

*Juli Ponce*  
University of Barcelona

## **THE “IGNORED CHALLENGE”, URBAN SPRAWL AND ITS NEGATIVE IMPACTS IN POLAND: A COMPARISON BETWEEN THE EU AND U.S.**

*Four out of five European citizens live in urban areas and their quality of life is directly influenced by the state of the urban environment*

(Communication from the Commission to the Council and the European Parliament on Thematic Strategy on the Urban Environment {SEC(2006) 16} /\* COM/2005/0718 final \*/)

### **1. INTRODUCTION. THE POLISH SITUATION AND THE EU CONTEXT: SIMILARITIES WITH THE US. WHAT IS URBAN SPRAWL?**

Today, it is possible to identify changing patterns in the European use of land. Europe is apparently in the middle of a “quiet revolution”, based on micro and macro socio-economic forces. The European Environment Agency has qualified this situation as “the ignored challenge”<sup>1</sup>.

The amount of housing space per person has doubled in the last half century as a result of higher living standards, declining family size and the increasing tendency for Europeans to live alone. Higher housing densities as a result of more compact housing estates and more ‘high rise’ living might in principle be able to offset the effect on land use. But in the last decade alone, the extent of urban sprawl increased in Europe by three times the size of Luxembourg, following the well-known American patterns. According to different sources, the U.S. is losing 365 acres of open space every hour to developers’ bulldozers<sup>2</sup>.

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<sup>1</sup> European Environment Agency, *Urban Sprawl in Europe. The Ignored Challenge*, 2006, at [http://www.eea.europa.eu/publications/eea\\_report\\_2006\\_10](http://www.eea.europa.eu/publications/eea_report_2006_10).

<sup>2</sup> M. Cooper, *Smart Growth, Issues for Debate in American Public Policy. Selections from the CQ Researcher*, Thousand Oaks 2006, 6<sup>th</sup> ed., p. 232. Available also at <http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2004052800>.

Therefore, the EU and the U.S. seem to face a similar problem. Exchanging data and approaches that support public policies to face market failures could be of mutual interest. On the other hand, it is important to avoid automatic transplan-tation due to the very different points of departure and the different realities (in legal and socio-economic aspects). However, Europe, the US and the rest of the world seem to be facing a common phenomenon and comparative approaches can help us to improve our cities in the future<sup>3</sup>.

Taking into account these general ideas, we can begin with the most basic question: what is urban sprawl?

It is no easy task to define such a phenomenon. A common definition seems to not exist<sup>4</sup>. Here, we are going to use the definition used by the European Environment Agency (EEA) in the aforementioned report. Urban sprawl is: “(...) commonly used to describe physically expanding urban areas. The Euro-pean Environment Agency (EEA) has described sprawl as the physical pattern of low-density expansion of large urban areas, under market conditions, mainly into the surrounding agricultural areas. Sprawl is the leading edge of urban growth and implies little planning control of land subdivision. Development is patchy, scattered and strung out, with a tendency for discontinuity. It leap-frogs over areas, leaving agricultural enclaves. Sprawling cities are the opposite of compact cities – full of empty spaces that indicate inefficiencies in development and high-light the consequences of uncontrolled growth”.

Poland, which since acceding to the European Union in 2004 has become its fastest growing economy, has an extensive urban sprawl, according to the OECD<sup>5</sup>. Poland will be used as a case study to underline a common European pattern. It is by no means alone in the EU context. The whole area is in a similar situation, as shown below.

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<sup>3</sup> About the usefulness of comparative legal approaches, see for example N. Foster, *The Journal of Comparative Law: A New Scholarly Resource*, JCL 2006, No. 1, at <http://thejcl.com/pdfs/foster.pdf>.

See about urban sprawl as an international reality, *Et in suburbia ego?*, *The Economist*, May 5, 2007, at <http://www.economist.com/node/9070632> and *A Sub Urban World the Emerging World is Becoming Suburban. Its Leaders should Welcome that, but Avoid the West's Mistakes*, December 6, 2014, at <http://www.economist.com/news/leaders/21635486-emerging-world-becoming-suburban-its-leaders-should-welcome-avoid-west>s.

