THE REDUCTION OF LAND CONSUMPTION AND THE ROLE OF URBAN REGENERATION AS A LAND-USE FUNCTION

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Abstract

The contribution, analysing the different possible interpretations of urban regeneration, focuses on the legal and regulatory framework regulating, at national, regional and European level, macro-regeneration as a tool to reduce land consumption. The reconstruction is useful to analyse two profiles of the relationship of the urban regeneration function: *i.* the relationship with private interests - first of all the proprietary ones; *ii.* the connection with public interests, in particular with reference to the protection of differentiated interests. The objective of the contribution is to verify the compatibility between the current Italian system of land governance and the realisation of the objectives of reducing land consumption through regeneration policies.

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1. Introduction

Reducing land consumption and urban regeneration have been effectively defined as two sides of the same coin[1], so much so that urban regeneration has also been qualified at the regulatory level as a strategic alternative to land consumption[2].

Soil, in fact, is not consumed, but is sealed, i.e., covered with materials that prevent the passage of water (think asphalt or concrete), diminishing many of the beneficial effects of soil and posing serious hydro-geological risks[3].

In order to counter the negative environmental impact of sealing, it seemed logical to change the paradigm according to which town planning responds to the changing needs expressed by using the land. In this sense, expansion town planning, which has made Italian cities widespread or infinite, has been countered by the model of urban regeneration, based on the redevelopment of the built environment[4].

The principle of reducing soil consumption, in this sense, aims at limiting the use of undeveloped land for new buildings and infrastructure and promotes the redevelopment and reuse of already built-up areas. The objective is based on the need to protect soil as a non-renewable resource and to safeguard ecosystems, biodiversity and the landscape by counteracting the progressive urbanisation and sealing of land.

If, therefore, on the one hand, urban regeneration becomes a tool to achieve the lowest possible land consumption, on the

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[1] F.F. Guzzi, *Il contenimento del consumo di suolo alla luce delle tecniche di rigenerazione urbana e di valorizzazione dell'esistente,* in E. Fontanari, G. Piperata (eds.), *Agenda Re-Cycle. Proposte per reinventare la città* (2017).

[2] The reference is to art. 125 L.R. Toscana 10 November 2014, no. 65.

[3] Among the many documents, please refer to the report of the European Commission, *Guidelines on good practices to limit, mitigate and compensate soil sealing,* 2012, available at the link: https://www.legambiente.emiliaromagna.it/stopalcemento/wp-content/uploads/ENV-12-009_MEP_IT_final_LR-pdf.pdf

[4] "the so-called. planning of the existing, which presupposes the need to use already built-up land as a priority, ceases to be an auxiliary tool outside the ordinary planning content, but begins to become the main means by which to achieve the objective of reducing soil consumption (...) which in turn is the tool for achieving sustainable urban development", so P. Chirulli, *La pianificazione urbanistica tra esigenze di sviluppo e riduzione del consumo di suolo: la riqualificazione dell'esistente*, 4 Rivista Giuridica di Urbanistica (2015); K. C. Fritzsche, L. Jahrmarkt, Y. Li, *Soil Protection Law*, in I. Härtel (ed.), *Handbook of Agri-Food Law in China, Germany, European Union* (2018).

other hand, the same regeneration is reconnected with further objectives, tools and aims, capable of questioning the general system of urban planning and land governance.

Given that there is currently no clear normative, jurisprudential and doctrinal direction regarding the legal nature of urban regeneration, in the present research work we have leaned towards its qualification as an administrative function, for the reasons explained below.

In the following analysis an attempt was made to distinguish between what urban regeneration is today, according to the Italian regulatory framework and in vertical comparison with the European one, and what regeneration should (or rather, could) be, if it were regulated according to the qualities and objectives we have recognised. The study therefore conformed to an *Is-ought problem* approach.

As is well known, urban planning is primarily an activity of evaluating the interests involved in the orderly organisation of the territory. For this reason, the question arose as to how the function of urban regeneration impacts on private interests and the balance between different public interests, with a view to so-called differentiated protection.

The following arguments, therefore, will have the ambition to contribute to answering some general questions: is today's regulation of urban regeneration adequate to the aims it intends to pursue? What space can be given to urban regeneration to realise, among others, the objective of reducing soil consumption? Can the function of regeneration be considered coherent with the basic choices of our urban planning system or does it induce rethinking in a more general context?

2. The elusive characters of regeneration

In order to be able to investigate the potential that urban regeneration offers to the objectives of reducing land consumption, it is first necessary to define what is meant by urban regeneration.

As is well known, there is no unitary definition of urban regeneration and different interpretations and a plurality of

perspectives remain[5]. It is, however, an accepted fact in doctrine that so-called expansion urban planning has now come to an end[6], having given way to the need to regenerate the built environment without further land consumption[7]. On the other hand, "the last 70 years have seen the progressive erosion of the countryside and the welding together of built-up areas. Megalopolises have sprung up, in which the old nuclei and urban centres are now united in a continuous and uninterrupted fabric of neighbourhoods, social housing, intensive building, and industrial warehouses, in which the dominant element, the real interstitial glue, is urban *sprawl*, in its typical, ut anonymous and insignificant degradation of architectural quality"[8].

In this context, it is possible to distinguish two main interpretations of the so-called "macro-regeneration"[9], related to the main purposes to which it is referred[10]. On the one hand, regeneration has to do with the ambition to fight inequalities and social exclusion phenomena in the urban dimension and to protect the environment and landscape[11]; on the other hand, it can only

[5] G.F. Cartei, E. Amante, *Strumenti giuridici per la rigenerazione*, in M. Passalacqua, A. Fioritto, S. Rusci (eds.), *Ri-conoscere la Rigenerazione - Strumenti giuridici e tecniche urbanistiche* (2018).

[6] The same government of the territory is now far from the concept of "building increase in built-up areas and urban development in general", as recalled by G. Morbidelli, *Il governo del territorio nella Costituzione*, in G. Sciullo (ed.), *Governo territorio e Autonomie territoriali* (2010).

[7] P. Stella Richter, *La generazione dei piani senza espansione,* Proceedings of the 17th Conference of the AIDU (Italian Association of Urban Law), 26-27 September 2014 (2015).

[8] P. Carpentieri, *Il "consumo" del territorio e le sue limitazioni. La "rigenerazione urbana"*, Report at the XXXV Conference in Varenna, 19 September 2019, published at www.giustizia-amministrativa.it;

[9] Macro-regeneration refers to the strategic dimension of regeneration, in which spatial planning plays a major role, as opposed to "micro-regeneration", corresponding to a dimension in which planning plays a less central role, and instead institutions linked to social partnership and horizontal subsidiarity emerge. See R. Dipace, *La rigenerazione urbana a guida pubblica*, 2 Rivista quadrimestrale dell'ambiente (2022); M. Pieterse, *Corporate power, urban governance and urban law*, 131 Cites (2022); C. Iaione, *Urban sustainable development and innovation partnerships*, 2 Italian Journal of Public Law (2022).

[10] This reconstruction is taken up by L. De Lucia, *Il nuovo testo unificato sulla rigenerazione urbana. Osservazioni critiche*, 2 Rivista quadrimestrale di diritto dell'ambiente (2022).

[11] See, in this sense, Article 1, co. 42, of Law No. 16013 of 27 December 2019, where it is provided that urban regeneration projects are "aimed at reducing

have as its object the building aspects of improvements in run-down neighbourhoods and the stimulation of real estate economic activities[12].

From this last point of view, however, it is worth emphasising that the word urban regeneration, although frequently juxtaposed with apparently synonymous terms (recovery, requalification, renovation, rehabilitation, etc....) has, in reality, an autonomous meaning. Regenerate is not a mere synonym of restore or requalify, since far from returning an object to its pre-existing condition, regeneration creates a different function for that object, with new "essential and distinctive features"[13]. While "urban requalification" is primarily a project of a disciplinary, urban planning and architectural nature[14], urban regeneration is an objective of a social and economic nature, within which a series of interconnected dimensions must be considered, including settlement, energy, environmental, economic, landscape, social and institutional dimensions[15].

Understood in this way, urban regeneration is a tool through which the territory regains its functional vocation to the interests and expectations of its society[16]. It can be defined, to borrow the words of Prof. Edoardo Chiti, as "an administrative

phenomena of marginalisation and social degradation, as well as improving the quality of urban decorum and the social and environmental fabric".

[12] C. Cellamare, *La Rigenerazione senza abitanti*, in G. Storto (ed.), *Territorio senza governo. Tra Stato e regioni: a cinquant'anni dall'istituzione delle regioni* (2020).

[13] A. Bianchi, *La rigenerazione urbana: un nuovo modo di pensare la Città*, 1 Rivista giuridica del Mezzogiorno (2020).

[14] P. Chirulli, *La pianificazione urbanistica tra esigenze di sviluppo e riduzione del consumo di suolo: la riqualificazione dell'esistente*, cit. at. 4, 68; P. Di Biagi (ed.), *Laboratorio Città Pubblica, Città Pubbliche. Linee Guida per la riqualificazione urbana* (2010).

[15] P. Galuzzi, P. Vitillo, *Città contemporanea e rigenerazione urbana. Temi, azioni, strumenti*, 1 Equilibri (2018); R. Paddison, *Housing and Neighbourhood Quality: Urban Regeneration*, International Encyclopedia of Housing and Home (2012); Hao, Z., Wang, Y. *Evaluation of socio-economic-ecological environmental benefits of urban renewal projects based on the coupling coordination degree*, 30 Environmental Science and Pollution Research (2023).

