

Summary

ÖROK-PUBLICATION NO 191 – “CONTRIBUTION OF SPATIAL PLANNING TO AFFORDABLE HOUSING”

The ÖREK Partnership “Affordable Housing” started work in September 2013. Its focus was on the question of how spatial planning and spatial development can help to lower housing costs before a backdrop of rising prices on the housing market. Considering the overall framework, the focus was placed on the possibilities of increasing the effectiveness of the tools available to spatial planning.

The instruments – such as for example the possibilities of mobilising building land, contract-based spatial development, special zoning, etc. – have been discussed and analysed within ÖROK in several publications, albeit some time ago (see, for example, the “Opportunities and Limitations of Land Policy in Austria”, Vienna 1995). Considering the steeply rising prices and bearing in mind the goals of the Austrian Spatial Planning Concept 2011 (“Österreichisches Raumentwicklungskonzept 2011”, “ÖREK 2011”) for the implementation of the key fields of action “Quality-based approach to coping with growth” and “Implementing space-saving and space management”, agreement was reached within the ÖREK Partnership to update and analyse these issues in more depth. This publication contains the compiled findings of this work.

Part 1 – Recommendations of the ÖREK Partnership “The Contribution of Spatial Planning to Affordable Housing”:

Part 1 of this publication discusses the most relevant recommendations from the perspective of ÖREK members. The recommendations concisely summarize the proposals from the work to improve and increase the efficiency of the key instruments and strongly recommended this implementation to the competent bodies of federal resp. Länder governments:

- Recommendation 1 – Spatial Planning Objectives: Affordable housing should be more firmly established as a goal in legislation relating to spatial planning.
- Recommendation 2 – Supra-regional spatial planning (überörtliche Raumplanung): Affordable housing should be more firmly established as a goal in supra-regional planning.
- Recommendation 3a – Special zoning land for subsidy-eligible housing: Spatial planning-related legislation needs to be supplemented by zoning for subsidy-eligible residential construction (special zoning or reserved spaces).
- Recommendation 3b – Sharing experiences: The sharing of experiences gained in the practical application of zoning for subsidy-eligible housing in each Land should be intensified.
- Recommendation 3c: Zoning criteria: Specific spatial planning criteria for zoning should be defined for (special) zoning or reserved spaces for subsidy-eligible housing construction.
- Recommendation 4 – Density regulations: To support affordable housing, an effort should be made to achieve appropriate densities, above all, in local planning instruments.
- Recommendation 5 – Contract-based spatial planning and subsidised housing construction: Spatial planning laws need to be reviewed and/or their scope enlarged in order for the application of contract-based spatial planning to also cover the provision or making available of space for subsidy-eligible housing.
- Recommendation 6a – Mobilising building land: Hoarding properties eligible for subsidy-eligible housing is to be counteracted by measures to mobilise building land.
- Recommendation 6b – Limited-time zoning for construction: Spatial planning legislation should include the possibility of zoning for construction for limited time periods.
- Recommendation 6c – Charges for infrastructure in new building land: The municipalities should have the option of collecting charges for infrastructural costs when zoning new building land. Therefore appropriate regulations have to be implemented in the spatial planning laws.
- Recommendation 6d – Re-defining the outlines of building land (Baulandumlegungen): The legal framework for redefining the outline of building land needs to be established in all Länder.
- Recommendation 6e – Land funds (Bodengesellschaften/-fonds): Affordable housing and active land policy should be supported by land associations and land funds.
- Recommendation 7 – Framework for legal scopes

of competence: The framework for the legal scopes of competence in the areas of public housing and civil law should be reviewed and adjusted to accommodate the planning aspects relating to affordable housing.

- Recommendation 8 – Residential housing subsidies: Coordination and cooperation between spatial planning and housing subsidy programmes needs to be further intensified.
- Recommendation 9 – Tax incentive systems: When designing tax incentive systems, the effects of land mobilisation and property prices needs to be taken into consideration in a systematic manner.

Part 2 – Position paper “Subsidy-eligible Housing Construction in Austrian Planning Legislation”

In order to be able to start out from an updated planning basis, Ao. Univ.-Prof. Dr. Arthur Kanonier (Technical University of Vienna) was commissioned with the drafting of a “position paper”.

