

SPAIN

Status

In November 1999 a new Building Act was passed in the Spanish Parliament, establishing a new Building regulatory system. The Act aims to achieve a better quality in building, so provisions on regulations fixing the quality levels, the professional competencies and responsibilities, and the liabilities and insurance requirements are set out in it. The Act entered into force last May 2000.

The Act sets in terms of objectives the “basic building requirements” on functionality, safety and habitability, which includes requirements on accessibility, structural and fire safety, safety in use, hygiene, health and environment protection, protection against noise and energy and thermal insulation. These general objectives just set and briefly defined in the Act, have to be developed by the Government in a Technical Building Code (“Código Técnico de la Edificación”, CTE). The scheduled time is two years, that is to say before May 2002. The Department competent for this task is the Spanish Ministry of Development (Public Works, Housing, etc).

Mandatory requirements

Situation before the new framework

Spain has never had a Building Code as a whole. Instead Spain always has had an "open framework" to establish the technical requirements for buildings. Several bodies are competent to set up regulations, and their scopes are sometimes overlapped.

On one hand there are “construction” regulations, i.e. the Rules for Concrete Structures, Seismic Regulations, etc., which apply to both building and civil engineering sectors. On the other hand the so-called “industrial safety regulations” are applied to products and installations in all sectors, building included. And finally there are specific regulations for buildings, termed Basic Building Standards (Normas Basicas de la Edificacion, NBE), which at present form a series of seven separate regulations of a compulsory nature dealing with structural, acoustical, thermal and energetic, water-tightness and fire requirements. NBE were approved through Royal decrees by the Government.

The old NBE approach has gone from a pure prescriptive set of requirements (i.e. the water-tightness regulations) to a well-defined performance approach, i.e. the one on acoustics, passing by intermediate or mixed approaches.

The revision of existing NBEs and the new ones under preparation before 1999 were drafted taking into account the performance-based approach.

Nevertheless they all have in common the provision of a “freedom clause” which allows the designer (architect or engineer) and the director of the works to adopt solutions differing from those in the regulations provided they prove by other means the fulfilment of the objectives in that regulation. Such clause it is not only aimed to permit innovation but also to consider the importance of the Spanish professional’s competence

in the construction field, stronger than in other countries and linked to their civil and penal liabilities.

Currently, the trend in the industrial safety regulations field is becoming more and more Performance- Based, due to the influence of the EU directives in the matter, which are also based in the so-called New Approach. Therefore regulations on products, services and installations such as lifts, electrical installations, fuel, gas, and so on, just establish essential requirements. The way to demonstrate their compliance is through the conformity with European standards, drafted upon European Commission mandates.

Future situation

It will start in the 2002. The Ministry of Development is now actively working to prepare the new Technical Building Code (Código Técnico de la Edificación CTE) to be ready for mid 2002. Transitionally the old framework still applies. The goal is to supersede the old and obsolete framework by getting a modern, simple and effective set of building regulations unified in a single Code comparable to the most advanced in the world.

The picture is not sharp yet, but the main idea is to adopt the Performance-Based approach as much as possible and to arrange the code around the Nordic five levels hierarchy. Last March 2000 this idea was publicly presented in the document "Basis for the CTE". The response from all the interested parties to this presentation was very positive. This basis obviously included the experience learned from those countries that have recently changed their systems.

The idea is to write a first version of the CTE made out of those parts of the old NBEs that are still valid so that the provisions and verification methods of the Code look familiar to NBE users.

The Code is being arranged in two parts. The first will include general provisions and a detailed expression (in qualitative or quantitative terms) of the basic requirements laid down in the Act. The second part will include the fourth and fifth levels in the Nordic arrangement: the methods of verification or compliance and the acceptable solutions. Most of this second part will be made out of the old NBE. This will be considered the "official methods of fulfilment" the performance or functional requirements from the first part. They will be part of the code but other ways of compliance could be used. The way these alternative methods are to be recognised is still under discussion. Nowadays in some NBEs (as for instance the one on fire protection) the responsibility to accept the alternative is left to the permitting authority while in others nothing is said.

