

Remark

Law 11/2020, of 18th September, on urgent measures to contain income in housing leases in Catalonia

September 2020

In this Note, we analyse the measures adopted around income containment in housing leases, as well as the sanctions system and control measures for the implementation of the same.

Finally, we will make a brief reference to the Opinion of the Catalonia Council of Statutory Guarantees, regarding the constitutional suitability of the regulation.

On 21 September 2020, Law 11/2020 of 18 September (hereinafter the "**Law**") was published in the Official Journal of the Government of Catalonia, approving measures to contain income from rentals for housing use.

I. Purpose and scope

The purpose of the Law is to regulate the containment and moderation of income in housing rental contracts in which the following circumstances concur:

1. That the rented housing is intended for the permanent residence of the tenant; and
2. That the rented property is in an area that has been declared a strained housing market area.

The following housing rental contracts, which are subject to special income determination rules, are expressly excluded:

- a) Those signed prior to 1st January 1995;
- b) Those relating to housing subject to a system of official protection;
- c) Those aimed at housing integrated into public networks of social integration housing or mediation for social renting, or into the Rental Housing Fund for social policies;
- d) Those of a welfare nature; or
- e) Those subscribed in accordance with the legal provisions applicable to compulsory social renting.

Furthermore, the law is only applicable to those contracts - or renewals thereof - that are concluded after the regulation has come into force, i.e. from 22nd September 2020. Therefore, this is not a regulatory text whose effect is retroactive.



II. Strained Housing Market Areas and Applicability of the Benchmark

II.1 Declaration of a Strained Housing Market Area

The declaration of a municipality, or part of a municipality, as an area with a strained housing market requires that, throughout the territory affected by the declaration, the **reference index of housing rental prices** determined by the competent housing department applies.

The **reference index of housing rental prices** can be consulted at the following link:

<http://agenciahabitatge.gencat.cat/indexdelloguer/>

In accordance with Article 2 of the Law, this is a basic budget to be able to declare an area with a tense housing market if any of the following conditions are met:

- a) That the average price of housing rentals in this area experiences sustained growth that is clearly higher than the average for Catalonia;
- b) The burden of the cost of renting is greater than 30 per cent of a household's usual income, or is greater than 30 per cent of the average income of persons under 35 years of age; and
- c) That, in the five years prior to the declaration, income has experienced an annual growth of at least three percentage points above the annual rate of the Catalonia Consumer Price Index.

The Second Transitory Provision of the Law declares sixty municipalities as areas with a strained housing market, which will have to comply with the rent containment regime during the next year. These municipalities include Barcelona, Castelldefels, L'Hospitalet de Llobregat, Lleida, Sabadell, Sant Cugat del Vallès, Tarragona, Vic, among others.

II.2 Income Containment Scheme

The rent agreed at the beginning of the contract is subject to the following conditions:

1. The reference price for renting a property with similar characteristics in the same urban area may not be exceeded; and
2. The rent stated in the last rental agreement, updated, may not be exceeded, unless
 - a) A family relationship existed between the parties who had entered into the last rental agreement prior to the entry into force of this Act; or
 - b) A rental contract is formalised for a dwelling initially excluded from the application of this Law, when the special regime for determining income that was applicable to it ceases.



Limits of a subjective nature are established:

- If the rental contract is renewed when the lessor is an individual whose cohabitation unit has an income equal to or less than 2.5 times the sufficient income indicator for Catalonia, only the rent stated in the last rental contract is applicable to him/her, on the understanding that if the rent stated in the last rental contract is less than the corresponding reference price, the new rent may be increased to the aforementioned reference price.
- The above exception is not applicable if the tenant's income is equal to or less than 3.5 times the weighted income adequacy indicator for Catalonia.
- For rentals of parts of a house, the sum of all rents cannot exceed the limits set by the reference index.

II.3 Reference Price Determination

Reference prices will be applied for renting a house with similar characteristics in the same urban area. The value indicated by the reference index may only be increased or decreased with a maximum variation of five percent, provided that at least three of the following elements are present in the dwelling:

- a. Lift;
- b. Parking space;
- c. Furnished flat;
- d. Heating or cooling system;
- e. Community areas of shared use, such as garden or rooftop;
- f. Community swimming pool or similar equipment;
- g. Concierge services in the building; or
- h. Special views.

On this rule, the Law provides for some exceptions, which are treated differently:

- Owners who have an annual income equal to or less than 2.5 of the Catalan income adequacy indicator are not obliged to respect this rule.
- In order to promote property improvement, the Law establishes that new housing or housing resulting from a process of major renovation, and during the five years following the receipt of the certificate of completion of the work, the rent agreed at the beginning of the contract may not exceed the upper margin of the reference price index of housing for a home of similar characteristics in the same urban environment, unless public subsidies have been obtained for the execution of the work.



- In line with the above, in the case of improvement work, the lessor may, once the minimum legal period of the obligatory duration of the contract has elapsed, increase the rent, without having to respect the reference prices or indexes. In this respect, the Law does not consider "improvement works" to be those necessary for the maintenance and conservation of the property or building, or those required for the operation, repair or safety of the elements that are included.

In addition, the Law refers to Law 29/1994, of 24th November, on Urban Rentals, for the updating of income (the link to the percentage variations that the Consumer Price Index may undergo in an annual period) and for the assumption of general expenses and individual services (the possibility of agreeing on the payment of such expenses by the tenant).

