

Urban-construction code: public consultation closed

December 2016 saw the close of the public consultation of the bill designated as the “urban-construction code”, which will replace the Construction Law, the Spatial Planning and Development Act and all the special-purpose acts in their entirety. The code will also include a selection of regulations which are currently set forth in the Property Management Act, the Surveying and Cartography Law, the Act on the provision of environmental information, environment conservation, public participation in environment conservation and on environmental impact assessments.

The Ministry of Infrastructure and Construction notes that the Act is aimed to improve the predictability of investment and construction processes and to streamline such processes, to restore and ensure productive spatial management and to support greater involvement of the society in broadly-understood spatial solutions so as to ensure that actions contrary to the interests of the community are generally avoided. Moreover, another objective of the act is to introduce a process that will ensure transparent and effective location and execution of public projects.

The bill will introduce new notions: “investment project” and “investment consent”. The notion “investment project” defines an action whose aim is to conduct construction work, change land use and change the use of a building structure. The term “investment consent” will replace such notions as: construction permit, notification of construction, notification of change in use, land development decision and decision on real estate division. It is assumed that the solution will shorten the duration of the procedure by half. The investment consent will be given by investment administration authorities, county or voivodship governor (*starosta* or *wojewoda*, respectively).

The draft code introduces a novel division of investment projects into six categories. The first category comprises the simplest structures which currently do not require any consent at all. The second category comprises less complex structures which can be erected based on notification, e.g. umbrella roofs. Categories three to six comprise more complex investment projects, ranging from single-family houses to stadiums and power plants. Which category a structure falls into depends on its cubic capacity, height, etc.

Investment projects will be categorised by the Council of Ministers by way of a regulation. For structures falling into categories two to four, the investment consent will be given in the form of a decision or a tacit consent. Category five and category six will require an investment consent in the form of a decision.

Public participation in spatial planning occupies an important place in the bill. Pursuant to Art. 23.2, in the cases provided for in the Act, any person has the right to submit comments, proposals and to take part in the public discussion. Moreover, public authority bodies will be able to hold meetings, debates, etc. so as to increase citizen participation in spatial planning. The investor will also be able to cooperate with the commune/municipality in the implementation of spatial policies. The terms and conditions of the cooperation will be defined by an urban development agreement or infrastructure agreement. A local zoning plan can be adopted at the investor's request provided the communal/municipal council grants the request. If this is the case, an urban development agreement will be signed, where the investor will agree to finance or transfer the associated projects free of charge to the commune/municipality, if a local zoning plan has been adopted, so as to complete the main investment project. Moreover, the investor will be able to initiate changes to the plan if it agrees to cover the related costs. In the current legal environment, it is impossible to provide such financing.

The bill also classifies parties to investment proceedings. In principle, only the investor will be a party to the proceedings concerning investment consent. However, there are exceptions to this rule. The investor will not be the only party to the proceedings which require public participation pursuant to

the regulations on the provision of environmental information, environment conservation, public participation in environment conservation and on environmental impact assessments. The rule will also not apply to real estate division. Moreover, if the investment project falls in categories three to six and it is to be carried out in an area where no valid local zoning plan is in place, the bill will allow more parties to the proceedings. In such an event, in addition to the investor, the parties to the proceedings will also include the commune/municipality and owners or managers of the properties located in the area in question; moreover, social organisations will be allowed to participate in the proceedings as parties if this is justified by objectives set out in the articles of associations of these organisations.

Other changes provided for in the bill include: extension of public goals, transformation of the meaning of land development right and common regulations for unlawful buildings and unlawful urban planning. Public goals will be divided into three categories. There are also plans to back out of setting public goals in separate regulations. The principle of “building freedom” will be abolished. There is also a plan to introduce an urban-construction register which will record requests and decisions. Unlawful construction will not be considered an offence. Charges for unlawful construction will depend on the type of project and its area.

Solutions suggested in the discussed bill will be introduced step by step, during a transitional period, so as to enable the execution of projects pursuant to building permits and decisions on land use and development which have already been issued. It has been announced that proposals regarding transition issues will be consulted, and that the consultations will be held as regional meetings. The government notes that the draft Code will likely be submitted to the Parliament along with a bill introducing the Code and drafts of key implementing acts in July 2017.

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