

The **Association of Owners of Empuriabrava**, which was recently established in order to defend the rights of the owners of properties and moorings in Empuriabrava, is working together with the **Association of Tourist Businesses, "Tot Comerç"**, to make public the extent of the matter initiated by the concessionaire, and at the same time has contacted various legal services with the aim of obtaining a legal report elaborated by lawyers, legal and independent professionals that will serve as a base for future actions and decisions made by owners and businesses in defense of their own interests in the mentioned process.

Until we have this legal report, we have elaborated a preliminary report that summarizes our opinions and concerns, and we expect the collaboration of all the interested parties in order to circulate it as much as possible.

#### **Preliminary report on the "Regularization Process of the Moorings"**

The Canals and the Port of Empuriabrava are managed by a concession system, the current concessionaire is "Port d'Empuriabrava, s.a." and the managing concessionaire is "Cegra Internacional, s.l.". The tasks and responsibilities of each one are not clearly defined.

The "Port d'Empuriabrava, s.a." has tried for over a year to initiate a so called regularization process based on five steps the user should follow, according to the reports and documentation that the concessionaire offers:

1. registration of the users;
2. payment of an inscription fee;
3. provide documentation on the rights of the moorings;
4. sign a contract transferring the rights; and
5. payment of community fees

In relation to the above, we include the following specifications:

1. the concessionaire is who should offer a "registry of the users", and not the user who should be obligated to register.
2. the action of registering or facilitating information does not incur cost nor gives them a right to charge a registration fee, so the presumption of charging 15 euros per meter squared of water surface is completely unjustified.
3. it is important to have the documentation ready in order to justify the acquired rights at any time;
4. the rights of use of a moor do not depend upon the will of recognition on behalf of the concessionaire, and whichever legal assessment that they have made up until now is merely a "partial interpretation". The opinion of the jurists we consulted are very different in relation to the opinion stated by the concessionaire, so, first, we need to obtain professional legal opinions and secondly, the opinion of the public services. On the other hand, the possibility

of “not recognizing a right” or “prohibiting the use of the moor” does not in any way correspond to the concessionaire.

5. before demanding payment of community fees, establishing categories of the users and threatening with extra charges, the formal requirements should be carried out, which the concessionaire has not done yet.

**The Concessionaire’s Defaults:**

1. The Concessionaire was required by the First Provisional Regulation of the “Reglamento de Marinas Interiores de Catalunya (Decreto 17/2005 de 8 de febrero)” (“Regulations of Interior Fleets of Catalunya (Decree 17/2005 on February 8<sup>th</sup>)”, to present within one year (that is to say, before the end of February 2006) a plan delimiting the port service area, a study on the maintenance situation of the canals and of the port services, a financial study on the remaining period of the concessionaire, including details on the applicable fees for different aspects, with a definition of the elements those include, detailing the distribution by elements of the participation fees of general and specifics costs of interior fleets, and they have NOT presented this.
2. The Concessionaire was also required to present within six months (that is to say, before the end of August 2006) all the documentation relating to the registration of users and the community of users and it is evident that they also HAVE NOT presented it.
3. The Concessionaire is required to carry out the maintenance and security of the canals of Empuriabrava since a long time ago, and as everyone can see the current situation is abandonment. In any case, the concessionaire cannot shield itself behind the lack of payment of the users, because in 28 years it has been incapable of complying with the legal obligations the different administrations have imposed and at the same time has been incapable of organizing a simple registry of users.
4. The Concessionaire has not registered the “exploitation regulation” and the “legal set of rules of the community of users” in the Land Registry (artículo 100 de la Llei de Ports de Catalunya, artículo 20 del Reglamento de Marinas Interiores) (article 100 of the Port Law of Catalunya, article 20 of the Regulations of Interior Fleets of Catalunya).

**Goals of the Owners Association:**

1. Most of the owners of Empuriabrava are aware that the maintenance of the canals has a cost apart from the fees and taxes that the Town Hall already pays. Therefore, we accept the initiative of creating a system of contribution to these costs, which accounts for:
  - a. The mere availability of a moor
  - b. The real use of a moor

2. Any system of contribution should be **absolutely clear, fair and understandable**, therefore we reject any intent to require a contribution if it is not understood, arbitrary and unclear, in which it is uncertain "who is trying to charge what, how many times and the reasons for payment."
3. Accepting a system of contribution should be **independent** from the eventual rights that an owner can possess or not on a moor, or any legal consideration or discussion on that ownership.
4. We state our **refusal to any kind of coercion, threat or lies**, like the ones derived from the documentation the Concessionaire has offered to the neighbours and business people up until now, and we exhort the Concessionaire to completely reconsider their attitude in the process they have begun.
5. We offer our **collaboration** to make long lasting agreements that imply a guarantee of the owner's rights, not only during the valid period of the concessionaire, but also when it ends.
6. We also state our **demand to the Town Hall** to form part in the defense of **the interests of the affected owners**, who see that the actions taken by the concessionaire provoke confusion, value loss of the properties and concerns in the tourist, real estate and navigation businesses, and to abandon their present attitude to protect the interests stated by the Concessionaire.

The Association of Owners of Empuriabrava

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