[16] G. Piperata, *Rigenerare i beni e gli spazi della città: attori, regole e azioni,* in E. Fontanari, G. Piperata (eds.), *Agenda Re-Cycle. Proposte per reinventare la città* (eds.), cit. at 1, 1.

function typical of a specific model of public action"[17].

It is well to underline, in this sense, that the reconstruction offered by Prof. Chiti derives from the analysis, primarily, of the "Municipal regulations for the management of urban commons". In relation to these sources, in fact, the author recognises how urban regeneration has the same aims, the same tools and corresponds to entirely similar interests, in all the different regulations. Well, purposes, instruments and interests are precisely the elements through which the theory of law identifies a function.

If the reconstruction of regeneration as a function is convincing, it cannot but remain so even when we turn our gaze from so-called micro regeneration to the different instrument of macro regeneration. On the other hand, both dimensions of urban regeneration are part of the broader function of territorial government, and for the realisation of macro regeneration, as we will soon see, the regions have established completely overlapping instruments.

Regeneration, therefore, can acquire the capacity to contribute to the function of urban planning[18] by removing it from the conception related to the expansion of urbanised territory.

3. The current regulatory framework of urban regeneration

3.1 The national regulatory framework

Compared to the above reconstruction, the urban regeneration tools provided by the national legislator are certainly less ambitious, as they seem to respond to the need to redevelop and recover (rather than regenerate) the urban fabric[19].

In fact, urban planning regulations have mostly introduced instruments specifically dedicated to the recovery of the pre-existing building and urban heritage. This locution (urban

[17] E. Chiti, *La rigenerazione di spazi e beni pubblici: una nuova funzione amministrativa?*, in F. Di Lascio, F. Giglioni (eds.), *La rigenerazione di beni e spazi urbani* (2017).

[18] In the sense of function, administrative activity understood in its "macro" aspects, rather than in its procedures and measures, and characterised by specific purposes, attributions, addressees and interest structures.

[19] E. Boscolo, *La riqualificazione urbana: una lettura giuridica*, *Working papers,* 1 Rivista online di Urban@it (2017).

recovery), if read in a purely legal sense, contemplates various meanings. Firstly, actions on individual buildings, carried out autonomously by private subjects, must be considered. Secondly, there are specific legal institutions whose purpose lies in the urban redevelopment of territorial areas of varying size. In these cases, the action is not restricted to individual buildings, but stands as a reorganisation of the city.

Most of the instruments introduced by the national legislator have punctual effects, they are, in fact, of an implementation nature, so that they are not able to affect the general urban plan: thus the recovery plan[20], the urban recovery programmes[21] and the rehabilitation programmes[22].

Such devices, therefore, can provide a useful contribution in reference to limited and specific contexts and projects, but they cannot be considered adequate in reference to the general planning of the territory, so that they may not be suitable to ensure the realisation of the objectives set by the regeneration in order to the overall transformation of the cities[23]. The only

[20] Introduced through Title IV of Law no. 457 of 5 August 1978, *Norme per l'edilizia residenziale*. For further study: E.M. Marenghi, *Il recupero del patrimonio edilizio ed urbanistico esistente* (1982); A. Corsetti, *Piano di recupero*, in A. Azara, E. Eula (eds.), *Novissimo digesto italiano* (1984); P. Bonaccorsi, G. D'Angelo, *Il recupero del patrimonio edilizio nella L. n. 457 del 1978*, 2 Rivista giuridica dell'edilizia 3 (1979); S. Amorosino, *I piani di recupero nel sistema dei piani urbanistici*, 2 Rivista Giuridica dell'Edilizia 244 (1990).

[21] Disciplined by art. 11 of Law Decree no. 398 of 5 October 1993, converted with amendments into Law no. 4931 of 4 December 1993. For a commentary: G. Piperata, *I programmi di recupero urbano*, in S. Battini, L. Casini, G. Vesperini, C. Vitale (eds.), *Codice di edilizia e urbanistica* (2013); S. Civitarese Matteucci, *Territorio e politiche locali*, in M. Cammelli (ed.), *Territorialità e delocalizzazione nel governo locale* (2007).

[22] Introduced by Article 27 of Law No 166 of 1 August 2002. For further information: G. D'Angelo, *Diritti dell'edilizia e dell'urbanistica* (2004); D. Antonucci, *Manuale di diritto urbanistico: pianificazione urbanistica e disciplina dell'attività edilizia* (2004).

[23] Consider, in this regard, that art. 21 of legislative decree no. 152 of 2021, converted with amendments into law no. 233 of 29 December 2021, which regulates the integrated plans of the building industry, has been approved by the Council of Ministers. 233, which regulates the integrated plans financed with PNRR funds, identifies the programme's objectives as "favouring better social inclusion by reducing marginalisation and situations of social decay, promoting urban regeneration through the eco-sustainable recovery, renovation and refunctionalisation of building structures and public areas, the energy and water efficiency of buildings and the reduction of soil consumption, including through demolition and reconstruction operations aimed at reducing the

instrument that has the function of detailed planning is the integrated intervention programme, which, however, can also be adopted for new constructions and is characterised by a high degree of consensuality between public and private (so that it risks being applicable only when there is private capital interested in its realisation).

To further confirm these reflections, it should be noted that there are no appreciable differences in the activities and purposes assigned to the administration between the implementation plans described above and the PRUSST[24], the neighbourhood contracts[25] and the redevelopment programmes[26]. The latter do not qualify as urban planning instruments (since they are not introduced by a source of law), but rather as mere financing plans for specific projects.

In addition, national legislation on urban regeneration continues to be lacking, despite the fact that in application of the commitments made when adopting the National Recovery and Resilience Plan, the government has provided for the approval of "a law on land consumption, which affirms the fundamental principles of reuse, urban regeneration and limitation of land consumption, supporting with positive measures the future of construction and the protection and enhancement of agricultural activity"[27].

Both bills currently under discussion (DDL nos. 29 and 761 on urban regeneration[28]), as well as the previous ones filed in previous legislatures, although not exempt from criticism on their merits, have been welcomed by the doctrine. It can be recognised, in fact, that there is a general opinion on the need for a state intervention in the matter that, following the various regional initiatives, would establish the general principles and connecting

sealing of soil already consumed with changes to urban shapes and layouts, as well as supporting projects related to smart cities, with particular reference to transport and energy consumption".

[24] Established by the Ministerial Decree of 8 October 1998 of the Minister of Public Works.

[25] Established by the Ministerial Decree of 22 October 1997 of the Minister of Public Works.

[26] Introduced by Ministerial Decree of 21 December 1994 of the Ministry of Works.

[27] PNRR ITALY, available at www.italiadomani.gov.it, p. 85. See link: https://www.senato.it/attualita/archivio-notizie?nid=82825.

[28] See link: https://www.senato.it/attualita/archivio-notizie?nid=82825.

discipline on urban regeneration.

On this point it is first of all necessary to recall that the regulation of the government of the territory is of concurrent competence, *pursuant to* Article 117, paragraph 3, of the Constitution, according to which it is for the state law to lay down the principles of a matter and for the regional law to deal with the detailed regulation, admitting that, in the absence of the former, the regions may legislate in compliance with the general principles. At the same time, the matter of private property is an exclusive state competence (insofar as it belongs to the civil order, which *under* Article 117, paragraph 2, letter *l) is a matter* of state competence) and, consequently, any intervention by the regional legislature regulating aspects and forms of property would be unconstitutional[29]. Lastly, urban regeneration, far from being limited to the regulation of urban planning in the strict sense, intertwines the issues of environmental and landscape protection (just think of the application of the principle of less land consumption), matters that are also the exclusive competence of the State, *pursuant to* Article 117, paragraph 2, letter *s) of* the Constitution[30].

In the light of these brief considerations, the intervention of the state legislator in the field of regeneration would be necessary. These elements, however, in the writer's opinion, should be read in conjunction with the antiquity of the current general law on town planning which, despite regulating a subject that is by definition subject to sudden changes and transformations, remains anchored (despite the many amendments) to the system provided for in 1942.

It is not peregrinatory to ask oneself, therefore, whether it would be more appropriate for the national legislator to promote a new general town planning law that would put the regeneration function at the centre. On the other hand, the draft laws currently under discussion seem rather timid and based on a deductive relationship with regional regulations, rather than inductive and guiding.

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[29] Regarding these last two considerations, see G. Pagliari, *Governo del territorio e consumo del suolo. riflessioni sulle prospettive della pianificazione urbanistica*, 5 Rivista Giuridica dell'Edilizia 325 (2020).

[30] See in this regard P. Urbani, *A proposito della riduzione del consumo di suolo*, 3 Rivista Giuridica dell'edilizia 227 (2016).

3.2 Fourth-generation regional laws

Due to the legislator's inertia with regard to a new national urban planning law, the challenges of land use planning have been taken up by the regions, which have adopted new regulations on the subject[31]. These measures introduce adjustments to existing urban planning instruments with the aim of enhancing the pursuit of two emerging goals: the reduction of soil consumption and urban regeneration[32].

The above-mentioned laws are heterogeneous[33], but, despite the differences in their approach and instruments, they show a common profile: urban regeneration is in fact assumed as a general principle that informs the whole policy of territorial government and is an alternative, priority instrument with respect to land consumption[34], in accordance with the European objectives[35]. Together with the objective of reducing (or, at least, not increasing) the area of built-up land, regional regulations entrust regeneration to consensual models, such as recovery plans or integrated intervention plans, and tend to regulate specific instruments of private participation, as it happens in the hypothesis of temporary use[36].

