-Law.

A reinforced right of information for the user is developed. The signs of quality, maximum capacity and any other information referring to the exercise of the activity must be installed in the main access (in a place of easy visibility), in accordance with the corresponding regulations.

Any establishment intending to market or advertise tourist establishments around the concept of circular business (which applies circular economy strategies, or similar), will have to obtain a certification issued by duly accredited entities to grant it.

The new figure of wellness hotels

The figure of wellness hotels is created, considered as those establishments that -in addition to meeting the requirements to be considered a Hotel- have facilities that jointly offer wellness and beauty services provided by staff.

They must meet the following requirements: (i) the provision of one or more services related to wellness and beauty, jointly with the accommodation service, is mandatory, and (ii) to have a minimum category of four stars.

The incentive of having up to 50% of the surface area available for the provision of wellness and beauty services is established.

The suspension to acquire new tourist accommodations also affects these wellness hotels. Therefore, during the term of this suspension, the only possibility to establish a wellness hotel would be the conversion of existing establishments into wellness hotels.

The suspension of touristic units

Another of the main novelties introduced by the Decree Law (and perhaps the one that is having the greatest impact) is the suspension of the acquisition of touristic units in Mallorca, Ibiza, Formentera and Menorca until 2026. Specifically, the possibility of acquiring touristic units is temporarily suspended (as well as the exchange of units between individuals) for the beginning of tourist activity or for the expansion of it, for:

- ▶ Tourist accommodation establishments (those that develop an activity of providing accommodation services to the public for a price, in a professional and habitual way -either permanently or temporarily-. Those companies whose purpose is institutional, social, sanitary, welfare, labor, educational or sports will not have this consideration).
- ▶ Housing subject to tourist commercialization.

These suspensions do not have retroactive effects, so they do not affect the applications that were being processed when the Decree-Law came into force.

Neither does it affect hotel establishments that; among others, are executing works for the opening or expansion of the establishment or are processing an application for an urban building license, or a responsible declaration for the opening or expansion of the establishment.

Nor does it affect tourist homes which, prior to the entry into force of the Decree-Law, were processing an application for accommodation units before the tourist administration. Or those that have carried out a provisional acquisition of accommodation units and request its renewal, in accordance with the regulations in force.

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