NOV. 21

INFORMATIVE NOTE

REAL ESTATE AND TOURISM

Regulation of the Housing Framework Law Sub-heading

Guarantee of alternative housing, the legal pre-emption right and supervision of habitability conditions

Decree-Law 89/2021 of 3 November (the "**Decree-Law**") came into force on 4 November and regulates key aspects of the Housing Framework Law (the "**HFL**", approved by Law 83/2019 of 3 September).

The HFL establishes the duty to regulate matters such as: (i) the obligations of public bodies regarding the guarantee of alternative housing, (ii) the terms under which these bodies have a legal pre-emption right in the sale of residential properties, (iii) the powers to supervise habitability conditions in the context of rented housing.

This Decree-Law therefore regulates important aspects of the HFL in order to increase the public housing supply.

"The HFL establishes the duty to regulate matters such as the powers to supervise habitability conditions in the context of rented housing."

The following are highlights of the new features introduced by the Decree-Law:

1. Further definition of the concept of the situation of actual homelessness and alternative housing

Under Article 28(6) of the New Residential Rent Support Scheme[1]: "Households targeted for eviction with actual housing needs are first referred to legal solutions for access to housing or for provision of housing support".

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1 Approved by Law 81/2014 of 19 December

This Decree-Law has therefore further defined the concept of the situation of actual homelessness to include people who do not have or are at real risk of losing their homes and who do not have any alternative housing. For this purpose, alternative housing cannot be housing that imposes a change on the household that existed before the situation of homelessness. The only exception to this is (i) if the change results from a written request, or (ii) if the written agreement of the applicant and of the member or members of the household with whom the public body has previously entered into a rental contract is obtained.

"A building or self-contained unit is considered to be unoccupied if it has been vacant for one year, regardless of its state of maintenance."

2. Further definition of the principle of effective use of housing through renting and subsequent sub-renting by the municipality

To increase the stock of properties suitable for housing use and with regard to properties located in urban pressure zones[2], the Decree-Law implements a mechanism that allows municipalities to rent property, which has been submitted to a vacancy classification procedure, for housing use. The aim of this is, at a later stage, to sublet the property, depending on the needs of the area in question and the population.

Under Decree-law 159/2006 of 8 August[3], the procedure for classifying a building or self-contained unit as unoccupied falls to the municipalities, which must ascertain the existence of the indications set out in that law. **A building or self-contained unit is considered to be unoccupied if it has been vacant for one year**, regardless of its state of maintenance. In that same Decree-Law, the following are considered to be signs of non-occupation:

- Absence of telecommunications, water, gas and electricity supply contracts;
- Absence of invoicing for water, gas, electricity and telecommunications consumption;
- Low water consumption[4];
- Non-occupation of the property, certified by a prior inspection by the municipal council, carried out under Article 90 of the Legal Framework of Urban Development and Construction (*Regime Jurídico da Urbanização e Edificação* - "**RJUE**"[5]). This inspection can be carried out to order (i) the execution of works necessary to correct bad health or safety conditions, or maintenance works to improve the aesthetic appearance, (ii) the total or partial demolition of buildings that are in danger of collapse or pose a danger to public health and the safety of persons.

2 "An 'urban pressure zone' is an area where there is significant difficulty in access to housing, due to scarcity or inadequacy of housing supply in relation to existing needs or because this supply is at higher prices than those bearable by the majority of households without them being overburdened with housing expenses in relation to their income" – see Article 2-A of Decree-Law 159/2006 of 8 August. The geographic delimitation of the urban pressure zone is the responsibility of the municipal meeting, under a proposal of the municipal council.

3 The legislation that regulates the classification of urban buildings or self-contained units as vacant, for the purposes of applying the municipal property tax (IMI) rate, and for the other purposes provided by law, in relation to housing, urban planning and urban rehabilitation policies.

4 (up to 7 m3/year) and electricity (up to 35 kWh).

5 See Article 89 and following of Decree-Law 555/99 of 16 December),

"One of the major new measures introduced by this Decree-Law is the possibility for the municipality to present a proposal to rent a property located in an urban pressure zone, at the time of notification of the plan to declare the building unoccupied."

Decree-Law 159/2006 of 8 August 2006 provides for some exceptions that prevent a building or self-contained unit from being considered unoccupied. These include:

- While rehabilitation works are being carried out, provided the works are certified by the local municipal council;
- When the conclusion of the construction or the issuing of the use permit occurred less than one year ago;
- In the case of acquisition for resale by natural or legal persons, under the conditions of Article 7 and 8 of the Municipal Property Transfer Tax Code, provided that, in either case, they have benefited or will benefit from an exemption from municipal property transfer tax and during the period of three years from the date of acquisition.

