



LEGISLATIVE PROPOSAL TO GUARANTEE THE RIGHT TO ADEQUATE HOUSING

The Spanish Parliament Official Gazette (*Boletín Oficial de las Cortes Generales*) published last Friday a legislative proposal (*proposición de ley*) to guarantee the right to adequate housing which the confederal parliamentary groups of Unidas Podemos-En Común Podem-Galicia en Común, Republicano, Plural, Euskal Herria Bildu and Mixed submitted (“**Proposal**”).

Much has been said about what this new regulation might bring about, but finally the many speculations have been embodied in an official text (albeit provisional), which essence is to reinforce the subjective right to decent, adequate and affordable housing, and define the social role of the right to own a house. The Government’s majority party (*Partido Socialista Obrero Español or PSOE*) has still not made its stance public, nor does the Proposal refer to it.

The Proposal changes a wide range of regulations: the Civil Code; the Bankruptcy Law (*Ley Concursal*); the Civil Procedure Law (*Ley de Enjuiciamiento Civil*); the Mortgage Law (*Ley Hipotecaria*); the General Consumers Law (*Ley General de Consumidores y Usuarios*); the Real Estate Credit Contracts Law (*Ley reguladora de los Contratos de Crédito Inmobiliario*) and the Urban Leases Law (*Ley de Arrendamientos Urbanos*). Its passing will therefore truly revolutionise the housing situation in Spain and some aspects such as its constitutionality will require further analysis as it has been proposed as a regulation that establishes the basic conditions for access to housing for the entire country.

The Proposal’s parliamentary process is not quite complete. The General Committee of the Congress of Deputies (*Mesa del Congreso de los Diputados*) referred it to the Government and it has 30 days to issue its opinion, and state whether or not it agrees with it entailing an increase or decrease in budgetary allocations, as the case may be. If the Proposal were to affect the State’s budget, and the Government were to disagree, the Proposal would not pass. In the event that the Government does not oppose the Proposal, it will be included in the agenda of the Congress of Deputies sitting in full session for its consideration. If the Congress of Deputies were to admit the Proposal, the procedure for legislative projects (*proyectos de ley*) applies. Therefore, the Proposal would be referred to the corresponding parliamentary committee, at which stage amendments (other than those to its entirety, unless it affects the State budget) could be made, and then would be debated and deliberated on at the Congress of Deputies sitting in full session. After the Congress of Deputies, the Proposal passes through the Senate,

which may definitively approve it, or amend or veto it. Therefore, as mentioned, the Proposal may look very different once it passes through Parliament, especially as it takes on average six to seven months for this type of legislative initiative to be definitely approved and published.

Even so, it is still worth examining the Proposal's main measures.

1. MEASURES TO AVOID EVICTING PEOPLE WHO ARE AT RISK OF LOSING THEIR HOMES

- Judges in eviction proceedings may decide against evicting persons from their habitual residence when doing so undermines the right to housing.
- In cases of substituted payment or performance (*dación en pago*), offsetting debt or selling the habitual residence which is being sold because the borrower is unable to repay their mortgage, the purchaser must offer the affected parties – if they have no other house where to live and in accordance with the housing exclusion risk parameters defined – a social lease proposal (which characteristics are defined by law).
- Before taking any foreclosure action or claims for rent defaults or when the lease expires, among others, the claimant must offer the affected party – if they have no other house where to live and in accordance with the housing risk exclusion parameters defined – a social lease proposal.

2. MEASURES AGAINST OVER-INDEBTEDNESS

- In foreclosure proceedings, if the foreclosed property is a person's habitual residence, the debtor may request the mortgaged property to be handed over instead of payment of the secured debt (*dación en pago*); the remaining debt, including interest and costs, will be deemed to have been fully paid off for all purposes, and no further claim may be initiated. However, the mortgage deed may establish that the secured obligation will be enforceable against all the assets of the debtor's estate. For this clause to be valid, it must be clearly set out in the loan contract, the debtor must have freely and voluntarily consented to it and it must have been negotiated transparently and clearly.
- The debtor's habitual residence may not be seized while other assets can be used to satisfy the debt within the term of the loan or credit that is to be executed or enforced. The habitual residence of the guarantors (*avalistas o fiadores*) and non-debtor mortgagors who have guaranteed the credit or loan on the foreclosed party's habitual residence must not be seized either.
- With respect to the credits the debtor's habitual residence secures that are to be assigned (including in a global portfolio assignment or through an asset securitisation operation carried out in favour of investment funds), the assignee must notify the assignment's conditions to the debtor, who will be released from their obligations if they pay the creditor the assignment price within two months of notifying the assignment.
- The debtor's right of first refusal (*derecho de retracto*) on a disputed assigned claim will be two months (instead of the current nine days) if the debtor's habitual residence secures the claim.