<sup>4</sup> P. Christiansen, T. Loftsgarden, *Drivers behind urban sprawl in Europe*, 2011, p. 2, at <https://www.toi.no/getfile.php?mmfileid=17329>.

<sup>5</sup> OECD, *Urban Policy Reviews: Poland*, 2011, at [http://www.oecd-ilibrary.org/urban-rural-and-regional-development/oecd-urban-policy-reviews-poland-2011\\_9789264097834-en](http://www.oecd-ilibrary.org/urban-rural-and-regional-development/oecd-urban-policy-reviews-poland-2011_9789264097834-en).

## 2. THE EUROPEAN ENVIRONMENTAL AGENCY AND EUROPEAN URBAN SPRAWL

The EEA has studied urban sprawl in Europe and has referred to this phenomenon, as mentioned before, as the "ignored challenge"<sup>6</sup>. The study begins by stating that "classically, urban sprawl is a U.S. phenomenon associated with the rapid low-density outward expansion of U.S. cities, stemming back to the early part of the 20<sup>th</sup> century" whilst in Europe "cities have traditionally been much more compact, developing a dense historical core shaped before the emergence of modern transport systems.

Compared to most American cities, their European counterparts still remain in many cases compact. However, European cities were more compact and less sprawled in the mid-1950s than they are today, and urban sprawl is now a common phenomenon throughout Europe" which is increasing and affecting the southern, eastern and central parts of Europe (page 5). The changing European reality is illustrated by the fact that for the past 20 years, there have been four times more new cars than new babies, and vehicle-kilometers traveled in urban areas by road are predicted to rise by 40% between 1995 and 2030 (page 40).

The report calls for a "new urbanism" which replaces "the dominant trends of urbanization (*laissez-faire*)" (page 38), with a better coordination of land use policies, as well as Structural and Cohesion Funds' investments between areas: rural areas, the regions and at the national level (page 41).

## 3. THE CAUSES OF URBAN SPRAWL: THE ROLE OF LAW

International literature identifies several different drivers for urban sprawl<sup>7</sup>. The EEA's report underlines many of them (pp. 17 sqq.).

Several of these drivers are promoted by some public policies. In the EU context, the building of new infrastructure such as roads and basic services, in part financed by the Structural Funds, has allowed 'out of town' housing developments to flourish. This pattern seems to repeat itself in some of the newest EU Member States, like Poland<sup>8</sup>. Other areas of the world have other specific

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<sup>6</sup> See the web page of the EEA: <http://www.eea.europa.eu/about-us>. There you can consult an interesting video about the European environment: <http://www.eea.europa.eu/themes/urban/multimedia/improving-the-environment-in-europes-cities/view>.

<sup>7</sup> P. Christiansen, T. Loftsgarden, *Drivers behind urban sprawl...*

<sup>8</sup> See R. Liddle, F. Lerais, *A Consultation Paper From the Bureau Of European Policy Advisers, Europe's Social Reality*, at [http://ec.europa.eu/citizens\\_agenda/social\\_reality\\_stocktaking/docs/background\\_document\\_en.pdf](http://ec.europa.eu/citizens_agenda/social_reality_stocktaking/docs/background_document_en.pdf).

drivers. In the American case, urban sprawl was fueled by federal policies in the 50's and 60's like the home-mortgage income-tax-deduction or the development of the Interstate Highway System at a time when the Cold War was at one of its peaks<sup>9</sup>.

However, our interest here is focused on what the report terms the “regulatory framework”. It includes weak land use planning, poor enforcement of existing plans and lack of horizontal and vertical coordination and collaboration. The Polish case confirms the role that institutional framework and land use regulations have in the promotion of urban sprawl. The major part of Polish municipalities (*gmina*) has not approved urban plans. On the other hand, the metropolitan reality is faced by neither specific institutions nor metropolitan urban planning<sup>10</sup>. It seems that deregulation has been the reaction after the fall of the communist regime. But deregulation has its own limits, even in traditional capitalist societies as we are going to illustrate, because the protection of public interest needs some kind of (smart) regulation.