The position paper contains a concise overview of the topic of “subsidy-eligible housing construction in Austrian planning legislation” and analyses, above all, the spatial planning instruments that support subsidy-eligible housing and make it possible to provide or secure land for subsidy-eligible housing.

The legal framework is presented as it stands today, instruments are analysed as to their effectiveness and open issues are revealed, and recommendations are made to increase effectiveness and eliminate barriers. Thus, the position paper also contains ideas for further activities of the competent bodies responsible for organising measures at the federal and Land level. The following themes are discussed to this end:

- Definition of scope of legal competence for the specific themes of “housing” and “spatial planning”; definition of terms and distinctions (“housing”, “subsidy-eligible housing construction”, “affordable housing”);
- General regulatory system for spatial planning themes in laws (tasks of spatial planning, spatial planning and housing,...);
- Treatment of housing and subsidy-eligible housing construction in line with spatial planning needs;
- Spatial planning objectives and instruments in laws (supra-regional spatial planning, special zoning, density rules, ...)
- Contract-based spatial planning (legal framework, embedded in spatial planning system);
- Measures to mobilise building land (limited zoning for building land, rezoning of building land,...);
- Land procurement;
- Recommendations from the perspective of the expert.

Part 3 – Expert Opinion “Legal Issues of Contract-based Spatial Planning in Austria”

In the preparatory phase for the work of the ÖREK Partnership, agreement was already reached – depending on the findings of the position paper – to dedicate more attention to the relevant laws at the Länder-level.

In the light of the enormous significance of the instrument of contract-based spatial planning (“Vertragsraumordnung”) for the mobilisation of building land (and thus the provision of land for subsidy-eligible housing), and also in some cases the massive reservations regarding the application of this instrument, the members of the ÖREK Partnership decided to commission o.Univ.-Prof. Dr. Walter Berka and Univ. Prof. Dr. Andreas Kletečka (both University of Salzburg) with the preparation of an “Expert Opinion on the legal issues of contract-based spatial planning in Austria”.

This Expert Opinion carefully analyses the legal framework and the design options and models of the instrument, and also addresses open issues (e. g. theme “mandatory contract-based spatial planning”, contract-based spatial planning and civil law aspects,...).

The constitutional law aspects were analysed by o.Univ.-Prof. Dr. Walter Berka, and the civil law side by Univ.-Prof. Dr. Andreas Kletečka.

The experts arrived at conclusions that resulted in very clear assessments especially with respect to long-standing reservations, and therefore, serve as support for legislators at the Land level to implement this instrument in conformity with the law.

Contract-based spatial planning is deemed to be of key significance in practice and is viewed as a suitable means for contributing to the mobilisation of building land. One of the principal findings of the experts states that in their view there is sufficient legal basis under current legislation for contract-based spatial planning in accordance with private law, though, of course, when concluding spatial planning contracts all applicable fundamental rights must be observed (especially principles of equal treatment and property ownership).

The expert opinion also discusses and presents which measures can be applied to increase efficiency and the targeted effect of the spatial planning instruments – especially in connection with the mobilisation of building land to support the objective of “affordable housing”. A strong link between the zoning decisions and the conclusion of spatial

planning contracts is named as a potential approach and specifications are given for the required contract terms.

Furthermore, the question is discussed and assessed if the instrument of contract-based spatial planning can also be realised in the form of contracts under public law. The experts arrive at the conclusion in this case that it is generally possible and explain the pros and cons of the issue in detail.

A separate Chapter is dedicated to the constitutional law aspects of contract-based spatial planning. As this concerns the question frequently asked about the instrument of contract-based spatial planning, the experts analysed the constitutional law uncertainties with respect to the stronger obligation on municipali-

ties to conclude spatial planning contracts under private law and the contingency of planning decisions on such contracts (reference: Ruling of the Constitutional Court on Salzburg's Contract-based Spatial Planning 1999). The experts arrive at the conclusion that this ruling does not contradict increasing the obligatory nature of contract-based spatial planning, but in this context also list the issues which in their opinion must be considered without fail (the contract is only one element of the factors that influence planning decisions).

Finally, the expert opinion points out that the creation of sufficient affordable housing cannot be achieved by the instrument of contract-based spatial planning alone, but other instruments must be applied accordingly.