

URGENT MEASURES FOR THE CONTROL OF RENT PRICES IN LEASE AGREEMENTS FOR PROPERTY IN CATALONIA

1. Introduction

On Thursday 23 May 2019, the Autonomous Government of Catalonia published in its Official Journal (*Diari Oficial de la Generalitat de Catalunya*) Decree-law 9/2019, of 21 May, on urgent measures for the control of rent prices in lease agreements for property, and for the amendment of book five of the Civil Code of Catalonia in relation to the pledge ("**Decree-law 9/2019**"), which authorises public administrations to categorise certain areas of the territory as "areas with a strained housing market" (*àreas con mercado tenso de vivienda*), and to subject lease agreements that are signed to a provisional rent control regime, which will only apply to areas categorised as such. Decree-law 9/2019 also serves as a mandate to the Autonomous Government of Catalonia to present a bill to the Parliament of Catalonia in six months' time for the comprehensive regulation of urban property lease agreements, so that Catalonia may have its own regulation on this matter.

Decree-law 9/2019 is pioneering in Spain. However, rent control measures similar to the provisions of Decree-law 9/2019 are already in place in neighbouring countries such as France and Germany.

2. Structure and content of Decree-Law 9/2019

The structure of Decree-Law 9/2019 consists of 24 articles distributed among three chapters, three additional provisions, two transitional provisions, one repeal provision and one final provision.

Below are the most important components of the text of Decree-Law 9/2019.

- Chapter 1: General provision

(i) Scope of application of the rent control regime

The regime will apply to lease agreements for property:

- a. That is intended to be the lessee's permanent place of residence;
- b. that is located in an area declared an "area with a strained housing market" (*àrea con mercado tenso de vivienda*); and
- c. that is not subject to an official protection regime.

- Chapter 2: Declaration of areas with a strained housing market

(ii) Areas with a strained housing market and competence to declare such areas

Municipalities or neighbourhoods in which there is a proven lack of affordable or adequate housing are considered “areas with a strained housing market” (*áreas con mercado tenso de vivienda*). A set of indicative factors will be used to help identify the existence of such a situation (e.g. a sustained increase in rental prices that is significantly higher than the average for the region of Catalonia, discrepancy between population growth and available housing, discrepancy between the rise in rental prices and the Consumer Price Index (CPI)).

The area or municipality concerned must be declared an “area with a strained housing market” (*área con mercado tenso de vivienda*) in order for rental prices to be limited. The authority to make this declaration lies with the department of the Autonomous Government of Catalonia responsible for housing matters, except in the city of Barcelona, where this authority is held by the Plenary Meeting of the City Council of Barcelona.

It should be noted that the declaration of a municipality or part of a municipality as an “area with a strained housing market” (*área con mercado tenso de vivienda*) is not discretionary, as Decree-Law 9/2019 establishes a procedure by which the circumstances justifying such a declaration must be verified.

(iii) Provisional measure. Temporary nature

The rent control regime for areas declared an “area with a strained housing market” (*área con mercado tenso de vivienda*) is intended to be provisional and temporary - with a maximum duration of five years - although it may be reduced (if circumstances change during its lifetime) or extended (if the situation warrants, by the same maximum period of time).

(iv) Rental price reference index

The rent controls will be based on the property rental price index to be formulated, updated and published by the department responsible for housing. This index takes information from the register of deposits for urban property lease agreements and reports (i) the average rental price per square metre for properties in a particular location and with a particular surface area and (ii) the upper and lower price limits after taking various characteristics of the properties into consideration (year of construction, state of repair, energy efficiency, lift, furniture etc.). Therefore, the regulations that are currently being introduced require the contracting parties to agree on a reference price within the limits of the index system (or, exceptionally, outside of these limits, although the reasons for this must be duly justified), taking into account the relevant characteristics of the rental property in order to set the rental price (the “**Index**”).

The Autonomous Government of Catalonia includes 53 municipalities in the online index system, where the applicable Index for each municipality can be consulted. However, as of today it is not yet possible to confirm if the rent control regime is applicable to all or some of the aforementioned municipalities, as they have not yet been declared “areas with a strained housing market” (*áreas con mercado tenso de vivienda*) by the relevant competent entity. For this reason, the actual implications of the implementation of Decree-Law 9/2019 will emerge later.

- Chapter 3: Rent control regime for property lease agreements

The rent control regime is based on the following rules:

- (i) **The General Rule:** The rent agreed upon at the start of the lease may not exceed the price set by the Index (the reference price calculated for a property with similar characteristics located in the same area) by more than 10%.