III. Control measures and sanctions

The Law also provides for measures to control complete compliance with the rules imposed, as well as a system of sanctions for those who fail to comply with them, referring to Title VI of Law 18/2007, of 18th December, on the Right to Housing:

III.1 Control measures

1. Inspection of compliance with the law by technical personnel from the Public Administrations;
2. Proceedings aimed at finding out whether certain facts or conduct constitute an administrative offence;
3. Adoption of provisional measures; and
4. The right of the tenant to obtain reimbursement of the amounts paid in excess, with the legal interest on the money, increased by three points, in the case of rents that do not respect the reference prices.

III.2 Sanction system

1. Serious infringements are punishable by a fine of 9,001.00€ to 90,000.00€, these being in income retention area:
 - a. Failure to comply with the essential rules of the rent control system when renting a property subject to the rent control system;
 - b. The landlord sets a rent that exceeds the maximum amount corresponding to the rent control system if the rent set exceeds this maximum amount by twenty percent or more; and
 - c. Concealing the fact that the dwelling is subject to the rent containment regime from the tenant or information regarding the reference index of rental prices of dwellings or the amount of rent from the previous rental contract necessary to determine the reference price.
2. Minor infringements are punishable by a fine of 3.000,000 to 9.000,00€, these being in an income retention area:



- a. Not to include the reference price index for housing rental or, if applicable, the amount of rent from the previous rental contract, in advertising for housing to be rented that includes the price of rent, in offers for urban housing rentals or in urban housing rental contracts;
- b. The lessor shall establish a rent that exceeds the maximum amount that corresponds in application of the system, if the fixed rent exceeds this maximum amount by less than twenty percent; and
- c. Not attaching to the contract or not providing the tenant with the document that generates the rental price index system, with the information relating to the value of the index that corresponds to a dwelling similar to that rented, expressed in euros per square metre, specifying the lower and higher margins, or the information relating to the date or amount of the rent corresponding to the previous rental contract, if these are necessary to determine the new rent, as well as falsifying or altering the aforementioned information to the detriment of the tenant.

If the profit resulting from the commitment of the infringement exceeds the amount of the fine to which is applicable, the amount of the fine may be increased to an amount equivalent to the said profit obtained.

IV. Judicial and Extrajudicial Resolution of Conflicts

The Third Additional Provision of the Law provides for mediation as a means of extra-judicial resolution of disputes that may arise between tenants and landlords, on the basis of the determination of rent or the reimbursement of amounts paid in excess. In the case of a contract signed with a legal entity, consumer arbitration is also provided for.

The Law also includes a major novelty in terms of the judicial resolution of disputes concerning rent control. The Fourth Additional Provision provides for the resolution of this dispute by means of an oral trial, regardless of the amount involved.

IV. Judgement 7/2020 of 5th August of the Council for Statutory Guarantees

The Opinion of the Council for Statutory Guarantees warned of the potential unconstitutionality of certain precepts of the proposed Law, the content or order of which has been minimally modified in the Law, the following articles being considered unconstitutional by the Council for Statutory Guarantees:

1. **Article 1.** Purpose and scope
2. **Article 6.** Determination of the initial rent
3. **Article 7.** Determination of the reference price
4. **Article 8.** Rent update
5. **Article 9.** General and individual service costs
6. **Article 10.** Letting of new or rehabilitated housing
7. **Article 11.** Improvement works
8. **Article 12.** Reimbursement of amounts received in excess



9. **Article 13.** Duty to report on the rent control system in housing offers in areas with a strained housing market
10. **Article 14.** Control and penalty system
11. **Articles 15 y 16.** Amendments to Law 18/2007, of 28th December, on the right to housing
12. **First Additional Provision.** Enabling the application of correction percentages
13. **Second Additional Provision.** Exclusion of large-area housing from rent containment
14. **Third Additional Provision.** Out-of-court settlement of disputes
15. **Fourth Additional Provision.** Legal Procedure
16. **First Transitional Provision.** System for housing rental contracts previously in force in an area with a strained housing market

The Council for Statutory Guarantees has interpreted the Law as regulating an essential element of the civil contract, insofar as it intervenes in the fundamental pillars and bases of the obligations of housing rental contracts that are set out in Article 1.255 of the Civil Code (the principle of individual autonomy) and in Article 17.1 of Law 29/1994, of 24th November, on Urban Rentals (the free stipulation of rent).

Since both provisions articulate a common principle in State law, the Council for Statutory Guarantees considers that the Generalitat of Catalonia does not have the power to condition or limit, by legal imperative, the setting of the price of the contract since, if it did so, it would be affecting the bases of contractual obligations, the regulation of which is the exclusive competence of the State (ex Article 149.1.8 of the Spanish Constitution).

Although the opinions of the Council for Statutory Guarantees are neither mandatory nor binding, they do provide interpretative criteria and are an indication of the constitutionality of the rule. Nevertheless, and despite unfavourable opinion, the Law has been approved.

V. **Unconstitutionality appeal**

Article 162.1 of the Spanish Constitution legitimates the lodging of an appeal of unconstitutionality against the President of the Government, the Ombudsman, fifty deputies, fifty senators, the executive collegiate bodies of the Autonomous Communities and their Assemblies.

If the Institution lodging the appeal of unconstitutionality is the President of the Government, and if the appeal is subsequently admitted, in accordance with Article 161.2 of the Spanish Constitution, the Law shall be automatically suspended, and the Constitutional Court shall ratify or lift the suspension within a period not exceeding five months.

If, on the other hand, the appeal of unconstitutionality is brought by the other legitimated parties, the admission of the appeal would not, as a general rule, lead to the automatic suspension of the legal provisions challenged unless this was requested as a precautionary measure and agreed.



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