

Clients & Friends Alert

January 2017

Practical Legal Issues After the Recent Changes of Urbanism Law 350/2001 and Authorization of Construction Works Law 50/1991 Following the Entry into Force of Emergency Ordinance 100/2016

Developers be Aware!

By the end of December 2016, the Romanian Government has amended the rules for urbanism and authorization of construction works. This was made under Emergency Ordinance 100 dated 15 December 2016, published with the Official Gazette on 27 December 2016.

Although largely unnoticed by the Romanian media, these changes have a significant impact for the urbanism and construction market in Romania.

This is a brief presentation of the key issues of the new law, having an impact on commercial developments.



A. PUZ RELATED MATTERS

1. PUZ Minimum Required Surface

1.1 New Legal Provision

The law establishes a land surface threshold for PUZ issuance:

- In case of intravilan land, only for areas topographically delimited by three public roads or by other natural limits of the land created in time;
- Typically at the convert of land from outside the city zone to intravilan a PUZ is required. Under the new law, PUZ can be issued only for plots of land larger than 5,000 sqm;
- No PUZ creating islands of intravilan land within the outside the city zone can be issued, unless these islands benefit from preexistent access and utilities infrastructure or shall be developed alongside with the real estate investment promoted by the PUZ.

1.2 General Comments

The tendency under the new rule is to allow PUZ issuance for larger plots only.

Having a PUZ issued for individual plots of land would no longer be an option!

The “three public roads” threshold rule implies that all land owners within the PUZ affected areas, need to agree with the PUZ details.

Otherwise, they might raise claims against the PUZ.

Gathering approvals from all owners might in fact prove to be logistically challenging and eventually a real hindrance in successfully promoting a PUZ.

2. What is the Initial Approval?

2.1 New Legal Provision

The previous opportunity approval (Romanian: *aviz de oportunitate*) issued by the chief architect/chief urbanist of the municipality on the opportunity to issue a new PUZ, is now re-baptized as the initial approval (Romanian: *aviz de inițiere*).

The initial approval can be issued only after the preliminary technical view expressed by the technical commissions for land planning and urbanism (*Romanian: comisiile tehnice de amenajare a teritoriului și urbanism*).

2.2 General Comments

The previous opportunity approval and the initial approval are basically the same document.

The municipality needs to obtain first the opinion of the technical commission for land planning and urbanism working at the level of each municipality and county councils.

What is characteristic for this new procedure is that:

- It has no legally established timeframe; and
- It has a centralization effect, in the sense that all PUZ request will be filter by the same technical commission.

B. NEW RULES FOR COMPLIANCE WITH CONSTRUCTION NORMS

B1. FOR PUZ COMPLIANCE

1. Liability of Licensed Specialists Preparing PUZ-related Documentation

1.1 New Legal Provision

PUZ-related documentation shall be prepared and signed by all licensed specialists working on the documentation (including written parts and drawings).

By signing the documentation, each specialist assumes express and individual liability for technical accuracy and correctness of the prepared documentation.

The law establishes a fine in case of liability ranging between RON 10.000 and up to RON 15.000 (roughly between EUR 2,200 and EUR 3,300).

1.2 General Comments

Despite the fact that this concept of liability existed before, now under the new law it is strengthened: each of these specialists assumes liability for technical compliance of the documentation they sign.

This strengthened liability might positively affect the market, by making these specialists more responsible.

The law does not limit the liability to the value of the fines. Any interested party might seek:

- additional compensation in court; and
- generous professional insurance from these specialists.

2. Challenging the PUZ

2.1 New Legal Provision

The prefect and the State Construction Inspectorate (Romanian: *Inspectoratul de Stat în Construcții*) may challenge in court the council resolution approving the PUZ issuance.

In addition, they may also seek suspension of the urbanism certificate, building permit and/or any other approvals/permits issued after and as a result of the PUZ issuance.

All state authorities issuing urbanism certificates and building permits need to provide to the State Construction Inspectorate on a monthly basis the list of all urbanisms/construction related documents they issued in the previous month.

