

The Canarian Government is apt to control rental car offers without driver, and its posting could be entrusted to the Island Council.

Modifying the Decree 159/1996 rental car offer without driver can be controlled by the Canarian Government. Regarding the regulation of this offer, the Canarian Executive can entrust its posting to the Island Councils. On their behalf, the Councils will have to determine the existence of objective circumstances that would demand adjustment of rental car offers without driver and in case they perform this authority the amount of the offer will have to be established by means of the procedure established by the Decree.

These are the main conclusions extracted from the Report: “Legal foundation for the regulation of rental car offer without driver in Lanzarote”, commissioned by the Island Council of Lanzarote, and framed within the project *Life Lanzarote 2001-2004*.

Synthesis of the Report:
Legal foundation for the regulation of rental car offer without driver in Lanzarote

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1. Introduction.

The Report analyses legal aspects given by the possible adjustment of rental car offers without driver in Lanzarote, as well as identification of public competence that contributes in its regulation.

A study of the appropriate Administration that should control the offer of car rentals without driver and of existing precedents, identifying possible legal risks was specifically entrusted.

2. Thirteen conclusions of the Report.

1^a.- There is objective data, confirmed by Public Administration on all levels, which enables planning and valuing whether the situation demands adjusting the growth of rental car offers in Lanzarote. This information shows that:

- a) There is distinctive data within the offer of rental cars without driver in Lanzarote that derive from insular facts.
- b) Within the Canary Islands Lanzarote bears a peculiar situation that cannot be compared with the rest of the islands.
- c) The differences between Lanzarote and the rest of the islands should be emphasized.

2^a.- If adjustment of rental car offers in Lanzarote was considered necessary, sufficient legal means do exist to adopt such measures. There is also an existing number of precedents in similar situations to lay the foundations for such measures.

3^a.- Measures of rental car adjustments would not affect the constitutional principle of circulation freedom as there is sufficient rental car offer permitting easy access to it for anyone who wishes to use this means of transport.

The adjustment of rental car offers without driver could affect the principle of business freedom. Nonetheless, this principle is not an isolated rule as it should be interpreted in connection to other articles of the Constitution that allow the intervention by Public Administration, as the principle of business freedom cannot be understood as absolute.

4^a.- There are various articles that entitle Public Administration to establish rules for the adjustment of rental cars without driver. We can quote town and country planning and environmental and tourist regulation rules. But the article we consider most appropriate is the rule for land transport, where a possible adjustment of rental car offers should be included.

The Canarian Consulting Council in different reports emitted on the practice of statutory power by the Canarian Government in land transport matters, reminds about the convenience of the pre-existence of an autonomic land transport law. Nonetheless there is proof that the Canarian Government has practised its statutory power according to Decree 53/1999, dated 8th April, without said pre-existing autonomous law.

5^a.- The activity of rental cars without driver has traditionally been submitted to regulated non-optional authorisation by State Administration. At present state legislation and autonomous legislation meet in mentioned regulation, practising the

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powers they receive through their respective Statutes or those which have been transferred to them by Central Administration.

New rules for businesses that rent cars without drivers do not condition the volume of activity of neither vehicles nor action radius, and provide that the granting of authorizations is ruled foreseeing that it will not be subject to any quantitative limitation so ever. The granting of this type of authorization is, consequently, totally and absolutely ruled, there existing no margin of discretionary nature so ever in favour of the Administration. It is therefore a case of mere operational observations.

6^a.- Due to the regional and more over to the inter-insular characteristics of this type of auxiliary transport activity the competence of its regulation is attributed to the Canarian Autonomous Community according to the content of article 29.13 of the Autonomous Statutes. In several sentences the Canarian Consulting Board denotes that this is the competence that has to be practised to control car rental in the Canary Islands. The application of state norms does not apply as it is not a matter of transport affecting different Autonomous Communities.

If it is understood that objective circumstances ask for an adjustment of the offer, Decree 159/96 can be changed and a quantitative limit of authorised businesses or an authorization for each vehicle can be established.

7^a.- The Island Councils, as members of government, administration and representation of each Island bear the characteristics of Local Corporation and are co-participants in autonomic functions. Administrative control of road transport and complementary and auxiliary activities have been transferred to the City Councils. Nonetheless normative control is maintained by the Government of the Autonomous Community.

Consequently, carrying out reglamentary control falls upon the Autonomous Government, with no prejudice as to the fact that the Canarian Parliament would be responsible for the approval of the transport referring Law that has been repeatedly requested by the Canarian Consulting Board.

The offer of rental cars without driver can be adjusted by the Government of the Canarian Autonomous Community, and in this adjustment the Government of the Canarian Autonomous Community can entrust the Island Councils to establish it. The Councils will have to determine whether there are or not objective circumstances that would ask for an adjustment of the offer of rental cars without driver, and in case they carry out this authority they will have to decide on the quantity of the offer through proceedings established by the Decree, whereby a consulting Commission should be formed and of which those affected by these measures could take part in order to bring forward to the Council their objections before the latter adopts corresponding measures. A normative with Decree status by the Canarian Autonomous Community is viable, and can establish criteria for granting permits for rental car activities. In any event it will be a case of an authority constituted from a point of view of administrative right as an indeterminate legal concept and regulated authority, susceptible to review by the Courts of Justice. As a consequence, and once rental car demand has been valued, the administrative normative will have to qualify the offer, and if necessary establish a Plan to permit the creation of a harmonic relationship between offer and demand, determining objective criteria of created quota distributions.

