

Cover article: "New Restrictions on the Issuance and Approval of the Urbanism Documentation"

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The Romanian Government has once again amended the regulations related to the urbanism regime in Romania, by means of Emergency Government Ordinance no. 7/2011. Read in this month's cover article an analysis of the newly introduced amendments aimed at putting a stop to current negative practices in the field of territory arrangement and zoning.

Legislative Retrospective

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company's activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in the following areas:

- Capital Markets
- Dispute Resolution



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- Voicu & Filipescu was ranked as one of the top M&A legal advisers in Romania in 2010, by deal value, according to the 2010 M&A Advisory League Tables for Romania released by ISI Emerging Markets - DealWatch.
- Voicu & Filipescu has been ranked in an independent analysis published by Ziarul Financiar as one of the top ten law firms active on the Romanian market in 2010, in terms of turnover.
- Ziarul Financiar has recently published an interview with partners Cristian Gavrilă and Raul Mișu, focused on the legal solutions available to companies investigated or sanctioned by the Romanian competition regulator.

NEW RESTRICTIONS ON THE ISSUANCE AND APPROVAL OF THE URBANISM DOCUMENTATION

The Romanian Government has once again amended the regulations related to the urbanism regime in Romania. One of the scopes of these new amendments is to stop the practice currently in place regarding approval of more permissive urbanism parameters than the ones under the general urbanism plan (PUG) for the majority of the private real estate projects. This practice has been proven detrimental by hindering the standardization of the territorial arrangement. In other words, the new Emergency Government Ordinance no. 7/2011 (the "**Ordinance**") amending the Law on territory arrangement and zoning was enforced for setting the rule according to which private real estate projects must be developed with the observance of the existing urbanism parameters. Other reasons for the enforcement of the Ordinance is to set up legal provisions to help the update of the local urbanism plans by the competent local authorities and the interdiction to permit that real estate projects developed with the non-observance of the legal provisions to obtain the permits after they have been constructed. The Ordinance provides for new conditions regarding the issuance of the building permit whenever a project does not comply with the already approved urbanism parameters. Specifically, if for the issuance of the urbanism certificate based on which a building permit may be obtained certain amendments of the current approved urbanism documentation are requested, the local public authority may:

- (a) reject the request (this alternative already existed in the previous law), or
- (b) impose as a condition for the project's authorization the execution and approval by the local public authority of a zonal urbanism plan (PUZ) (newly introduced), or
- (c) impose as a condition for the project's authorization the execution by the private investor of a PUZ and its approval for the following projects: for built in areas (in Romanian: *intravilan*) - industrial parks, technological parks, supermarkets, hypermarkets, commercial parks, cultural parks, production areas, areas where new residential projects will be developed, transport infrastructure or for the outside built in areas (in Romanian: *extravilan*) which are to be included in the built in areas only for real estate projects of at least 10,000 sqm for residential purposes or at least 5,000 sqm for services or production purposes (newly introduced), or
- (d) impose as a condition for the project's authorization the execution and approval of a detail urbanism plan (PUD) (this alternative already existed in the previous law), or
- (e) permit the execution of the technical documentation for the building permit if the project is built on a plot within a preexistent continuous front where the existing buildings have the same height regime as the one requested (newly introduced).

The Ordinance is determining the rule according to which the initiative for executing the urbanism documentations belongs exclusively to the public authority limiting significantly the alternatives available for the private investors. For the cases in which is permitted, the PUZ initiated by the private investor may be drafted only if an opportunity opinion is issued. The Ordinance details the legal

conditions for such opportunity opinion to be issued (i.e. drafted by the chief-architect, approved by the president of the county council and by the mayor). The opportunity opinion will determine the area that will be regulated by the PUZ, the functions and potential encumbrances, compulsory regulations and necessary public endowments, the regulations regarding the access, parking and utilities, capacities and maximal parameters for the volumes of goods and contaminants.

Granting such extensive powers to the authorities raise questions with respect to the current status of the PUG in the cities of Romania, which in most cases are old, expired, limiting thus significantly the alternatives for the investors to develop projects. With the purpose of curing such status, the Ordinance provides for the obligation of the public authorities to assume the responsibility of drafting such documents and begin the process for updating the PUG with at least 18 months before its expiry. The Ordinance also introduces a maximum 2 year (3 year for towns having under 10,000 residents) period for which an expired PUG may be prolonged for the finalization of its update procedures. The Ordinance fails to provide for a sanction in case the maximum terms are not observed by the local authorities. This should be rectified as without a real sanction, the ambitious plans of the Ordinance of implementing modern PUG countrywide risks not be achieved.

On a related matter, a question that arises is whether and under which conditions the public authorities will in fact initiate the execution of PUZ (for example, for areas in which such a project is needed in order to achieve the regional and national urbanism policies). In case such initiative will indeed be taken, will this process not be prevented or delayed due to the lack of public funds? It can not be completely ruled out that in practice the private investor will still may have a contribution at the amendment and completion of the urbanism parameters considering that the necessary financing will be easier available than the public funds. Most likely, public procurement rules will have to be implemented with the objective of achieving such cooperation between the parties.

