*Czech Republic amends its Building Act*

On 1 January 2018, the long-awaited Act No. 225/2017 Coll., amending the Building Act (i.e. Act No. 183/2006 Coll., on town planning and the building code) entered into effect (the "amendment"), along with another 43 related acts. The amendment has been in the making for more than three years and has been under fire for almost as long for being insufficient. This article, however, will not continue to add to those criticisms; instead, it intends to pinpoint certain provisions that could be seen as significant contributions to construction practices. Along with the amendment, Act No. 326/2017 Coll., amending Act No. 100/2001 Coll., on environmental impact assessment, was also passed, with effectiveness from 1 November 2017, transposing into Czech law Directive 2014/52 / EU of the European Parliament and of the Council of 16 April 2014 (the "transposition amendment"). These may have a positive effect on the length and complexity of permitting approval processes in the Czech Republic.

**Joint proceedings**

The most significant benefit of the amendment is the introduction of the concept of joint proceedings. Various kinds of building approval procedures, which in the past were held separately, will now be able to be merged into a single proceeding, with a single administrative decision. Although the option for separate proceedings remains, allowing the possibility of joint proceedings should bring beneficial time savings, while simultaneously eliminating the possibility of multiple challenges against decisions issued for one project, when such approvals required separate proceedings.

Approvals for a structure's location (zoning decision), its construction (building permit decision) can now be merged into a single joint proceeding. At the same time, various separate proceedings can also be included in the joint proceeding if they relate to a single investment project, i.e. general structures (industrial halls, residential houses, offices, etc.), linear structures (railroad sidings to industrial plants), roads (service roads or local access roads to projects) or waterworks structures (sewerage, water mains, wastewater treatment plants, etc.). Prior to the amendment, joint proceedings existed under the Building Act, but only to a limited extent.

Now, approvals for the location and construction of all related structures can be joined in a single joint proceeding at the same time. No longer will a project investor have to attend separate proceedings for this. Under merged proceedings, decisions on all such related structures must be issued within a standard administrative period of 60 to 90 days.

For example, before the new legislation approvals for an industrial compound (or, alternatively, a residential or commercial project), required four to five separate procedures to obtain zoning approval and building permits (approvals for the production hall, water mains, sewerage and access road). This would usually take, on average, at least 12 months, (however 18 months was more likely). Under the amendment, all these processes can be joined into a single proceeding in which one common permit will be issued within five to six months.

Additionally, unlike the previous regulation, joint proceedings might also include decisions on connections to roads and permissions for tree cutting; previously, these had to be held independently (each within a standard administrative period of 30 to 60 days).

**Including EIAs in joint proceedings**

Furthermore, joint proceedings can also integrate the entire "big EIA" process (i.e. full environmental impact assessment). The Building Office will hold EIA integrated joint proceedings in close co-operation with the "EIA office" (i.e. the regional authority or Ministry of the Environment, generally depending on the project size). Including "big EIA" proceedings in joint proceedings will remove certain duplicities that would otherwise occur if separate proceedings were held.

In integrated proceedings, the Building Office will accept a request for a joint proceeding, project documents and EIA documentation and will advise the appropriate EIA office. Once joint proceedings are launched, the Building Office will provide at least 30 days for the general public to comment on the EIA documents and for the first round of comments on issues associated with the project's

environmental impact. After the first round, the Building Office will submit the comments to the EIA office to carry out the "big EIA" process after which a binding EIA opinion is issued. Following the publication of the EIA opinion, the EIA office will refer the proceeding back to the Building Office for a second round of comments, this time on the building project, for at least ten days. Following the second round of comments, the Building Office will issue a joint permit containing the EIA opinion.

The EIA-integrated joint permit must be issued within an administrative period of 90 to 120 days. That said, this period will be interrupted while the EIA office conducts its own proceeding. Once proceedings resume, the 120 day-period must be respected.

The transposition amendment removed the need for publication and comments from the general public on the expert opinion, which is prepared by an independent expert, on the documentation presented by the investor in the EIA proceeding, rendering the process more efficient. Now, the expert opinion is intended to be used by the EIA office as internal support material for verifying the accuracy of the environmental impact documentation, and it will no longer be available to the general public. This reduces the amount of time, as compared with the regular EIA process, by some 45 days.

Previously, building permits for projects requiring a "big EIA" were issued within 12 to 24 months; under the new legislation, the time needed is substantially reduced to 10 months.

