



## An Analysis of the Holiday Rental Issue in Spain

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***Abstract:** Holiday lets and holiday rentals have generated a major debate in recent years in Spain with regard to their regulation. Their impact, not only on tourism, but also on urban sustainability and local planning, have led to public intervention to control their expansion. This article analyses the origin of holiday lets, their problems, and how the public authorities have intervened in this regard, thus providing an overview of the impact of this type of accommodation in Spain.*

**Keywords:** Airbnb; collaborative economy; collaborative accommodation; collaborative tourism.



## Introduction

Holiday rentals have generated a major debate in Spain, with many conflicting parties and conflicting interests. Having emerged in the context of the collaborative economy, for many years they were not subject to regulation, which led to harsh criticism from the hotel industry as a result of their being a focus of unfair competition. This legal vacuum led to many owners using empty properties or second homes for tourism purposes, owing to the high demand for these accommodations by tourists looking for good value accommodation. This is in addition to the emergence of platforms such as Airbnb, which have further boosted holiday lets.

This lack of control was halted by the progressive approval of tourism legislation governing this type of accommodation. However, its impact on the local population, urban sustainability, planning, and the rental market has meant that we are no longer faced with a problem purely related to tourism. This article will explain how holiday lets have developed in Spain and the reasons for their expansion, taking into account the views of the property owners and the profiles of tourists. It will in addition look at regulatory measures and how some city councils, such as those in Madrid and Barcelona, have adopted urban planning control measures.

## The evolution of holiday letting in Spain

Holiday letting is a phenomenon that goes back decades in Spain, although it is with the emergence of platforms such as Airbnb and so-called collaborative tourism that it has assumed such a prominent role in the field of tourism (Russo 2015; Pisá 2017).

Until 2013, this situation was regulated as a ‘holiday letting agreement’, a concept which appears in Act 29/1994 of 24 November on urban rentals (abbreviated to LAU) and concerns the rental of housing not for the purpose of any permanent tenant need (Art. 4.3), but merely to occupy it by chance or for temporary use. The legislation does not define ‘temporary’, but it should be understood in a broad sense, and the legislation does not apply to housing used for regular needs but to second homes. The fact that many owners were offering their property with extra tourist services meant that this legal concept was not really applicable, as we were actually dealing with tourist accommodation or a letting agreement, a mixed contract in which the rental of something is combined with the rental of services. It is not regulated by the LAU and we find few provisions relating to it in the Civil Code and it is characterised by the fact that its legislation is basically structured through tourism regulations (Castaños 2014).

The rise of the collaborative economy and platforms such as Airbnb led to a considerable increase in these accommodations on the market, which also take advantage of the legal vacuum in this area. This situation led to criticism from the hotel industry about the unfair competition being generated (Franch & Ribas 2013; Exceltur 2015).

Act 4/2013 of 4 June marked an important change, as Section e) was inserted into Article 5 of the LAU (Martos 2014). This new section establishes that the applicability of the LAU excludes cases that involve the temporary rental of furnished accommodation equipped for immediate use, as well as any accommodation marketed or promoted in tourist distribution channels or for financial gain. This led to the regulation of this form of tourism by the Autonomous Communities, which are the competent authority in accordance with the distribution of powers set out in the Spanish Constitution (Article 148.1.18).



With this important legislative change, the different Autonomous Communities were given free rein to begin regulating holiday rentals, one initial problem with which was the inexistence of any shared concept of what ‘holiday rentals’ are. This led to the emergence of different terms to refer to the same idea, such as holiday rentals, homes for tourism purposes, or holiday homes (Guillén 2015). In addition, regional regulations have not been harmonised over time, so variations range from the Catalan legislation regulating holiday rentals that was introduced in 2012 to the regulations that were adopted in Asturias in 2020.

Because the Autonomous Communities have authority over tourism they regulate holiday lets independently and create regulations that do not follow any uniformity (Guillén 2020). There are therefore major differences between them, not only because of the different terms used to refer to holiday lets, but also because some allow the renting of rooms (Andalusia, the Canary Islands, Cantabria, Castile-Leon, Galicia, La Rioja, the Region of Murcia, the Basque Country and the Principality of Asturias), while others do not. Another aspect on which regulations differ is the list of services that the owner of a holiday home must provide. In this respect, the Canary Islands and Castile and Leon have very detailed regulations and outline a complete list of items associated with each of the rooms (general equipment, bedroom, bathroom, kitchen and living rooms-dining rooms).