An important restriction brought by the Ordinance with a considerable impact on the development of real estate projects is the impossibility to approve *post factum* the urbanism documentations for the buildings that have been constructed with the non observance of the existing documentations. This restriction will be applicable starting with January 1, 2012. In the past, it was rather common to build without observing the urbanism parameters and once the construction was finalized to initiate the amendments of such parameters. Such practice will have to come to an end as the authorities will have to directly request demolition of these types of buildings.

An aspect which will probably raise debates in practice refers to the projects currently under the process of being authorized. The Ordinance provides that the urbanism documentations executed based on an urbanism certificate or an opportunity opinion issued before February 1, 2011 will be approved under the conditions set forth by the provisions of the law in force before passing the Ordinance, the investors having 1 year from February 1, 2011 to obtain the final approvals for such projects. Having in mind the fact that there are cases in which it is arguable that all permits may be obtained within such period, the investors should speed up the procedures for achieving the approvals.

Another novelty brought by the Ordinance is the instated duty of the State Inspectorate in Constructions to control the observance of the provisions mentioned in the urbanism documentations. The Ordinance is limiting the urbanism amendments that may be brought by the PUD. Before the enforcement of the Ordinance, the PUD could have had as subject matter one or more plots of land. Since the enforcement of the Ordinance, the PUD may refer to only one plot of land.

As a conclusion, the amendments brought by the Ordinance are meant to solve a problem that has been discussed and commented for a long time - the problem related to the fact that there is no unity in determining and on the applicability of the urbanism regulations regarding construction regime. However, the law regarding the territorial arrangement and zoning has been in the past amended for the same reasons. It is true that the Ordinance brings the most restrictive regulations until now and this may lead to a more uniform policy in respect to the urbanism regulations.

capital markets - legislative retrospective

Instruction no. 3 regarding the application of the International Financial Reporting Standards (IFRS) to the entities authorized, regulated and supervised by the National Securities Commission (CNVM), approved by the CNVM Order no. 11/2011 establishes the obligation for all the entities authorized, regulated and under supervision of CNVM to prepare, within a period of 180 days as of the financial year end, for the financial exercises 2010 and 2011, an additional version of the annual financial statements based on IFRS and which are obtained by retreatment of the annual financial statements prepared according to the Regulation based on Directive IV of the European Economic Community, approved by CNVM Order 75/2005, and separately to identify any differences resulting from the application of the two accounting treatments. It shall be subject to financial audit.

Such IFRS annual financial statements are prepared for informative purpose and shall not be considered as fundament for any investing decisions.

The Instruction was published in the Official Gazette, Part I, no. 145 as of February 28, 2011.

Instruction no.2/2011 regarding the auditing of the IT systems used by the entities authorized, regulated and supervised by the National Securities Commission (CNVM), approved by the CNVM Order no. 10/2011 establishes the minimal mandatory requirements for the IT systems audit applicable for the entities authorized, regulated and supervised by CNVM.

The investment firms (SSIF) performing the activities according to article 7 (1) a) and b) of the Capital Market Law no. 297/2004, including the branches of the investment firms from the other member states, which use automatic data processing IT systems have the obligation to prepare security measures and to perform the audit of the IT systems at least on an annual basis by an IT auditor.

The other entities, including the branches of the asset manager entities from member states, have the obligation to obtain the SMSI (security information management system based on the implementation of standards SR EN ISO/IEC 27001:2005) certification issued by a national or international organization certified by a signatory party of the EA MLA agreement.

For the year 2011, all the entities have to exercise the option right either for obtaining the SMSI certification or for the IT system audit, in such respect transmitting to CNVM their statement regarding the exercised option, within 30 days of the date of entering into force of the present instruction. Depending on the exercised option, the entities have to prepare the first IT audit report within 9 months as of the date of entering into force of the present instruction or to submit the documentation related to SMSI certification within 12 months as of the date of entering into force of the present instruction. The SMSI certification is mandatory starting with January 1, 2012.

The Instruction was published in the Official Gazette, Part I, no. 118 as of February 16, 2011.

dispute resolution - legislative retrospective

Government Emergency Ordinance no. 10/2011 abolishing par. (8) of Art. 39 of Law no. 51/1995 on the organization and functioning of the lawyers' profession provides for the amendment to be abolished that was adopted during the parliamentary debates regarding Law no. 270/2010 for the amendment and completion of said Law no. 51/1995, referring to the modification of Art. 37 by the introduction of a no-sanction clause in connection with the lawyers' profession. The abolished section provided that no criminal liability existed in charge of lawyers for the professional recommendations and opinions they made to clients and for the legal actions they suggested to clients in case the said committed criminal offences by acting on such suggestions. The Government Emergency Ordinance no. 10/2011 was published in the Official Gazette of Romania, Part I, no. 113 of February 14, 2011.

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