The new framework will increase the third party building control, particularly in structural requirements. The developer's obligation to subscribe an insurance policy to guarantee the structural damages during 10 years in residential buildings is leading to an increase on external controls on behalf of the insurance company. The quality control companies will carefully check the fulfilment of the codes in both projects and works.

The insurance of the rest of the requirements is not yet compulsory although it is being voluntarily adopted by developers, mainly by housing public promoters.

Supporting documents and innovative systems

Regulations in Spain normally use the reference to national (UNE) or international standards to specify products characteristics, testing methods and so on. In the European Union context it is compulsory to adopt the European harmonised standards when available.

For innovative products and systems Spain has the Agrément system since the sixties. The Instituto Torroja for Construction Sciences was accredited by the Government to issue the Agrément Certificates (DIT) following the UEAtc rules. The IETcc has more than 30 years of experience in the matter. There is also a European Technical Agreement foreseen in the European legislation on construction products that is applicable in cases when the construction products manufacturer wants to innovate.

A public site for the new Code is under preparation. Presently some information on the NBE in Spanish can be found in the URL

<<http://www.mfom.es/vivienda/normativa/NormativaEdif.html>>

The Spanish Building Act 1999 resumé

(Act 38/1999 of 5th November 1999 published in the Official Gazette 6.11.1999)

Objective

The primary objective is to regulate the building process by updating and completing the legal concept of the agents involved in the process, establishing their obligations in order to determine their responsibilities and cover the guarantees to users based on a definition of the basic requirements to be met by buildings.

In doing so, the legal concept of building has been technically defined and the essential principles and scope of the Act that must govern this activity have been delimited, specifying both the new building works and works on existing buildings to which these regulations shall apply.

Basic requirements

In view of increasing demands for quality on the part of citizens, the Act establishes the basic requirements to be met by buildings so that the guarantee protecting users are based not only on technical building requirements but also on the establishment of surety and property damage insurance.

These requirements cover both the functional and safety aspects of the buildings as well as those referring to habitability.

Agents participating in the building process

The Act establishes the obligations of each and every one of the different agents participating in the building project, and the liability derived therefrom, considering the developer as the individual or legal entity taking the initiative for the entire process and the one obliged to guarantee the building against potential property damages. Under the heading of building activities, special mention is made of the Construction Manager as well as the obligation to formalise any part of the works which may be subcontracted.

The Act also delimits the scope of the activity of the professionals, designer, the Works Director and the Director of Execution of the Works, clearly establishing the specific scope of their intervention based on their professional qualifications.

The different agents will be personally and individually liable for property damages to the buildings caused by their own acts as well as by the acts of others for whom they are legally responsible under the Act.

Liability periods

The liability periods are established for terms of one, three and ten years, depending on the different damages caused to the buildings. The builder is responsible for all property damages derived from deficient construction for a period of one year; the other agents involved in the construction of the building are liable for all property damages caused to

the building by faults or defects affecting its habitability for a period of three years, and for a period of ten years for the damages resulting from faults or defects which affect the building's structural safety.

Mandatory insurance

With regard to legal guarantees, the Act stipulates a mandatory insurance or surety policy for a period of one year to cover property damages, which may be replaced by the developer withholding 5 percent of the cost of the contract to cover the property damages caused by defective execution.

The Act furthermore stipulates for buildings used as housing that developers must take out an insurance policy to cover the property damages caused to the building by the failure to comply with habitability conditions or which affect the building's structural safety, for three and ten year terms, respectively.

Building Code

A second final provision authorised the Government to pass a Technical Building Code within two years which development the basic requirements to be fulfilled by the buildings mentioned in article 3; the third urges the Government to adapt the regulation of the Forced Expropriation Act to the modifications introduced in the fifth additional provision and the fourth addresses the matter of the Act coming into force.

Fostering quality

In short, the Act attempts, within the framework of the Government's powers, to promote quality by stressing the basic requirements and the obligations of the different agents taking part in the different activities involved in the construction of a building, in order to establish the liabilities and the guarantees which protect users and to fulfil the constitutional right to a dignified and habitable dwelling.

