

CERHA HEMPEL CEE NEWSLETTER *Slovak Republic*

New construction legislation in the Slovak Republic

On 7 June 2022 the **recodified construction legislation** consisting of two separate acts - **Act No. 200/2022 Coll. on Spatial Planning** (hereinafter also referred to as "**SP**") and **Act No. 201/2022 Coll. on Construction** (hereinafter also referred to as "**CA**") was published in the Collection of Laws of the Slovak Republic. These two new Acts will replace one original Act No. 50/1976 Coll. on spatial planning and building regulations (Building Act) as of their **effective date 01.04.2024**.

The basis of the new legislation is the computerisation of processes and digitisation of data related to spatial planning and construction in one information system (URBION). Spatial planning documentation will be processed in electronic form. The spatial planning process as well as the construction procedures will in principle be carried out electronically via the information system. An electronic file will be kept on construction procedures. Service of process in the spatial planning and construction processes will in principle be carried out electronically, with the proviso that, under the transitional provisions of the CA, a natural person may also carry out any procedural act under the CA in written form until 31.12.2028.

The new SP standardizes and simplifies the spatial planning process, which enables both simplification of procedural procedures as such (cancellation of the concept, non-negotiation of the assignment, harmonization with environmental impact assessment processes) and also digitalization of data on the territory and new spatial planning documentation in a unified form and implementation of the spatial planning process in electronic form through the information system and by professionally competent persons. Spatial

planning remains in the competence of local government authorities (municipality, self-governing region), while the Office for Spatial Planning and Exhibition of the Slovak Republic (hereinafter also referred to as the "**Office**") will procure the Concept of Spatial Development of Slovakia and act mainly as a coordinator of a unified procedure and processes of spatial planning by means of methodological guidelines. The previous stages of spatial planning documentation remain unchanged, while the new SP is supplemented by a new type of spatial planning documentation - the micro-region spatial plan.

The SP establishes a new supra-ministerial public administration information system for the performance of spatial planning and construction tasks (hereinafter also referred to as "**IS**"). The IS will have a public part and a non-public part. The **public part** will be accessible via the Office's website and will contain spatial planning documentation, information on the territory provided by the spatial planning authorities for publication, decisions and binding opinions of the spatial planning authorities and selected data from decisions and measures of construction data (from the decision of the building authority on the building permit it will be the decision number, the date of the decision, the date of the decision's legal validity, the name of the builder, the location of the building and a brief description of the building). The **non-public part of the IS** will be used for official communication and access to it will be granted to the so-called authorised persons according to the SP (spatial planning authority, professionally qualified person for the acquisition of spatial planning documentation, processor of spatial planning documentation, affected state administration authority, affected legal person) and the CA (in particular the designer, construction manager, construction contractor, building inspector),



CERHA HEMPEL CEE NEWSLETTER *Slovak Republic*

whose access will be established by the Office on the basis of registration. The non-public part of the IS will contain in particular spatial planning documents, construction documentation according to the CA (e.g. the so-called construction diary, which will be kept in electronic form), data of transport/technical infrastructure and selected data of the land register. The data in the IS that are declared as **reference** will be considered as complete and corresponding to the reality until proven otherwise. Other data in the IS will be for **information** only. The IS will also include a **register of professionally competent persons** according to the SP, through which the spatial planning authority will ensure the acquisition of spatial planning documents and spatial planning documentation. The IS will also include a **register of constructions** according to the CA, which will include in particular data on constructions, data on the contractor of the construction, a list of certified general contractors of reserved constructions and a register of representative associations of owners of information constructions. The Authority will be the administrator and operator of the IS. The Authority will make the data from the IS available to the public via the public part of the IS on the Authority's website.

