



VIII CONSTITUTIONAL GOVERNMENT

DECREE-LAW No 8/2021

LEGAL REGIME OF SOIL CLASSIFICATION AND QUALIFICATION

After the approval of Law No 6/2017, of 19 April, which establishes the bases of spatial planning, it becomes necessary to create the set of rules that enable the development and implementation of spatial organization models by territorial planning instruments.

Article 54(2) of the Constitution of the Republic clearly indicates the defence of the principle of the social function of property, when it states that "private property shall not be used to the detriment of its social function". This constitutional rule attributes to the State the right, but also the duty, to implement policies that defend the natural aptitudes and qualities of the soil so that the way in which the territory is used is maximized; as such, it is the State's responsibility to ensure the superior community interests by defining the rules of occupation, use and transformation of the soil.

By establishing the principles and criteria for the classification and qualification of soils, this diploma is a regime that structures the form of territorial zoning, through the definition and implementation of the soil regime, within the scope of municipal planning instruments, a central instrument for pursuing the intended model of spatial organization by defining the rules for occupying, using and transforming the soil.

It also confers a standardisation of terms and concepts that will result in greater ease in the design, reading, understanding and use of planning instruments by technicians and the population in general, namely by the local communities in the areas of intervention of these planning instruments. In accordance with what is established in the Basic Law for Spatial Planning, the soil classification determines the basic destination of the land, where it admits the existence of two classes, urban soil and rustic soil.

Given the state of infrastructure development in the country, it was deemed appropriate to include in the class of urban soil the distinction between urbanised soil and developable soil, so that the State may carry out programmed planning of the expansion of urban perimeters, anticipating territorial dynamics in response to demographic and economic dynamics and within a framework of environmental sustainability, the creation of conditions for greater competitiveness and the promotion of better living conditions for urban populations.

Rustic soil is that which, due to its recognised aptitude, is intended for agricultural, livestock, forestry, conservation, enhancement and exploitation of natural resources, geological or energy resources, as well as that which is intended for natural, cultural, recreational and leisure spaces, and, suppletively, that which is not classified as urban.

The soil qualification shall define, in accordance with its classification, the content of its use, by reference to the development potential of the territory, defining the respective dominant uses, the admissibility and restriction of use, through rules for the occupation, use and transformation of the soil.

The Government decrees, under paragraphs b), c) and k) of Article 115(1) and paragraph d) of Article 116 of the Constitution of the Republic, and under Article 32 of Law No. 6/2017 of 19 April, to be valid as law, the following:

CHAPTER I GENERAL PROVISIONS

Article 1 Object and Scope

1. This decree-law establishes the criteria for the classification and qualification of land and the categories of qualification of rural and urban land, applicable to the entire national territory.
2. The criteria and categories referred to in the preceding paragraph shall apply to the procedures for the preparation, amendment and review of territorial plans of municipal scope, in accordance with the land use regime defined in the Basic Law on Regional Planning.

Article 2

Administrative easements and public utility restrictions

1. Administrative easements and public utility restrictions affecting the rules governing occupation, use and transformation of the land deriving from specific legal frameworks and having spatial expression and territorial impact shall be duly integrated and represented in the territorial plans at municipal level through the respective map of constraints.
2. In areas covered by administrative easements and public utility restrictions, the respective regimes shall prevail over the other provisions of the land use regimes of the categories in which they are integrated.

CHAPTER II

CLASSIFICATION AND QUALIFICATION OF SOIL

Section I

Soil classification

Article 3

Concept

1. Soil classification shall be a planning option whereby a fundamental distinction is made between the classes of rural soil and urban soil, taking into account the nature, functions, potential and basic purpose of the soil.
2. The classification and reclassification of soil into the classes of rural and urban soil shall be defined in territorial plans with a municipal scope, under the terms laid down in this statute and in the legal regime of territorial planning instruments.

Article 4

Classes

Soil shall be classified as urban or rural.

