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Major amendments to the construction and urbanism legislation



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The end of 2016 brought with itself important amendments and supplements to the legal framework concerning the construction and urbanism legislation, by the entering into force of the Emergency Ordinance no. 100/2016 (the "Ordinance").

The explanatory memorandum of the Ordinance justifies the necessity of its issuance based on an incomplete and uncorrelated existing legal framework with limitations in its implementation, which caused various problems in the national law and operational practices in the work of landscaping, urban planning and of construction execution authorizing.

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Major amendments to the construction and urbanism legislation

Below we summarise the main changes brought by the Ordinance:

No.	Amended matters	Description	Brief observations
Amendments to Law no. 50/1991 on authorizing the execution of construction works ("Law no. 50/1991")			
1	The starting point of the authorization procedure for construction works	The authorization procedure for construction works starts with the obtaining the urbanism certificate issued for the execution of construction works.	<p>Prior to the entering into force of the Ordinance, the authorization procedure for construction works started with filing the application for obtaining the urbanism certificate.</p> <p>This amendment occurs on the basis of an non-unitary existing practice with the local and regional government authorities regarding the starting point of the authorization procedure for construction works (determined by the fact that prior to obtaining the construction permit it is necessary the elaboration, notice and approval of a Zonal Urban Plan ("PUZ") or a Detailed Urban Plan ("PUD"), according to Law no. 50/1991).</p> <p>Thus, the amendment is intended to clarify this situation and avoid any future confusion generated so far in practice.</p>
2	Construction building outside built-up area	The authorization for construction works and arrangements of the lands situated outside built-up area is now allowed only for a category of special constructions (e.g. railways, roads, airports, waterways, high voltage power lines). This category will not include houses, holiday homes, boarding houses, garages or other permanent construction or arrangements.	<p>This provision is meant to explicitly mention the construction categories that can be authorized to be executed outside built-up area.</p> <p>However, this provision is not necessarily new, but only expressly stated by Law 50/1991, given the fact that the existing Law no. 18/1991 ("The Land Law") already provides, as a general rule, that any new construction shall be built within the built-up area, except for specific cases.</p>



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No.	Amended matters	Description	Brief observations
<i>Amendments to Law no. 50/1991 on authorizing the execution of construction works ("Law no. 50/1991")</i>			
3	The validity period of the building permit	The validity period of the building permit is 24 months from the issuance date, period during which the applicant is obliged to start the construction works.	<p>Prior to the entering into force of the Ordinance, the validity period of the building permit was of 12 months.</p> <p>In practice, however, it was noticed that, in most cases, the 12 months validity period within the investor was obliged to start the construction works for which he obtained the building permit was insufficient and in most cases required further authorization.</p>
4	The non-issuance of the notices and approvals established by the urbanism certificate within the legal term prescribed by Law no. 50/1991	The fact of not issuing the notices and approvals by the competent authorities within the legal term prescribed by Law no. 50/1991 is now deemed as a minor offence (Romanian " <i>contraventie</i> ") being sanctioned with a fine between RON 5,000 and RON 30,000.	<p>Prior to the entering into force of the Ordinance, the applying law provided an implied approval (Romanian "<i>aprobare tacita</i>") of the notices and approvals established by the urbanism certificate that were not issued within the legal term prescribed by Law no. 50/1991.</p> <p>In the explanatory note of this Ordinance, the elimination of the provisions on implied approval is justified on grounds of speeding up the investment process.</p> <p>However, currently the Law no. 50/1991 does not bring any clarity regarding the remedy for the non-issuance of the respective notices and approvals, so that the person concerned in this matter might be forced to seek legal remedy for obtaining them. In practice, the implied approval could have risen some questions regarding the validity of the subsequent documentation issued based on this type of approval.</p>



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No.	Amended matters	Description	Brief observations
Amendments to Law no. 50/1991 on authorizing the execution of construction works ("Law no. 50/1991")			
5	Construction works that do not require a building permit	One can engage in construction works without a building permit when making repairs on interior finishing and replacements of interior and exterior joinery, provided that the material, shape, gaps and carpentry sizes are preserved and can also make repairs and replacements on floors and interior installations on the buildings located in monument protection areas and construction protected areas, provided they are not buildings with architectural or historical value, established by an approved urbanism documentation.	The provision is intended to simplify the execution of some construction works which, given their nature, should not be subject to an administrative procedure for the obtaining of a building permit.
6	Simplification of administrative procedures	The documentation for the authorization of construction works, along with the specific approval documentation, may now be submitted electronically, but only with the administrative-territorial units which have organized Single Agreement Commissions.	This provision aims to introduce e-governing with urban planning and authorizations and simplifies the administrative procedures and reducing costs. E-governing can be accessed through the electronic single contact point (Romanian « <i>punctul de contact unic electronic</i> » -"PCU") to http://www.edirect.e-guvernare.ro/ .



