

Legal Alert

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Spatial planning - the government's proposal of significant reform

At the beginning of the year, the Ministry of Development and Technology published a draft of the Act amending the Act on spatial planning and development as well as certain other acts ("**Draft**"). The Draft is intended to enter into force in its' substantial part on **1 January 2023**. Nevertheless, as many comments have been submitted within the pre-consultations, not only the Draft itself may still be subject to material changes but also its' entry into force may be delayed.

The Draft includes i.a. following amendments:

- studies on conditions and zoning directions of the municipality ("**Study**") are to be replaced with general plan that is to be a local law act;
- residential zones are to be allowed to be established in the municipalities' general plans, generally only if the housing balance will be positive;
- municipality's general plan is to be allowed to include the so-called municipal standards of accessibility to social infrastructure, including at least the principles of ensuring access to a primary school and to public green areas;
- issuing decisions on land development ("**WZ Decision**") is to be limited;
- validity period of the WZ Decisions is to be introduced;
- the possibility to apply Housing Investments Special Act also to certain non-residential (e.g. to industrial) investments to be introduced;
- rules of developing the investments based on the Housing Investments Special Act are to be substantially amended, in particular by introducing the so-called integrated investment plans, that are to be a type of local zoning plans ("**LZP**"). An integrated investment plan will have to be preceded by the conclusion of a so-called urban planning agreement between the investor and the municipality.

Issuing of WZ Decisions to be limited

One of the key changes that the Draft includes is the replacement of the Studies with new planning acts, namely with general plans. General plans, as opposed to Studies, will constitute a local law act and so will be binding within issuing the WZ Decisions. Such approach will significantly limit the possibilities of developing the areas that not covered by LZP. Under current legislation, the provisions of the Studies are not binding for the authorities issuing the WZ Decisions, and therefore their unfavourable provisions are not a legal obstacle to issuing favorable WZ Decisions.

In addition, **WZ Decisions will not be allowed to be issued for:**

- **RES installations of the installed capacity higher than 500 kW, save for the standalone photovoltaic installations of the capacity amounting up to 1000 kW** (if they are to be located on agricultural land of low soil classes). Hence, RES installations of said capacity are generally intended to be located only based on the LZP;
- **any investments that are to be located within areas other than the so-called areas of supplementary development.** Said areas are to be determined in general plans, around the existing buildings. Hence, LZP is to be the main legal instrument to be used to locate new development and so within spatial planning in general. At the same time, the Draft provides that designating agricultural land of high soil classes (i.e. I-III) that are located within complementary development areas, for the non-agricultural use, will not require the consent of the minister competent for rural development, what may facilitate designation of such lands for non-agricultural use.

Validity period of the WZ Decision to be introduced

The Draft includes an introduction of the validity period of the WZ Decisions. They are to expire after three (3) years as from the date of them becoming final. In terms of the WZ Decisions that became final before the Draft will come into force, said three-year validity period is intended to start at the date of the Draft entering into force.

Said provisions will adversely affect the possibility to flexibly plan the investment process, as it in particular may lead to:

- limiting the possibility to improve the investment process by acquiring "*ready-to-build*" projects (or projects that are at the earlier stages of development), that are based on the WZ Decision, in particular due to potential limitation of the possibility to modify such projects at a later stage;
- increasing the time and costs needed for amending the building permit that has been issued based on the WZ Decision, in particular if such amendment will require also the WZ Decision to be accordingly amended or will be intended to take place after the expiry of the WZ Decision;
- transfer onto the investor the negative consequences of excessive duration of the proceedings for issuing the building permit. If the WZ Decision expires during the course of the proceedings for issuing the building permit, the building permit will no longer be allowed to be issued.

Transitional provisions relating to the WZ Decision

Taking into account the planned date of the Draft entering into force, it should not adversely affect the proceedings for issuing the WZ Decisions that will be instigated (or have been instigated) in 2022. The Draft provides that the hitherto provisions will be applied within the proceedings for issuing the WZ Decision instigated and not completed by the date the Draft enters into force.

On the other hand, once the Draft enters into force, the provisions allowing to issue the WZ Decision only within the areas of supplementary development will not apply to the proceedings for issuing the WZ Decision that have been instigated before 1 January 2026 and have not been completed until the general plan has entered into force in given municipality. In terms of the proceedings instigated after 1 January 2026, WZ Decisions will be allowed to be issued only if the general plan will be in force in a given municipality.

Possibilities to locate housing investments to be limited

The current wording of the Draft may also lead to a significant limitation of the possibility to locate housing investments by introducing the rule that:

- residential zones will be allowed to be established in the municipalities' general plans (the provisions of which are to be binding for the municipalities both at the stage of adopting the LZPs and issuing the WZ Decisions) generally only if the housing balance will be positive. Said housing balance is to be the difference between the demand for new housing development and the sum of land absorption and gaps in housing development. This data is to be calculated according to a complex formula, specified in a secondary legislation adopted under the Draft;
- the municipalities' general plans may include so-called municipal standards of accessibility to social infrastructure, covering at least the rules of providing accessibility to the primary schools and to the green areas. Currently, similar solutions are included in the Act of 5 July 2018 on facilitating the development of housing investments and ancillary investments ("**Housing Investments Special Act**"). Introducing such standards into the municipalities' general plans will mean that they will have to be observed even if given housing investment will not be developed based on Housing Investments Special Act. This solution may significantly limit the flexibility of locating new housing development;
- the WZ Decision will be generally allowed to be issued only within the areas of supplementary development (see comments in point 1 above).

Substantial amendment of the Housing Investments Special Act, including in particular extension of its' scope

The Draft includes extending the scope of the Housing Investments Special Act also on developing investments other than only the housing ones, if such investments include construction of buildings (not only within residential zones but also in areas designated for services or production) of a total built-up area of at least 2000 square meters. One may say that it may materially facilitate the development of i.a. production investments. At the same time, the hitherto rule has been maintained that the investor may, at its' own discretion, develop given investment based on general rules or on Housing Investments Special Act.

On the other hand, some amendments intended to be introduced to the Housing Investments Special Act may adversely affect the efficient development of certain investments. According to the Draft, investments to the development of which the Housing Investments Special Act (once amended) may be applied, will be developed based on the so-called integrated investment plan. The integrated investment plan is to be the type of the LZP. It means that investments will no longer be allowed to be developed based on a resolution on locating housing investment, which could have been inconsistent with the applicable LZP (provided that it was consistent with the relevant Study).

Moreover, the integrated investment plan will have to be preceded by the conclusion of a so-called urban planning agreement between the investor and the municipality. Said agreement may in particular include investor's obligation to develop (or finance the development) the ancillary investment (e.g. public roads, kindergartens, schools, green areas). Currently, concluding the agreement on developing ancillary investments between the investor and the municipality is not mandatory. Obligatory conclusion of a urban planning agreement will therefore have a significant impact on the time and costs of developing the investment, but will standardize the hitherto practice of concluding agreements by the investors and the municipalities on development of ancillary investments.



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