Article 5

Soil classification as rural

1. Soil shall be classified as rustic in accordance with its suitability for agricultural, forestry, livestock, mining and natural conditions, in accordance with its pedological characteristics, natural resources and existing environmental values, and shall also include any soil that is not suitable for, or does not justify, its allocation to urban purposes.
2. The classification aims at the balanced and sustainable development of the rural system, the framing and support of economic activities associated with agriculture, livestock, forestry and mining, the improvement of the quality of life of rural populations and the creation of conditions for their settlement, the protection of natural resources and the defence and enhancement of the environment, and shall be carried out within the framework of the planning strategy and land use planning objectives, with consideration of the following criteria:
 - a) Suitability for agricultural, forestry and livestock use;
 - b) Potential for exploitation of geological and energy resources;
 - c) Relevance in the conservation, enhancement or use of natural and landscape resources and values;
 - d) Protection and valorisation of non-urban sites with heritage and historical and cultural relevance;
 - e) Protection and enhancement of natural structures with ecological relevance and sensitivity, namely in maintaining the water cycle, preventing natural risks, defending coastal zones and safeguarding ecosystems and biodiversity;
 - f) Taking advantage of the characteristics and potential of these areas for tourism and cultural, recreational and leisure activities directly linked to nature and the rural world, even when occupied by equipment and infrastructures;
 - g) Framing religious activities linked to events and spaces of the rural world;
 - h) Protection and enhancement of rural communities and settlements;

- i) Location of equipment and infrastructures essential for national defence, security and civil protection, incompatible with integration into urban land;
- j) Allocation to infrastructures, equipment or other types of human occupation that do not confer the status of urban soil;
- k) Soil which, not being covered by the above-mentioned criteria, does not have aptitude or does not justify its classification as urban soil.

Article 6

Reclassification to rural land

1. The reclassification of urban soil as rustic soil shall take place within the framework of the amendment or review of territorial plans at municipal level, when the updating of population growth and socio-economic development forecasts or the results of the implementation of the territorial plan at municipal level in force allow for the area defined as urbanised to be considered excessive.
2. The reclassification to rustic soil must obey the criteria presented in the previous article.

Article 7

Classification of soil as urban

1. The classification of soil as urban shall be aimed at balancing and qualifying the urban system, ensuring the support and rationalisation of internal dynamics, the qualification of housing, the provision of services to citizens, the response to demographic dynamics and economic development trends, the rational management of soil and other territorial resources and environmental sustainability.
2. Urban land includes totally or partially urbanised or built-up land and land subject to programmable urbanisation with a recognised vocation for the process of urbanisation and construction.
3. The classification of land as urban land shall be made in accordance with the territorial planning strategy and the models for local development and for

growth and qualification of urban systems defined in territorial plans of municipal scope, considering cumulatively the following criteria:

- a) Inclusion in the urban system organisation model;
- b) Existence or foreseen existence of built groups with common structures, functional interdependencies, spaces and socialisation links;
- c) Existence or forecast of the existence of building complexes with functional diversity, at the residential level and of different economic activities, supported by infrastructures, equipment and collective urban services, namely at the level of transport, administration, health, education, water supply, sanitation, electricity and communications;
- d) Existence or foreseen existence of multi-functional edified groups and/or generators of large flows of people and goods;
- e) Insertion in the ecological structure, indispensable for the balance of the urban system;
- f) Geomorphological suitability for edification and urbanization;
- g) Strategic nature for the creation of residential nuclei, installation of economic activities or installation of infrastructures or equipment necessary for the dynamics of growth and the qualification of urban systems;
- h) Non-existence of restrictions, conditioning or protection regimes which must prevail and which may be irreconcilable with edification and urbanisation.

Article 8

Reclassification to urban soil

1. The reclassification of rustic soil as urban soil shall be carried out within the framework of the amendment or review of territorial plans of municipal scope, in response to a demonstrated need for new urban areas as a result of demographic dynamics, socioeconomic development or urban upgrading strategies.

2. Reclassification to urban soil must comply with the criteria presented in the previous article.

Article 9

Urban perimeter

The urban perimeter is delimited and shall comprise urban land, which includes partially urbanized or built-up land and, where expansion areas exist, programmable urbanization land, which, as a whole, must form a cohesive territory with functional interdependence.