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<sup>9</sup> About the relationship between urban sprawl and military goals in the US, see S. Graham, *Cities under Siege*, London 2010, p. 14: “(...) early Cold War urban planning in the US sought to see US cities”, and actively tried to stimulate decentralization and sprawl as means or reducing the nation’s vulnerability to a pre-emptive Soviet nuclear attack. And it is often forgotten that the massive US interstate highway system was initially labelled a “defense highway” system and was partly designed to sustain military mobilization and evacuation in the event of a global nuclear war”.

<sup>10</sup> OEDC, 2011, pp. 132–133: “While the current planning law regards Municipal Physical Development Plans as the main instruments for regulating municipal development, their use is still not widespread and does not allow for comprehensive planning. Only a small part of the country is covered by approved Municipal Physical Development Plans that are in accordance with the 2003 Spatial Planning and Spatial Development Act, which are produced at neighbourhood scale. While the share of land covered by these plans in cities with county (*powiat*) status has increased from nearly 11% in 2006 to 17% in 2008, this leaves a significant share of city land that is not managed by Municipal Physical Development Plans”.

“In the absence of Municipal Physical Development Plans, many land-use decisions are made on a case-by-case basis and do not conform to the Studies of Conditions and Direction of Spatial Development and Land Use in Municipalities. The dominant regulatory instruments in Poland are these decisions or “decisions on the location of public land uses” (M. Gdesz, R. Alterman, *Takings International: A Comparative Perspective on Land Use Regulations and Compensation Rights*, Amer Bar Assn 2010). They are ostensibly similar to development permits, but they are detached from any local plans and do not have to conform to higher-order government policies or guidelines. Apart from selected areas governed either by national infrastructure decisions (often accompanied by expropriation) or nationally designated high-quality agricultural land, proposals for “decisions on development conditions” or “decisions on the location of public land uses” are bound by only one rule: local government may reject them if they do not meet the “neighbourhood rule”, that is, if they differ too much from their surroundings. This notion, however, is largely discretionary, and landowners often contest rejection decisions”.

#### 4. IS IT GOOD OR BAD? URBAN SPRAWL VS. COMPACT CITY

There is a consensus about the negative impacts of urban sprawl both in the EU and the US, although it is also possible to find some voices in favor of it. For example, freedom of choice and affordable housing are sometimes used as arguments in support of urban sprawl. Nevertheless, the first cannot be unlimited in a modern and civilized society and externalities created by individual preferences can affect the community in a relevant way<sup>11</sup>. On the other hand, as we will see later, it is debatable that urban sprawl automatically brings affordable housing.

In any case, we know the negative impacts of urban sprawl. Among them, we can highlight:

1. Environmental impacts: it consumes natural resources (e.g. land, water and energy), impacts natural and protected areas, affects urban quality of life, causes traffic congestion (which causes pollution) and promotes flooding.

2. Economic impacts: due to urban sprawl, local authorities must provide for roads, schools, etc. which impacts public budgets. Urban sprawl also increases household spending on commuting from home to work over longer and longer distances.

3. Social impacts: it generates psychological problems (as the movie *Bowling for Columbine* underlines), physical problems (e.g. obesity: according to the Center for Disease Control and Prevention, 64% of Americans are obese, due in part to the lack of exercise related to the use of automobiles), social problems (lack of community, reduction of social cohesion and urban segregation<sup>12</sup>, which is even worse if urban sprawl includes gated communities, as in the Polish case<sup>13</sup>), or problems with family relationships due to the lack of time generated by commuting.

On the contrary, the opposite urban model, the compact city, promotes urban sustainability in several ways, according to the OECD<sup>14</sup>.

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<sup>11</sup> T. C. Schelling, *Microdecisions and Macrobbehavior*, New York 1978.

