



PUBLIC LAW

Extension of the deadline for integration of special plans and suspension of construction on developable land (?)

In recent months, the need to conclude the procedures to adapt/amend/revise the municipal and inter-municipal plans for spatial planning has been widely discussed by the municipalities, the Government, economic agents and civil society. This discussion has focused on:

- i) The integration into in those plans of the rules contained in special plans concerning the arrangements to safeguard territorial resources and natural values that directly bind private individuals. The obligation is contained in the General Bases of Public Policy on Land, Spatial Planning and Development – Law 31/2014 of 30 May.
- ii) The inclusion in those same plans of the (new) rules for land classification contained in the Legal Framework of Territorial Management Instruments (*Regime Jurídico dos Instrumentos de Gestão Territorial*, referred to here by its Portuguese initials, “RJGT”), approved by Decree-Law No. 80/2015 of 14 May).

As a result of the extensions and suspensions of the deadline that have resulted, among others, from the exceptional and temporary measures relating to the COVID-19 pandemic, the deadline for municipalities for this purpose was 9 January 2021.

Faced with the difficulties in meeting that deadline, the National Association of Municipalities asked the Government to extend it.

In this context, on 7 January, Decree-Law 3/2021 was published to amend article 78(1) of Law 31/2014 of 30 May. The amendment sets 13 July 2021 as the new deadline to implement the content of the special land use plans in force into the inter-municipal or municipal master plan, and other inter-municipal or municipal plans applicable to the area covered by the special plans.

"The amendment sets 13 July 2021 as the new deadline to implement the content of the special land use plans in force into the inter-municipal or municipal master plan."

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"There was no extension of the deadline to include the (new) rules on land classification contained in the RJGT in the inter-municipal or municipal plans. Therefore, the period to do so ended on 9 January."

This law came into force on 8 January 2021, the day after its publication. It maintains the consequences established for failure to comply with the obligation to implement the rules of the special regional spatial planning plans identified by the regional coordination and development committees for the territorial plans.

As a result, if that obligation has not been met when the deadlines passes, the rules of the inter-municipal or municipal plans that should have been amended are suspended. Furthermore, in the areas covered, no acts or operations involving the occupation, use or transformation of land may be carried out. In addition, failure to comply with this obligation to implement the rules in good time, for reasons attributable to the municipalities, will continue to lead to the rejection of project applications for benefits or subsidies granted by national or community public bodies or services. It will also lead to programme contracts not being concluded until the situation has been regularised.

In contrast, **there was no extension of the deadline to include the (new) rules on land classification contained in the RJGT in the inter-municipal or municipal plans. Therefore, the period to do so ended on 9 January.**

In this regard, it is important to note one of the spatial planning innovations set out in Law 31/2014 of 30 May. The Law changed the rules for classifying land by introducing a more restrictive concept of urban land based on the distinction between urban land and rural land. In the context at that time, it was stipulated that, in the procedures for drafting, amending or revising territorial plans beginning after the date of entry into force of that law and in those still pending one year after that date, land that was classified as urban land or urban land with planned development would continue to be classified as urban land until the end of the period to carry out the development works which had been or were defined in a detailed plan, a development or urban development agreement, or an administrative act of prior control.

Therefore, the failure to meet the deadline of 9 January 2021 means that, under article 199(2) of the RJGT, the "rules of the territorial plan that should have been amended are now suspended, and no acts or operations involving the occupation, use and transformation of the land may be carried out in the area covered while the suspension lasts" are now suspended.

These circumstances raise many questions and the answers to them are not clear. This is expected to cause difficulties in terms of development, processing and promotion of projects in Portugal. These questions include: **With reference to developable land or land with planned development, are we now prohibited from doing any type of act or carrying out any type of operations involving the occupation, use and transformation of the land? Does it mean a blind application of concepts and a disregard for de facto situations that evidence land that is truly developed/has infrastructures or that represent small patches surrounded by actual urban agglomeration? Does it mean the stagnation of ongoing procedures (possibly with “intermediate/accessory” rights already acquired)? Is a possible extension of the deadline (perhaps with retroactive effect) the answer for situations that are being decided/assessed in the meantime?**

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In short, there are many doubts surrounding this issue and they require an effort of legal interpretation that will certainly lead to differing understandings, especially on the part of municipalities. We are confident that the issue in question will be clarified and stabilised rapidly. This will require legislative intervention, not only for the sake of legal certainty and trust in the uniform application of the rules, but also to set a new deadline to comply with the obligation to include in the inter-municipal or municipal plans the rules for classifying land, as was done for the implementation of the content of the special plans. ■