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BRIEFING

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THE NEW GENERAL LAW FOR SOILS, LAND USE AND URBAN PLANNING

PUBLIC LAW

Law no. 31/2014 of 30 May entered into force last June 30 establishing the general guidelines for public policy on soils, land use and urban planning, aiming to pursue, among others, the following objectives:

- **simplification of urban planning and management system**;
- **strengthening the role of municipal plans** (*MDP*, *UP* and *DP*), as the only legally binding instruments for individuals and authorised to define the regime for land use.

Under the new Law, urban planning management instruments comprise solely two categories:

- **territorial programmes;**
- **territorial plans.**

The instruments of the Central Government's initiative fall within the category of **territorial programmes**, namely: the National Programme of Land Use Planning Policy; the Regional Programmes (former *PROTs*); the Sectorial Programmes; the Special Programmes (former *PEOTs*).

Territorial plans are of municipal initiative and include the already existing regulations concerning the Municipal Directory Plan (MDP), the Urbanisation Plan (UP) and the Detailed Plan (DP).

Regarding the binding force of those legal instruments, it should be noted that **public entities are bound by** territorial programmes, while territorial plans directly and immediately **bind not only public entities but also individuals**. With respect to the articulation between **programmes** and **plans**, the new Law provides that **municipal plans should be consistent** with the guidelines set out in the existing **territorial programmes** (national or regional); which means it **does not require full compliance** between the municipal plans and the territorial programmes. This entails that **mere compatibility** will suffice, which is obviously a lower threshold to comply with.[1]

1 See, concerning the conformity and compatibility relation between instruments of territorial management, Fernando Alves Correia in "*Estudos de Direito do Urbanismo*", Coimbra, Almedina, 1997, p. 45 and "*As Grandes Linhas da Recente Reforma do Direito do Urbanismo Português*", Coimbra, Almedina, 1993, p. 20.

Simplification of urban planning system; strengthening the role of municipal plans

To foster the adjustment of existing land use plans to the new legal framework, this diploma determines that:

- the content of **land use special plans** (PEOTs) shall be incorporated into municipal directory plans, within 3 years;
- **all instruments of territorial management** currently in force (*e.g.*, in particular, *PROTs* and *PEOTs*) shall be subject to the type of programme or territorial plan which better suits their scope.

As a consequence, in upcoming years, **major changes** will take place **regarding land use management plans** currently in force. Hence, individuals are strongly advised to be aware of the effects resulting from this new series of urban planning.

Besides the reference to changes to the type of land use management instruments, briefly outlined above, **the new Law also comprises a set of rules of significant importance**:

a) The use of soil is uniquely defined by municipal plans

The new Law establishes the salutary principle according to which "*the use of soil is **uniquely** defined by the **territorial plans** of intermunicipal or municipal levels (...)*" (*v.g.* article 20, paragraph 1), which is justified by the fact that such usage "*takes place within the **limits set forth (...) in territorial plans** of municipal (…) level*" (*v.g.*. article 9).

Major changes will take place regarding land use management plans currently in force

This means, for instance, that **the applicable regime for urbanisation and construction operations is established exclusively by municipal plans**, which apparently evidences that Central Government's instruments of territorial management (as is the case of the current PROTs and PEOTs, now named Territorial Programmes) may not establish mandatory rules in that regard, a task which is assigned to the municipal plans.

b) New procedures to review public utility constraints

This Law provides that in regard to the elaboration, modification or review of municipal territorial plans (MDP, UP and DP), "***disposals or changes** may take place in the constraints of specific land use resulting from public utility easements*", notably, REN (National Ecological Reserve) and RAN (National Agricultural Reserve) (*v.g.* article 11, paragraph 3). This mechanism strengthens the powers of the municipalities in the field of land management and introduces flexibility concerning planning instruments, which until now was almost nonexistent.

c) Obligation to identify areas to be rehabilitated

In pursuit of promoting urban regeneration policies, **the Law imposes on the State, Autonomous Regions and municipalities the obligation to identify the territorial areas which are to be rehabilitated or regenerated**. This is achieved by endorsing appropriate actions for said purpose, among which is the concession of incentives by the public entities mentioned above.

Exceptional regime concerning the legalisation of urban operations carried out without administrative authorisation

d) Exceptional regime for the legalisation of urban operations

This law innovates in foreseeing the implementation of an exceptional regime concerning the **legalisation** of urban operations which were carried out without the relevant administrative authorisation. This matter will be subject to further regulation.

Finally, it should be noted that, as a consequence of this Law coming into force, the legal regimes of land management instruments, urbanisation and construction and the one applicable to land register shall be revised within six months, which might entail extensive reforms.

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