The identification of buildings or self-contained units that are vacant is communicated, under the terms of Decree-Law 159/2006 of 8 August, by the municipalities to the Tax and Customs Authority, under article 112 of the IMI Code, and the IMI rates of the building or self-contained unit may be increased threefold[6].

One of the major new measures introduced by the Decree-Law (which regulates the HFL) addressed in this note is the possibility for the municipality to present a proposal to rent a property located in an urban pressure zone, at the time of notification of the plan to declare the building unoccupied sent to the landlord pursuant to Article 4(2) of Decree-Law 159/2006 of 8 August. This proposal assumes that the property or self-contained unit to be rented meets the habitability conditions that allow its immediate integration in the rental market. If the landlord accepts the proposal to rent their property, the procedure to classify the property as vacant will be terminated, without any consequent increase in the IMI rate.

In cases where, after an inspection, it is concluded that the property is in a bad state of maintenance, the municipal council can use the procedure to classify the property as unoccupied. Following this, under the terms of RJUE, the council can order the execution of the works necessary to correct the poor conditions of safety, health and habitability. The aim of this is to guarantee the potential use of the property as a dwelling. In such cases, the reimbursement for the execution of these works will follow the provisions of Articles 108 and 108-B of the RJUE, respectively "Expenses incurred with forced execution" and "Forced Renting".

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6 In the case of a property located in an urban pressure zone that has been unoccupied for more than two years, the IMI rates can be increased six fold and then increased, in each subsequent year, by 10% more.

3. Exercise of pre-emption rights by Municipalities, the Autonomous Regions and the State

As provided for in the HFL, the Municipalities, the Autonomous Regions and the State have pre-emption rights in transfers of real estate for residential use. However, their rights are subject to the pre-emption right of tenants (Article 37(4) of the HFL) and housing and construction cooperatives (Article 28 of Decree-Law 502/99 of 19 December), which prevail.

Under this Decree-Law:

- The cases in which public bodies have a pre-emption right in the disposal for valuable consideration of real estate for residential use are clarified:

  i) In an urban pressure zone, delineated on the grounds of absence or shortage of supply, under Article 2-A of Decree-Law 159/2006 of 8 August, as amended;

  ii) In areas identified in the National Housing Programme on the grounds of absence or shortage of supply.

- The pre-emption rights of the various public bodies are ranked in the following order: Municipalities, Autonomous Regions and the State. If more than one public body seeks to exercise its rights, this order of preference will apply.

- There is a 10-day time limit to exercise the right of preference and the State is represented by the Housing and Urban Rehabilitation Institute (IHRU, I. P.).

4. IHRU, I.P.'s Supervisory Duty

"Ministerial Order 261/2021 of 22 November regulates the IHRU, I.P.'s activity of supervising rental housing."

The Decree-Law gave IHRU, I.P. the power to supervise rental housing and establishes that this body is under a duty to report to the competent authorities any facts it may become aware of in performing its role that may indicate the commission of infractions which it does not have the power to assess and punish. The Regulation on the Supervisory Activity of the IHRU, I.P. was approved by Ministerial Order 261/2021 of 22 November.

In supervising the habitability conditions of rented or sub-rented homes, the IHRU, I.P. may become aware of facts that could imply the existence of deficiencies in those conditions. If it does so, it can ask the municipal council of the area of the property to determine the level of maintenance of the rented property, to then order maintenance works or administrative eviction, under the terms of RJUE[7].

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7 Under Articles 89 and following of Decree Law 555/99 of 16 December.

5. Information requirements in advertisements for residential properties

The aim of these requirements is to achieve greater transparency and efficiency in housing rentals, and to avoid the advertising of properties that do not have an authorised residential use or do not meet the conditions for that purpose. The Decree-Law imposes the following obligations:

"To achieve greater transparency and efficiency in housing rentals, advertisements for rental properties will now have to include the property's use licence or use authorisation number, the number of rooms and the net floor area of the property."

- **An obligation on real estate mediation companies** (estate agents) to include the following details in all advertisements for rental contracts: number of licence or authorisation for the use of the property, number of rooms and net floor area (*área útil*) of the property;

- **An obligation on advertisers** not to publish advertisements, or to withdraw, when published, any advertisement that does not present any of these compulsory details;

- Non-compliance with these obligations constitutes an administrative offence punishable by **a fine of between €250 and €3,740 for individuals** and **between €2,500 and €44,890 in the case of companies**.

The Institute of Public Markets, Real Estate and Construction (*Instituto dos Mercados Públicos, do Imobiliário e da Construção* – IMPIC, I. P.) is responsible for opening and conducting administrative offence proceedings, and for determining and applying any fines.

IHRU, I. P. must report to IMPIC, I. P. all facts that come to its knowledge in supervising housing rentals that point to the commission of these administrative offences, and it must also send IMPIC, I. P. all the evidence it has gathered in this context. ■