<sup>12</sup> European Environment Agency, *Urban Sprawl in Europe...*, p. 35.

<sup>13</sup> Paper submitted by M. Gluszak, B. Marona, *Housing demand, urban sprawl and gated societies: Evidence from Poland*, ENHR Conference 2011, July 5–8, Toulouse, at <http://www.enhr2011.com/sites/default/files/Paper-MichalGluszakBartlomiejMarona-WS08.pdf>.

<sup>14</sup> OECD, *Compact Cities Policies. A comparative Assessment*, 2012, p. 57 at <http://www.oecd.org/gov/regional-policy/compact-city.htm>.

## 5. WHAT ARE THE SOLUTIONS? CONTROLLING URBAN SPRAWL AND MOVING TOWARDS COMPACT CITIES THROUGH THE LAW. SOME EXAMPLES

Is there anything that societies could do to control urban sprawl? Obviously, it is possible to defend a *laissez faire* solution: doing nothing at all. However, the aforementioned costs and negative impacts strongly recommend the development of diligent and achievable public policies to control market failures and protect the public interest<sup>15</sup>.

According to the OECD there are several key policy strategies and sub-strategies for the compact cities, including setting minimum density requirements for new developments, promoting mixed-land use or encouraging the provision of affordable housing, for example<sup>16</sup>:

In the Polish case, these measures have also been recommended by the OECD<sup>17</sup>. Perhaps knowledge about EU and U.S. experiences can help to develop future regulations that could improve the current situation in Poland, as well as in other parts of the EU<sup>18</sup>.

### 5.1. EUROPE

#### 5.1.1. Density

Among several documents advising EU Member States to stop the urban sprawl trend, we find the important Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 2004 titled *Towards a thematic strategy on the urban environment*<sup>19</sup>. Among other recommendations, this document encourages member states to: “*set minimum residential land use densities to encourage higher density use and limit urban sprawl*”.

If we take the Spanish case, the influence of the principle of environmental sustainability on Spanish land use law (through UE law) is visible in regional legislation. Different regional laws establish legal principles guiding urban activity

<sup>15</sup> A discussion about the different public policies is available in National Issues Forum Institute and Public Agenda, *A Nice Place to Live, Creating Communities, Fighting Sprawl*, Kendal/Hunt 1999, at [http://conservationtools-production.s3.amazonaws.com/library\\_item\\_files/456/501/stream\\_document.pdf?AWSAccessKeyId=AKIAIQFJLILYGVDR4AMQ&Expires=1442247872&Signature=haWL8oTJeqdAg3ZV9AVCvBIWFSQ%3D](http://conservationtools-production.s3.amazonaws.com/library_item_files/456/501/stream_document.pdf?AWSAccessKeyId=AKIAIQFJLILYGVDR4AMQ&Expires=1442247872&Signature=haWL8oTJeqdAg3ZV9AVCvBIWFSQ%3D)

<sup>16</sup> OECD, *Compact Cities Policies...*, p. 172.

<sup>17</sup> OECD, *Compact Cities Policies...*, p. 266 and OECD, *Urban Policy Reviews...*

<sup>18</sup> See for more details and countries: E. J. Siy, *Learning from Abroad: The European Approach to Smarter Growth and Sustainable Development*, Fall 2004, at [http://www.fundersnetwork.org/files/learn/Learning\\_from\\_Abroad-FINAL.pdf](http://www.fundersnetwork.org/files/learn/Learning_from_Abroad-FINAL.pdf).

<sup>19</sup> At <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52004DC0060>.

towards continuity in urbanization, limitation of urban sprawl and preference for urban infill and revitalization instead of new developments<sup>20</sup>.

For example, in the case of Spain, the traditional legal limit for density (established by the Land Use Act of 1976, Article 75, and mandatory for local planning) is 75 housing units/hectare (depending on regional laws, some of them can allow a maximum of 100 housing units/hectare) – a hectare being equivalent to 2.47 acres. Recent legal developments go further, setting up *minimum* standards of density<sup>21</sup>.

