

Major departure from approved building permit design in the light of the amended Construction Law

The Act of 16 December 2016 amending certain acts with a view to improving the legal environment for entrepreneurs (Journal of Laws of 2016, item 2255) marked a significant change to the provisions of the Act of 4 July 1997 – Construction Law (consolidated text: Journal of Laws of 2017 item 1332, as amended, hereinafter referred to as the Construction Law) concerning both major and minor departures from the approved construction permit design or other terms and conditions of a construction permit. This article is aimed to clarify the revised regulations applicable to such departures.

The amended law introduces two categories of departures from the approved construction permit design or other terms and conditions of a construction permit, i.e. major and minor ones. The list of major departures is contained in Art. 36a.5 of the Construction Law.

Firstly, the article stipulates that is departure concerning the development plan for the plot of land or site is a major departure from the approved construction permit design or other terms and conditions of a construction permit. Accordingly, every execution change diverging from the development plan for the plot of land or site approved by virtue of the construction permit is a major departure from the design. This is a major difference when compared to the previous wording of the law where a major departure was defined as a change to the scope covered by a development plan of the plot of land or site.

Another novelty in the set of major departures from the approved construction permit design concerns departures regarding the conditions defined in the local zoning plan, local law acts or decisions on land use and development. The revised wording of the article can raise questions as to what particular departures should be deemed major in the light of the provision in question. As a matter of fact, neither the construction permit nor the construction permit design interfere with the scope of planning decisions issued by communes or municipalities, or any other local law acts. It appears that the provision should be construed in line with the current practice, meaning that it applies to departures concerning conditions of legal acts and decisions specified in that provision. At the same time, it should be noted that this currently applies to all kinds of local law acts.

Apparently, the provision primarily applies to acts issued under the Revitalisation Law, but – in the absence of limitations – it applies to all local law acts, including even those which *prima facie* appear to have little to do with the development of real properties.

A major departure from the approved building permit design is also an executive change whose legal sanctioning requires not only obtaining opinions, approvals or consents required to secure the construction permit but also modification thereof. Previously, the provision only stipulated that it was necessary to secure new opinions, approvals or consents, so it could raise questions if the departure could be deemed minor in the event of having to modify any such opinions, approvals or consents.

Another major change is the introduction of exceptions from the rule that all executive changes resulting in the change of specific parameters of a construction work, such as the cubic capacity, covered area, height, length, width or the number of storeys, are major departures, are major departures. Art. 36a.5a lists the category of minor departures. Pursuant to this article, a change in terms of the height, width or length of a building structure is not a major departure from the approved construction permit design or other terms and conditions of a construction permit if the departure fulfils all the following conditions: (1) the departure does not change a building structure's height, width or length by more than 2% of, respectively, height, width or length stated in the construction permit design, (2) it does not increase the structure's impact zone, (3) it does not modify the conditions required to ensure access to the structure for the disabled, (4) it does not change the intended use of the structure or any of its parts, (5) it does

not require obtaining or changing opinions, permits or approvals required to secure a construction permit, (6) it does not contravene the applicable technical and construction regulations. If all of the above conditions are met, the departure from the approved construction permit design is not major and it may not be classified as a major departure by the competent designer.

The above exception from the rule that all departures concerning specific parameters of a construction work are major departures does not apply to non-linear structures, which means that every departure concerning specific parameters of a construction work, such as length, height or width of linear structures should be classified as a major departure under the revised regulations. However, it appears that previous case law remains valid in this respect, allowing for minor departures without differentiating between linear structures and other building structures. Therefore, the competent authority will be required to examine the nature and scope of departure for each individual case.

Furthermore, as previously, only a major departure from the approved construction permit design or other terms and conditions of a construction permit requires a decision to amend the construction permit. Minor changes do not necessitate obtaining such a decision. Still, when the designer classifies the change as minor, they are required to attach to the construction permit design the relevant information (drawing, description) concerning the departure. It is meant to allow the building control authorities to check the classification at the stage of the construction permit application process.

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