Other noticeable differences between regional regulations are the different regulations on the capacities of homes, the contractual terms (deposits, reservations, cancellation and invoicing), and penalty systems. The corresponding regional legislation must then be consulted to find a solution to any problems (López 2018).

A last aspect to be pointed out is the tax assessment of holiday lets (Montesinos 2017; Cerdeira 2018). In this respect, there have been significant developments in recent months. Supreme Court Ruling 1106/2020 of 23 July 2020 on this subject cancelled and annulled the obligation to report the rental of housing for tourism purposes, which was contained in Article 54b of the General Regulations on Actions and Procedures Related to Tax Management and Inspection (Royal Decree 1065/2007 of 27 July), and introduced in 2017 – a ruling which merely enforced the doctrine of the European Court of Justice's Airbnb Ireland ruling (C-390/18) of 19 December 2019 and abolished tax control over holiday lets in Spain.

## **The effectiveness and suitability of regulations**

When considering the question of whether holiday lets should be regulated, it is interesting to analyse the positions of the various stakeholders – in particular, the hotel industry, property owners, tourists, and the public authorities.

There are undoubtedly two aspects that affect collaborative tourism: the black economy and unauthorised activities. In this regard, the Spanish Confederation of Hotels and Tourist Accommodation (abbreviated to CEHAT) issued a statement in mid-2014 against the black economy and illegal economic activity in Spanish tourist accommodation. This statement outlined that the hotel industry did not intend to prevent holiday letting but was instead demanding that the rules to compete in the market be on the same footing.



However, holiday lets have been linked to a number of problematic issues that have led to the need for them to be regulated given the legal vacuum that existed. The problematic issues regarding holiday lets can be summarised into the eight ideas outlined in Table 1.

**Table 1: Problematic issues regarding collaborative accommodation**

1. Unfavourable impact on urban models, the real estate market, and coexistence in homeowners' associations
2. Security problems due to the significant uncontrolled movement of people who have not filled in the registration form that hotels require and then submit to the police.
3. The increase in the black economy.
4. The increase in illegal employment.
5. The violation of consumer rights in terms of safety and quality.
6. Great competitive advantage in the prices of holiday rentals because regulatory costs are not applicable
7. Deterioration of the image and future of tourist destinations.
8. Little regional regulation

Source: *Excelltur (2015), CEHAT (2014)*.

The need to regulate holiday lets has had its enemies – not only property owners who prefer more flexible conditions to increase their profitability, but also the National Commission on Markets and Competition (CNMC). In this case, due to criticism from the hotel industry, the CNMC prepared a public consultation and a report in which it expressed its opposition to the regulation of holiday rentals, stating that ‘unnecessary or disproportionate regulation would harm consumers and the general interest, as well as being an obstacle to effective competition’ (CNMC 2014).

The CNMC's current view has changed (CNMC 2018). While it accepts the regulation of holiday lets, it is true that it has established that regulation by public authorities ‘must be due to the existence of a market failure or an overriding reason of general interest that requires public intervention’ (CNMC 2018: p. 62). In other words, the CNMC is in favour of applying the principles of efficient economic regulation and the elimination of requirements that place an unreasonable, excessive, or impossible burden on owners because they discourage their participation in the market and increase costs for users (Guillén Navarro 2020).

With regard to owners and tourists, it should be noted that a new type of tourist has appeared in recent years, the so-called ‘collaborative’ tourist or tourist 3.0, who chooses affordable accommodation that is away from the hordes of tourists or that allows direct contact with the local population (Airbnb 2019; HomeAway 2019). This type of tourist prefers holiday lets over hotel accommodation. This situation has created a high demand for this type of accommodation, which has been matched by a wide range of holiday rentals, many of them illegal. It is worth noting that the holiday let industry generated more than 4,39 billion euros in Spain in 2018, 3,26 billion euros of which correspond to expenses during the stay, which has a great impact on local economies (HomeAway 2019). This situation has been taken into account by many owners of empty properties, and the main reason for using the property for holiday lets is the financial contribution it can make to the family budget (Fevitur 2015).