The Spanish Building Act 1999 Summary

General Provisions

- Article 1. Purpose
- Article 2. Scope

Technical and Administrative Building Requirements

- Article 3. Basic Building Requirements

1. In order to guarantee people's safety, society's well-being and the protection of the environment, buildings must be projected, constructed, maintained and conserved in such a way as to satisfy the following basic requirements:

a) Functional Requirements:

- a.1) Utility, to ensure that the arrangement and dimensions of the spaces and the fitting out of the services allow the building to be used for its intended purpose.
- a.2) Accessibility to ensure that disabled (with impaired mobility and communication) people are able to access and move about the building under the terms foreseen in the specific regulations.
- a.3) Access to telecommunications, audio-visual and information services pursuant to the provisions of the specific regulations.

b) Safety Requirements:

- b.1) Structural safety, to insure against damages to the building or any part thereof originating in or affecting the foundation, supports, beams, framework, load-bearing walls or other structural elements which could jeopardise the building's mechanical resistance and stability.
- b.2) Safety in case of fire, to insure that the occupants may evacuate the building safely, that the fire may be stopped from spreading inside the building and to neighbouring buildings and that fire extinguishing and rescue services may operate.
- b.3) Safety of use, to insure that the normal use of the building poses no risk of accident to people.

c) Habitability Requirements:

- c.1) Safety, hygiene and environmental protection to acceptable levels of healthiness and water tightness inside the building and to prevent any damage to surrounding environment, guaranteeing appropriate management of all kinds of waste.
- c.2) Noise protection to ensure that noise levels do not threaten people's health and allow them to carry out their activities normally.
- c.3) Energy savings and thermal insulation to ensure the rational use of the energy needed for the building to be run properly.
- c.4) Other functional aspects of the constructive elements or services which allow the building to be used satisfactorily.

2. The **Technical Building Code** is the regulatory framework which establishes the basic quality requirements for buildings and services which allow them to comply with the preceding basic requirements.

As soon as this Act comes into effect, the basic building requirements and other compulsory technical requirements shall be the applicable technical regulations until the **Technical Building Code** is approved as foreseen in the second final provision of this Act.

The Code may be supplemented with other requirements and regulations dictated by the competent authorities and will be updated periodically in accordance with the evolution of technology and society's demands.

- Article 4. Project
- Article 5. Administrative Requirements and Permits
- Article 6. Reception of the Works
- Article 7. Documentation on the Works Performed

Building Agents

- Article 8. Concept
- Article 9. The Developer
- Article 10. The Designer
- Article 11. The Builder
- Article 12. The Works Director
- Article 13. The Director of the Execution of the Works
- Article 14. Quality Control Laboratories and Entities
- Article 15. Product Suppliers
- Article 16. Owners and Users

Responsibilities and Guarantees

- Article 17. The Civil Liability of the Agents who intervene in the Building Process.
- Article 18. Prescription periods

- Article 19. Guarantees Against the Property Damages Caused by Construction Faults or Defects
Article 20. Requirements for Deeds and Registration

Additional Transitory and Derogatory provisions

Final provisions

First. Constitutional Basis

Second. Authorisation for the Government to Approve a **Technical Building Code**.

The Government is hereby authorised to approve, by means of a Royal Decree within two years of this Act coming into force, a Technical Building Code which establishes the requirements to be met by buildings in relation to the basic requirements established in parts 1.b) and 1.c) of article 3.

Until such approval, the Basic Building Regulations - NBE (Normas Básicas de la Edificación) regulating the technical requirements for buildings as listed below shall be used to satisfy such basic requirements:

NBE CT -79	Thermal Conditions in Buildings.
NBE CA-88	Acoustical Conditions in Buildings.
NBE CA-88	Actions in Buildings.
NBE FL-90	Resistant Brick Walls.
NBE QB-90	Waterproofing of Roofs made of Bituminous Materials
NBE AE-95	Steel Structures used in Buildings
NBE CPI-96	Fire Protection Conditions for Buildings

Likewise, the rest of the mandatory technical regulations governing any of the basic requirements established in article 3 shall apply.

Third. Adaptation of the Regulations of the Forced Expropriation Act.

Fourth. Validity.