The Emilia-Romagna regional law[37], for example, introduced an innovative model of territorial planning by competence that replaced the previous system of structural plans,

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[31] The doctrine refers, in this regard, to "fourth" generation regional laws: see P. Stella Richter (ed.), *Verso le leggi regionali di IV generazione. Studi dal XXI Convegno nazionale* (2019), which takes up the reconstruction by generations of urban planning laws made by G. Campos Venuti, *La terza generazione dell'urbanistica* (1990).

[32] E. Boscolo, *Verso le leggi regionali di IV generazione,* in P. Stella Richter (ed.), *Verso le leggi regionali di IV generazione,* cit. at 31, 19.

[33] The reference, in particular, is to the urban planning laws of: Abruzzo, L.R. 13 October 2020, No 29; Lombardy, L.R. 26 November 2019, No 18; Calabria, L.R. 16 April 2002, No 19; Emilia-Romagna, L.R. 21 December 2017, No 24; Sicily, L.R. 13 August 2020, No 19; Tuscany, L.R. 10 November 2014, No 65; Umbria, L.R. 21 January 2015, No 1

[34] M. Dugato, *L'uso accettabile del territorio*, 2 Istituzioni del federalismo 599 (2017).

[35] The 2006 Thematic Strategy for Soil Protection already included the goal of zero soil consumption by 2050. The same goal was reiterated in 2011 with the Roadmap to a Resource Efficient Europe.

[36] G. Torelli, *La rigenerazione urbana nelle recenti leggi urbanistiche e del governo del territorio,* 1 Istituzioni del federalismo 651 (2017).

[37]Law no. 24 of 21 December 2017, to which the monographic issue of 2 Rivista Giuridica dell'Urbanistica (2020) is dedicated.

municipal operational plans, implementing urban plans, and urban building regulations with only the General Urban Plan (PUG)[38]. This act is assigned a planning role rather than a merely executive one[39]. The PUG is mainly based on a "zoning"[40], with markedly simplified characteristics, since the territory is substantially divided into urbanised and rural. To the former are dedicated the instruments for the improvement of urban and environmental quality, for territorial and infrastructural endowments, for the public services deemed and, finally, for the possible uses and transformations; to the latter are referred the disciplines of urban and building uses and transformations functional to agro-silvo-pastoral activities. In this way, new building is a subsidiary option, exceptional with respect to regeneration. Precisely because of this, the concrete implementation of the Plan is delegated to implementation plans of public initiative and, for the most part, to operational agreements with private parties.

The Emilian law presents some similarities with the older law of the Tuscany Region 10 November 2014 no. 65, which "dictates the rules for the government of the territory in order to guarantee the sustainable development of activities with respect to the territorial transformations induced by them also avoiding new land consumption"[41]. In fact, the cited provision expressly forbids the building of rural areas or scattered and discontinuous built-up areas, so much so that the text clarifies that "transformations involving the use of undeveloped land for settlement or infrastructure purposes are permitted exclusively within urbanised territory"[42]. Exceptions are only permitted for building for productive, infrastructural or large-scale distribution purposes. In such cases, however, new land consumption is subject to a special procedure, in which the municipalities concerned as "vast area", the province and the Region itself are also involved, in any

[38] A. Giusti, *La rigenerazione urbana tra consolidamento dei paradigmi e nuove contingenze*, 2 Diritto Amministrativo 439 (2021).
[39] G. Pagliari, *La legge regionale Emilia-Romagna 22 dicembre 2017, n. 24 tra vecchi e nuovi modelli pianificatori: una legge di transizione e per la transizione*, 2 Rivista Giuridica di urbanistica 260 (2020).
[40] G. Pagliari, G*overno del territorio e consumo del suolo. Riflessioni sulle prospettive della pianificazione urbanistica*, cit. at. 29, 325.
[41] Containing "Provisions for the reduction of soil consumption and the redevelopment of degraded soil".
[42] Art. 4, par. 2, L.R. Toscana cit.

case where "there are no alternatives for the reuse and reorganisation of existing settlements and infrastructures"[43].

A partially different set-up seems, on the other hand, to emerge from Lombardy Regional Law No. 18 of 26 November 2019[44] which introduces further amendments, in addition to those provided for by Regional Law No. 31 of 24 November 2014, to the general discipline contained in Lombardy Regional Law No. 12 of 11 March 2005. The amendment affects the general objectives of planning, among which is now included the reduction of soil consumption and urban and territorial regeneration, for the realisation of a "sustainable territorial development model"[45]. The law in question stipulates that the aim of reducing land consumption is to be put into practice by the regional level, with the relevant territorial government plan, and that an environmental assessment of the effects of the implementation of territorial plans is required, taking into account the respect of environmental sustainability and the limitation of land consumption. Indeed, Lombardy's urban planning law cannot be said to be exempt from criticism, so much so that it has been considered extraneous to the so-called fourth-generation laws, in the region of the generality of the declared intentions against the lack of suitable instruments to realise them[46].

As can already be seen from these first hints, the new urban planning laws propose differentiated objectives, policies and actions depending on the spaces - urbanised or not - of intervention, and they mainly perform two functions: a custodial one, of environmental protection, and one of settlement efficiency, which ensures development that is no longer horizontal and dissipative[47].

4. The influence of European policies

As far as European law is concerned, this has for some time

[43] Art. 4, par. 8, L.R. Toscana, cit.

[44] For a comment see P. Lombardi, *Il governo del territorio in Lombardia dopo la l.r. n. 18/2019*, 4 Rivista Giuridica di Urbanistica 840 (2020).

[45] Art. 1, paragraph 3-bis, Lombardy Regional Law no. 12 of 11 March 2005.

[46] The reference is to E. Boscolo, *Verso le leggi regionali di IV generazione*, cit. at. 32, 30.

[47] P. Urbani, *A proposito della riduzione del consumo di suolo*, 3 Rivista Giuridica dell'Edilizia 234 (2016).

now assumed full prominence among the sources, particularly in the field of environmental protection, within which the issue of reducing soil consumption and urban regeneration also falls[48]. In fact, the plans and programmes that have followed one another over time in order to incentivise the redevelopment of the territory have for the most part related to environmental matters rather than to urban planning[49], assigning States concrete objectives for sustainable development[50].

The most recent measures include the Soil Strategy 2030, the New Leipzig Charter and the Ljubljana Agreement on the New European Urban Agenda.

As for the former, it is part of the Green Deal[51] and promotes measures - both voluntary and binding - to protect soil at the same level as other environmental resources such as water and air. This requires societal involvement, adequate financial resources and eco-friendly practices for food production, nature and climate, with medium (2030) and long-term (2050) targets, including achieving zero net land consumption[52]. The approach

[48] P. Urbani, *A proposito della riduzione del consumo di suolo*, cit. at. 48, 234; A. Felli, F. Zullo, *The importance of urban regeneration actions: European and Italian legislative framework analysis*. *SUPTM 2024 conference proceedings*, ", available at the link: https://repositorio.upct.es/server/api/core/bitstreams/0887b7f2-1a2f-4cae-a971-ba47f83bcd1a/content.

[49] On this point see V. Molaschi, *Le agenzie per la protezione dell'ambiente tra diritto interno e diritto comunitario*, in R. Ferrara, P.M. Vipiana (eds.), *I "nuovi diritti" nello Stato sociale in trasformazione* (2003).

[50] Among the many initiatives are: *the Charter of European Cities for Durable and Sustainable Development* (the so-called Aalborg Charter), adopted in 1994 by the European Conference on Sustainable Cities and Towns; the Bristol Accord, concluded in 2005 at the Informal Ministerial Meeting on Sustainable Communities in Europe, under the British presidency; *the Leipzig Charter*, signed in 2007 by the assembly of European ministers responsible for urban areas; the Marseilles Declaration, deliberated on 25 October 2008 at the informal meeting of ministers responsible for urban development; *the Toledo Declaration* "On integrated urban regeneration and its strategic potential for smarter, sustainable and more inclusive urban development in European cities", adopted in Toledo on 2 June 2010 by the European Ministers responsible for urban development; and, finally, the *Urban Agenda for the European Union,* better known as the "Amsterdam Pact", adopted in 2016.

[51] European Commission, COM(2019) 640 final of 11 December 2019.

[52] The goal of "zero net land take" by 2050 is also included in the Seventh Environmental Action Programme (Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a general programme of Union action on the environment up to 2020 "*Living well within the limits of our planet*"). A. Decoville, *Can the 2050 zero land take objective of the*

follows the "soil consumption hierarchy": limit, mitigate, compensate[53]. Member States should set national, regional and local targets by 2023 to significantly reduce soil consumption by 2030, integrating this hierarchy into greening and environmental protection plans.

The New Leipzig Charter, whose motto is "the transformative power of cities for the common good"[54], was adopted at an informal meeting of the Ministers for Urban and Territorial Development of the EU Member States on 30 November 2020. The Charter, while fully in line with previous major European and international interventions[55], is distinguished by the consideration given to the impact of the COVID-19 pandemic on cities and small towns, as a result of which inequalities between territories have increased, further necessitating an integrated and multilevel governance approach[56]. The Charter sets the ambitious goal of striking a balance between the three main aims of European cities and towns: to increase productivity, to generate wealth and employment in cities and regions, and to ensure a fairer distribution of wealth among citizens, while improving the quality of the environment.

EU be reliably monitored? A comparative study, 11 Journal of Land Use Science (2016).

[53] Communication from the commission to the european parliament, the council, the european economic and social committee and the committee of the regions eu Soil Strategy for 2030, Reaping the benefits of healthy soils for people, food, nature and climate, SWD(2021) 323 final.