Finally, the Municipal Authorities have been in favour of regulating holiday lets. We must bear in mind that holiday lets have nothing to do with residential lettings. This type of letting is not covered by the Act on Urban Rentals (LAU) and must be regulated by the tourism industry. In addition to this, there are three important factors that led to the regulation of holiday lets in Spain. Firstly, it should be noted that the use of private accommodation for tourism was giving rise to unauthorised activities and unfair competition. Secondly, there was a need to establish a certain minimum quality and safety guarantees for tourist users, and, thirdly, there was a need to continue to improve the quality of tourist destinations. These reasons have led the different Autonomous Regions to regulate holiday lets. These regulations regulate how the property can be used for holiday rentals, the requirements that must be met, the contractual terms, and contract violations and penalties (De la Encarnación 2016; Guillén Navarro 2020).

The regulation of holiday lets has been supplemented by tourism inspection systems. Tourism inspection has in this respect helped to control illegal holiday rentals. An example of this is the case of Barcelona, which launched an action plan in 2016 to combat this type of accommodation and detect illegal properties offered on sites such as Airbnb. This action plan against flats that are rented by the day without a licence has meant analysing listings of homes for rent advertised on 140 platforms (especially Airbnb), with 17,000 homes analysed so far, resulting in 6,453 penalties. In addition, 4,900 cease and desist orders were issued, and 62% of these properties (more than 3,000) have now stopped this activity (Ayuntamiento de Barcelona 2019). As can be seen, the regulations and inspection procedures have helped to ensure that holiday rentals are now considered just another regulated tourist accommodation option, thus overcoming the initial problems. However, as will be seen below, it is important to bear in mind the impact on local planning or owners' associations, which have created a negative view of holiday rentals in recent years.

## **The impact of holiday lets in Spain: a user profile**

There are many factors that need to be taken into account to explain the 'boom' in holiday rentals in Spain. To start with, we should stress both the importance of Spain as a tourist destination and the high number of unoccupied or secondary homes (25.2% of the total housing stock in Spain in 2018) whose owners have seen this option as a good way of making their properties profitable as opposed to traditional renting.

In this regard, the holiday rental boom in Spain has a clear economic component. The owners of empty houses located in tourist cities have opted to use them for holiday rentals in order to make them more profitable and because of the legal vacuum that exists in the regulation of this type of accommodation, which gave rise to a tax benefit in the form of not having to pay taxes on revenue generated through this activity (Exceltur 2015). This situation has been criticised by the hotel sector, which considers it unfair competition (CEHAT 2014). In addition, all this has led to the appearance of many illegal accommodations, since platforms such as Airbnb allow homes to be offered for rent regardless of whether they are legally permitted to do so. On the other hand, we must add the interest of tourists in this type of accommodation, which is usually cheaper than a hotel.

As I have already noted, the economic aspect is very important. A clear example of this is found in a comparative study carried out by the British real estate company Nested, which analysed this situation by comparing the profitability of a three-bedroom home offered as a normal rental



and as a holiday let, comparing the months needed in both cases to recover the investment made (Nested 2017). This worldwide study includes Spain and specifically the cities of Barcelona and Madrid, ranking them in the 35th and 54th places, respectively, with respect to the profitability of properties advertised on the Airbnb website (Table 2).

**Table 2: Comparative study of the profitability of a three-bedroom home in Barcelona and Madrid**

City	Avg. cost of a 3-bed. property	Avg. monthly rental of a 3-bed. property	Months until value recuperated via rental	Avg. monthly Airbnb rental 3-bed. property	Months until value recuperated via Airbnb
Barcelona	€ 431,025.97	€ 1,222.42	353	€ 4,358.49	99
Madrid	€ 556,850.58	€ 1,432.64	389	€ 4,024.34	138

*Source: Prepared by the authors based on Nested data (Nested 2017)*

Nevertheless, this study is highly debatable. The situation has now changed, with the profitability of holiday rental now lower than the profitability of residential rental due to the taxation and expenses (utilities, supplies, and rental management) that the owner has to face. In this respect, it is interesting to mention the study carried out for Madrid and Barcelona by the Alquilerseguro.com (2020) site, which compares the profitability of both types of rental according to district.

As a starting point, the study establishes the costs that an owner of a holiday rental must face. This study thus sets the monthly expenses for utilities and supplies at 100 euros, to which we add rental management costs (check-in, check-out, and cleaning), which is set at 70 euros for each three-night stay. The study also takes into account that the owner must pay a 20% tax on the net income from holiday rental (income-expenses). However, in the case of residential rentals, it is necessary to take into account the monthly rental management costs, which are 5% plus VAT on the monthly rent and a 20% tax on net income.

