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 19.10.2016

German Tax and Legal News

Reform of German zoning laws – Urban Area

Following long discussions with the municipalities but also developers and investors, the legislator finally creates a new type of land-use area called the „Urban Area“, which will hopefully help to reduce the pressure on housing markets in larger and attractive German cities.

Reform of BauNVO – the new type of land-use area “Urban Area”

Are you a real estate developer or investor looking for constructible surfaces in the inner city? Or a tradesman or a retailer who wants to live in a vibrant part of the city? Then you may look forward to the planned reform of German zoning laws, as set by the German Baunutzungsverordnung (BauNVO).

On June 16, 2016 the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (Bundesministerium für Umwelt, Naturschutz, Bau und Reaktorsicherheit, in the following “BMUB”) published its draft bill regarding the amendment of the BauGB and the BauNVO. The amendment will primarily serve to transpose EU directives and to push forward the concept of the “mixed-use city of short distances” as well as the densification of the cities. The core piece of the reform will be the implementation of a new type of land-use area, the “Urban Area”.

The planned reform will bring along opportunities, especially for developers, investors, planners and tradesmen - but also challenges.

As part of sec. 6a BauNVO, which is to be newly-introduced in the BauNVO, the BMUB plans the creation of a new type of land-use area that shall serve as an instrument for densification and mixing various uses (e.g. living, business, culture, leisure) the so-called “Urban Area (MU)”.

The new land-use area shall both systematically and functionally be classified between the “central area” (which is an area mainly for commerce, administration and culture) and the “mixed area” (which is an area mainly for housing & trade).

“Urban Areas serve [residential] housing purposes and the accommodation of businesses as well as facilities for social, cultural and other purposes in a segmented mix-use, to the extent these businesses and facilities don’t disturb the residential housing use.” (para. 6a sec. 1 BauNVO-E)

In contrast to the “Mixed Area”, the different types of use within an „Urban Area“ shall not underlie a strict quota system in order to ensure the greatest possible freedom of the urban planning.

With the new draft bill, the BMUB even wants to make possible mixing various uses within one building with facilities serving business, social and cultural purposes on the ground floors and housing on the upper floors. In the “Urban Area”, purely residential buildings shall be permitted only in exceptional cases and the same holds true for single-use office buildings. These types of single-use buildings are permissible in the “Mixed Area” as well as in the “Central Area”. In this regards, the draft bill conflicts with demands brought forward by interest groups (especially those of the statement of the ZIA dated July 5, 2016).

The new type of land-use area shall provide local public authorities with more flexibility as regards building activity in high-density areas. At the same time, the implementation of the “Urban Area” shall enable a yet further increase of the site density. For this purpose the new wording of sec. 17 BauNVO codifies a site occupancy ratio of 0.6 GRZ, equal to the ratio applicable in the “Mixed Area”, and a floor space index of 3.0 GFZ, equal to the index applicable in the “Central Area”. This opens the way for much denser structures than in residential areas.

In order to improve effective usage mixture in urban areas and for the sake of increasing site density, the “Technical Guidance for the protection against Noise” (TA Lärm) which regulates noise emission, shall be changed, as well. The draft bill dated July 7, 2016 aims at increasing the maximum noise emissions permissible in urban areas to 63 dB at day time

and 48 dB at night. These new emission thresholds by far exceed those applicable in mixed areas and nearly reach those for "industrial estates". Given the rather heavy debates that the new regulations have instigated, however, it is not certain, yet, whether the new standard thresholds will actually be included in the final version of the administrative regulations.

Due to the often deviating and sometimes even contrary interests and requirements for the various types of uses and users, high density areas bring along a particular risk of conflicts of interest. Challenges such as climate and noise protection need to be managed, as well.

With its Draft Bill, the BMUB tries to achieve both, namely compliance with EU Directives relating to climate and noise protection and an increase in the mixture and density of urban areas and thereby create a regulatory framework for modern larger German cities. As the goals pursued by the BMUB seem to be contradicting each other and hard to converge, it remains to be seen whether the Bill will actually lead to the envisaged goal.

It is currently foreseen that the Bill will be finalized and enacted until the end of this legislative period. Therefore, in particular investors, developers as well as tradesmen and retailers should closely monitor further developments.

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