Section II

Soil classification

Article 10

Concept

1. Soil classification translates the planning options and the territorial organisation model for responding to local development strategies, the allocation of uses and the need to adapt and establish differentiated rules for soil occupation, use and transformation, in accordance with the characteristics and potential of the territory.
2. Soil classification shall be carried out in a territorial plan of municipal scope and aligned with the soil classification, defining categories and subcategories for rural and urban land, in accordance with the content of its current or planned use, by reference to a dominant use.
3. The qualification shall consider, in accordance with the territorial context and planning options, the conciliation, hierarchisation, admissibility and restriction of uses and the rules for the occupation, use and transformation of land.
4. The qualification considers the principle of multi-functionality of rural and urban spaces, through the compatibility and integration of uses in accordance with the territorial needs and potentialities and in the scope of the rational management, safeguard and valorisation of the natural, environmental, landscape and cultural resources.

5. The subcategories of land are aimed at greater detail in the differentiation of permitted uses, namely at the level of their hierarchy, compatibility, incompatibility, or when they are necessary for the specific regulation of morphotyping issues, of the characteristics and dimensioning of urbanistic operations or of other land transformation actions.

Article 11

Parameters, indexes and conditioning for building and land transformation

1. Soil classification shall, in accordance with the planning objectives, soil classification, the established criteria and the dominant and admissible uses for the different categories or subcategories, establish a set of parameters, urban indexes and any other geometric or descriptive constraints that regulate the potential for building and the general conditions in which soil occupation and transformation may be built or promoted.
2. The parameters, indexes and constraints to be considered in the soil categories and subcategories may be, namely:
 - a) Parameters:
 - i. Height of the facades; Height of the floors;
 - ii. Maximum/minimum number of floors
 - iii. Maximum/minimum clearances;
 - iv. Maximum depth of the gable
 - v. Maximum deployment polygon;
 - vi. Maximum/minimum area of the plot of land;
 - vii. Maximum/minimum frontage of the plot of land;
 - b) Indices:
 - i. Construction ratio (construction area / area of the land);
 - ii. Implantation (implantation area / plot area);
 - iii. Impermeability index (area of impermeability / area of land);
 - iv. Habitational (number of dwellings / area of ground);
 - v. Population (number of inhabitants / area of land);
 - vi. Of green areas or outdoor areas of collective use (green area / construction area per type of use);
 - vii. Areas for collective use of equipment (equipment area / construction area per type of use);

- viii. Parking (parking area or number of parking places / construction area per type of use);
- c) Other constraints (geometric / descriptive):
 - i. Setback angle (height / setback);
 - ii. Alignment (vertical/horizontal);
 - iii. Morphological;
 - iv. Typological;
 - v. Constructive processes, materials and construction finishes.

Article 12

Incompatibilities

1. Territorial plans with a municipal scope and the regulations associated to soil qualification must prevent the coexistence of incompatible uses, and in each soil category or subcategory the criteria for the restriction or inadmissibility of the installation of uses or the carrying out of urbanistic operations must be identified.
2. Under no circumstances may:
 - a) Urban allotment operations in rustic soils;
 - b) Agricultural activities on urban land that may affect the respective hygiene and salubrious conditions;
 - c) Activities, infrastructures and equipment with environmental impact or risk level that jeopardize the safety and quality of life of residential areas or the uses and functions permitted for the categories and subcategories of space in which they are inserted, namely in agricultural and forestry spaces.

Article 13

Canal and land reserve spaces

1. The canal and reserve spaces do not constitute a separate soil category, but rather establish a safeguard regime that may be superimposed on soils classified as rural or urban and qualified in any of their respective categories or subcategories.

2. The safeguard regime establishes conditions for the occupation, use and transformation of soils that prevail over any other regime that applies to soils.
3. The canal and soil reserve spaces are classified as follows:
 - a) Canal spaces for infrastructures, intended to establish a protection regime for the soils occupied by territorial or urban infrastructures of linear development, including the adjacent protection strips established for their protection and proper functioning, or to ensure the reservation of area for their future creation;
 - b) Soil reserve spaces for equipment, intended to establish a protection regime for land occupied by public or collective use equipment or to ensure the reservation of area necessary for its future implantation, alteration or enlargement;
 - c) Soil reserve spaces intended to establish a protection regime for green areas, community protection areas, outdoor spaces for collective use or to ensure the necessary reservation of area for their future establishment, alteration or enlargement.