### 5.1.2. Urban growth boundaries

The fight against urban sprawl has generated some interesting new legal techniques in Spain. For example, the prohibition of urban development *per saltum* (discontinuity in urban sectors of development)<sup>22</sup> or deciding specific limits to new urban developments<sup>23</sup>. Another interesting technique is the “capacity of territorial resistance”, which consists of establishing urban growth limits in each city in accordance to population, economic activity, available resources, infrastructure and facilities<sup>24</sup>.

In the same way, Catalan legislation tried to avoid urban sprawl by establishing legal principles in favor of sustainable urban development (since the art. 3 Land Use Act 2005) including a legal principle guiding urban development towards compactness. New developments are decided by urban local planning considering these legally binding principles. But there are not, in the Catalan case, concrete legal standards with regard to growth boundaries. These kinds of boundaries are established in the Catalan legal system using spatial plans.

A second example can be found in the UK with Green Belts or European urban growth boundaries<sup>25</sup>. There are 14 separate green belts in England, varying in size from 486,000 hectares around London to just 700 hectares at Burton-on-Trent. The total hectares in March 2014 was 1,639,090<sup>26</sup>.

<sup>20</sup> E.g. Article 9 Andalucía Land Use Act 7/2002; Article 32 Cantabria Land Use Act 2/2001.

<sup>21</sup> Following the recommendations of the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 2004 titled *Towards a thematic strategy on the urban environment*.

<sup>22</sup> In that sense, Article 86 Castilla y León Urban regulation.

<sup>23</sup> That is the case of the Asturias legislation which establishes that the Master Plan will decide percentages of land on which new urban developments will be possible (*suelo urbanizable*). This decision will be taken according to the necessities of each municipality but in the case of towns with a population superior to 40.000 inhabitants the percentage of land for new development must be inferior to 50% of land already occupied.

<sup>24</sup> E.g. Cantabria’s *Plan de Ordenación del Litoral* (Act 2/2004).

<sup>25</sup> See J. M. Levy, *Contemporary Urban Planning*, 8<sup>th</sup> ed., New York 2009, p. 363.

<sup>26</sup> A clear and simple analysis of the Green Belts can be found in the BBC web [http://news.bbc.co.uk/2/hi/uk\\_news/6947435.stm](http://news.bbc.co.uk/2/hi/uk_news/6947435.stm). For more information: L. Smith, *The Standard Note SN/SC/934*, updated 30 June 2015, produced by the Library of the House of Commons has a concise but complete description, at <http://researchbriefings.files.parliament.uk/documents/SN00934/SN00934.pdf>.

The Metropolitan Green Belt around London was first proposed by the Greater London Regional Planning Committee in 1935. The Town and Country Planning Act 1947 then allowed local authorities to include green belt proposals in their development plans. In 1955, Minister of Housing Duncan Sandys encouraged local authorities around the country to consider protecting land around their towns and cities by the formal designation of clearly defined green belts.

Green belts aim to stop urban sprawl and the merging of settlements, preserve the character of historic towns and encourage development to locate within existing built-up areas<sup>27</sup>. Their current regulation is found in *National Planning Policy Framework*, 2012, pages 19 sqq<sup>28</sup>.

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<sup>27</sup> Green Belts have been scenarios of clashes between the protection of land and the need of housing in the case of gypsy people. The European Court of Human Rights has decided in several cases in favor of the UK regulation, prohibiting housing in Green Belts. See for example, the *Chapman v. UK*. 18 January 2001. Application No. 27238/95, at [http://hudoc.echr.coe.int/eng?i=001-59154#{"itemid":\["001-59154"\]}](http://hudoc.echr.coe.int/eng?i=001-59154#{), which includes a good explanation about the role of the Green Belts: "28 The purpose of Green Belts and the operation of the policy to protect them is set out in national policy document PPG 2 (January 1995).

»1.1. The Government attaches great importance to Green Belts, which have been an essential element of planning policy for some four decades.

