

CONVENTIONAL BUILDING PERMIT: THE ABSENCE OF THE ZONING AGREEMENT DOES NOT RELIEVE THE MUNICIPALITY OF ITS OBLIGATION TO RULE ON THE APPLICATION

1. Factual background

On 19 August 2026, the Regional Administrative Court of Lombardy – Milan issued Judgments Nos 4138 and 4139 concerning failure to act and the obligation on the administration to conclude proceedings for the issuance of building permits by adopting an express decision.

In particular, both proceedings arose from complaints brought pursuant to Articles 31 and 117 of Legislative Decree No 104/2010, seeking a declaration that the Municipality of Milan's failure to act was unlawful in two proceedings concerning the grant of a conventional building permit for new construction projects involving the recovery of existing gross floor area through demolition and reconstruction, together with a change of use to residential use.

Following the application for a conventional building permit submitted pursuant to Article 28-*bis* of Presidential Decree No 380 of 6 June 2001, and the subsequent procedural exchanges, the Municipality of Milan decided to suspend the time limits applicable to both proceedings, on the ground that the planning agreement had not previously been approved by the Municipal Executive. That position was based on the assumption that the procedure was divided into two stages: a first, necessarily preliminary, contractual stage concerning the zoning agreement, followed by a second stage concerning the adoption of the decision granting the building permit.

2. The Regional Administrative Court's decision

The Regional Administrative Court upheld the complaints on the basis of the following considerations.

First, the Regional Administrative Court examined the legal framework governing the conventional building permit. Article 28-*bis* of Presidential Decree No 380/2001 provides that, where site development requirements may be met through simplified arrangements, a conventional building permit may be granted. The Court further confirmed the complex structure of the procedure for its adoption, comprising a contractual stage and an administrative decision-making stage. In particular, the agreement sets out the obligations undertaken by the developer to fulfil the public interest requirements for the purposes of granting the permit.

The Court then referred to Article 2 of Law No 241/1990, which requires the administration to conclude the proceedings by adopting an express decision within the time limit laid down by law or regulation. The action against administrative silence, governed by Articles 31 and 117 of Legislative Decree No 104/2010 (the Administrative Procedure Code), is specifically intended to put an end to such administrative inaction and to secure an express administrative decision.

Applying those principles to the case at hand, the Regional Administrative Court held that, where an application for a conventional building permit is submitted, the administration is not necessarily required to grant it. It is, however, under an obligation to determine the application by adopting an express decision, either granting or refusing it. Such decision must be based on an adequate investigation and provide sufficient reasons. Where the authority fails to act, this constitutes administrative silence amounting to a failure to act. The applicant may therefore seek a judicial declaration that such silence is unlawful, with a consequential order requiring the administration to adopt an express decision on the application and, in the event of non-compliance, the appointment of a commissioner *ad acta*.

The Regional Administrative Court further examined the effects of the failure to approve the zoning agreement on the suspension of the administrative proceedings.

Article 2(7) of Law No 241/1990 allows the proceedings to be suspended only once and for a period not exceeding 30 days, in order to obtain information or documents from external sources which are not already available to the administration. Similarly, Article 20(5) of Presidential Decree No 380/2001, which governs the procedure for granting a building permit, allows the time limit to be interrupted only once, within 30 days of the application being submitted. This is permitted solely where the administration provides reasons for requesting additional documents that are not already in its possession.

In the Regional Administrative Court's view, however, the planning agreement cannot be regarded as a pre-existing document which the applicant is able to prepare independently and submit to the administration *sic et simpliciter*. Rather, it is the outcome of the consensual stage of the procedure, to be drawn up following the administrative investigation and the exchange between the administration and the applicant. Accordingly, the absence of the agreement does not constitute a documentary deficiency external to the proceedings. On the contrary, it concerns one of the outcomes which the proceedings themselves are intended to produce.

It follows that the technical examination of the building project and the administrative procedure leading to the conclusion of the agreement must proceed concurrently and in coordination with each other. The purpose of the agreement is to regulate the obligations arising from the project, such as the transfer of land, site development works, design and architectural requirements, and, where applicable, affordable housing. Determining the scope of those obligations requires a prior and comprehensive assessment of the proposed project, its impact on urban infrastructure and services, and its compatibility with the applicable zoning framework.

Accordingly, in the present case, instead of suspending the proceedings on the ground that the agreement had not yet been concluded, the Municipality should have carried out the technical and administrative examination, assessed whether the zoning agreement could be concluded and, following that assessment, submitted a draft agreement to the competent body. Having found that the suspension imposed by the Municipality was unlawful, the Court held that the time limit for concluding the proceedings had expired. The complaints were therefore upheld.

3. Concluding remarks

The judgment was issued in the context of the ongoing difficulties surrounding urban planning in Milan, including investigations by the Public Prosecutor's Office into the approval and management of a large number of building projects.

Against this background, characterised by considerable uncertainty as to the interpretation of the applicable rules and by the risk of defensive bureaucracy (the so-called "fear of signing") arising from the criminalisation of building offences, the Regional Administrative Court sought to strike a balance between the need for caution in the exercise of administrative functions and the administration's obligation to conclude the proceedings falling within its competence. The former must give way to the public interest in ensuring that proceedings are duly concluded. Accordingly, an indefinite suspension of proceedings, capable of bringing the entire procedure for the granting of the permit to a standstill, is unlawful. Such a suspension may adversely affect not only legal certainty but also the actual implementation of the projects concerned.

DISCLAIMER

The sole purpose of this *Client Alert* is to provide general information. Consequently, it does not represent a legal opinion nor can it in any way be considered as a substitute for specific legal advice.

3

Laura Sommaruga, Partner
Email: laura.sommaruga@grplex.com

Sandra Sacchi, Associate
Email: sandra.sacchi@grplex.com