

GERMANY

LOCAL GOVERNMENTS — LAND READJUSTMENT

LAND VALUE CAPTURE

Land readjustment "Baulandumlegung"

DESCRIPTION

Land readjustment refers in Germany to the intervention of the public authorities on a given perimeter, to change the boundaries of existing properties and other rights relating to land, in order to conform to a new land-use plan. A consolidation authority defines the perimeter of the operation without the necessary consent of a qualified majority of owners. The value of the land is regularly updated and made public by specific offices. All public / private properties included in this perimeter are merged virtually. Some of this land is taken to build the necessary local infrastructures (roads, sidewalks, car parks, playgrounds, etc.), financed by the sale of another part of the land. Then the rest is redistributed to the owners, in proportion to the size of their original land. The municipality captures the added value produced during this process along two ways : 1) by retaining some of the land to build local infrastructures (30% of the land for a first operation and 10% for the following (2) by receiving, once the land is redistributed at the end of the operation, a payment from the owners equal to the added-value of the land (not more than 30% of the value of the land).

LEVEL OF GOVERNMENT INVOLVED

The municipal government runs the procedure, which is subsequently carried out by the Land Reclamation Authority (Umlegungsstelle), an entity within the municipal government, which ensures the transparency of the operation and takes into account all stakeholders.

INSTITUTIONAL AND FINANCIAL FRAMEWORK

Within the Federal State (Bund), each of the German Länder has a great deal of autonomy. The land use plan (Bebauungsplan) is creator of right and determined in the building code Baugesetzbuch (1987 - drafted by the Federal State). Sections 45 to 84 of this plan allow for mandatory land readjustment (also called "replotting of land" or "land consolidation"). Land laws consider that they do not constitute an attack on private property, and that, on the contrary, this mechanism prevents too much interference with land ownership. The owners can be compensated in case the amendment of the Bebauungsplan would reduce the value of their land.

TRACK RECORD OF THE USE OF THIS INSTRUMENT

Land readjustment techniques are widely used since 1902, and very widespread in Germany, to varying degrees according to the Landers. For example, in the 350 municipalities of Baden-Württemberg, 84% of the building plots were developed according to the Umliegung in the 1980s. A lighter procedure exists for rectifying land plot boundaries (called Grenzregelung) In cases where an overall consolidation is not necessary.

OUTCOMES

Land consolidation operations are particularly effective and widely used in Germany, as other public land-ownership instruments (forced acquisition, pre-emption, expropriation) are particularly difficult to implement, because owners are very well protected by the law. The vast majority of land readjustment operations are carried out by negotiation, but they most often take the legal form of compulsory / re-parcelling in order to benefit from advantages such as tax exemptions, or to benefit from the expertise of the Municipal Re-parcelling Authority . These hybrid practices are called "consenting compulsory land readjustment", and can ideally combine elements of power, freedom and community.

STAKEHOLDERS INVOLVED

The binding nature of land readjustment practices in Germany is rooted in the continued commitment of land and property owners during the process. The majority of owners are satisfied with these operations, which saves them the cost of maintaining and renovating the land. Indeed, the greater the perimeter of consolidation of actors, the higher the transaction costs. Owners are thus able to initiate voluntary land readjustment operations themselves, but it is more often in their advantage to go through the compulsory procedure in order to benefit from advantages such as exemptions from taxation or the expertise of the authorities Of municipal consolidation as to the development operation.

PUBLIC MANAGEMENT AND ACCOUNTABILITY

The law stipulates that owners must keep a parcel of unchanged value at the end of the process, or they must receive monetary compensation. Owners can give their opinion and are consulted upstream of the project, as well as throughout the process. However, they have very limited rights on an individual basis, and those who wish to leave their property unchanged may be forced to develop it under "extraordinary" circumstances. Compulsory land readjustment in Germany is thus based on precise rules of urban planning combined with rights to the protection of private property guaranteed by the constitution, as well as a compulsory compensation system.

ANALYSIS AND ASSESSMENT OF THE TOOL

- In Germany, urban land readjustment is seen primarily as a means of effectively implementing urban planning and land use planning (Bebauungsplan) for ensuring the general interest (to confine the strategies of some private owners). It was used to rebuild German cities whose old land parcelling was no longer adapted (following a fire or a war for example). The country is often set up as an example. In order to be constitutionally acceptable, the operation must pass the "public project test": to prove that planned local infrastructures actually benefits the general interest (eg roads are used for firefighters) and that the added value captured by the municipality is actually reinvested in the development of the area.
- In 2001 the First Chamber of the German Federal Constitutional Court clarified the nature of ownership in relation to land readjustment: as long as landowners recover land plots of equal or greater value (although of smaller size), the system complies with the laws of the European Court of Human Rights.
- Yet, on the other hand, this mechanism conflicts with the right to property in three ways: 1) it temporarily blocks all rights and uses on the area 2) the land withdrawn for the general interest is redistributed to the municipality ahead of the redistribution of the remaining land to former owners 3) it is the municipality that recovers the added value generated.