With these figures, the study establishes that for Barcelona, for example, the property needs to be occupied for an average of 21 nights in order for the profitability of holiday rentals to be on par with residential rentals. Thus, there are districts in which the minimum occupancy rate must be 60%-70% (see Nou Barris), while in other areas the property must be occupied 70%-80% of nights (see Ciutat Vella, Les Corts and Sant Martí). A similar situation occurs in Madrid, but with the difference that the profitability of tourist properties in 4 districts of Madrid is no greater than for residential properties (Arganzuela, Centro, Ciudad Lineal, and Puente de Vallecas).

In addition to all this another aspect must also be added, which is that the fall in the number of visitors as a result of COVID-19 has been reflected in the tourist rental housing market. Thus, in Barcelona, the number of properties for this type of use has decreased by 32% since March 2020 (Alquilerseguro.com 2020). The demand for holiday rentals is in any case significant, but far behind the hotel industry: 54,909,689 foreign tourists stayed in hotels in 2019, compared to 9,328,475 who stayed in holiday rentals (INE 2020).

It is also important to identify the profiles of the tourists who choose this type of accommodation. In this respect, and according to data provided by the 6th Holiday Lets Survey





(HomeAway 2019), families are the main users of holiday rentals (54.8%), followed by couples (24.7%) and friends (18.0%), while in hotels it is couples (52.5%) and families (34.0%).

The association with family tourism is a very important aspect of this that has been maintained and even grown stronger over time, as Table 3 shows. It can be said then that holiday lets are clearly family oriented, with other guest profiles coming in a distant second.

**Table 3: Holiday rental users**

	2014	2015	2016	2017	2018	2019
<b>Family</b>	46.1%	45.9%	45.2%	51.0%	42.7%	54.8%
<b>Couple</b>	27.0%	30.0%	32.1%	28.3%	36.4%	24.7%
<b>Groups of friends</b>	25.0%	20.7%	19.0%	18.6%	16.8%	18.0%

*Source: Prepared by the authors based on Homeaway data (Homeaway 2019)*

With regard to the length of stay and number of people, there have been minor fluctuations if we take into account the total data, although we are talking about average stays (6 days) and with an average of 4 people staying (table 4).

**Table 4: Average length of stay and people accommodated in holiday rentals (days)**

	2014	2015	2016	2017	2018	2019
<b>Persons accommodated</b>	4.6	4.0	4.0	4.4	4.0	4.0
<b>Length of stay (nights)</b>	7.4	6.0	5.0	6.4	5.5	5.3

*Source: Prepared by the authors based on Homeaway data (Homeaway 2019)*

Another interesting aspect to take into account in the user profile is nationality. Looking at the data from Homeaway (2018), it is possible to identify a greater predilection among international tourists for this type of accommodation. This is because residents from abroad spend more nights in a holiday rental than residents in Spain, with almost 10 nights for the former compared to 5.5 for the latter.

## Current problems

It is important to note that the regulation of holiday rentals in Spain has not been adequate. The existence of regulations are mainly due to criticism from the hotel sector that these accommodations generate unfair competition. Although holiday rentals have been regulated since 2013, it has only been done under tourism legislation. This phenomenon, however, has created problems beyond the tourism sector. Nevertheless, regulation has also had positive effects, such as the fight against unlicensed operators, and has forced many homeowners to legalise their situation, the result of which has been the disappearance of many illegal accommodations. On the other hand, the position of the National Markets and Competition Commission must be considered, as it has always defended the flexible regulation of holiday rentals. This position is incorrect, from my point of view, as it favours the positioning of holiday rentals in the market to the detriment of other accommodations that must comply with all legal and tax obligations.



Three specific problems can be identified at present in relation to holiday lets. These are the disruptions they cause in the peaceful coexistence of residents in a block of flats and the inconvenience caused to neighbours; the intervention of local councils to halt the expansion of holiday lets; and, finally, the effects of Covid 19 in paralysing tourism in Spain.

With regard to the first of these problems, homeowners' associations have played a major role in the development of holiday lets in Spain. We must bear in mind that we are dealing with residential housing that is intended for tourism and is in most cases, except for houses, located in residential blocks of flats. This situation has created serious problems of residential coexistence and many residents have objected to the appearance of holiday rentals in their buildings due to the noise and inconvenience caused by tourists (Cabezuelo 2018; Rodríguez 2018).

