

Finally, last Thursday, December 15, Law 11/2022, of December 21, on Urgent Measures for the Promotion of Economic Activity and the Modernization of the Administration of the Community of Madrid within the framework of the Plan for the Reactivation of the Community of Madrid ("**Omnibus Law**") was approved.

The Omnibus Law has a major impact on spatial planning and urban development because it modifies, among others, (i) Law 9/1995, of March 28, on Territorial Policy, Land and Urban Planning Measures ("**Law 9/1995**") and (ii) Law 9/2001, of July 17, on the Land of the Community of Madrid ("**LSCM**").

In terms of Law 9/1995, the Omnibus Law introduces a new regulation of **Regional Scope Projects**, which makes its processing more flexible by eliminating the need for urgent actions or actions of exceptional public interest. This aims to adapt the aforementioned to current socioeconomic needs and effectively contribute to the attraction of investments, generating economic growth and employment.

In relation to LSCM, the Omnibus Law is the second regulatory modification in more than 20 years of validity. It should be mentioned that the previous modification took place not so long ago, in 2020, and it had a clear impact by replacing the licensing regime with the declaration of responsibility for the first occupation and use of buildings.

Therefore, the scope of the Omnibus Law goes further by modifying the LSCM in more than forty articles. This is undoubtedly a **major modification, which serves as a prelude to the expected new Land Law of the Community of Madrid**. If the current executive renews the confidence of the people in Madrid, it will be approved during the next legislature.

The main amendments made to the LSCM refer to:

- Endowment actions.
- Modifications to the structural and detailed planning determinations.
- Environmental impact assessment of Detailed Studies and Partial Plans.
- Measures in the area of public housing.
- The new regulation of the public-private partnership regime.

- The scope of actions on rural land.

For the sake of clarity, each of these amendments is analysed separately below:

### **1. Endowment actions on urban land**

One of the aims of Omnibus Law is to adapt the Madrid regulations to the current revised text of the Law on Land and Urban Rehabilitation, approved by the Royal Legislative Decree 7/2015, of October 30 (hereinafter, “**TRLS**”).

To this effect, the new article 19 bis of the LSCM, which regulates endowment actions, is a response.

Endowment actions are those that:

- i. Affect one or more plots of consolidated urban land;
- ii. Have a modification of planning instrument that entails a higher buildability, density or assigns a new characteristic use, and
- iii. Do not require the reform or renovation of the urbanization of the area.

In this sense, the Omnibus Law distinguishes between urban development reform/renovation actions and endowment actions by means of a quantitative criterion. Thus, in the event of a reform or a renovation action for the implementation of a higher buildability, density, or new characteristic use, it will be necessary to modify the networks of the existing services by more than fifty percent (50%). When this percentage is not exceeded, the action will be qualified as an endowment.

This distinction between actions is not trivial since different urban development duties or charges are imposed.

The endowment actions entail the obligation to (i) deliver land to the Administration for public endowments (when necessary to readjust their proportion) and, if applicable, (ii) the corresponding transfers of use.

In relation to point (i), the obligation to increase public allocations is carried out taking as a reference the special homogeneous area and not only in the plots affected by the action. On the other hand, the transfer of lucrative use -point (ii)- is reduced from 10% to 5% of the weighted average buildable area of the urbanized land defined in the planning instrument. Compliance with both obligations may be replaced by the delivery of the equivalent in cash.

These measures facilitate the modification of land uses and the increase of buildability by reducing the burdens associated with them, as well as providing legal certainty by clarifying the rules of the game, although they may be contradictory to the TRLS that they are intended to develop.

## 2. Modifications to urban development planning

An amendment to Article 34.3 of the LSCM envisages so that the structuring determinations listed in Article 35.5 of the LSCM may be modified by Special Plans, i.e., by development planning, even if they have been established by general planning instruments.

In this way, it will no longer be necessary to process a modification of the general planning, which reduces the formalities and increases the autonomy of City Councils, since these modifications will not have to go through the Community of Madrid.

