



PUBLIC LAW

THE BEGINNING OF THE REFORM OF TOWN AND COUNTRY PLANNING

Beginning with a statement of the constitutional guarantee of the right of private ownership and of the right to territorial planning, the legislator has opted to classify land as only rural or urban, taking into account its nature/basic purpose for this purpose.

The new Base Law on Public Policy of Land and Town and Country Planning (Law no. 31/2014 of 30 May - "Base Law") was published on 30 May and will come into force in 30 days.

Justified by (i) the need to update the land use and planning laws in force up to now, (ii) the diagnosis of the system of territorial management as complex and lacking flexibility, (iii) the will to create stable policies that encourage investment, and (iv) the objectives of increasing the integration of policies for land use and planning and the idea of creating value and/or rehabilitation/regeneration of existing stock (tempered by the guarantee of sustainable and environmentally friendly development), the Base Law will bring a range of innovations to our legal system that foreshadow a flurry of activity when they are put into practice.

Beginning with a statement of the constitutional guarantee of the right of private ownership and of the right to territorial planning, the legislator has opted to classify land as only rural or urban, taking into account its nature/basic purpose for this purpose. What is wanted now is no longer urban expansion (with the concept of land for development being eliminated), but rather to safeguard the existing stock, making urban rehabilitation and regeneration the favoured means for the development of cities.

In this context - assuming a situation that has always been well known but little accepted - the law establishes an exceptional procedure to regularise urban developments carried out without the prior control to which they were subject and to complete unfinished or abandoned urban developments. Once again, the idea of holding private parties responsible in the context of urban developments is strengthened (by means of recourse to prior communication and/or successive control of urban developments).

The structure of the system of land management is changed greatly. This change is based, on the one hand, on national, regional and inter-municipal land planning programmes (including those known to date as sector plans and special plans, which now go by the name of "programmes") and, on the other, on the inter-municipal land use plans (inter-municipal master plans, inter-municipal urbanisation plans and inter-municipal detailed plans) and municipal (municipal master plan, urbanisation plan and detailed plan). From another perspective, the legislation also establishes that the existence of an inter-municipal master plan, urbanisation plan or detailed plan excludes the possibility of there being plans of the same type on a municipal level in the area covered by them. Furthermore, when it comes to municipal master plans - which are intended

to be more strategic and more programme based, allowing a faster transformation of land that is more appropriate to economic needs, promoting more flexible procedures for their alteration and revision - the requirement to prepare such a plan is removed if an inter-municipal master plan already exists.

Municipal master plans, together with inter-municipal plans, urbanisation plans and detailed plans are considered to be directly and immediately binding on private parties, unlike special land use plans - now "programmes" - which, despite the specific character and sensitivity of the respective content, seem no longer to benefit from such prerogative. In addition, the Base Law does not provide for the rules of the National Ecological Reserve, the National Agricultural Reserve and Nature Network 2000 to apply directly and to bind private parties.

Finally (and without seeking to analyse the topic exhaustively), an economic-financial system is outlined which establishes the need for a prior demonstration of the economic interest and financial sustainability of any urban infrastructure to be created. The municipalities must prepare an urban financing programme and set up a municipal environmental sustainability and urban development fund. Mechanisms are also defined for an equitable redistribution of the benefits and burdens of the urban development to be established in the plans. In light of the above, it seems the Base Law now approved is no more than the foundation of an operation which, despite seeking rehabilitation and regeneration, opts to renew the right to town and country planning that has been in place up to now.

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 Portuguese Law Firm of the Year
Chambers European Excellence Awards, 2009, 2012, 2014

 Iberian Law Firm of the Year
The Lawyer European Awards, 2012

 25th Most Innovative Law Firm in Continental Europe
Financial Times – Innovative Lawyers Awards, 2011-2013