[54] New Leipzig Charter - The transformative power of cities for the common good, 12/12/2020 https://ec.europa.eu/regional_policy/en/newsroom/news/2020/12/12-08-2020-new-leipzig-charter-the-transformative-power-of-cities-for-the-common-good.

[55] Indeed, the Leipzig Charter opens with the statement that its principles are built on a long series of European and international documents, including: *17 Global Goals, Habitat III, European Green New Deal, European Digital Strategy, European Pillar of Social Rights, Renovation Wave and New European Bauhaus Initiative.*

[56] On the pandemic effects in ordina to urban composition, let us refer to: F. Ciarlariello, *La crisi pandemica e l'impatto sulle città: le risposte del Piano Nazionale di Ripresa e Resilienza,* in F. Di Lascio, I.M. Delgato (eds.), *Crisi di Sistema e Riforme Amministrative* (2023); C. Incaltarau, K. Kourtit, G. C. Pascariu, *Exploring the urban-rural dichotomies in post-pandemic migration intention: Empirical evidence from Europe*, 111 Journal of Rural Studies (2024).

The Ljubljana Agreement, signed on 26 November 2021 by the EU ministers responsible for urban issues, kicked off the new development phase of the European Urban Agenda[57]. The Agreement aims to improve regulation, financing and knowledge on urban/environmental issues. The first pillar includes, in particular, the objectives of aligning the Urban Agenda's policies with the rest of the European legal system to ensure greater effectiveness at both national and supranational levels; the pillar referring to "better financing" guarantees the expansion of financing, the simplification of awarding procedures in favour of small municipalities and the implementation of financing control tools. Finally, in the last pillar - "better knowledge" - instruments are devised to encourage the more frequent exchange of knowledge and experience, particularly with regard to public-private partnerships, also with a view to involving more public actors.

It is evident that in European cohesion policy, recognition of the environmental value of soil is considered central to urban planning.

The analysis of the impact of European policies on urban spatial management allows us to grasp a further confirmation of the expansive *vis* that seems to characterise the Union's order[58]. There is, in fact, a progressive expansion of the areas in which the European system, though not having direct competences, undertakes to direct the internal policies of the member states, even with non-binding acts[59].

In the area of land governance, as far as urban regeneration processes and reduction of land consumption are concerned,

[57]The full text is available at https://eurocities.eu/wp-content/uploads/2021/11/Ljubljana-Agreement.pd

[58] This element was already analysed twenty years ago, see in this regard M.P. Chiti, *Il ruolo della Comunità europea nel governo del territorio*, 3 Rivista giuridica dell'edilizia 91 (2003).

[59] J.B. Auby, *Europe's administrative rights: a convergence towards common principles?*, in G. Falcon (ed.), *Il diritto amministrativo dei paesi europei, tra omogenizzazione e diversità culturali* (2005); G. Della Cananea, C. Franchini, *I principi dell'amministrazione europea* (2013); J.B. Auby, J. Dutheil de la Rochère, *Traité de droit administratif européen* (2022); M. P. Chiti, *Diritto amministrativo europeo* (2011); R. Chieppa, *Le nuove forme di esercizio del potere e l'ordinamento comunitario*, 6 Rivista italiana di diritto pubblico comunitario 319 (2009); S. Cassese, *Diritto amministrativo europeo e diritto amministrativo nazionale: signoria o integrazione?*, 5 Rivista italiana di diritto pubblico comunitario (2004).

Europe's role seems to translate into mostly coordination activities[60], which rely, in fact, on the spontaneous adhesion of Member States, while respecting the differences of each social and territorial context[61].

While the multilevel nature of urban policies, which seem to be combined with an organic and integrated approach, cannot be disputed, the choice of the concrete instruments to be used is the responsibility of individual states. It is up to the latter not only to govern the territory in the public interest, but also to protect the private interests involved in regeneration: first and foremost those of property owners.

5. Urban regeneration to the test of (public and private) interests

5.1 The relationship with private interests: ownership.

In the area of land governance, as has been effectively pointed out, "public decisions reach the highest level of conflictuality, due to the presence [on land] of innumerable interests"[62]. Planning, in fact, necessarily affects land, which, on the one hand, is a scarce resource but, on the other, is a necessary element for the exercise of multiple rights and interests that are recognised as having legal value within society[63]. Interests, therefore, regardless of their nature, tend to "make space", in the literal meaning of occupying land for a given purpose and in the figurative meaning of asserting themselves in administrative choices, with the effect of inevitable conflicts[64]. Urban planning, therefore, is the place to address this inescapable factual situation,

[60] E. Carloni, M. Vaquero Pineiro, *Le città intelligenti e l'Europa. Tendenze di fondo e nuove strategie di sviluppo urbano,* 4 Istituzioni del Federalismo 865 (2015); E. Mariotti, *Lo schema di sviluppo dello spazio europeo. Linee guida per un diritto urbanistico europeo*, 5 Rivista giuridica ambiente 775 (1999); G. Soricelli, Il *"Governo del Territorio": nuovi spunti per una ricostruzione sistematica?*, 6 Rivista giuridica dell'edilizia 663 (2016).

[61] L. Torchia, *Il governo delle differenze. Il principio di equivalenza nell'ordinamento europeo* (2006); F. Giglioni, *Governare per differenza. Metodi europei di coordinamento* (2012).

[62] This opens the contribution by L. Casini, *L'equilibrio degli interessi nel governo del territorio* (2005).

[63] F. Salva, F. Teresi, *Diritto urbanistico* (1986); G. D'Angelo, *Cento anni di legislazione urbanistica*, 2 Rivista giuridica dell'edilizia 121 (1965).

[64] P. Stella Richter, *Profili funzionali dell'urbanistica* (1984).

since the administration must recompose and balance the conflicting interests for the purpose of the orderly organisation of the territory[65]. It is inescapable, in this sense, that the administration should give preference to some interests and sacrifice others, making a choice[66].

In this sense, if it is true that the powers assigned by law to the Public Administration are moulded according to the relative administrative function[67], it is then possible to ask how urban regeneration can affect the powers of government of the territory; at the same time, if it is true that the legal situation of interest is nothing more than the mirror of the exercise of a given power[68], then it is possible to investigate how the powers to be attributed to urban regeneration relate to private interests. In the first place, urban regeneration seems to broaden, on the one hand, and better specify, on the other, the range of purposes to which the function of territorial government is dedicated, exerting a centripetal force on public interests[69], aimed at reuniting and interconnecting[70]. As for the private interests involved in regeneration activities, they do not seem to be identifiable as "new" compared to those emerging in general urban planning. Nevertheless, it is nevertheless possible

[65] G. Pastori, *Governo del territorio e nuovo assetto delle competenze statali e regionali,* in B. Pozzo, M. Renna (eds.), *L'ambiente nel nuovo titolo V della Costituzione* (2004); S. Campbell, *Green cities, growing cities, just cities?: Urban planning and the contradictions of sustainable development*, 62 Journal of the American Planning Association (1996).

[66] G. Morbidelli, *Modelli di semplificazione amministrativa nell'urbanistica, nell'edilizia, nei lavori pubblici (ovvero della strada verso una sostenibile leggerezza delle procedure)*, in L. Vandelli, G. Gardini (eds.), *La semplificazione amministrativa* (1999).

[67] The well-known reference is to the reconstruction by M. Nigro, *Studi sulla funzione organizzatrice della pubblica amministrazione* (1966).

[68] F.G. Scoca, *L'interesse legittimo storia e teoria* (2018).

[69] On public interests, see M.S. Giannini, *Diritto amministrativo* (1967) who qualifies them as legal positions of which a subjective figure is the bearer that the rules qualify as public; as well as G. Corso, *Manuale di diritto amministrativo* (2003), where it is clarified that the public interest is "institutionally codified in a rule or policy or measure that are in force. It is not so much its content that is relevant as the fact that it has been crystallised in a determination of the public powers"; and F.G. Scoca, *Il coordinamento e la comparazione degli interessi nel procedimento amministrativo*, in VV. AA., *Convivenza nella libertà. Scritti in onore di G. Abbamonte* (1999), where public interest is defined as "concrete (legally relevant) purpose that the power must, through its exercise, allow to be achieved".

[70] We will return to this point in the next paragraph

to investigate how they are affected by the new function. As a preliminary remark, it is worth remembering that the doctrine's general distinction between individual and collective private interests does not lose its validity[71].

These abstract categories can well be dropped into the field of territorial governance understood, for our purposes, as the legal space where the function of urban regeneration is exercised[72].

On the one hand, in fact, urban regeneration itself seems to have found legitimacy precisely because of the emergence of widespread interests that were no longer adequately reflected in classical planning. In other words, those interests that are the expression of social rights and so- called performance rights, the implementation of which necessarily depends on public intervention to realise their claim, have become increasingly important[73].

On the profile of individual interests, at the same time, economic and proprietary interests clearly emerge.

With regard to the first profile, it should be noted that liberalisation processes have progressively led to limiting the effects of planning on economic and commercial activities[74]. This

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[71] On this point, D. Donati, *Stato e territorio* (1924); M.S. Giannini, *Diritto amministrativo*, cit. at. 70, 113.

[72] On the relationship between space in the material sense and legal space, see: F. Di Lascio, *La regolazione amministrativa degli spazi urbani,* 2 Munus 315 (2016); B. Sordi, *Il tempo e lo spazio dell'attività amministrativa nella prospettiva storica*, 32 Quaderni fiorentini (2003); N. Irti, *Norma e luoghi. Problemi di geo-diritto* (2006).