- If the habitual residence of the foreclosed party is sold in a mortgaged property auction, it may only be awarded to the bidder that offers the total appraisal value for auction purposes provided in the mortgage deed, or to the highest bidder who offers more than such value (instead of the currently established 70% or 50%, which continue to apply to other types of assets).

3. RENT REGULATION

- Housing leases will have a minimum duration (at the lessee's discretion) of seven years if the lessor is a natural person or twelve years if the lessor is a legal person. If the lessor is a "large housing holder" (*gran tenedor de vivienda*) and the lessee is in a situation of risk of housing exclusion, the lease will be extended for an additional year until a decent and adequate housing alternative is available.

Once the lease, or any of its extensions, expires, it will be automatically extended for seven years, or twelve years if the lessor is a legal person, unless the lessee gives at least two months' notice of its intention not to renew the lease or the lessor gives at least four months' notice of an exceptional need for the housing.

The regulation defines "large housing holder" as financial entities, their real estate subsidiaries, investment funds, asset management entities as defined by commercial legislation, and individuals or legal entities that, alone or through a group of companies, own five or more housings or have more than 800 sq. m.

"Empty housing" (vivienda vacía) means residences that are not a second residence and remain unoccupied for six consecutive months except for a justified reason (e.g. relocation for work reasons, change of domicile due to a dependency situation (situación de dependencia), leaving the housing in a rural area suffering demographic decline and the housing being the subject matter of a legal dispute pending resolution), in breach of the social role of the right to own a house.

- In housing leases, the lessor may not require the lessee to provide other guarantees such as to name a second leaseholder who does not reside in the property or a guarantor, to secure insurance covering default, to provide bank deposits or any others in addition to the legal deposit.
- In housing leases over dwellings located in a "stressed market area" (*area de mercado tensionado*), the agreed rent may not exceed either of the following two values (which must be disclosed in the lease offer):
 - a) The official reference index to rent a residence of analogous characteristics in the same urban area.
 - b) The rent stated in the previous lease contract, in force for the past five years, or the average of the contracts in that period, increased by the competitiveness guarantee index (*índice de garantía de competitividad, IGC*), provided that this increase does not exceed the increase in the CPI (*índice de precios del consumidor*), including the fixed expenses the lessee has to pay.

According to the regulation, "stressed market areas" are those parts of municipalities, neighbourhoods or urban areas in which any of the following circumstances a) or b) occur and the autonomous community in

question, the Cities of Ceuta and Melilla or the corresponding city council declare them so, where the purchase price, lease or any other legal formula of temporary lease has experienced, in the past five years, an accumulated inter-annual growth of at least three percentage points higher than the CPI inter-annual rate of the autonomous community in question:

- a) *That the official reference indexes of the prices of homes for purchase, lease, or any other legal formula of temporary lease reflect a sustained growth above the average of the urban area, municipality or part thereof, or of the average rent in the autonomous community in question;*
 - b) *That the average burden of the cost of the mortgage, of the lease, or of the consideration for any other legal formula of temporary lease, either in the personal budget or in the cohabitation unit budget, plus the basic expenses and supplies, exceeds 30% of the average income of the urban area, municipality or part thereof, or of the average income of the autonomous community in question.*
- Leasing rooms within a habitable building that satisfies permanent housing needs of lessees who do not have another residence, when they have access, even if shared, to all the services necessary for habitability (toilet, kitchen, etc.), will be considered a housing lease.
 - The Proposal creates the figure of the lifetime housing lease subject to review (*arrendamiento de vivienda vitalicio revisable*), as a special-duration lease under which, once the minimum duration is exceeded, if the lessee meets certain requirements – on the one hand, to have income lower than 1.5 times the minimum professional wage (*salario mínimo interprofesional, SMI*) and, on the other, to fall under one of the following categories: being over 65, having lived in the house for more than 20 years, being permanently disabled, being a large family with two or more minor children, or having a disability (of a degree of more than 33%) or a permanent injury –, the lease is automatically renewed until the lessee's death.