Subsection I Rural Land Classification

Article 14 Rural land classification criteria

The classification of rural land into categories and subcategories shall be based on the grounds for its classification and on the following criteria:

- a) Alignment with strategies, policies and programmes at national, supra-municipal, municipal, local and sectoral level, regarding agroforestry planning, the sustainable use of energy and geological resources and the protection and enhancement of the natural, landscape and cultural heritage;
- b) Compatibility with management programmes or legal regimes for the protection and enhancement of natural resources;
- c) Predominance of activities in the area of agricultural, livestock and forestry exploitation, of exploitation of energy and geological resources,

of protection and valorisation of the natural functions of the soil and their impact on the protection of the environment and the ecological balance, of safeguarding cultural and landscape values and of prevention and mitigation of natural, environmental or technological risks.

- d) Hosting infrastructures and equipment to support rural communities and activities that do not determine the classification of the land they occupy as urban;
- e) Hosting activities compatible with the dominant activities that contribute to diversify and boost the local economy, safeguarding the environmental and landscape sustainability;
- f) Qualification of rural settlements, defence and valorisation of buildings and traditional structures and of the identity characteristics of rural communities.

Article 15

Rural land tenure structure

The land use regimes established within the scope of territorial plans at municipal level, without prejudice to the provisions of the law, may define minimum or maximum areas for division of ownership in accordance with the dominant use and the planning options considered for each category of rural land.

Article 16

Categories of rural land

1. The categories of rustic soil provided for in the following paragraph shall be regulated by territorial plans with a municipal scope and shall aim to establish specific rules for soil occupation, use and transformation.
2. The following are categories of rural land
 - a) Agricultural areas;
 - b) Forestry areas;
 - c) Areas for the exploitation of natural resources;
 - d) Natural areas;
 - e) Rural undifferentiated spaces;
 - f) Rural settlements;

g) Other categories of land.

3. The territorial plans at municipal level may disaggregate the categories referred to in the previous point into subcategories that are appropriate to the local development strategy and to the model for spatial organisation of the municipal territory.

Article 17 **Agricultural area**

1. The dominant use of the agricultural space regime is agricultural and livestock activities, based on the characteristics, aptitude and potential for the effect of the lands covered, and shall promote their use in an economically and environmentally sustainable manner.
2. The permitted use must not compromise the natural functions of the soils that jeopardise the ecological balance and environmental performance of the territory, namely regarding the hydrological cycle, the prevention of natural risks or carbon sequestration.
3. 3. Other uses may be occasionally admitted when inherent or necessary for the development and sustainability of agricultural or livestock activities, namely in the area of housing, infrastructures, public facilities, industry, storage or exploitation of natural resources, if duly justified and as long as there is no proven prejudice to the dominant use.
4. Tourist, recreational, leisure, cultural or religious use may also be permitted on an exceptional and occasional basis, when justified on the basis of the cultural or natural heritage and landscape and provided that there is no proven prejudice to the dominant use.

Article 18 **Forestry space**

1. The dominant use of the forestry space regime is forestry, based on the characteristics, aptitude and potential for the effect of the land covered, and shall promote its use in an economically and environmentally sustainable manner.

2. The permitted use may not compromise the natural functions of the soils that jeopardise the ecological balance and environmental performance of the territory, namely as regards the hydrological cycle, the prevention of natural risks or carbon sequestration.
3. Other uses may be occasionally admitted when inherent or necessary for the development and sustainability of the forestry activity, namely in the domain of housing, infrastructures, collective equipment, industry, storage or exploitation of natural resources, if duly justified and as long as there is no proven prejudice to the dominant use.
4. Tourist, recreational, leisure, cultural or religious use may also be permitted exceptionally and occasionally, when justified on the basis of the cultural or natural heritage and landscape and provided that there is no proven prejudice to the dominant use.