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No.	Amended matters	Description	Brief observations
<i>Amendments to Law no. 350/2001 on spatial planning and urban planning ("Law 350/2001")</i>			
1	Development of PUZ	<p>In case of PUZs developed for built-up areas, the area to be covered must be bounded by at least 3 public roads or limitations imposed by elements of the environment stable over time.</p> <p>In case of PUZs regarding the extension of the urban areas, the area to be covered must be at least of 5000 sqm.</p>	<p>Prior to the entering into force of the Ordinance, PUZs were also being developed for a single plot in case of an investment that did not integrate into the legally approved urban planning regulations, and without any further conditions.</p> <p>In the explanatory note of the Ordinance, this practice has been described as forcing the legal framework, given the fact that the concept of a plot became somehow equal to the concept of an area for PUZ development sites. This has resulted in an incoherent development, unnecessary bureaucratic work for the structures of public administration, as well as litigations between neighbors.</p> <p>The new regulation should correct this situation by imposing the developing/updating of some PUZs or some General Urban Plans ("PUG") for larger parts of the concerned localities.</p>
2	Decisional transparency and access to public information	<p>Landscaping and urban planning documentation that is legally approved shall be made public by the authorities, including by publishing the content of the respective documentation on the website of both cityhall and county council, and also by publishing it by the Ministry of Regional Development and Public Administration in the National Territorial Observatory.</p>	<p>This provision fully supports the purpose described in the explanatory memorandum of the Ordinance of ensuring transparency and public access to documents of general interest.</p>



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No.	Amended matters	Description	Brief observations
Amendments to Law no. 350/2001 on spatial planning and urban planning ("Law 350/2001")			
3	The changing of the land usage coefficient ("CUT") by PUZ	<p>The Law no. 350/2001, in both previous and current form as amended by the Ordinance, provides as a general rule that an extended CUT can not exceed by more than 20% the initially approved CUT by PUG, and just one time.</p> <p>According to the Ordinance, the above mention provision regarding the CUT shall not apply to PUZ sites designed for the establishment of industrial parks, technological parks, supermarkets, commercial parks and service areas.</p> <p>The Ordinance also introduced the provision stating that when amending a legally approved PUZ already containing CUT increases, then another increase of this coefficient by a new PUZ, shall not be accepted.</p>	<p>Prior to the entering into force of the Ordinance, the Law no.350/2001 provided that the rule regarding the extended CUT did not apply to PUZ sites designed for the establishment of industrial parks, technological parks, supermarkets, commercial parks, service areas and "other similar", the latter term being eliminated by the Ordinance, and therefore conferring now limited character to the exception.</p> <p>Although this new amendments are more restrictive, they create a more organized and coherent legal framework regarding the CUT, by eliminating the possibility of abusive or uncorrelated extensions of the CUT with any of the concerned urban area.</p>
4	The validity period of landscaping and urban planning documentation	<p>In case of not expressly setting a validity period for the landscaping and urban planning documentation by the competent authorities, the respective issued documentation shall remain valid until the approval of other amending or replacing documentation of the same or higher rank.</p>	<p>This provision clarifies the existing situations in practice when certain documentation was issued without providing its period of validity.</p> <p>Because the Law 350/2001 did not provide a solution for such situations, one could have easily concluded that the respective documentation was issued without compliance with the legal requirements.</p>



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No.	Amended matters	Description	Brief observations
Amendments to Law no. 350/2001 on spatial planning and urban planning ("Law 350/2001")			
5	Extension of the validity period of the landscaping and urban planning documentation	The validity of the landscaping and urban planning documentation provisions will now be automatically prolonged for the investments for which the urbanism certificate was issued in order to authorize the execution works.	<p>Prior to the entering into force of the Ordinance, the validity of the landscaping and urban planning documentation provisions was automatically prolonged for the investments that started in the documentation's period of validity, and until their completion.</p> <p>However, it was difficult to prove in practice when exactly was the starting moment of the investment, so that the legislator chose to replace the starting moment of the investment with another reference date as of which the validity of the documentation is extended, more objective and definite.</p> <p>This new regulation should reduce the bureaucracy that so often characterize this domain.</p>
6	The requirement of the urbanism certificate	<p>Subsequent to the PUD approval, the required documentation for authorizing the execution of construction works in order to obtain the building permit can be prepared, without requiring a new urbanism certificate.</p> <p>However, after the PUZ approval, one will now have to apply for another urbanism certificate in order to obtain the building permit, given that the certificate issued for the PUZ approval is not valid for further use.</p>	These provisions continue on one hand the simplification of the administrative procedures for obtaining the necessary documentation subsequent to the PUD approval, but on the other hand hamper the procedure of obtaining the necessary documentation after PUZ approval.

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