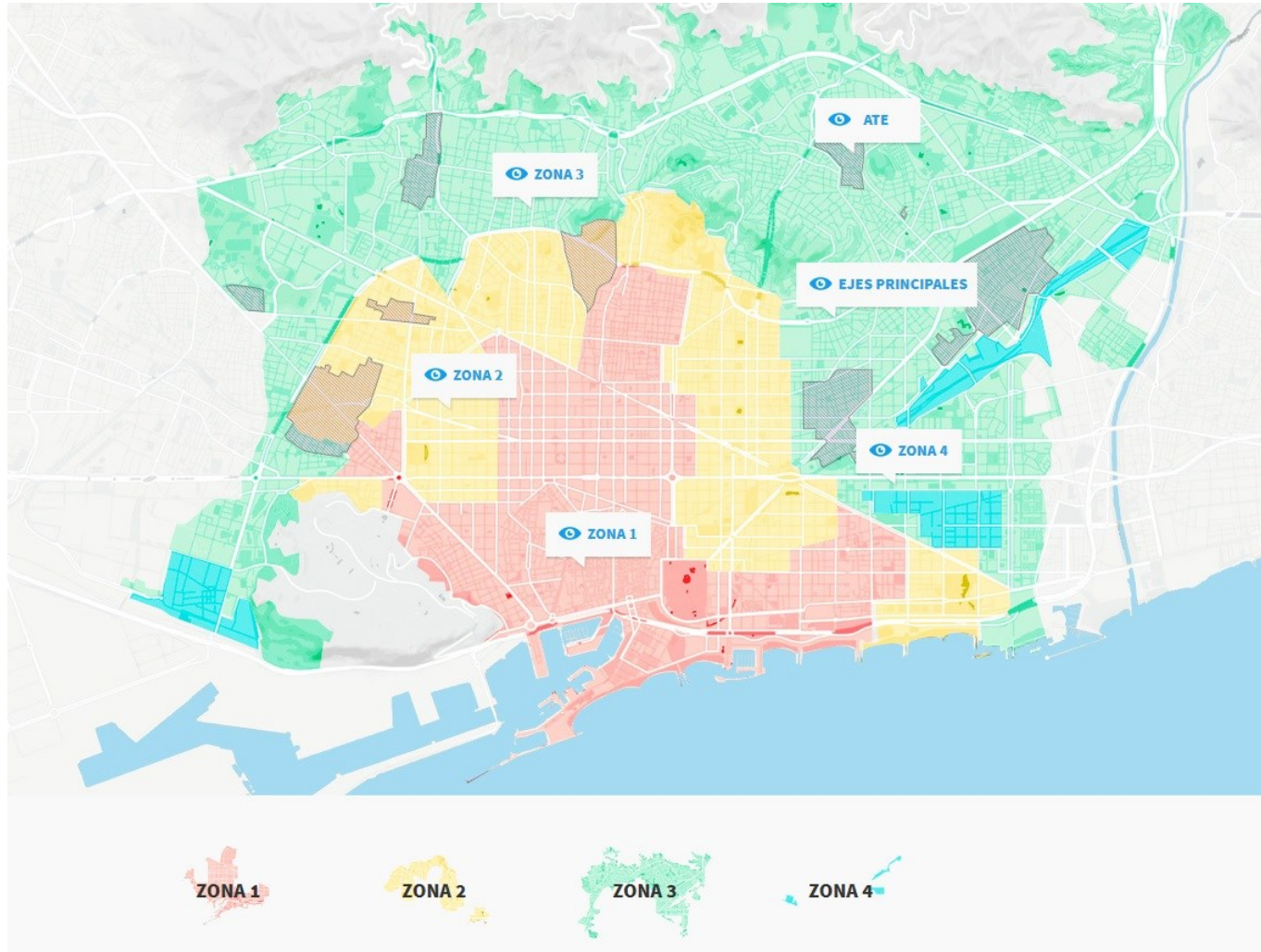
Although some laws, such as those in Aragon and Catalonia, require that the owner of a holiday rental property obtain a document certifying that the articles of the homeowners' association do not prevent the possibility of using homes for tourist purposes, these criteria are not followed in all autonomous community regulations. Nevertheless, there have been important changes in recent times in the majority system necessary to limit or regulate activities carried out by homeowners' associations. In this respect, legislation on urgent measures in housing and renting was amended to also cover horizontal property. This means that three-fifths of the total number of property owners, who in turn represent three-fifths of the ownership, (in a homeowners' association) must vote in support of limiting or regulating activities carried out (within the building/property), regardless of whether this involves changes to the constitutional document or articles of association (Cerdeira 2019). It should in addition be said that these homeowner agreements do not have any retroactive effects.