Article 19

Areas for exploitation of natural resources

1. The regime of spaces for exploitation of natural resources has as its dominant use the economic exploitation of energy and mineral resources, is based on the characteristics, aptitude and potential of the land covered and must promote such exploitation in an economically and environmentally sustainable manner.
2. The rules for the use of the land shall provide for the minimisation of environmental impacts and mechanisms for promoting the natural regeneration and landscaping of intervened areas at the end of the term defined for the exploitation.
3. Other uses may only be admitted when they prove to be inherent, necessary or compatible with the exploration activity and do not aggravate the environmental impacts resulting therefrom.

Article 20

Natural spaces

1. The natural spaces regime is destined for areas identified as having sensitive and relevant environmental and landscape value, provided that their dominant use is not agricultural, forestry or exploitation of natural resources,

including the necessary protection of coastal areas, prevention of natural risks, maintenance of the hydrological cycle, protection of ecosystems and biodiversity and enhancement of the landscape, and is strongly restrictive regarding any activities of artificialisation or alteration of the natural conditions and functions of the soil.

2. Activities involving the artificialisation or alteration of the natural conditions and functions of the soil are admitted in this soil category on an exceptional basis and only when:
 - a) Strictly necessary for the pursuit of the planning and protection objectives referred to in the preceding paragraph;
 - b) They result from ancestral forms of local communities occupying and living in the territory, always without prejudice to the planning and protection objectives referred to in the preceding paragraph;
 - c) They are very limited forms of nature tourism, always without prejudice to the planning and protection objectives referred to in the previous number;
 - d) They are provided for in environmental legislation.

Article 21

Undifferentiated rural spaces

1. The undifferentiated rural spaces regime is applicable to the set of soils whose characteristics, aptitude and potential do not justify their inclusion in any of the aforementioned categories of rural land, nor do they prove adequate or necessary for allocation to urban uses.
2. Urbanisation or conurbation actions are prohibited, uses are limited to those permitted in rustic soil, and occupation is limited, occasional and without prejudice to the predominance of natural soil functions.

Article 22

Rural settlements

1. Rural settlements are constituted as built-up areas, with an urban connection, predominantly for habitation purposes and to support activities

located on rural land, having infrastructures and services of proximity, but for which the classification as urban land is not appropriate, namely as regards building rules, requirements and dimensioning of equipments and infrastructures, location and dimensioning of green spaces or spaces for collective use and conciliation or incompatibility of uses.

2. The rules of occupation, use and transformation of the soil must consider the necessary conciliation between the imperative of improving conditions of habitability, comfort, safety and salubrity of dwellings, services and collective spaces and the protection and enhancement of the built heritage and of the traditional forms of habitation and community life of the rural populations.

Article 23

Other categories of rural land

1. The territorial plans at municipal level may establish, in accordance with the planning options and the territorial organisation model adopted and in conformity with existing territorial and sectoral guidelines and programmes, other categories of rustic soil for areas of anthropic occupation that do not determine the classification of the soil they occupy as urban and justify the establishment of a category with a specific use regime.
2. The following other categories of rural land may be established:
 - a) Cultural and religious space: area of outstanding heritage value which it is of interest to protect and enhance;
 - b) Tourism space: the predominant tourism activity, with characteristics that are compatible with and admitted by the rural land and framed in territorial planning or sectorial development options;
 - c) Industrial land: the dominant area of industrial or storage activity, with compatible characteristics admitted by the rural land and framed in territorial planning or sectorial development options;
 - d) Equipment and infrastructures space: area occupied by equipment, infrastructures or other structures and occupations incompatible with integration into urban soil, which justify the constitution of a category or subcategory with its own regime;

- e) Dispersed buildings: area occupied by dispersed buildings, supporting activities located on rural land, which must be subject to a specific regime of use aimed at its containment and improvement of its quality, namely the habitability conditions and the provision of infrastructure and public support services.