(...)

1.4. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts is their openness. Green Belts can shape patterns of urban development at sub-regional and regional scale, and help to ensure that development occurs in locations allocated in development plans. They help to protect the countryside, be it in agricultural, forestry or other use. They can assist in moving towards more sustainable patterns of urban development.

1.5. There are five purposes of including land in Green Belts:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns from merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration by encouraging the recycling of derelict and other urban land.

(...)

2.1. The essential characteristic of Green Belts is their permanence. Their protection must be maintained as far as can be seen ahead.

(...)

3.1. The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances.

(...)

3.2. Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development<sup>28</sup>.

<sup>28</sup> At [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6077/2116950.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf).



### 5.1.3. Mixed uses

Separating uses in the territory leads to urban sprawl. Therefore, functional or, as it is known in the US, Euclidean zoning (named after the famous US Supreme Court case<sup>29</sup>) promotes urban sprawl whilst a regulation of uses based on mixing them helps to reduce it.

### 5.1.4. Case law and urban sprawl: the Spanish example

Finally, reaction against urban sprawl must come from the Courts when they apply legislation. In the Spanish case, the land use act of 2008 includes in its preamble a reference in favor of the compact city in accordance with EU documents and article 2.2.c mentions the need for an “efficient use of land”. Some regional legislation following this model includes an explicit legal principle in favor of the compact city. Using such references, the Spanish Supreme Court has declared illegal several local plans which promoted urban sprawl because municipalities breached the principle of compact city without any kind of explanation about why it was necessary for the public interest (e.g. Decisions of July 10, 2012, March 26, 2013 or May 21, 2015).

## 5.2. THE U.S.: NEW URBANISM AND SMART GROWTH

If on one side of the Atlantic the idyllic image of compact cities is changing and the EEA calls for a “new urbanism”, on the other side the well-known and still predominant U.S. sprawl is being dealt with by different planning movements (e.g. *Smart Growth* and *New Urbanism*) that promote urban developments based on the ideas of compact cities, urban infill, city center revitalization, mixed uses or a more pedestrian-oriented style of urban life<sup>30</sup>.

These movements look at the classic European model of a compact city, which is now being replaced. In a paradoxical outcome, *new* urbanism on both sides of the Atlantic now means coming back to the *old* historical European urban roots.

As previously mentioned, mixing uses is an important regulatory tool to fight urban sprawl, as New Urbanism acknowledges. The problem is that classic Euclidian zoning regulations in the U.S. that segregate uses, works against this goal. Therefore, as Blasingame Custer notes, different remedies could exist for this problem, such as finding a way to work within existing ordinances, rewriting entire zoning ordinances or adopting a Smart Code<sup>31</sup>. The first approach is proba-

<sup>29</sup> Village of Euclid v. Ambler Realty Co., 272 US 365, 1926.

<sup>30</sup> J. A. Kushner, *Comparative Urban Planning Law*, Durham 2003, pp. 243 sqq and J. A. Kushner, *Smart Growth, New Urbanism and Diversity: Progressive Planning Movements in America and Their Impact on Poor and Minority Ethnic Populations*, UCLA Journal of Environmental Law and Policy 2002/2003, Vol. 21, No. 1, pp. 45 sqq.

<sup>31</sup> J. Blasingame Custer, *New Urbanism and Euclidian Zoning: Can They Co-Exist*, Land Use Clinic. Paper 17, 2007, at <http://digitalcommons.law.uga.edu/landuse/17>.

bly the most difficult because trying to mix uses (e.g. permitting commercial use in a residential area) might be challenged as a zoning decision inconsistent with a municipality's comprehensive plan, a violation of many states' zoning enabling statutes, or as illegal spot zoning (i.e. discriminatory).

## 6. SMART GROWTH AND AFFORDABLE HOUSING: A DIFFICULT RELATIONSHIP

As we saw, an argument in favor of avoiding public intervention against urban sprawl is that public intervention leads to increasing housing prices. However, urban sprawl is not necessarily equal to affordable housing, according to the American<sup>32</sup> and Spanish experiences.

