

Legal opinion

Big changes in Construction Law are coming: main points of the draft amendment bill

The Ministry of Investment and Development is pushing ahead with its wide-ranging amendment to the Construction Law. Following a public consultation exercise that took place in the spring, it has now published an updated text of the draft bill, which it wants to see passed before the end of this Parliament in September. Since its enactment would amount to a minor revolution in building regulations, it is worth discussing its main points.

One of the most significant proposed changes concerns the building permit design. It would be divided into three distinct parts (Article 34): site plan, architectural-construction plan, and technical plan. Crucially, only the former two would be subject to approval by the district office. The technical plan, specifying e.g. the structural, geotechnical, or energy features of the built structure (and necessarily compatible with the other two plans), would only be submitted to the construction supervision authority when applying for the occupancy permit. According to the ministry, the change will speed up the issuance of building permits, and the acceptance of

building notifications, by easing the burden on district offices and reducing the time needed to prepare the necessary documents. The exact scope of each type of plan is to be set out in executive regulations. (The architectural-construction plan, for example, will cover things like the built structure's use, access, spatial and architectural features, or environmental characteristics.)

In another important change, the definition of the impact zone of a planned structure was modified by removing the phrase "w zagospodarowaniu" and replacing it with "w zabudowie" (i.e., instead of talking about limitations on how the area can be developed, the definition now talks specifically about limitations on what can be built there). The practical consequence is that things such as noise levels, vibrations, or exhaust fumes would no longer be taken into account when issuing building permits. As the ministry explains, the Construction Law should properly be concerned only with the impact of built structures; the current definition is not clear enough and tends to be interpreted very broadly by the administrative courts. Certainly, this change could make things a lot easier for investors and act as a spur to construction activity.

In another modification that would facilitate matters for investors, district offices would no longer have to apply to the Minister for authorisation to grant an exemption from technical construction regulations. They would gain the power to grant such exemptions themselves (or to refuse to do so). This is a highly justified and rational change, as the current state of affairs – in which decisions depend on a central government minister – draws out the building-permit issuance process unnecessarily.

The ministry has also decided to spell out explicitly, in Article 29, the types of projects that require a building permit, those that require a notification, and those that require neither. As it explained, this is necessary because the matter continues to raise interpretive questions.

Several other changes will make it easier for investors to introduce small but important modifications to ongoing projects. Thus, for example, cubic area – a parameter that's difficult to calculate, especially in the case of modifications – will disappear from the list of a built structure's parameters. So will built-up area (primacy will be given to what the local development plan or land development decision says). On the other hand, if the investor decides to change the original heating system to one based on solid fuel, i.e. a less efficient one, this will be treated as a major alteration requiring an amendment to the building permit.

Most of the changes that the ministry is proposing – and our discussion above does not cover all of them; there are others, pertaining to the legalisation of unauthorised structures, for example – are positive from investors' point of view. They respond to their needs and requests, rationalise the process, or clarify interpretive issues. If the draft amendment bill is indeed enacted by this Parliament, the legal environment for builders might look quite different than it does now come 1 January 2020.

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