[73] P. Mantini, *Le trasformazioni del diritto urbanistico* (2012); C. Lamberti, *Piano regolatore e principio di imparzialità*, in P. Stella Richter (ed.), *La perequazione delle diseguaglianze: tra paesaggio e centri storici. Studi dal XX Convegno nazionale* (2018). By performance rights is meant, as is well known, that particular category of social rights whose fulfilment requires public intervention that guarantees their realisation, think of education or the right to health. *Ex multis*: P. Grossi, *Qualche riflessione per una corretta identificazione e sistemazione dei diritti sociali,* in VV.AA, *Studi in onore di Mario Grandi* (2005); G. Corso, *I diritti sociali nella Costituzione italiana*, 3 Rivista trimestrale di diritto pubblico 758 (1981); V. Crisafulli, *Le norme "programmatiche" della Costituzione,* i V. Crisafulli (ed.), *La Costituzione e le sue disposizioni di principio* (1952); L.R. Perfetti, *Pretese procedimentali come diritti fondamentali. Oltre la contrapposizione tra diritto soggettivo e interesse legittimo*, 3 Diritto processuale amministrativo (2012).

[74] A. Travi, *Attività commerciali e strumenti urbanistici: ovvero, "il diritto preso sul serio"*, 1 Urbanistica e appalti 97 *(*2014); T. Bonetti, *Pianificazione del territorio e attività commerciali*, Urbanistica e informazioni 66 (2012); E. Dallari, *Potere di pianificazione urbanistica ed attività economiche*, in VV.AA., *Diritto amministrativo e società civile* (2019); T. Bonetti, *Pianificazione urbanistica e regolazione delle attività*

does not mean that any impact of urban regeneration policies on economic interests should be excluded. The territory necessarily remains the terminal of commercial, industrial and tertiary activities, and "the insertion in urban planning instruments of forecasts pertaining to economic activities is, in any case, fully compatible both with the ultimate purpose of urban planning - which is to reconcile the various interests regarding the use of the territory, among which are to be included, in a certainly not residual position, also the interests in the use of this for economic purposes - and with the typical and usual contents of urban planning"[75].

In other words, the freedom of establishment from a European source cannot be read as the absolute primacy of companies "to exercise economic activity at all times and in all cases, having to deal with the urban planning power of settlements, including productive and commercial ones"[76].

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commerciali nei centri storici, 3 Rivista giuridica di urbanistica 386 (2017); E. Boscolo, *La Liberalizzazione del commercio e limiti urbanistici,* 1 Urbanistica e appalti 101 (2017); P. Urbani, *Governo del territorio e delle attività produttive. Tra regole, libertà d'iniziativa economica e disciplina della proprietà*, 12 Urbanistica e appalti 1309 (2016); M. Dugato, *Gli strumenti territoriali come strumenti di programmazione economica*, 2 Istituzioni del federalismo 261 (2009); P.L. Portaluri, Primauté *della pianificazione urbanistica e regolazione delle attività commerciali*, www.giustizia-amministrativa.it (2013); A. Lolli, *Pianificazione urbanistica, interessi economici e pianificazioni commerciali*, in M. Cammelli (ed.), *Territorialità e delocalizzazione nel governo locale* (2007); G. Caia, *Governo del territorio e attività economiche*, 4 Diritto amministrativo 707 (2003); G. Morbidelli, *Rapporti tra disciplina urbanistica e disciplina del commercio*, Rivista giuridica urbanistica 160 (1990).

[75] G. Caia, *Governo del territorio e attività economiche,* cit. at. 75, 708.

[76] Cons. Stato, sec. IV, 20 July 2017, no. 3574. On this point, see F. Dallari, *Vincoli espropriativi e perequazione urbanistica. La questione della discrezionalità*, (2018), in particular footnote no. 167, where it is clarified that "according to constant case law: the internal process of liberalisation of economic activities pursued through the above-mentioned legal provisions (to which must be added those contained in Legislative Decree 26 March 2010, no. 59, implementing Directive 2006/123/EC on services in the internal market - so-called "Bolkestein Directive". "Bolkestein Directive"), although it moves in the direction of a broader recognition of the right of economic initiative and the simultaneous reduction of the possible limits to its exercise, nevertheless still legitimises the provision of limits in function of the pursuit of further and different purposes of general interest, requiring that the opposing needs be balanced according to the limits of proportionality, reasonableness and the minimum means (most recently in this sense, Cons. Stato, V, 17 November 2016, No 4794, 13 September 2016, No 3857, 22 October 2015 No 4856; see also Corte cost, 19 December 2012,

With respect to economic interests (apart from individual potential disputes related to specific planning choices) the regeneration function is by no means neutral. In this respect, the positive and distributive economic effects of urban regeneration interventions have been demonstrated when they have led to a *tourn over of* economic activities, which have become more numerous and innovative, an increase in the resident population and related commercial activities and, finally, a general increase in the value of real estate[77].

Regeneration also has positive effects on the economic profile even if the reading of the data is detached from individual interests and brought back to a "macro" vision. Demolition and reconstruction activities, in fact, directly involve the building sector, which is able to activate (directly and indirectly) 86% of economic sectors[78].

In conclusion, the land shows a natural economic vocation, within which at least three use profiles can be recognised. Firstly, the territory is a resource to be directly exploited for agricultural, breeding, mining, construction, etc. purposes; secondly, it is a fundamental space for economic and production processes, essentially the place where these activities take place; finally, the territory is made up of multiple variables that determine the level of competitiveness and attractiveness of regions, thus influencing the social and economic development of the communities living there[79].

Alongside economic interests, as already mentioned, proprietary interests acquire a central profile, i.e. the interests of those who enjoy real rights over real estate, in relation to which

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no. 291, 20 July 2012, no. 200)', so Cons. Stato, sec. V, 13 February 2017, no. 603)".

[77] C. Agnoletti, C. Bocci, *Gli effetti economici e distributivi degli interventi di riqualificazione urbana*, available at the link: http://www.irpet.it/storage/eventoallegato/1381_Paper.pdf; Dossier Studi Camera dei Deputati - Servizio Studi, Dipartimento ambiente, *Le politiche di rigenerazione urbana - Prospettive e possibili impatti*, June 2022, available at the link: https://documenti.camera.it/leg18/dossier/pdf/am0036d.pdf?_1663759571309; J.N. Berry, N.G. Deddis, W.S. McGreal, *Urban RegenerationProperty investment and development* (1993).

[78] F. Monosilio, A. Bimbo, G. Altieri, E. Riccardelli (eds.), *L'industria delle costruzioni: struttura, interdipendenze settoriali e crescita economica* (2015).

[79] T. Bonetti, *Il diritto del "governo del territorio" in trasformazione. Assetti territoriali e sviluppo economico* (2011).

the relationship with public interests is of particular complexity[80]. The law attributes to the administration the power of conformity over real estate, understood under the dual profile of the determination of the use of land and the delimitation of the content and enjoyment of property, for the purposes of social utility[81]. The general regulatory plan or the implementation plans therefore contain different instruments affecting property rights. The two classic devices are those of zoning[82] and the affixing of constraints for expropriation purposes; while the former affect, in a variable manner, the *ius aedificandi*, the latter are predetermined to the acquisition of the property by the public and affect the value of the property[83].

The basic problem in this field has always been that "of the competition and therefore of the opposition between the powers of the owner and the powers of the Public Administration, i.e. of the expectation that the same property generates, of satisfaction of the individual interest and of compliance with the general interests"[84]. Keeping aside the very wide debate on the nature of constraints and its effects[85], which is extraneous to the purpose of this contribution, it is worth pointing out that in the instruments of urban regeneration it seems to be relevant, in particular, the so-

[80] A. Predieri, *Pianificazione e costituzione* (1963); N. Blomley, *Land use, planning, and the "difficult character of property"*, 18 Planning Theory & Practice (2017).

[81] M.S. Giannini, *Introduzione sulla potestà conformativa del territorio*, in L. Barbiera (ed.), *Proprietà, danno ambientale e tutela dell'ambiente* (2006); P. Urbani, *Il contenuto minimo del diritto di proprietà nella pianificazione urbanistica*, available at the link: https://www.pausania.it/wp-content/uploads/files/cont.%20mnimo%20dir.%20propr..corretto.pdf; A.N. Niyazova, M.K. Suleimenov, K.M. Ilyassova, G.T. Kaziyeva, *Land proprietary rights and limitations in private and public interests*, 7 Land Proprietary Rights and Limitations in Private and Public Interests (2016).

[82] For a general reconstruction: D.R. Mandelker, M.A. Wolf, *Land Use Law* (2015).

[83] P. Urbani, *Urbanistica solidale* (2011).

[84] P. Stella Richter, *Proprietà immobiliare e pianificazione urbanistica*, Rivista giuridica di urbanistica 579 (1991).

[85] And on which we refer, *ex multis*, to: M.S. Giannini, *Introduzione sulla potestà conformativa del territorio*, cit. at. 82; P. Stella Richter, *Proprietà immobiliare e pianificazione urbanistica*, cit. at. 84, 579; P. Urbani, *Conformazione della proprietà, diritti edificatori e moduli di destinazione d'uso dei suoli*, 8 Urbanistica e appalti 905 (2006); A.M. Sandulli, *Natura ed effetti dell'imposizione di vincoli paesistici* (1963).

called mixed conformative constraints[86], with public or private initiative[87]. These are provisions "that impose a destination (even of specific content) that can be realised by private initiative or promiscuous public-private initiative, that do not necessarily entail expropriation or interventions at the exclusive public initiative and therefore can also be implemented by the private subject and without the need for prior ablation of the property"[88]. This may be the result of a planning policy choice whenever the general interest objectives of providing the territory with facilities and services are deemed feasible also through private economic initiative - albeit accompanied by convention instruments.