In the Spanish case, the urban plans have been considered by some authors as being out of date, useless and a bureaucratic barrier to the entrepreneurs. In the 90's a new ideological, political and legal movement tried to reduce the role of urban planning and promote the market as a substitutive and more effective tool.<sup>33</sup>

For these reasons, a modification of the existent national 1998 Act was passed in 2000. After that, all Spanish land was, in principle, available for urbanization and *there was a legal right to do so* (in contrast to the traditional point of view that emphasized the primary agricultural use of land). It seemed that local plans lost their preeminence and local governments their key role of managing the urban process. The clear goal of the reform was to increase the supply of land available for urbanization because the national government thought that it would reduce house prices. The regulation was compulsory at both regional and local levels.

There was a great deal of discussion in Spain about this point because it meant a change of model, departing from the historic one, and some *Comunidades*

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<sup>32</sup> M. Cooper, *Smart Growth...*, p. 238: "(...) simply overturning smart-growth rules and relying on market forces to direct development seems unlikely to reverse the lack of adequate affordable housing in wealthy suburban jurisdictions. According to a recent study of the Washington metropolitan area, the wealthiest suburban counties have the fewest affordable housing units. And less-affluent residents are being driven out of housing markets across the country in other fast-growing areas".

<sup>33</sup> This idea found intellectual support in 1993 through the Court Report from for the Defence of Free Competition (a public authority charged with the responsibility of preserving the free market). This report criticized the old legal model, which promotes an extreme interventionism, a high degree of discretionary powers in the hands of governments and an inefficient use of land. The Report suggested several changes, one of them accepted by the later legislation: the general consideration of all the land to be urbanizable in Spain. This Report was followed by another in 1994, coming from an Expert Committee created by the socialist government. The second Report included more reasonable (and better studied) measures to improve the system.

*Autónomas* (regional authorities), like Catalonia, did not like the change and used their legislative powers to block it. Moreover, municipalities did not agree with legal provisions blocking their discretionary powers for land policy.

Even when there was a coherent national, regional and local policy of liberalization, it is now clear that more construction did not have a positive role in reducing house prices<sup>34</sup>. If we look at the evolution of housing prices in Spain, available official data seems to show that land liberalization had little impact on the provision of affordable housing (which was the formal reason for developing it). On the contrary, during the period it was in effect (until 2008, where the regulation was changed and returned to the classic model) housing prices increased dramatically<sup>35</sup>.

But beyond the cases described, it seems obvious that, in principle, the kind of public policies that attempt to contain the effect of urban sprawl can affect housing affordability by affecting the supply of land. As Nelson asks: "Will owners of land, knowing they hold an oligopolistic position in the land market, delay its sale to get a higher price?"<sup>36</sup>.

In that sense, although there is no conclusive data, the Spanish legislature does believe that it has been one of the relevant causes of the lack of housing affordability in the country, as it is explained in the preamble of the land use act

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<sup>34</sup> A regional reaction against the legal change in 2000 led to the important Constitutional Court's decision of July 11, 2001, which suggested that the national Act 1998 could be unconstitutional, because it could breach the constitutional distribution of powers between the national and the regional level. This decision did not actually state explicitly that the National Act 1998 was unconstitutional, but it suggested that a future new decision could make the act recover its original text, and then regional and local governments could, through laws and plans, make land use decisions based on general public interest (environmental protection, rational control of urbanization, etc.). Although according to constitutional case law the national level has little powers in relation to land use (just those necessary to regulate basic conditions of constitutional rights, Article 149.1.1 of the Spanish Constitution, procedural aspects and property rights among other aspects), it is important to remember that housing plans and fiscal instruments are still in national hands.