Decree-Law 9/2019 will only affect new contracts (see the exceptions applicable to pre-existing contracts in point (ii) a. of this legal briefing). It should be noted that the overpayment of sums, i.e. the difference between the Index plus 10% and the rent paid, as stipulated in the contract, grants the lessee the right to be repaid the excess with accrual of legal interest.

- a. Changes to lease agreements subject to rent control:
 - **Exact amount of the reference price:** The contract must indicate exact amount that the contracting parties take as a reference price within the limits of the index system (or, in exceptional circumstances, outside these limits, due to circumstances not accounted for by the index system which cause the reference price of the property to be higher than the upper limit, by a maximum of 5%, although the reasons for this must be duly justified). It should be noted that, if the contracting parties do not indicate in the contract the exact amount that they take as the reference price, it will be understood to be the median of the upper and lower values provided by the index system.
 - **Annual rent review:** The rent may only be reviewed if the contract includes express agreement of an annual rent review. Where this express provision is included, changes to the rent will be based on the annual fluctuation of the Competitiveness Guarantee Index (Índice de Garantía de Competitividad - IGC), an indicator that compares the fluctuation of Spanish inflation with that of the Eurozone. This will prevent the lessor from being able to alter the rent during the term of the contract using the Consumer Price Index (CPI).
 - **Breakdown of costs:** The rent, general expenses and individual services must be broken down for each rent payment when these costs are borne by the lessee.
 - **Improvement works:** If the lessor carries out improvement works after the minimum term has passed, the lessor may raise the annual rent (even if it then exceeds the limit imposed by the General Rule).

- **Additional documents:** The document containing the corresponding rate and the lower and upper limits as established by the index system must be attached.

(ii) Exceptions:

a. Pre-existing contracts with rent above the reference price

When a contract existing prior to the entry into force of Decree-law 9/2019, with a higher rent than permitted by applying the General Rule, is terminated, a new contract may be agreed or the previous contract renewed, with the maximum rent being that of the previous contract. In this case, the amount and the date of accrual of the last rent payment of the preceding contract must be verified, and this information must be included in the new contract. Any annual rent review that is agreed may only be carried out with reference to the annual fluctuation of the IGC. The above shall also apply in the event that the renewal of the contract implies a change in rent or an extension of the term, when such renewal takes place after the area in which the property is located is declared an “area with a strained housing market” (*área con mercado tenso de vivienda*).

b. New-build homes or properties that have undergone major renovation

For the first 5 years after obtaining the end of works certificate, the rent agreed at the start of the contract for this type of property may not exceed the price set by the Index (the reference price calculated for a property with similar characteristics located in the same area) by more than 20%. Properties that have undergone subsidised works are an exception to this rule; in these cases the original General Rule must be applied.

It should be noted that the rent control regime will not apply to this type of housing until three years after Decree-Law 9/2019 enters into force. In other words, the rent limit, which may not exceed the price set by the Index by more than 20%, shall become applicable 3 years after 24 May 2019, and shall remain in place for the first 5 years after obtaining the end of works certificate.

- Additional, transitional and final provisions

One important aspect of Decree-law 9/2019 is that it establishes that disputes between lessors and lessees regarding rent prices will be settled through oral proceedings. Likewise, it establishes that in the event that a contract signed between a business and a consumer is terminated, the parties may opt for mediation or consumer arbitration.

Finally, it should be noted that the rent control regime may not be applicable to properties with a large surface area, i.e. with a usable floor area of more than 150 m², as indicated in the document outlining the grounds for declaring an “area with a strained housing market” (*área con mercado tenso de vivienda*).

Decree-Law 9/2019 shall enter into force on the day after it is published in the *Diari Oficial de la Generalitat de Catalunya*, i.e. 24 May 2019, and shall be automatically applicable for an initial term of 30 working days. Within this period, the Catalan parliament must expressly validate it, or it shall be repealed.

This Briefing was prepared by Laura Cebrián Prats, associate of the Real Estate practice.

The information contained in this Briefing is of a general nature and does not constitute legal advice. This Briefing was prepared on 24 May 2019 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.

For more information,
please contact:

Gerard Serra i Trullàs

Real Estate Partner
gserra@perezllorca.com
T.: + 34 93 481 30 77

Sergio Agüera Amat

Real Estate Partner
saguera@perezllorca.com
T.: + 34 93 481 30 79