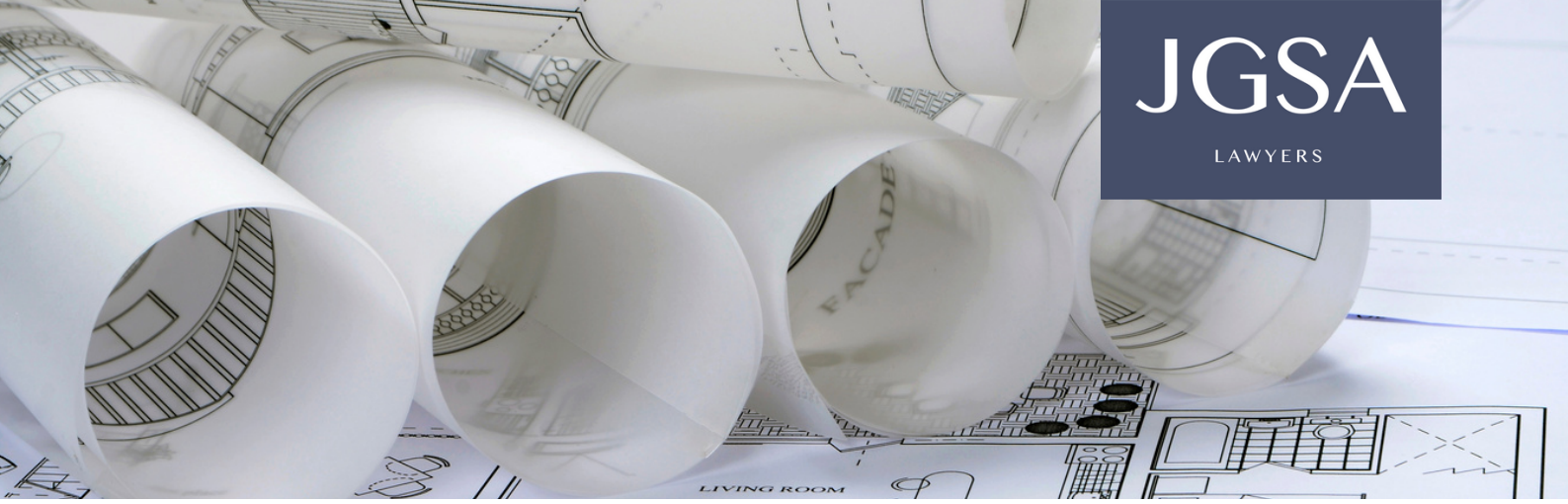

"SIMPLEX" FOR TOWN PLANNING: REFORM AND SIMPLIFICATION OF LICENCES FOR TOWN AND COUNTRY PLANNING AND INDUSTRY

Decree-Law no. 10/2024 of 8 January this year reformed and simplified licensing in the fields of town and country planning and industry, with the aim, within the framework of SIMPLEX, of simplifying administrative activity by eliminating unnecessary or disproportionate licences, authorisations and administrative requirements that do not effectively add value to the public interest.

To this end, various measures to simplify procedures have been approved, including the following:

1.URBAN PLANNING LICENCES

The number of cases in which a licensing process is required for preventive control has been reduced. They were thus created:

a. New cases of mere prior notification, with the consequent exemption from obtaining an urban planning licence;

b. New exemption situations, where there is no prior administrative control procedure (for example, when there is an increase in the number of floors without an increase in the height or façade);

c. New cases in which urban planning licences or other acts of prior control are dispensed with, and only a non-binding opinion is issued by the competent municipality.

In any case, the powers of municipalities to monitor compliance with the relevant rules are maintained, but it is made clear that the monitoring must be guided by criteria of strict legality, and is prohibited from aspects relating to the convenience, merit or technical options of the works.

2. ADMINISTRATIVE PROCEDURES FOR OBTAINING URBAN PLANNING LICENCES, PRIOR COMMUNICATIONS AND PRIOR INFORMATION

a. With regard to building permits, there will now be a tacit approval system, meaning that if decisions are not taken within the due time, the individual will be able to carry out the desired project (an electronic certification of tacit approval will also come into force on 1 January 2024, proving the right acquired by tacit approval);

b. The building licence is eliminated, replaced by the receipt for payment of the fees due;

c. If there is no outright rejection or an invitation to correct or complete the application or communication, they are deemed to have been correctly instructed and cannot be rejected on the grounds of incomplete instruction;

d. During the procedure, the individual may only be asked once for information, additional documents or other requests;