4. MEASURES TO PROTECT AND INCREASE THE PUBLIC SOCIAL HOUSING STOCK AND AVOID EMPTY HOUSING

- The unjustified non-occupation of residences that do not constitute a second residence will be sanctioned if the owner is considered to be in serious breach of the social role of the right to own a house.
- Three months after this regulation enters into force, neither public housing nor publicly protected housing (*vivienda con protección pública*) may be offered for sale, and the competent authorities will set up mechanisms to change how public housing is classified from ownership to social lease housing, whether they are already built or planned.
- Public land, both urban and for development (*urbano y urbanizable*), assigned mainly for residential use, may not be sold either. The right to use this land may only be transferred, through an administrative concession or other temporary right, between public authorities or public companies, or both, or to non-profit entities, provided the property's social purpose is maintained.
- More land is set aside for publicly protected housing and it seems that it will all be used for subsidised rental housing, although a section of the Proposal establishes that 60% of that land

will be used for publicly protected housing for social lease (the current regulations do impose or establish no minimum to be used for rent). The land set aside for publicly protected housing in new urbanisation projects increases from 30% to 50% of the residential buildable area; and in urban reform or renovation projects, from 10% to 50% of the residential buildable area.

- As to public source land or housing in areas with a proven demand for housing, special expropriation procedures will be expedited for housing that is transferred before the law enters into force and which fulfil no social purpose.
- Empty housing will be compulsorily transferred to the estate the public authorities manage, and will be used for public rental on the following terms:
 - a) Twenty years for housing that “large housing holders” own or manage, or which have received public funds such as subsidies, aid, subsidised credits or any other tax benefit for their construction.
 - b) Ten years for all other houses, except those that constitute a first and second residence.
- Compulsory transfer of privately owned residential buildings that have remained unused and empty, exceptionally, for one year, to be added to the public rental housing stock, which the competent public authority will manage for a minimum period of one year.
- Where persons in a housing exclusion situation occupy the housing that is to be compulsory assigned, the competent public authority will regularise their situation through a social lease.
- 100% of the housing the SAREB manages or owns will be compulsorily assigned to the competent public authority.
- The obligation to temporarily assign applies without prejudice to the right to expropriate housing that has been unoccupied for more than one year, for inclusion in the public lease housing stock.
- A right of first refusal (*derecho de tanteo y retracto*) is granted to the public authorities on first and successive transfers of the following types of housing:
 - a) publicly protected housing and its extensions;
 - b) housing that has been rehabilitated, acquired or made more energy efficient through public guarantees or that have been publicly funded;
 - c) non-protected housing and entire buildings intended primarily for residential use, located in areas with a proven demand for housing.

The right of first refusal includes transfers of shares and equity interests in commercial companies, including their merger, transformation or spin-off, where their corporate purpose is directly or indirectly linked to the real estate activity and own any of these buildings or housing.

5. OTHER

- The competent public authorities will guarantee all citizens access to adequate and affordable housing, and the maximum expenses destined to cover the cost of rent, mortgage, plus the housing's basic expenses and supplies, will in no case exceed 30% of the income of the family unit or persons occupying the housing.
- A social rate will be established for people at risk of housing exclusion for water, electricity and gas supplies.
- The special tax regime for Listed Real Estate Investment Companies (*Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliario, SOCIMI*) will cease to apply. Thus, SOCIMIs and their partners must apply the general tax regime within a maximum period of six months from the date the law enters into force.

This document does not analyse the entire Proposal comprehensively, but describes, with a little less uncertainty, the Proposal (which was sent before the two parties forming the government coalition on this matter announced last week that they had reached an agreement). It also serves as a warning of the huge impact the Proposal will have on the housing sector, if it is ultimately approved in its current form.

Measures such as extending the duration of lease contracts, regulating arrangements such as lifetime leases or the new rights of first refusal, excluding SOCIMIs from the special tax regime, restricting evictions or imposing transfers of certain empty houses would transform the sector and seriously disturb, if approved in its current form, many investors' business plans.

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