Subsection II

Qualification of urban land

Article 24

Criteria for classifying urban soil

1. The classification of urban soil into categories and subcategories is based on the grounds for its classification and also on the following criteria:
 - a) Alignment with the strategies, policies and programmes of national, supra-municipal, municipal, local and sectoral scope, namely relating to spatial planning, the structuring and development of the urban network and systems or the organisation and development of urban space;
 - b) Compatibility with management programs or legal regimes for the protection and enhancement of natural, environmental, landscape and cultural resources and values;
 - c) Respect for the principle of multifunctionality of urban space, through compatibilization and integration of uses;
 - d) Homogenous built-up areas with a stabilized urban structure and predominantly or exclusively for residential, economic activity or multifunctional purposes;
 - e) Spaces and groups of buildings in poorly qualified urban structures that are susceptible to urban qualification or regeneration processes;
2. The qualification of urban land is carried out through its inclusion in planning and functional categories, defined by territorial plans at municipal level, with the aim of establishing specific rules for land occupation, use and transformation, based on the following criteria:

- a) The planning categories are established for the purposes of the execution of the territorial plan of municipal scope based on the degree of soil urbanisation, the degree of consolidation of the urban fabric and the programming of urbanisation and building, relying on the fundamental distinction between urbanised soil and developable soil;
 - b) The functional categories shall be established on the basis of the dominant function and morphotopolitical characteristics of urban space organisation.
- 3. Functional categories are compulsory for urbanised soil and recommended for urbanisable soil.
 - 4. The territorial plans at municipal level may disaggregate the planning and functional categories referred to in the preceding paragraph into subcategories that are appropriate to the local development strategy and the model for spatial organisation of the territory under consideration.

Article 25

Minimum implementation or urbanization units

The land use regimes established in territorial plans with a municipal scope may define minimum execution units or criteria for progression of the territory's urbanisation, namely those related to the resolution of infrastructure systems and urban services, and the need for spaces and equipment for collective use.

Article 26

Urban land planning categories

- 1. The urban land planning categories are the following:
 - a) Urbanised land: that which is totally or partially urbanised or built-up, endowed with urban infrastructures and collective facilities and where urban functions predominate;
 - b) Soil subject to urbanisation: that which is destined to urban expansion programmed through a territorial plan of municipal scope.

2. The territorial plans of municipal scope may disaggregate the categories referred to in the previous point into subcategories, on the basis of the degree of urbanisation and the type of urbanisation interventions foreseen.

Article 27

Functional categories of urban land

1. The functional categories of urban land are as follows:
 - a) Residential spaces, which are preferably intended and characterised by residential use, and may admit other uses that are complementary or compatible;
 - b) Economic activity spaces, which are preferably intended and characterized by the installation of economic activities, namely commerce, industry, warehouses and services;
 - c) Tourism spaces, which are preferably intended and characterized by areas allocated predominantly for tourism use and may admit other uses that are complementary or compatible;
 - d) Mixed use spaces which are characterized by diversity of use, normally corresponding to urban centralities or structuring axes;
 - e) Spaces of built or immobile cultural heritage which are characterised by areas predominantly occupied by man-made structures of recognised historical, cultural, artistic and technical value;
 - f) Spaces of special use, which are intended for collective equipment and structural infrastructures;
 - g) Urban upgrading spaces which correspond to the areas located on the urban perimeter with structuring and planning problems, insufficiency or deficiency of habitability conditions, infrastructures, urban spaces, equipment and services;
 - h) Green spaces, which correspond to areas with functions of environmental balance, landscape enhancement and hosting outdoor recreational, leisure and sport activities.

CHAPTER III TRANSITIONAL AND FINAL PROVISIONS

Article 28 Transitory Provisions

The present statute applies to the procedures to be initiated or underway for the preparation, alteration or review of territorial planning instruments of municipal scope.

Article 29 Regulation

The present statute shall be regulated by a ministerial statute issued by the Government member responsible for the area of planning and zoning.

Article 30 Final provisions

The present statute enters into force on the day following its publication.

Approved by the Council of Ministers on May 12, 2021.

The Prime Minister, _____
Taur Matan Ruak

The Vice-Prime Minister and Minister of Planning and Organization,

José Maria dos Reis

Promulgated on 23.06.2021.

To be published.

The President of the Republic, _____
Dr. Francisco Guterres Lú Olo