e. The need for an opinion from the competent cultural heritage authority is eliminated in a number of situations, namely for works inside buildings (provided there is no impact on the subsoil, or alterations to tiles, stucco, stonework, joinery, carvings or metalwork); for outside conservation works; and in relation to the installation of advertising hoardings, signs, awnings, terraces and street furniture;

f. In order to make town planning licence procedures more agile, it is possible to delegate powers in these matters to the heads of departments, thus avoiding the concentration of powers in the town councillor with responsibility;

g. New rules for counting deadlines are introduced;

h. In cases where consultations, opinions or authorisations are required, the procedure must continue during the time between the request for such consultations, opinions and authorisations and their issue or the expiry of the respective deadline;

i. Requests for opinions from entities that are part of the Public Administration, public companies or concessionaires must be submitted via the Computer System for Issuing Opinions, as of 6 January 2025;

j. The period of validity of favourable prior information is extended from 1 to 2 years;

k. The deadline for carrying out the works may be extended without the current limits.

3. STANDARDISATION OF URBAN PLANNING PROCEDURES, TO AVOID DIFFERENT PRACTICES AND PROCEDURES BETWEEN THE VARIOUS MUNICIPALITIES

a. Municipal regulations can only cover certain types of matters, and cannot, for example, deal with matters relating to administrative procedures or instructional documents;

b. Municipalities may not demand additional documents other than those provided for by law;

c. It is envisaged that there will be an Electronic Platform for Urban Planning Procedures, compulsory from 5 January 2026, which will make it possible to: i) submit requests online; ii) check the status of processes and deadlines; iii) receive electronic notifications; iv) obtain certificates of exemption from urban planning procedures; v) standardise procedures and documents required by municipalities.

4. LIMITATION OF MUNICIPALITIES' POWERS OF JUDGEMENT IN PRIOR URBAN PLANNING CONTROL

In particular, when it comes to issuing licences, municipalities will not be able to assess aspects relating to the interior of buildings or matters relating to specialised services (water, electricity, gas, etc.), since these are drawn up on the basis of declarations of compliance with the applicable legal standards by competent technicians. In any case, this limitation on the powers of municipalities at the time of prior control or the issuing of a licence does not affect their supervisory powers.

5. SPECIALITIES

The municipalities do not assess or approve specialised projects, which are merely sent for information and filing, accompanied by terms of responsibility issued by the competent technicians stating that the projects have been carried out in accordance with the law.

6. ELIMINATION OR REPLACEMENT OF EXCESSIVE REQUIREMENTS IN TERMS OF PRIOR URBAN PLANNING CONTROL

a. Certain requirements of the General Regulations on Urban Buildings (RGEU) are repealed or replaced, because they do not correspond to the protection of a current public interest. For example: i) the requirement for bidets in bathrooms is eliminated; ii) a shower is allowed in bathrooms instead of a bath; and iii) the use of kitchen solutions such as kitchenettes or walk-through kitchens is made possible.

b. The repeal of the RGEU with effect from 1 June 2026 was approved, to be replaced by the future Construction Code.

7. AUTHORISATION FOR USE

a. The authorisation to use is eliminated when there has been work subject to prior control, and this authorisation is replaced by the mere submission of documents, without the possibility of rejection (without prejudice to maintaining supervisory powers during and after the work);

b. In the case of a change of use without work being subject to prior control, a prior notice must be submitted with a 20-day deadline for the municipality to respond. If the municipality does not respond within this period, the application for authorisation to use will be deemed to have been accepted.

8. PROPERTY PURCHASE AND SALE CONTRACTS

The requirement for proof of authorisation for use and the existence of a technical housing file at the time of signing the deeds is eliminated.

9. LAND-USE PLANNING PROCEDURES

a. The process of reclassifying rustic land as urban land for industrial, storage or logistics purposes is simplified;

b. Conditions are created to speed up the procedures for approving urbanisation plans and detailed plans, by: i) eliminating the need for the regional coordination and development commissions to monitor their preparation; and ii) eliminating the concertation phase.

c. Conditions are created for a greater number of cases of exemption from urban control.

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Most of these measures will come into force on 4th March 2024, with a few exceptions that have already been in force since 1st January this year.

Entities and professionals in the property sector have already expressed their views on these measures, and the common denominator of their perspectives is the fear that the speed intended by these measures will mean an increase in legal uncertainty.

A municipal councillor refers to the danger of an increase in the embargo of works due to less prior control - given the reduction in the number of cases requiring a licence - as well as a potential increase in the outright rejection of cases in which municipalities have to make a decision, but in which they are limited by the time limit and by the new rule under which they can only once ask the private individual for information, additional documents or other requests. It also warns of the interference in the autonomy of local authorities and the risks that the new regime may entail for intermediaries in urban planning processes.