2.2 General Comments

Despite this PUZ challenging right is not new, now it is more explicitly detailed.

The state control exercised by the State Construction Inspectorate has also strengthened.

To this end., the State Construction Inspectorate has a new and more effective tool to track down under-construction projects by benefiting from constant exchange of information with other state authorities.

B. NEW RULES FOR COMPLIANCE WITH CONSTRUCTION NORMS

B2. FOR BUILDING PERMITS COMPLIANCE

1. New Sanction

1.1 New Legal Provision

In case the beneficiary of the building permit commences the construction works but fails to notify this commencement to the state authority issuing the building permit and to the State Construction Inspectorate immediately, the law presumes that the works have commenced the day after the issuance of the building permit, irrespective of the date when works have actually commence.

1.2 General Comments

This new rule is trying to make the beneficiaries more responsible and declare in due time the commencement of the construction works.

The sanction here is that by not declaring to the authorities the real works commencement date, the validity period of the building permit is shortened.

2. No Recycling of Previous Approvals Rule is Firmly Established

2.1 New Legal Provision

In case during the performance of the construction works, it is necessary to obtain a new-building permit, none of the approvals and permits obtained for the issuance of the previous building permit can be used for the issuance of the building permit.

2.2 General Comments

Lack of firm legal establishment until now of this “no recycling” rule has generated in the past numerous heated debates on whether approvals/permits may be nevertheless recycled. At least some players on the market thought so.

Now, hopefully the controversy is closed for good. No existing approvals and permits can be recycled the issuance of a new building permit.

3. Need for Works' Conservation Measures

3.1 New Legal Provision

In case the State Construction Inspectorate suspends the construction works for various legal irregularities, the beneficiary of the works shall also be obliged to undertake conservation measures of the already executed works.

3.2 General Comments

What is new is the obligation of undertake conservation measures. The law is not specific in terms of what conservation means.

From our experience and following discussions with authorities, conservation measures include any and all actions and prevention measures designed to avoid potential accidents triggered by lack of supervision of the suspended works.

C. TRANSPARENCY MEASURES

1. Written Parts and Drawings of the PUZ- Documentation Available Online

1.1 New Legal Provision

Municipalities and county councils shall make available on their official website in detail the content of the PUZ-documentation - written parts and drawings.

1.2 General Comments

Theoretically, now, any interested party may have access to this kind of detailed information regarding the PUZ.

How this transparency rule will be implemented is yet to be seen, since the law fails to establish a timeframe or sanction in case this rule is not applied.

At a minimum, we are expecting that the number of lawsuits to increase, as plaintiffs have now the necessary tools to examine the entire PUZ documentation and assess any irregularities.

2. NO-vote Against PUZ Issuance Needs to be Justified

2.1 New Legal Provision

All members of local or county councils casting a NO vote against the issuance of the PUZ needs to argue in writing their refusal.

2.2 General Comments

This rule is intended to reduce arbitrariness, by making all council members to justify their vote against the PUZ.

Yet, there is no legal sanction for lack of compliance with this rule.

**We hope that you will find the above useful.
In case you have any other questions, please contact us.**

Contact Biriş Goran:

Victor Constantinescu
vconstantinescu@birisgoran.ro

Sorin Aungurenci
saungurenci@birisgoran.ro

Biriş Goran SPARL
47 Aviatorilor Blvd. RO-011853 Bucharest

T +4 021 260 07 10
F +4 021 260 07 20

DISCLAIMER: This material reveals only such issues deemed to be the most important. This material does not represent at all an extensive benchmarking study of the regulations under the law.

For better knowledge of all amendments and newly introduced matters, please consult the entire Emergency Ordinance 100/2016.

This material does not represent a legal opinion and may not be used as such. The contents of this informative material are the exclusive expression of the analysis of legal provisions and do not secure that a certain result will be obtained.

Biris Goran SPARL does not assume any responsibility and no legal liability shall be required by third parties related to or deriving from the contents of this material.