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# Update

## Real Estate, Tourism and Urban Planning

### Urban Planning Simplex - Changes to the request for prior information: special cases of exemption from prior control and validity

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As it is, in our opinion, of particular relevance, as it has significant potential practical effects in terms of simplification and appears to be, after all, a new prior control procedure, we are dedicating this update specifically to the amendments introduced by the so called URBAN PLANNING SIMPLEX (“Simplex” - Decree-Law no. 10/2024, of 8 January) in what concerns Prior Information Requests (PIP), with a special focus on the exemption of prior control regime.

The main changes introduced by SIMPLEX to the rules of the Legal Regime for Urbanisation and Building, approved by Decree-Law no. 555/99, of 16 December (the “RJUE”), relating to Prior Information Requests are as follows:

- Introduction of a general rule exempting prior control in the case of any urban planning operations preceded by favourable prior information, under the terms of Article 14(2) and (3) of the RJUE, provided that the PIP covers the aspects set out in subparagraphs a) to f) of paragraph 2 of the mentioned legal provision (new subparagraph h) of Article 6(1) of the RJUE).
- Introduction of specific rules exempting some specific urban planning operations from prior control due to the existence of a favourable PIP (changes to article 17 of the RJUE), in the following cases:

- Situations in which the PIP "*concerns an area subject to a detailed plan or plotting operation*" (2nd part of Article 17(2) - the first part of this rule is identical to Article 16(1)(h)).

- Situations in which there is a *unidade de execução*, which we will deal with in a separate update to be published shortly.

- Amendment to the initial "validity" period of the PIP (Article 17(5)), which is now two years: "*the urban planning operations referred to in the preceding paragraphs [apparently the rule seems to refer to all PIPs, whether or not they give rise to situations of exemption from prior control] must be started within two years of the favourable decision on the request for prior information (...)*".
- Urban development operations must "always be accompanied by a declaration from the authors and coordinators of the projects that they respect the content, terms and conditions of the favourable PIP" (final part of Article 17(5)).
- Amendment to the regime of extension of the effects of the PIP (Article 17(6)): "*After the time limit set in the previous paragraph has elapsed, the private individual may request the mayor to declare that the factual and legal assumptions that led to the previous favourable decision are maintained, and the mayor shall decide within 20 days and a period of 1 year shall elapse for the submission of applications for licensing or prior communication, if the assumptions are maintained or if the mayor has not responded within the legally prescribed time limit.*"

The changes introduced to the RJUE raise a number of doubts and even some perplexities, which we'll leave for reflection here:

1) The legislator's choice, in terms of legislative technique, is rather strange: instead of concentrating the situations of exemption from prior control resulting from a favourable PIP in Article 6, which deals specifically with situations of exemption, he spreads the rules on the same subject over two articles, clearly making it difficult to know the situations of exemption and to interpret them as a whole;

2) The rule in Article 17(2) of the RJUE referring to the situation of exemption from prior control in the case of a PIP relating to an area subject to a detailed plan or plotting operation, seems to admit this exemption regardless of the type of PIP, i.e. it does not require the PIP to contain the specifications in Article 14(2)(a) to (f), unlike the requirement in Article 6(1)(h). This would seem to mean that the requirement for a more detailed PIP in the latter rule only applies to urbanisation operations located in an area not covered by a detailed plan or plotting operation, which could be justified by the fact that

the detailed plan or subdivision operation itself has detailed specifications on the urbanisation operations to be carried out in the respective area of intervention.

3) We don't understand why the previous rule on the validity of simple PIPs (i.e. without exemption from prior control) relating to urban development operations subject to a subsequent prior control procedure, which made the validity of the PIP refer to the time of submission of the licence application or prior communication, was removed. Shouldn't the rule have been maintained for these situations that, during the period of validity of the PIP (now 2 years instead of 1 year), the developer has to submit the applicable procedure to the Municipality?

4) The new rule that, within the 2-year validity period of the PIP, the developer must start the works, seems to apply also to situations in which it is necessary, after the PIP, to submit a licence application. If this is the case, isn't it ultimately reducing the effective validity of the PIP - contrary to what has been announced - and therefore, in practice, drastically reducing the virtues of using the PIP to speed up urban planning operations? In other words, doesn't this rule mean, in practice, that the developer is obliged to immediately submit the licence application as soon as the PIP is issued (in cases where this is required), in order to have the expectation of being able to start the works within two years? If the explanation for this change in the law is due to an expectation of a drastic reduction in the time it takes to complete licensing procedures, it seems to us that the legislator is being overly optimistic and we fear that he has ended up introducing a change that, in practice, will most likely be much less advantageous for developers than the one that existed to date; It seems to be a mere oversight on the part of the legislator, however, it will not fail to raise problems in its application by municipalities.

5) On the other hand, what is the reason for the reference in the last part of Article 17(6), regarding the possibility of extending the validity of PIPs, to the submission of licence applications or prior notices? The same possibility is not envisaged for situations of exemption from prior control. In the latter situations, won't the validity of the PIP be extended for another year, if the assumptions of fact and law don't change? Does the developer inexorably have to start the work exempt from prior control within two years without the possibility of an extension? What is the reason for such a distinction? It seems to be another lapse on the part of the legislator. The idea would probably have been to have two separate regimes - one for the exemption from prior control (2 years to start the work), the other for situations of prior control (2 years to submit the prior control procedure) - What is certain is that the legislator did not distinguish between the two situations, which once again will probably give rise to doubts in the application of the rule and certainly to differing understandings from municipality to municipality on how to legally resolve this lapse.

6) It's not clear what the duty is in practice for urban planning operations to be "*always accompanied by a declaration from the authors and coordinators of the projects that they respect the content, terms and conditions of the favourable prior information*". Is it enough for developers to ensure that such

documentation is issued and available, or is there a duty to communicate these elements to the town hall when the work begins? This could possibly be one of the cases to be the subject of municipal regulations.

7) Does the aforementioned duty laid down in the final part of Article 17(5) of the RJUE apply only to works exempt from prior control or to all urban planning operations preceded by a PIP? The rule doesn't distinguish, but we don't think it makes sense for it to apply to cases in which, despite the PIP, there is prior control, since in these cases the documentation to be obtained and delivered is specifically provided for in the applicable procedure. Doubts will certainly arise about the promoters' duties in this regard.

8) What happens if the PIP for a work exempt from prior control has not been started within the initial or extended deadline from the date the PIP was issued? It seems that the promoter can submit successive PIPs for the same work, which clearly means that the PIP is transformed into a real prior control procedure.

9) Article 14(1) of the RJUE has not been amended and continues to stipulate that any interested party can submit a PIP for any urban planning operation to be carried out on any building. The concept of interested party in this context is that of any private individual with a legitimate interest, who does not have to hold any specific right of a real or other nature over the building to which the PIP refers. How can the exemption from prior control following a PIP be reconciled with the question of legitimacy for carrying out urban planning operations? Is it enough for this to happen if the documentation referred to in the final part of Article 17(5) is submitted in the name of the promoter?

10) On the other hand, what is the nature of the PIP decision in cases of exemption? Won't it become a real prior control procedure with a final decision, which becomes an administrative act constituting urban planning rights with immediate effects, similar in its legal nature to a licence, albeit with a predetermined validity?