The emergence of this new category seems to respond to the ongoing transformation of the relationship between power and property. In fact, urban planning, even at the regional level[89], is increasingly characterised by compensatory and equalising instruments, also due to the now structural financial shortages faced by municipal administrations[90]. Compared to the affixing of classic conformative or expropriative constraints, in the

[86] On the difference between conformative and expropriative constraints, see, among the most recent, Cons. Stato, Sec. VI, 30 January 2020, 783.

[87] P. Urbani, *Urbanistica solidale*, cit. at. 83, 30; P. Urbani, *Il tema del contenuto minimo del diritto di proprietà nella pianificazione urbanistica,* cit. at. 82, 335. Such constraints are to be considered as merely conforming and, to that effect, not subject to compensation in favour of the private party, thus, for example, Cons. Stato, Sec. V, 31 March 2016, no. 1268; TAR Puglia Lecce, Sec. III, 12 February 2014, no. 416.

[88] Point 5 of the consideration in law, Corte cost., judgment 20 May 1999, no. 179, 1 Foroit. 1705 (1999). Among the numerous comments on this judgement: S. Bonatti, *Palinodia della Corte costituzionale in tema di indennizzabilità dei vincoli d'inedificabilità, alla luce della Giurisprudenza della Corte europea dei diritti dell'uomo*, 3 Rivista italiana di diritto pubblico comunitario 881 (1999); S. Civitarese Matteucci, *La reiterazione dei vincoli urbanistici decaduti come misure "sostanzialmente espropriative"*, 4 Le Regioni 804 (1999); D. De Pretis, *I vincoli di inedificabilità di nuovo al vaglio della Corte costituzionale: aggiornamento della categoria e indennizzo per la reiterazione*, Rivista giuridica di urbanistica 289 (1999); P. Stella Richter, *A proposito dei vincoli a contenuto sostanzialmente espropriativo*, 7 Giustizia civile 2597 (1999).

[89] L. Giani, *Il sistema dei diritti edificatori tra mercato, equità ed evidenza pubblica. La perequazione urbanistica nell'esperienza regionale lucana,* 1 Rivista amministrativa degli appalti 29 (2011).

[90] On this point, M.A. Quaglia, *Pianificazione urbanistica e perequazione* (2000); V. Cerulli Irelli, *La soggezione della proprietà immobiliare al potere di pianificazione*, in P. Urbani (ed.), *Le nuove frontiere del diritto urbanistico* (2013), where he considers obsolete the affirmation that the jus aedificandi is inherent to the typical, minimum content of real estate property.

hypotheses of public/private collaboration, property relates differently to administrative action, since we are witnessing a process of dematerialisation of the *jus aedificandi*[91], its components being freely exchangeable on the market regardless of the ownership of the property.

Indeed, there is no shortage of criticism in doctrine regarding the effectiveness of the path followed by regional legislation, but also national legislation, of giving preference to negotiated or contracted town-planning tools[92], since they translate into punctual interventions, circumscribed and not always consistent, applicable only on the basis of the willingness of the private party to intervene and, also for these reasons, limited to areas that offer opportunities for gain[93].

There are also general doubts as to whether building rights should be fully negotiable, even between private individuals and administrations. Where a private party's building right is established on the basis of a negotiated deed, one of the classic powers of territorial government becomes inexercisable, namely the possibility of modifying planning choices already made, i.e. of changing the destinations previously assigned to individual portions of land[94].

5.2 The coordination of public interests

The issues of soil consumption and urban regeneration pose complex questions that unite various areas of relevance for the law, from the environment to town planning, from agriculture to

[91] The concept is taken up by T. Bonetti, *Il diritto del "governo del territorio" in trasformazione. Assetti territoriali e sviluppo economico* 71 (2011).

[92] The reference is to L. De Lucia, *Il contenimento del consumo di suolo nell'ordinamento italiano*, in F. Cartei, L. De Lucia (eds.), *Contenere il consumo del suolo. Saperi ed esperienze a confronto* (2014), where it is clarified that "it should be noted, however, that land saving presupposes the abandonment of counterproductive instruments. This is the case of the institutes of compensation and equalisation, which, moreover, have seduced a large part of the country's urban, legal and political culture"; P. Maddalena, *Il consumo di suolo e la mistificazione dello* ius aedificandi, available at the link: http://www.salviamoilpaesaggio.it/blog/2014/02/il-consumo-di-suolo-e-la-mistificazione-dello-ius-aedificandi/.

[93] S. Rusci, *La città senza valore* (2021).

[94] V. Cerulli Irelli, *La soggezione della proprietà immobiliare al potere di pianificazione*, cit. at. 90, 80.

the landscape[95]. The regulatory framework, however, is far more fragmented than this consideration, since while urban planning is assigned the strict task of the orderly organisation of the territory, the protection of the so-called differentiated interests is assigned to autonomous disciplines[96]. In our legal system, in fact, there remain numerous matters that are considered differentiated, i.e. aimed at regulating specific aspects of land use, responding to public interests considered to be of particular constitutional value. These disciplines, which affect a single material object (the territory[97]), not only come from "distinct legislative power [...], but, at the level of administrative function, are regulated by their own procedures and often even report to different authorities than those in charge of the urban planning function"[98]. The reference is obviously to the protection of the landscape, which can be achieved by means of the landscape plan[99], to soil and water protection (including from pollutants), which is instead the subject of the basin plan or excerpts thereof[100], and, finally, to the regulation of national or regional parks, which is entrusted to the park plan[101].

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[95] G.A. Primerano, *Il consumo di suolo e la rigenerazione urbana. La salvaguardia di una matrice ambientale mediante un strumento di sviluppo sostenibile* (2022).

[96] The expression differentiated interests is due, as is well known, to V. Cerulli Irelli, *Pianificazione urbanistica ed interessi differenziati*, 2 Rivista trimestrale di diritto pubblico 386 (1985). On this point see also: S. Civitarese Matteucci, *Sulla dinamica degli interessi pubblici nella pianificazione urbanistica*, 2 Rivista giuridica dell'edilizia 155 (1992); E. Picozza, *Il piano regolatore urbanistico comunale* (1983). This term refers to particular strong interests, considered as limits to urban planning, since the law provides that they are the subject of specific and autonomous competences.

[97] M. Cafagno, *Principi e strumenti di tutela dell'ambiente come sistema complesso, adattativo, comune,* (2007), recalls that "the regulations functional to the care of the town-planning interest usually consciously look at the territory as an indivisible good but rival in consumption".

[98] P. Stella Richter, *I principi del diritto urbanistico* (2018).

[99] The landscape plan was envisaged since Law no. 1497 of 29 June 1939, Protection of Natural Beauties (repealed by article 166, paragraph 1, of Legislative Decree no. 490 of 29 October 1999), now a regional competence, pursuant to Legislative Decree no. 42 of 22 January 2004.

[100] Law 18 May 1989, no. 189, now Legislative Decree 3 April 2006, no. 152.

[101] Regulated by Law 19 October 1991, no. 349 and the various regional laws. For an in-depth study: N. Gullo, *Il coordinamento tra la pianificazione dei parchi e delle aree naturali protette e la pianificazione urbanistica*, 1 Rivista giuridica di urbanistica 235 (2012); Torelli G, *Il sistema dei parchi della Val di Cornia: una*

The legal system provides for the protection of these, special, interests in two distinct ways. In the first hypothesis, protection is satisfied by means of a measure to ascertain the characteristics of certain assets, as a result of which there are restrictions on use. This method has two main consequences: «(a) physical changes in such areas are subject to an authorisation separate from the title authorising building; (b) the regulation of the use of those locations, by the municipality, can only be established through an agreement with the administration that has the care of the differentiated interest. In the second type, on the other hand, the differentiated interest is the subject, in turn, of an act of territorial planning, with which urban planning in the strict sense must be coordinated»[102].

As is well known, the provisions contained in the "differentiated" plans also have conformative effects on property and, since the plans are positioned in hierarchy with each other, the content of the superordinate plan prevails over the provisions of the subordinate plans[103].

Town planning, in the light of this hierarchical scheme, seems to have been greatly weakened, since its function is largely reduced by planning on differentiated and prevailing interests, assumed by autonomous administrative authorities[104]. As noted by authoritative doctrine[105], the instruments for the protection of differentiated interests have proved to be stronger and more effective than planning, mainly for two reasons: firstly, these interests have been deemed by the law itself to be "primary and absolute"; secondly, the conformative effect on property deriving

significativa esperienza di valorizzazione ambientale e culturale da recuperare, 2 Aedon (2021).

[102] P. Urbani, S. Civitarese Mattucci, *Diritto urbanistico. Organizzazione e rapporti* (2003).

[103] A. Bartolini, *Pianificazione e depianificazione*, 2 Quaderni della Rivista giuridica dell'edilizia 151 (2014).

[104] From the outset, in fact, authoritative doctrine had found that "the content and object of territorial policy, and in particular of the function of general territorial (urban) planning, are limited by the fact that a series of activities (with territorial impact) and certain species of immovable property, insofar as they express public interests differentiated from the (general) policy of the territory, are in turn the object of public functions differentiated from the latter and attributed to subjects or bodies expressly assigned by law to their care", V. Cerulli Irelli, *Pianificazione urbansitica ed interessi differenziati*, cit. at. 96, 441.

[105] P. Conforti, *Il "consumo' del territorio e le sue limitazioni. La Rigenerazione Urbana"*, available at: www.giustizia-amministrativa.it.

from sector plans does not entail any obligation to compensate the private property concerned and has no deadline[106].

