

(Re)construction law

In June, the Sejm received a draft amendment to the Construction Law. The project, described by the government as "deregulatory", aims to speed up the investment and construction process, simplify it and make it easier for investors - both individual and institutional - to carry out construction projects. So, let's take a look at what the proposed 'deregulation' would cover.

One of the most interesting proposals in the draft amendment is the introduction of the so-called 'yellow card' - a new mechanism for construction supervision. If the construction supervision authority finds significant deviations from the design documentation, the authority, without initiating administrative proceedings in this respect, could instruct the investor to bring the construction works into compliance with the approved documentation and set a deadline for restoring compliance. This solution is supposed to mitigate the effects of minor mistakes and give the investor a chance to correct significant deviations from the design without the risk of suspending the entire investment. Only if the investor fails to bring the works into conformity with the documentation within 60 days from the date of instruction, an administrative proceeding to stop the works will be initiated.

The amendment also provides for extending the catalogue of construction investments that do not require a construction permit, but only a notification, as well as the catalogue of investments that do not require either a permit or a notification. The notification procedure would make it possible to construct, inter alia, free-standing protective structures with a usable area of up to 35 m², free-standing telecommunications containers with a build-up area of up to 35 m² together with installations and connections, unroofed terraces with a build-up area of up to 35 m² and roofed terraces with a build-up area of more than 35 m² and a roof area of more than 35 m², but not more than 50 m². However, it will be possible to build, inter alia, terraces with parameters smaller than those indicated above, install heat pumps, free-standing solar collectors, photovoltaic devices with a nominal capacity of no more than 20 kWh without notification. The government's reasoning for such a proposed change is that for simple and uncomplicated constructions, there is no need to involve the building administration as much as before. This will make it quicker and cheaper for private individuals to carry out simple investments on their own property.

The draft also assumes changes to the so-called simplified legalisation procedure by shortening the period of the possibility of applying simplified legalisation of significant deviations from the design and willfulness from 20 to 10 years. The justification for the introduction of this change is that, pursuant to the provisions of the Code of Administrative Procedure, after the lapse of the period of 10 years from the date of delivery or announcement of the decision, a decision on the construction permit may not be revoked under renewal proceedings (here, in certain cases, the decision may not be revoked after the lapse of 5 years), nor may it be declared invalid under invalidity proceedings, if 5 years have lapsed from the date of its delivery or announcement.

It is also worth pointing out that the amendment also assumes the transfer to the Construction Law of several definitions found in the regulation on technical conditions to which buildings and their location should conform. The introduction of these definitions into the Act is justified, inter alia, by the fact that these terms appear in the Act, as well as by the fact that work on the draft of a new regulation is underway. Some definitions would also be modified or made more precise. As an example, the definition of a collective residence building would be expanded to include a flat hotel, meaning that the building would not qualify as residential.

If the proposed amendments are adopted, the deadline for the mandatory use of an electronic construction log will also be postponed. Paper logbooks are to be issued as much as five years longer until 31 December 2034, instead of only until 31 December 2029, as is currently the case.

The changes proposed in the draft amendment to the Construction Law under discussion show that the legislator recognises the need to adapt the regulations to the realities of everyday life and investment practice. Fewer formalities, more transparency and a greater margin of trust in the investor - an approach that can improve the efficiency of the entire construction process. We will be watching to see how and when the content of the regulations finally takes shape after the parliamentary work. Let's hope that the final will not resemble an investment that was supposed to be "by the end of the year", and here, after several years, there are still no prospects of acceptance.

Do you want to know more? Contact us!

Weronika Własienko, Counsel
weronika.wlasienko@ngllegal.com

Karolina Pacholska, Associate
karolina.pacholska@ngllegal.com