



Portugal : AN INTRODUCTION

[Contributed by Vieira de Almeida & Associados](#)

A New Planning Paradigm

The Portuguese Parliament has just approved the New Guidelines of Soil Policies, Spatial Planning and Urbanism (hereinafter the "SPPU").

This new legal framework should reflect an integrated vision of the territory, combining public planning and environmental policies, thus covering the scope of the current Soils Law (Dec. Law 794/76 of November 5th) and of the Guidelines of Spatial Planning and Urbanism (enacted by Law 48/98 of November 11th as amended by Law 54/2007).

It is in this context that these new Guidelines, as stated by the legislator, aim at establishing a new paradigm for planning activity in Portugal.

This envisaged paradigm is crystallised in three main principles/goals:

- More flexible planning;
- PDM (municipal master plan) as the key planning instrument;
- Rehabilitation as the model/driver for urban development.

These goals are pursued by the legislator by introducing in the new Guidelines ten innovations/improvements to the existing SPPU:

Soil classification

The goal is to perfect the current model of soil classification in order to ensure that development is focused on urban soil, and carried out in accordance with the existing applicable planning instruments or development agreements, in a sustainable manner in terms of energy and the environment, whilst leaving rural soil for activities that do not require any previous urbanisation.

In this context, soil shall have only one of two basic classifications (urban or rural), thus removing an existing third genre (*terrenos expectantes*), a grey area without a specific and clear legal regime.

PDM - A key planning instrument

The suggested amendments show there is a strong commitment by the legislator to enhance the transparency of the planning system and its legal framework, with a view to reducing planning costs for investors/developers.



By making sure that PDMs unify all the rules that should be considered when planning, and eliminating the dispersal of plans and development programs that often overlap and result in conflicting rules and planning objectives, the legislator seeks to end the intricate and expensive 'planning puzzle' that developers and investors usually face.

To enforce this guideline, failure by the municipalities to update their PDMs will result in the suspension of the planning rules applicable to the relevant areas, and will prevent the possibility of any changes of use of the soil therein, restricting access to any national or EU subsidies or funds which would otherwise be available.

Inter-municipality co-operation

Inter-municipal co-operation is identified as a crucial factor for accomplishment of efficient use of natural resources, infrastructure and equipment management.

The legislator encourages such co-operation by creating an adequate legal framework for neighbouring municipalities to work together to define an integrated development strategy (and a sub-regional territorial model) through municipal or inter-municipal plans or programs dealing with the location and management of relevant shared equipment and infrastructure.

Flexibility of territorial planning

The ten-year lifecycle of PDMs, along with their intensive revision procedure, is identified as a serious constraint for these planning instruments to take a truly strategic and programmatic role and work as an efficient and adaptable tool capable of responding effectively to different economic cycles.

To achieve this, the legislator proposes the introduction of more flexible procedures for PDM amendment and revision, through other more detailed planning instruments, and for swift reclassification of soils.

Increase of municipalities' powers in territory management

Alongside the envisaged flexibility in the PDM revision and amendment procedures, the legislator recognises the need to provide municipalities with effective and efficient tools for intervening in the territory (namely, in the context of urban regeneration programs).

Different tools are required to assure this capacity for intervention, such as mandatory sale or lease of property, or the transfer of construction ratio, in cases where landowners fail to comply with their duties under valid planning instruments, but also provided that the public interest in a particular situation justifies such compression of ownership rights.



A new economic-financial equation

The goal is to assure a sustainable use of the soil, and the guarantee of financial and economic viability of development, through adequate planning.

Making soil transformation (from rural to urban) conditional on a demonstration of its economic viability will result in the promotion of 'healthy' and responsible investments, responsive to demonstrated needs, thus justifying the sharing, between Government and the private sector, of different development responsibilities.

Distribution of planning benefits and costs

Amendments are to be introduced to establish fair and equitable criteria and mechanisms of the distribution of benefits and charges to compensate the costs associated with the protection of general interests issues, such as the safeguarding of cultural heritage, the valorisation of biodiversity and the protection of ecosystems.

Focus on urban rehabilitation

Rehabilitation is identified as the main instrument of development and regeneration of urban centres and is encouraged by the introduction of new and specifically focused planning instruments, along with selected tax benefits.

Prior notice procedures

Increasing the number of actions (in the licensing procedure) that depend only on a previous communication to the municipality, in cases where the development parameters are already detailed in the applicable planning instruments is 'compensated' by increased professional liability of professionals involved in the planning procedure (architects, engineers etc).

Planning Operations' Regularisation** The intention is to deal with different situations where current economic activities are inconsistent with the existing territorial planning and management instruments, and also with the relevant environmental rules.

Different mechanisms are to be established to address these pre-existing situations, in order to overcome the issues they raise and to legalise them.

Final notes

Once approved, other legal regimes through which these Guidelines become operational (e.g. Territorial Management Instruments Legal Framework and the Urbanisation and Construction



Legal Framework) will inevitably be subject to revision to incorporate and reflect these new principles, thus anticipating a substantial increase in the workload for planning legislation.

As a very general overview, these new Guidelines clearly purport to increase the efficiency of planning as a tool to intervene and react to economic cycles, whilst maintaining a strong commitment to a sustainable and responsible management of the territory.**