At one time, indeed, the protection of differentiated disciplines was ensured by means of "exceptions" to the primacy of town planning: certain areas considered sensitive were excluded from planning, since they were subject to different protection by other administrations[107]. Urban planning, which at the time was certainly about expansion, could not but be in conflict with the protection of the environment, landscape and cultural heritage, which required maintaining the *status quo.* In relation to differentiated rights, therefore, external limits were placed on urban planning power[108]. In other words, the dynamism of planning was contrasted with the static nature of environmental and landscape protection[109].

Recently, however, the picture, while complex, seems to have changed. Not only has the aim of land development (if understood as the expansion of building activities) become recessive, but alongside it, together with the emergence of the objectives of regeneration and limiting land consumption, the protection of values such as the environment, the landscape and the safety of the territory has become increasingly prominent[110].

At the same time, over the last forty years, as is well known, alongside the vertical articulation of levels of administration, "there has been a horizontal crowding of powers that «invade» the government of the territory, and pressurise traditional urban planning power. This crowding, and competition, is being attempted to be remedied in regional legislation by multiplying, on paper, the mechanisms of co-planning, coordination and

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[106]These characteristics derive from the conformative and not expropriative nature of the constraints, as established by the famous Constitutional Court rulings no. 55 and no. 56 of 1968, an extensive reconstruction, also in terms of doctrinal contributions, regarding the effect of these pronouncements can be found in S. Moro, *Il governo del territorio e le situazioni proprietarie*, (2017), in particular Chapter I, *Le limitazioni amministrative alla proprietà edilizia nel periodo antecedente alle sentenze nn. 55/1968 e 56/1968 della Corte costituzionale,* 1-31.

[107] V. Cerulli Irelli, *Pianificazione urbanistica e interessi differenziati,* cit. at. 96, 104, 413.

[108] P. Chirulli, *Urbanistica e interessi differenziati: dalle tutele parallele alla pianificazione integrata*, 1 Diritto Amministrativo 62 (2015).

[109] V. Cerulli Irelli, *Urbanistica e interessi differenziati,* cit. at. 96, 104, 107, 386, defines "static" differentiated interests.

[110] *Idem*.

agreement. This warp, not always coherent, of heterogeneous conventional forms risks «being a Penelope's web» if all the parties present in the public arena do not come to an agreement, as frequently happens"[111].

As could be expected, the proliferation of sectoral plans, or thematic plans, has made it necessary to introduce innovative instruments for coordination and integration between the different spatial governance competencies. For example, environmental interests have been introduced directly into the planning process[112].

In order to ensure the compatibility of spatial planning with environmental protection, in fact, strategic environmental assessment (SEA) has been made a prerequisite for the validity of the plan itself[113]. Environmental protection is thus integrated into the veryprocess of evaluating interests for planning purposes, instead of being just an external element that applies to specific

[111] S. Amorosino, *Retaggi della legge urbanistica e principi del governo del territorio*, 3 Rivista giuridica di urbanistica (2018).

[112] S. Civitarese Matteucci, *Governo del territorio e paesaggio*, in G. P. Rossi (ed.), *Diritto dell'ambiente* (2011); P.L. Portaluri, *L'ambiente e i piani urbanistici*, in G.P. Rossi (ed.), *Diritto dell'ambiente* (2021); B. Caravita di Toritto, *L'ambiente e i suoi confini*, in B. Caravita di Toritto, L. Casetti, A. Morrone (eds.), *Diritto dell'ambiente* (2005).

[113] The SEA is an institute of European derivation (it was introduced by Directive 2001/42/EC) incorporated into the Environmental Code, aimed at integrating the analysis of the effects of human activity on the environment into the planning process. On this point, in the context of a very broad doctrine, we point out: F. Fracchia, F. Mattassoglio, *Lo sviluppo sostenibile alla prova: la disciplina di VIA e di VAS alla luce del D.Lgs. n. 152/2006*, 1 Rivista trimestrale di diritto pubblico 121 (2008); E. Boscolo, *La valutazione ambientale strategica di piani e programmi*, 1 Rivista giuridica dell'edilizia 3, (2008); R. Ursi, *La terza riforma della parte II del Testo unico ambientale*, 1 Urbanistica e Appalti 13 (2011); M. Mazzoleni, *La Valutazione Ambientale Strategica: applicazione pratica e giurisprudenza tra i ripensamenti del Legislatore*, 11 Ambiente e Sviluppo 8, (2010); F. Doro, *La Valutazione Ambientale Strategica nella giurisprudenza amministrativa, costituzionale e comunitaria: profili sostanziali e implicazioni processuali*, 1 Rivista giuridica urbanistica 141 (2013); D.M. Traina, *Problematiche applicative e rapporti tra le procedure di VAS, VIA e AIA*, 13 Federalismi 224 (2023); G. Delle Cave, *La Valutazione Ambientale Strategica: ratio, caratteristiche e peculiarità (nota a Consiglio di Stato*, Sez. *II, 01 September 2021, n. 6152)*, available at https://www.giustiziainsieme.en/en/environment-and-security/2019-the-strategic-environmentalassessment-ratio-characteristics-and-peculiarities-note-a-council-of-state-sez-ii-01-september-2021-n-6152; G. Fonderico, *La "codificazione" del diritto dell'ambiente in Italia: modelli e questioni*, 3 Rivista trimestrale di diritto pubblico 613 (2006).

geographical areas. With reference to the landscape, on the other hand, the distinction between differentiated protection and the town-planning function is more complex[114], since two distinct authorities find themselves exercising autonomous powers, with adjoining purposes, with reference to the same territory. The plurality of planning instruments, in fact, does not always allow, in practice, the integration and complementarity that the abstract legislation would like to outline: "integration between different levels of urban planning has, in fact, clear theoretical justifications, but concrete experience shows how difficult its translation into reality is, despite and against the relevant legislative provisions"[115]. Differentiated interests, as mentioned, came into tension with urban planning because while the former required a conservative approach to the territory, the latter had a transformative effect[116]. That is, the dynamism of planning was contrasted with the static nature of environmental and landscape protection[117].

On this point, theoretically, the function of urban regeneration could involve a mitigation of this tension. In fact, the concept of regeneration fully encompasses the protection of the landscape, respect for the ecosystem, the enhancement of environmental and cultural assets, and the implementation of public services. Urban regeneration, if correctly interpreted and regulated as an administrative function, could have the capacity to

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[114] Pursuant to Article 131 of Legislative Decree no. 42 of 22 January 2004, the Cultural Heritage and Landscape Code, this is defined as "the territory that expresses identities, the character of which derives from the action of natural and human factors and their interrelationships". It is therefore not easy to draw a clear distinction between the protection of the landscape, thus understood, and the orderly organisation of the territory. On this point, among many: A. Predieri, *Paesaggio*, in VV.AA., *Enciclopedia del diritto* (1981); A. Predieri, *Urbanistica, tutela del paesaggio, espropriazione* (1969); G. Sciullo, *I vincoli paesaggistici ex lege: origini e ratio*, 1 Aedon (2012); S. Amorosino, *Dalla disciplina (statica) alla regolazione (dinamica) del paesaggio: una riflessione d'insieme*, in E. Casetta, A. Romano, F. G. Scoca (eds.), *Studi in onore di Leopoldo Mazzarolli* (2007).

[115] G. Pagliari, *Pianificazione urbanistica e interessi differenziati*, 2 Quaderni della Rivista giuridica dell'edilizia 199 (2014).

[116] S. Amorosino, *Dalla disciplina (statica) alla regolazione (dinamica) del paesaggio: una riflessione di insieme*, in E. Casetta, A. Romano, F. G. Scoca (eds.), *Studi in onore di Leopoldo Mazzarolli* cit. at. 113, 143.

[117] V. Cerulli Irelli, *Pianificazione urbanistica e interessi differenziati*, cit. at. 96, 104, 107, 109, 386, defines differentiated interests as "static".

give new "lymph" to the government of the territory, with a view to integral town planning, understood as a global discipline of land use[118].

In this sense, however, the approach that sees incentives and rewards to private individuals as the only, or prevalent, regeneration tools should be overcome. Such options, in fact, cannot but entail a risk of contradiction with respect to differentiated protections, especially when they take the form of derogations from urban planning/building regulations. The regional legislation that ensures private individuals wishing to engage in regeneration the increase of cubage or the possibility of exceptions to the regulation of maximum heights and distances between buildings, also providing for simplified procedures for the spending of bonuses, risks conflicting with the protection of the landscape.

Even for the purposes of urban regeneration, an evolution of the traditional parallel protections may therefore be considered desirable, «towards a "multi-scalar integrated" system, within which the municipal town planning plan becomes the instrument of expression at the local scale of sectoral policies»[119].

On the other hand, the differentiation of protections is not an insuperable principle, but a simple legislative technique, according to which some rights are isolated from the general context, to become the object of differentiated public functions[120].

The function of regeneration, on the other hand, on the basis of the characteristics we have identified, could not have effective results if it did not have the capacity to reunite the public interests connected to the general government of the territory, recomposing the currently fragmented interests and, to the effect, also the relative plans.

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[118] E. Sticchi Damiani, *Disciplina del territorio e tutele differenziate: verso un'urbanistica "integrale"*, in VV. AA., *L'uso delle aree urbane e la qualità dell'abitato* (2000).

[119] E. Boscolo, *Il piano regolatore comunale*, in S. Battini, L. Casini, G. Vesperini, C. Vitale, *Codice di edilizia e urbanistica* (2013), 191; P. Chirulli, *Urbanistica e interessi differenziati: dalle tutele parallele alla pianificazione integrata,* cit. at. 107, 51.