However, they are required to be carried out “*after enough justification in relation to their specific purpose and, in any case, in congruence with the rest of the structuring planning*”.

The main determinations that may be altered by means of Special Plans are as follows:

- The change of characteristic use of one or more lucrative plots of consolidated urban land, provided that the variation in urban development use, due to the change of use, does not vary by more than 15%;
- The increase in buildable area on consolidated urban land, with a maximum increase of 15% over the buildable area established in the general plan;

- The intensification of uses in private plots of consolidated urban land that increase the density of population or users, with a maximum of 15% over the existing density or that are foreseen in the general plan; and
- Hygienic, aesthetic, building or urbanization conditions that are not consistent with or prevent the adaptation of buildings to environmental, building or energy efficiency legislation.

This list may be extended by regulation.

As for the detailed determinations, their modification is allowed both by the general planning and by the development planning, even though it would have been the general one that would have established them.

These measures aim at streamlining administrative procedures and reducing costs.

### **3. Environmental Impact Assessment**

Within these measures, there is the modification operated in Law 4/2014, of December 22, on Fiscal and Administrative Measures, whereby Detailed Studies are excluded from the environmental assessment procedure, as well as certain types of Special Plans in accordance with the jurisprudence of the Constitutional Court.

### **4. Measures in the area of public housing**

In order to ease the problem of access to housing, the following measures are introduced:

- On the one hand, it is allowed that the vacant land of the network of services or social facilities (educational, cultural, health, welfare, sports, etc.) coming from sectors of urban land or unconsolidated urban land, can be destined to the network of public housing subject to a protection regime, thus expanding its purposes and allowing such land to be used for the construction of subsidized housing.

This possibility is limited, in any case, to a maximum percentage of 5% of the residential buildable area foreseen for the sector by the planning, and provided that it also complies with the required standards of public networks.

- In unconsolidated urban land, a minimum of 10% of the residential building that must be subject to reform or renovation of urbanization must be reserved for public housing. Exceptions may be made, on a discretionary basis, to the application of this provision to planning instruments whose purpose is the reform or renovation of the existing urbanization in which the residential use does not reach a total of 200 dwellings. This exception will have to be agreed by the Municipal Plenary.

## 5. Public-private collaboration

With the approval of the Omnibus Law, all the municipalities of the Community of Madrid, and not only that of Madrid Capital, will be able to collaborate with private urban development entities, the so-called **Urban Development Collaborating Entities** ("ECUs"). Therefore, their competences will be extended, and it will be possible for them to process any license or responsible declaration and to carry out inspections at the request of the municipalities (their specific functions are regulated in the new provision 166 of the LSCM).

Notwithstanding the foregoing, the purposes of the public land assets are broadened to include the creation and provision of land for the exercise of new business activities or the expansion of existing ones, which in both cases generate employment and are compatible with sustainable development. The cases that include direct alignment of these lands are regulated in accordance with the Law.

In this sense, it is allowed that the constitution of the surface may be based on any utility, not being limited to the construction of housing subject to any regime of public protection or social integration, equipment, as well as other used of social interest, as previously established in the LSCM. As regards the legal regime of the surface right, it refers to the State legislation, maintaining as a caveat the current term of 75 years as opposed to the maximum term contemplated in the State legislation (89 years).

## 6. Measures in relation to rural land

To stimulate economic activity in rural areas, it is allowed to authorize, through the procedure of urban qualification in undeveloped land for protection, actions allowed by sectorial legislation that are not expressly prohibited by municipal or urban territorial planning.

This is a change since it was required that they were expressly allowed by the municipal planning. The reason for the modification of the regime of actions in undeveloped land for protection lies in preventing new activities that may arise from being excluded because they are not foreseen in the planning, which is usually outdated.

Likewise, the rehabilitation for conservation of any existing building is authorized, without the need for it to have a "*high architectural value*" as required by the LSCM in its previous wording.

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**Marta González-Llera**

**Real Estate Partner**

[marta.gonzalezllera@caseslacambra.com](mailto:marta.gonzalezllera@caseslacambra.com)

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Spain

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