The SP establishes a new central state administration body - the Office for Spatial Planning and Exhibition of the Slovak Republic with competence in the field of spatial planning, construction and expropriation. The seat of the Office will be Bratislava. The Office will establish permanent **regional offices** (without its own legal personality) and determine the territorial perimeter of their jurisdiction. A specific list of the eight regional offices, their seats and territorial districts is contained in Annex 1 to the SP (e.g. the territorial district of the Bratislava Regional Office will include the districts of Bratislava I to V, Malacky, Pezinok

and Senec). According to the CA, the **construction authority** will be the regional (construction) authority in whose territorial area the construction works are to be carried out. Thus, the CA transfers the competence of the construction authority from the municipalities/localities (it is the so-called delegated performance of state administration) to the Office, which is to represent the centralisation and professionalisation of state administration in construction. The competences of the existing special construction authorities remain basically unchanged. The competence of the construction authority will include in particular deciding on the construction plan, issuing a decision on the construction permit, verifying the construction project, issuing a certificate of approval, verifying the documentation of the actual construction, exercising state construction supervision, hearing offences and imposing fines in construction. According to the transitional provisions of the CA, proceedings initiated and not legally completed by 31.03.2024 (until the new CA comes into force) shall be completed by the building authority - municipality according to the regulations effective until 31.03.2024, but no later than 31.03.2026. Pending files shall be delimited by the building authorities - municipalities to the Office until 30.04.2026, while proceedings initiated and not legally completed according to the existing regulations until 31.03.2026, which have not been completed by the building authority - municipality, shall be completed by the Office according to the existing regulations.

The municipality or the self-governing region, as the concerned authority of the territorial self-government, will issue a **binding opinion** on the basis of the builder's application in the process of negotiation of the construction plan within the time limit specified by law regarding the compliance of the construction plan with the binding part

CERHA HEMPEL CEE NEWSLETTER *Slovak Republic*

of the relevant spatial planning documentation, i.e. the concept of spatial development of the region, the spatial plan of the micro-region, the spatial plan of the municipality (town plan, metropolitan spatial plan) and the spatial plan of the zone. The spatial planning documentation will be a binding basis for decision-making on the construction plan and for project activities. A binding opinion expressing compliance with the planning documentation will be a condition for further action in the exhibition procedure and will be the basis for issuing a decision on the building permit. The binding opinion will be reviewable by the Ministry of Environment of the Slovak Republic on the basis of an initiative of the builder or the building authority submitted within the statutory time limit in the process of negotiation of the draft construction plan. Against the subsequent binding opinion of the Ministry issued in the process of such review, the municipality may file an administrative action, while the building authority may not act further until the final decision of the court.

The CA explicitly defines the so-called reserved activities in construction (design activities, construction supervision, management of construction works, selected geodetic and cartographic activities) and in more detail establishes the rights and obligations of the so-called. It also specifies the scope of sanctionable subjects in the event of a breach of the CA, including other persons involved in construction - the construction contractor, the person in charge of construction supervision and the construction supervisor.

The CA significantly strengthens the position of the designer. The designer will, on the basis of a contractual relationship with the builder, draw up a draft of the so-called construction plan for the builder and on the basis of the builder's instructions, which will subsequently be recorded in the IS for the purpose of its negotiation. Within the

framework of the negotiation of the construction plan proposal

- (i) the competent concerned authority of the local self-government issues a **binding opinion**, the municipality issues a **binding opinion** regarding the compliance of the construction plan proposal with the municipal zoning plan or the zoning plan of the zone, and the self-government region issues a **binding opinion** regarding the compliance of the construction plan proposal with the concept of the territorial development of the region or the zoning plan of the micro-region
- (ii) (ii) the competent concerned authority of the state administration protecting the interest according to the special regulation, according to the type and scope of the proposed construction works, the so-called "construction plan".
- (iii) the relevant legal entity concerned, the so-called **binding statement** with possible comments to the extent of impacts on the transport/technical infrastructure of which it is the owner, administrator or operator, and
- (iv) (iv) the party to the proceedings (in particular the owner of the adjacent land and construction), the so-called **statement** with possible comments. The building authority will be bound by the binding opinion of the authority concerned.