Similarly, the Portuguese Association of Real Estate Developers and Investors (APPII) warned that the end of the building permit could compromise the legal certainty of the deal and introduce the need and cost of insurance, as did the Association of Real Estate Professionals and Companies of Portugal (APEMIP), citing the risks of dealing in properties without a licence to use them, considering this absence a burden that could affect the value of the property and jeopardise access to bank finance. In this regard, the Bank of Portugal has even stated that banks, if they deem it relevant, may make credit conditional on the availability of the housing data sheet and the property's utilisation permit. The Order of Notaries, for its part, criticises the elimination of the need for notaries to display and check these documents.

The Order of Architects and the Order of Engineers, representing the professionals who design and carry out the work - who are more closely involved in the very substance of the activity - welcome the changes, but also warn of some risks.

The Order of Architects says that the sector was in dire need of new regulations and emphasises the importance of the introduction of the Electronic Platform for Urban Planning Procedures and the Construction Code. It admits, however, that the simplification of some procedures could lead to an increase in litigation and work embargoes, as well as conditioning access to financing, predicting that banks may demand a more rigorous review of projects, with an impact on costs for citizens. Together with the Order of Engineers and other organisations linked to the sector, he intends to promote a series of contributions and suggestions to the law.

The Order of Engineers, in fact, has already shown the same constructive sense, suggesting that the terms of responsibility that qualified technicians must sign under the terms of the law should be validated by the respective professional organisation, complemented by professional civil liability insurance, thus increasing the security of technical compliance and safeguarding against the effects of the risk of abuse and violation of the law.

The perspective of these professional organisations, positive and without fear of replacing slower mechanisms of questionable public interest, involves the presentation of suggestions that can provide greater security for citizens and the organisations involved, as a complement to the measures to speed up procedures that have now been approved.

The criticisms and fears voiced by municipalities, intermediaries, banks and notaries generally have as their underlying cause the idea that individuals and economic agents will only be defended if the powers of prior assessment of the conformity of works remain concentrated in the municipalities. However, a substantial part of the amendments that have now been approved are based on transferring responsibility for this compliance to qualified professional technicians, thereby placing trust in their ability, as specialists, to adequately ensure it.

Everyone will recognise that a term of responsibility may be insufficient and increase the risk of non-compliance with the law, whether due to laxity or opportunism. Nevertheless, and for this reason, the suggestions made by the Order of Engineers could lay the foundations for improving the legislative solution, giving it greater certainty, after weighing up its effectiveness and the respective contextual costs. In fact, we could see a healthy devolution to the professional organisations of the assessment of the conformity of projects and their execution in accordance with their own leges artis in cases where the prior bureaucratic control of local authorities in the exercise of the state's powers of local administration is not justified.

An example of this is the elimination of the requirement for proof of authorisation of use at the time of signing the deeds, a requirement that was laid down in DL 281/99, which has now been repealed. This authorisation, according to article 62 of the also repealed RJUE, was intended to verify the completion of the urban development operation (...) and the conformity of the work with the approved architectural project and exterior arrangements and with the conditions of the respective prior control procedure, as well as the conformity of the intended use with legal and regulatory standards. This was dependent on permission from the city council and stemmed from paragraph 5 of article 4 of the RJUE: the use of buildings or their fractions, as well as changes to their use, is subject to authorisation.

However, this paragraph has been amended and now provides that such use (...) does not require any permissive act, but is only subject to the provisions of article 62-A, now added, stipulates that use only depends on the delivery to the town hall of the term of responsibility signed by the construction manager or the construction supervision manager, in which they must declare that the work has been completed and that it has been carried out in accordance with the project, as well as the final canvases when there have been changes to the project, which are intended to give notice of the completion of the urban development operation and to be filed with the town hall. Finally, paragraph 3 states that the building or its autonomous fractions may be used for the intended purpose immediately after the aforementioned documentation has been submitted.

This framework allows us to realise that the main aim of the law - to guarantee that the building works to be used have been carried out in accordance with the project - is still present, but that this use is no longer subject to a permissive administrative act by the municipality, but instead depends on a declaration of responsibility in which a technical professional attest to the aforementioned conformity.

The fear, shared by the organisations involved in the sector, is that such a declaration could be made in a less scrupulous or even false manner, whether for convenience, opportunism or even pressure from the client who owns the work.

However, a mechanism such as the one presented by the Order of Engineers, or a similar one, could allay this fear. It would improve the new legislative solution and embody a set of measures to valorise the role of qualified technicians and professional associations in assessing and guaranteeing the legal compliance of projects and their execution.

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