[120] E. Cardi, *La ponderazione degli interessi nel procedimento di pianificazione urbanistica*, 3 Foro Amministrativo 865 (1989).

6. Concluding reflections

The reflections set out so far have started from the assumption that "avoiding new soil consumption becomes a strategic objective to be pursued through urban regeneration"[121], and have led to the belief that the realisation of these objectives calls for a paradigm shift in the system of land governance, in particular on two essential profiles of town planning, which are deeply interconnected: the relationship between planning power and private property and the choice of differentiated protection.

As to the first profile, urban regeneration, due to its characteristics of intervention on the built-up area, cannot but affect dominical rights, but encounters difficulties intrinsic to urban planning[122]. Historically, in fact, the public power of conformation has been distinguished between land conformation and property conformation, where the former pertains to general planning acts and the latter - generally if not exclusively - to implementation measures[123].

While the conformation of the territory entails the affixing of conforming constraints, which are not subject to a time limit and cannot be indemnified, the affixing of a specific conforming constraint has an essentially expropriatory nature and, as a result, it lapses or, if reiterated, imposes an indemnity on the private party[124]. Well, it is not entirely clear what type of constraint is affixed by urban planning instruments that pursue urban regeneration purposes. Even recently, in fact, jurisprudence has clarified that the allocation of an area for collective use imposed by the urban planning instrument where it aims to identify specific assets for the creation of a non-built up area entails the

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[121] R. Dipace, *Le politiche di rigenerazione dei territori tra interventi legislativi e pratiche locali*, 3 Istituzioni del Federalismo 630 (2017).

[122] Davy's reflection starts from the same considerations, which makes it clear that "planning interventions in property can only be successful if planners and policymakers have a clear idea about the link between planning and property", B. Davy, *Land Policy. Planning and the Spatial Consequences of Property* 3 (2012).

[123] P. Stella Richter, *Conformare*, 1 Il Diritto processuale amministrativo 165 (2020).

[124] For a general reconstruction L. Piscitelli, *Potere di pianificazione e situazioni soggettive* (1990); C. Tucciarelli, *Vincoli conformativi e sostanzialmente espropriativi. Appunti, relazione al Corso di aggiornamento e formazione per magistrati amministrativi - "Le procedure espropriative, a venti anni dall'entrata in vigore del D.P.R. n. 327 del 2001"*, available at the link: www.giustiziaamministrativa.it.

imposition of substantially expropriatory constraints[125]. A different path, on the other hand, seems to have been taken by the category of so-called recognitive constraints, linked to the protection of differentiated interests, the affixing of which does not envisage any term of effectiveness nor does it entail any obligation of compensation in favour of private individuals[126] . For these reasons, too, landscape plans have prevailed over urban planning plans. Indeed, it may prove difficult to trace a difference in the theoretical profile between the two types of constraint, conformative and recognitive. It seems, rather, that constitutional jurisprudence has recognised a particular value that the law assigns to the environment and landscape, such that their defence must be ensured even at the expense of the rights of owners. Thus, through the introduction of the category of reconnaissance constraints, the administration has the possibility of conforming the territory even in the absence of the financial resources to protect the position of private individuals[127]. In the light of these premises it is natural, then, to question the nature of the constraints that would allow the realisation of regeneration objectives, in order to verify whether these would entail a

[125] Court of Cassation, Sec. I Civil, Order (ud. 24 June 2022) 22 December 2022, no. 37574.

[126] *Ex multis*: G.F. Cartei, *La disciplina dei vincoli paesaggistici: regime dei beni ed esercizio della funzione amministrativa*, 1 Rivista giuridica dell'edilizia 18 (2006); F. Pagano, *Vincoli ablativi e ricognitivi nella pianificazione territoriale ed urbanistica*, 6 Rivista giuridica dell'edilizia 255 (2001); M. Renna, *Vincoli alla proprietà e diritto dell'ambiente*, 4 Il Diritto dell'economia (2005); G. Iacovone, *Interesse proprietario e interesse pubblico alla trasformazione del territorio*, 4 Rivista giuridica dell'edilizia 231 (2002); M. Immordino, *Vincolo paesaggistico e regime dei beni* (1991); P. Urbani, *Vincoli paesaggistici e vincoli di settore a qualificazione ambientale: i rapporti con la tutela della proprietà e la necessità di un loro riordino*, 1-2 Rivista giuridica di urbanistica 75 (2008).

[127] F.G. Scoca, *Relazione di sintesi*, in P. Urbani (ed.*), La disciplina urbanistica in Italia. Problemi attuali e prospettive di riforma* (1997), 159 that in general "it is undeniable that the category of "recognitive" constraints has been devised ad hoc by the Constitutional Court; that is, it is a mere "legal construction" (lacking a substantial substratum that actually exists) built by the Court precisely to avoid the indemnifiability of the sacrifices produced by such measures ordered by administrative action. In my opinion, the crux of this problem lies neither at the level of the constitution nor at the level of general theory and not even, probably, at the level of substantive justice: if, in fact, we examined the problem of indemnifiability under these points, it would be possible to find a positive solution. The only real problem remains that of finding financial resources".

limitation of the jus utendi such as to substantially empty the content of property rights, or whether the constitutional values that regeneration pursues allow a different interpretation. In other and simpler terms: could the urban regeneration tools of urban planning lead to the imposition of recognitive constraints on property? The realisation of urban regeneration objectives, on the other hand, cannot be understood as autonomous with respect to the care of differentiated interests and, while it cannot be limited to single, specific projects, neither can it be reduced to a legislative discipline that measures the permitted amount of soil consumption[128]. Regeneration requires a rethinking of urban planning "as a necessary part of a more complex function, which summarises and embraces the different components, economic, social, environmental and landscape of the territory"[129] . The horizon that these reflections draw, therefore, is that of greater integration, if not reunification, of the protection of the environment, the landscape, the territory and the interests that reside in them. The containment of soil consumption and regeneration objectives, finally, consolidate the need to make a political decision upstream, "whether to strengthen public intervention and try to recover the idea of rational land planning (ordered on the new and strong motivations of reduced soil consumption and urban regeneration) or whether to definitively abandon this enlightenment-rationalist idea and move definitively to so-called negotiated town planning by projects, focusing on equalisation and compensation as an alternative land management model to that of constraint and expropriation"[130]. The integration of the urban regeneration function into the planning system seems to prove more resilient when implemented through "public-led" instruments. The equalisation system, based on the division between actual and only potential building, which is also expressed in building compensations and in cases of building premiums, is in fact coherent only if the building potential has a spendable value in the market of "building

[128] P. Roberts, *The Evolution, Definition and Purpose of Urban Regeneration*, in P. Roberts, H. Sykes (eds.), *Urban Regeneration: A Handbook* (2008).
[129] P. Chirulli, *La pianificazione urbanistica tra esigenze di sviluppo e riduzione del consumo di suolo: la riqualificazione dell'esistente*, cit. at. 4,14,. 614.
[130] P. Mantini, *La perequazione urbanistica nel tempo della rigenerazione urbana*, in P. Stella Richter (ed.), *Studi del XX Convegno nazionale AIDU 29-30 settembre 2017 (Udine), La perequazione delle ineguaglianze tra paesaggio e centri storici* (2018).

credits"[131]. What can be the margins of compatibility between equalisation instruments and the new town planning aimed at zero land consumption and the simultaneous protection of the environment and landscape?

Equalisation, as is well known, is one of two ideological options arising from the inherent discriminatory nature of planning. In planning, the choice of zoning involves economic advantages for some and serious disadvantages for others. Faced with this element, there are only two possible options left: "to reserve the right to build to the municipality, thus equalising the ownership positions «downwards», or to distribute the advantages of building fairly through an equalisation system"[132].

Compared to the phase in which the systemic choice that led us down the road of equalisation was made, much has changed[133]. In fact, the legislator of regeneration and zero soil consumption has the burden of configuring planning instruments that primarily ensure the protection of land, the environment and other natural elements. In fact, buildability should become an exception to the general impossibility of building, planning would be directed to the transformation of the built-up area and not of the territory, and the right to build in relation to land ownership would disappear[134].

These considerations do not necessarily entail the opportunity to re-evaluate and update the content of the Sullo bill[135], but they certainly require a creative effort from the jurist, even before the legislator, which is indispensable for governing the territory and its changes.

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[131] D.M. Traina, *Lo* ius aedificandi *può ritenersi ancora connaturale al diritto di proprietà*?, 5 Rivista Giuridica dell'Edilizia 258 (2013).

[132] P. Stella Richter, *Diritto urbanistico. Manuale breve* (2022).

[133] P. Chirulli, *Cosa rimane della pianificazione urbanistica*, 3 Rivista giuridica di urbanistica 484 (2021).

[134] G. Pagliari, *Governo del territorio e consumo del suolo. Riflessioni sulle prospettive della pianificazione urbanistica,* cit. at. 29-40, 346.

[135] From the name of the Minister of Public Works who in 1962 presented a proposal of urban reform in which it was foreseen, in extreme synthesis, the separation between the ownership of the areas of the territory affected by planning, which remained in public hands, and the right to build on them, which was granted to private citizens through auction mechanisms. On this point, *ex multis*: A. Becchi, *La legge Sullo sui suoli*, 3 Meridiana 107 (1997); E. Salzano, *Fondamenti di urbanistica. La storia e la norma* (2003); F. Oliva, *L'uso del suolo: scarsità indotta e rendita,* in F. Barca (ed.), *Storia del capitalismo italiano dal dopoguerra a oggi* (1997).