The binding opinion, the binding statement and the representation will be delivered to the developer via the IS, within the time limit set out in the CA, i.e. within 60 days (30 days for simple constructions, 90 days for reserved constructions) from the date of delivery of the construction plan proposal. The entire negotiation process will be ensured for the builder by the designer, who will also prepare a report on the negotiation of the

CERHA HEMPEL CEE NEWSLETTER *Slovak Republic*

draft construction plan, which will contain, among other things, the way of dealing with all the comments made during the negotiation process. Subsequently, the builder shall send the application for a decision on the building permit together with the negotiated draft building plan, the report on the negotiation of the building plan and data or documents to verify the ownership or other right to the land or building to the building authority. The building authority will decide (approve) the negotiated draft building plan. The building authority will issue a building permit decision (instead of a building permit) within 15 days from the date of receipt of a complete application for a building permit decision. On the basis of the approved building plan and in accordance with the building permit decision, the designer will draw up a draft of the so-called construction project. The construction project shall be recorded electronically by the designer in the IS for the purpose of assessing the comments submitted by the authority concerned and the legal entity concerned, if they have reserved the discussion of the construction project in their previous binding opinion/comment on the construction plan and the issue of the so-called compliance clause. The construction project will be verified by the building authority at the request of the builder by means of a verification clause via the IS. The designer will also prepare the implementation design of the construction project, according to the verified construction project. The construction can be carried out on the basis of the building permit decision and according to the verified construction project. The designer will be authorised to carry out on-site project supervision of the execution of the construction works in terms of compliance of the construction works with the certified construction project. The designer will also draw up docu-

mentation of the actual construction and an opinion on the compliance of the completed construction with the certified construction project and will provide this certificate for the approval. The completed construction can only be put into permanent use after the building has been approved (if the building approval is required). The building approval will be initiated by the builder and carried out by the building authority. The building authority will issue the building approval certificate within 15 days from the date of the building approval inspection if it finds that the building is structurally and technically fit for the intended purpose. The building approval certificate will be the basis for the registration of the building in the Land Registry.

As regards **minor constructions** (according to the legal definition), these will continue to be subject only to prior notification, which is to be a simple and fully computerised procedure. The building authority will issue the builder with a confirmation of notification of the construction.

The CA defines in more detail the terms such as building, temporary building, small building (in Annex 2 CA), simple building (in Annex 3 CA), reserved building (in Annex 4 CA), building, residential building, non-residential building, engineering building, linear building, etc.

The CA defines in more detail the so-called. Construction documentation, which it divides into:

- (i) **project documentation:** construction plan (basis for negotiation and approval of construction works), construction project (basis for carrying out construction works and for elaboration of the construction implementation project), construction implementation project (detailed elaboration of the verified construction project)

CERHA HEMPEL CEE NEWSLETTER *Slovak Republic*

- (ii) **implementation documentation:** Construction log (record of the progress of construction works from the commencement of preparatory works to the full completion of construction works and handover and acceptance of the construction), documentation of the actual construction of the construction (basis for the approval of the construction and for the construction works during the operation of the construction), and
- (iii) **operational documentation:** documents on the construction modifications to the construction, documents on the maintenance of the construction and its equipment. The design and implementation documentation of the construction will be kept in the IS.

The new CA is also intended to address the current society-wide problem of reduced level of discipline in construction, so that it no longer provides for the institute of additional permission of the so-called black construction and clarifies the procedure of the building authority in the case of unauthorized construction works and their removal, in particular by defining the so-called

"black construction". The definition of **unauthorised construction works** (so that it is possible to identify already during the construction process, by comparing it with the confirmation of notification or the decision on the construction permit or the certified construction project, that the construction works give rise to a so-called black construction) and the conditions and procedure for their removal.

According to the drafters of the new legislation themselves, it will still take around 6 to 12 months for the new legislation to be gradually put into practice. In particular, the preparation of a number of necessary implementing regulations to the SP and CA, the establishment of the new office (formally already established as of 01.06.2022) and the URBION information system are to be a prerequisite.

For more information

JUDr. Jozef Bannert
Managing Partner
jozef.bannert@cerhahempel.sk
Tel: +421 2 20 64 85 80