After this long legal battle before the constitutional court about the distribution of powers between the national and the regional level producing some relevant judicial decisions, the national level passed a new Land use act in 2007 replacing the former Act of 1998. One aspect of the regulation, which is still in force, is to stop the systematic deregulation of land, which has been the cause of significant environmental and social problems (urban segregation). Although the act does not set legal restrictions for growth limits, it implicitly opens the door for regional legislation to establish such a restriction if considered necessary and overturns the previous (and ephemeral, from 1998 to 2007) legal justification that all Spanish land was available for urbanization.

<sup>35</sup> At [http://www.fomento.gob.es/MFOM/LANG\\_CASTELLANO/\\_ESPECIALES/SPANISHREALESTATE/PRECIOS/EVO\\_MEDIA\\_NAL/](http://www.fomento.gob.es/MFOM/LANG_CASTELLANO/_ESPECIALES/SPANISHREALESTATE/PRECIOS/EVO_MEDIA_NAL/).

<sup>36</sup> A. C. Nelson, *Effects of Urban Containment on Housing Prices and Landowner Behavior*, Land lines Newsletter of the Lincoln Institute of Land Policy, May 2000, p. 3, at [https://www.lincolnst.edu/pubs/dl/297\\_LLI0005.pdf](https://www.lincolnst.edu/pubs/dl/297_LLI0005.pdf).

of 2008<sup>37</sup>. Therefore, the control of urban sprawl should go hand in hand with public policies to promote affordable higher density housing in order to avoid this collateral problem<sup>38</sup>.

The final question we should answer is whether we, our societies as a whole, are willing to remain passive and pay the high costs of urban sprawl in terms of economic, social and environmental sustainability.

## **THE “IGNORED CHALLENGE”, URBAN SPRAWL AND ITS NEGATIVE IMPACTS IN POLAND: A COMPARISON BETWEEN THE EU AND U.S.**

### **Summary**

Urban sprawl is an important problem in Poland and in the EU, as well as in the US. This article analyzes the concept of urban sprawl, its drivers, its negative environmental, social and economic impacts in the EU context, using Poland as a case study. The research explores the possible ways of controlling urban sprawl and promoting more compact cities through a smart public intervention, protecting the relevant (and sometimes contrary) public interest involved, taking into account American developments like New Urbanism and Smart Growth and some EU experiences.

## **„ZIGNOROWANE WYZWANIE”, NIEŁAD URBANIZACYJNY I JEGO NEGATYWNE SKUTKI W POLSCE: UJĘCIE PORÓWNAWCZE MIĘDZY UNIĄ EUROPEJSKĄ I STANAMI ZJEDNOCZONYMI**

### **Streszczenie**

Nieład urbanizacyjny to ważki problem w Polsce i Unii Europejskiej, a także w USA. Niniejszy artykuł analizuje koncepcje nieładu urbanizacyjnego, jego motyw i negatywne efekty środowiskowe, socjalne i ekonomiczne w kontekście UE, posługując się jako

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<sup>37</sup> “They are many and authoritative voices from society, industry, the government and the academic community complaining of retention practices and speculative land management which obstruct the performance of their duties and, in particular, access of citizens to housing”. The translation from Spanish is ours.

<sup>38</sup> K. A. Danielsén, R. E. Lang, *What does smart growth mean for housing?, Housing Facts and Findings*, 1999, pp. 12–15, at [http://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=1352&context=sea\\_fac\\_articles](http://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=1352&context=sea_fac_articles).

studium przypadkiem Polski. Badania dotyczą możliwych sposobów kontroli nieładu urbanizacyjnego i promowania niewielkich miast przez właściwe interwencje publiczne, ochronę dobrze rozumianego interesu publicznego, biorąc także pod uwagę doświadczenia amerykańskie takie jak Nowa Urbanistyka i Inteligentny Rozwój oraz niektóre doświadczenia europejskie.

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#### KEYWORDS

urban sprawl, urban growth boundaries, new urbanism, smart growth, housing

#### SŁOWA KLUCZOWE

nieład urbanizacyjny, granice rozwoju miast, Nowa Urbanistyka, inteligentny rozwój, mieszkalnictwo