8^a.- The adjustment of rental car offer has to be coordinated with the planning that is being carried out at regional level in the transport sector, and in the field of Lanzarote within the Strategy towards island development. It should not be looked upon as an

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isolated measure, but as a measure to be inserted in others assigned to obtain sustainable growth within the frame of territorial planning and the improvement of public transport.

9^a.- Legislation dictated to regulate cars assigned to rental with no driver can serve as precedent to determine the legal form of adjusting the offer of vehicles without driver. The Canarian Autonomous Community Decree 148/94 that established the regulation of car rentals with no driver was object to legal suspension. For this reason in the second phase of this report, the examination of arguments used against Decree 148/94 are considered convenient in order to diminish to a maximum the legal risks of a repetition of said arguments against an eventual Decree that would regulate the adjustment of offer within car rental businesses.

10^a.- Emphasis should be given to the fact that an eventual quantitative restriction of car rental offer without driver affects the general established principle of Basic State Law by which no quantitative limits are given to granting permits, except in case objective events contribute to justify installing this quota.

Eventual normative regulation would mean a deviation of the inclination followed since 1994 to the present within governmental field as well as within the Autonomous Community in regulating rental cars with no driver, passing from granting permits to businesses without establishing quantitative limits to vehicles, and lastly would affect the market release produced within government as well as autonomous legislation. Nonetheless objective information allows to state that the Island bears an objective situation which determines the needs to establish specific regulation, and according to mentioned objective information a normative that would adjust car rental offer is possible.

As stated in the document “Lanzarote in Biosphere” it will possibly be necessary to require ample social support, and therefore it would be convenient to obtain the assent of associations representing the sector, especially to determine an objective distribution system of market capacity.

11^a.- From a formal point of view, three conclusions referring to future normative can be extracted in case assessment of car rental offer adjustment is adopted:

- a) Canarian Autonomous Statutes include an article, - road transport -, that grants exclusive competence of inter-communitarian road transport matters. And precisely in relation to adjusting rental car offers it clearly determines that regulation of such transport is sought within the field of exclusive autonomous competence, therefore without this power being granted or having to be granted by the State. Thus bringing about consequences by which the Autonomous Community is not reduced to developing governmental laws and even less statutory laws without being limited by such norms of non unanimous or basic character.
- b) Referring to the rule status, and whether it should be Law or Decree, this should be decided by the Canarian Government, although we can anticipate that up to now (last occasion by Decree 53/99, 8th April) these questions have been ruled by statutory rules, at Autonomous Community level as well as at State level and at other Autonomous Community levels.
The adequate way would be to establish a change of the Decree 159/96 which rules car rentals with no driver within the Canarian field.

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Evidently the rule can be established as Law status under the character of a regular rule in relation to foregoing Decrees by the Canarian Consulting Board, and has thus been advised.

Because of the reform entity it would be convenient, even though decision evidently concerns the Canarian Government, to seek a report from the Canarian Consulting Board in order to grant maximum guarantee to affected interests.

- c) Autonomic rules could still contemplate a permit referring to each vehicle, as clear parallel to the state rule already repealed.

12^a.- If offer adjustment is chosen, it could be carried out by ways of quota contingent. While no Autonomous Transport Law exists, the established frame within the Basic State Law should be used. Since the problem derives from an excess of offer, the logical solution is to quantify, and if necessary, limit available offer.

This might require establishing a permit for each vehicle. Independently, the objective requirements that car rental companies have to observe will have to be established in a similar way in which it is done at present.

The permits entitling car rental could be granted as permits to the renting company, establishing specific limits in relation to the vehicles to be used in the business practice. In this case the permit can, or not, refer to a specific car.

There is a precedent that can specially be applied in relation to the autonomous normative which rules rental cars with driver. There is indeed a precedent within the field of the rule dictated by the Canarian Autonomous Community that rules practice and authorisation system for rental of tourist cars with driver. In Additional Stipulation Eight it is ruled that:

Island Councils have to establish maximum quota of permits attending to the correct adjustment between offer and demand in such service.

Said quotas will require previous Report by the Commission that to the purpose will be constituted by the corresponding Island Council of which it will be part, as well as the Associations representing the interests of the sector of car rental with driver, and those of public discretionary transport of travellers in tourist vehicles (auto taxis).

This implies that the Island Council, in the case that is object of this report, would have the power to decide whether or not quota should be applied, since as stated before circumstances vary from one island to the other and those circumstances that might require establishing quota apparently only occur in Lanzarote. Nonetheless and from the point of view of wielding statutory power, it would be convenient to attribute this power to all Island Councils.

The Island Council, if it determines to establish quotas, will have to establish the objective criteria of distribution.