Another major problem is the intervention by local councils to curb the expansion of holiday rentals, which has in some cases had negative effects on 'urban sustainability' and outbreaks of tourism phobia, i.e. animosity felt by local residents towards tourists (Arana 2018; Guillén 2020). The reason for this intervention is the high number of residential properties that have been converted for tourism purposes, which has in some cases led to an increase in rental prices as a result of a decline in the amount of rental housing on offer. This is because owners find it more profitable to use their homes for tourism than to rent them out, which has led to the expulsion of local residents in some cities in favour of tourists.

Cities such as Barcelona and Madrid have adopted interesting measures aimed at delimiting areas where new holiday rentals are not allowed to emerge. In the case of Barcelona, the Special Urban Plan for Holiday Rentals (PEUAT), which came into force on 6 March 2017, regulates the licensing of tourist flats and accommodation in the city of Barcelona. A feature of the PEUAT is that it divides the city into four specific zones, ZE-1, ZE-2, ZE-3, and ZE-4, which determine whether or not new tourist services can be established (Figure 1).



**Figure 1: Division of the city of Barcelona into PEUAT zones**



*Source: Ayuntamiento de Barcelona, 2017.*



Among these zones, it is important to note the impact of ZE-1, known as the degrowth zone, where the PEAUT does not allow any new types of tourist establishments to be set up or any increase in the capacity of existing establishments. With regard to holiday rentals, although the PEUAT prohibits new accommodation from being set up, it does allow a new establishment to be opened in the ZE-3 when a holiday rental is removed from the ZE-1 list of rental properties. This is conditional upon the new establishment being located outside the district of Ciutat Vella and it being set up in accordance with the conditions determined for this area (Ayuntamiento de Barcelona 2017). It should be noted that ZE-1 includes several predominantly tourist areas, such as the Gothic Quarter and Barceloneta. As for ZE-2, this is considered a maintenance area so that when a tourist establishment is removed from the list of rental properties, another one with the same capacity is allowed. On the other hand, ZE-3 is more flexible as it allows new establishments to be set up and existing ones to be expanded, as long as the maximum density of establishments is not exceeded. Finally, ZE-4 has special features as it is an area that includes transformation areas, where no new holiday rentals are allowed.

Madrid is another example of municipal intervention in holiday rentals. Various measures have been adopted in recent years that led to the approval on 27 March 2019 of the Special Plan for the regulation of tertiary use in tourist accommodation (PEH). The use of tertiary services in Tourist Accommodation is thereby regulated, with three areas being delimited as concentric rings and made up of different districts (Figure 2). The PEH basically imposes strong restrictions on rings 1 and 2 – for example, requiring tourist accommodation activities to have separate entrances, and not being able to use the same entrance doors, halls, or lifts as those used by other residents in the building.







The last problem to point out is the impact of Covid-19. The collapse of tourism in Spain during the pandemic has meant that many owners have given up the idea of using their homes for tourism purposes and have thus returned to using them for residential rentals. This situation has led to an increase in the supply of rental housing, and doubts about how tourism will evolve in the coming months, given the advance of the pandemic in Spain as the tourist season approaches.

## Conclusion

Holiday lets in Spain have experienced four different phases. The first phase can be identified as one of indifference, given that it had little impact on tourist accommodation, as for decades it was not really an option chosen by tourists. This phase gave way to another phase, one of concern due to the uncontrolled expansion of this phenomenon in response to a boom in collaborative tourism, platforms such as Airbnb and, above all, as a result of the legal vacuum in Spain regarding new forms of holiday rentals, such as holiday lets. This was followed by a third phase, a time of regulation, as the Autonomous Communities actively intervened to regulate this phenomenon and introduced inspection systems to monitor the appearance of illegal tourist accommodation. Finally, a final phase can be identified, in which the phenomenon is no longer just a tourist problem but has become an urban planning problem in cities such as Madrid and Barcelona. This situation has seen the intervention of City Councils, which exert control through urban planning measures. Holiday lets are now fully regulated, although the inefficiency of the inspection services and the protection that platforms such as Airbnb and Vrbo offer property owners still facilitate the appearance of illegal accommodation. Nevertheless, holiday rentals have now become a standard form of tourist accommodation. Their particular features, such as less comprehensive regulation than hotels, and their popularity among tourists have encouraged their rapid expansion in places considered important tourist destinations.

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