In addition to the time saved, another key benefit is the reduction in potential appeals. As a result of consolidating all the above proceedings into a single proceeding, only one appeal can be filed, against which only one motion for a court review can be filed. With individual decisions, e.g. if five separate proceedings were required, an appeal could be filed against each decision. Now, the single decision resulting from the integrated proceedings can be appealed only once.

It must be noted, however, that a joint permit proceeding (especially when it involves a "big EIA") is not suitable for all projects but only for those projects where the investor knows – or has a clear idea – from the beginning what the project's final shape will be. This relates to the amount of detail investors must submit in the building permit project documentation when requesting a joint permit. Should the investor, e.g. wish to upsize the project and consequently attempt to determine the limits that the affected authorities, neighbours and general public will agree to, or if it can be anticipated during the approval process that variations in the project could occur, joint proceedings cannot be recommended, because the resulting proceeding could be dramatically longer than the current procedure involving separate approvals.

**Below-limit projects**

Major changes resulting from the transposition amendment involve the regulation of below-limit projects. These are projects that are not listed in Annex 1 to Act No. 100/2001 Coll., on environmental impact assessment – projects for which a "big EIA" or at least a screening proceeding (often referred to as a "small EIA") are always required. Under the previous regulation, each below-limit project (i.e. projects not listed in Annex 1) had to obtain an opinion from the competent environmental office as to whether the project required a screening proceeding in order to rule out any negative environmental impact. In practice, below-limit projects usually do not result in any negative environmental impact; therefore, the transposition amendment has removed the paperwork associated with obtaining a below-limit opinion in certain cases.

The new legislation completely removes the requirement for the state administration to supervise certain below-limit projects; it will no longer be necessary to obtain a "below-limit opinion" in cases where the project does not reach the limit value as set out in Annex 1, provided it is not located in a protected area or protective zone.

In the above cases, a screening proceeding will no longer be carried out if there are no other aggravating circumstances or facts, and no opinion will be required to determine whether the project is a below-limit project (i.e. it will be possible to file a request for a zoning decision without any further examination of the environmental impact). An opinion of the competent authority as to whether the project requires a screening proceeding (opinion on a "below-limit project") will be required only if the project exceeds 25 per cent of the relevant limit value set out in Annex 1 and is located in an especially protected area or

protective zone, and the competent authority stipulates that a screening proceeding must be carried out.

As an example, Annex 1 sets the limit value for projects containing a car park at 500 parking spaces. Before the transposition amendment, if this limit was exceeded, a screening proceeding had to be carried out in every case and, if the project was below-limit, an opinion on the below-limit project had to state whether or not a screening proceeding had to be carried out. Now, screenings proceedings for car parks are conducted only if the car park has 500 or more parking spaces or, say, if construction of 125 parking spaces falls within land designated as a national park.

Furthermore, the transposition amendment changed the compulsory parameters of the limit values in Annex 1.

We will use as an example a plastics injection moulding plant with a built-up area of 4,000 sqm. Before effectiveness of the transposition amendment, if the plant processed more than 100 tonnes of polymers a year, it had to acquire an environmental impact assessment within a screening proceeding. In practical terms, this means the plant would process about 400 kg of granulate a day. This limit was disproportionately low and represented an unnecessary burden for the Ministry of the Environment, as it had to review a substantial number of plants. Now, only operations involving the production or processing at least 1,000 tonnes per year of polymers, elastomers, synthetic rubber or products based on elastomers are subject to screening proceedings. Unless the construction project falls under other categories set out in the transposition amendment, such as the storage of hazardous substances (based on a certain capacity), a surface treatment or a warehouse of a particular size, only proceedings for the location and building permit or their joint proceedings should be sufficient. Hence, the approval process could be reduced by half.

Projects for e.g. greenfield data centres will similarly benefit. Unless their operation requires extremely large amounts of fuel for diesel generators or unless other parameters of Act No. 100/2001 Coll., as amended, apply to them, their approval will be faster under the new legislation.

The transposition amendment also removes from Annex 1 certain categories of investment projects, e.g., assessments for the construction of machine works and electric-technology plants.

Of course, a number of these projects will be assessed for other parameters involved in their operation (for example, surface treatment or warehousing). That is why, before any administrative steps are taken, investors should consider carefully what permits are actually needed and not waste their time unnecessarily.

**Excluding associations from standard approval proceedings**

The last major change relates to the exclusion of environmental associations from common approval proceedings. Before effectiveness of the amendment, environmental associations had the opportunity to take part in (and challenge) ordinary approval proceedings under the authority conferred upon them in Section 70 of Act No. 114/1992 Coll., on the conservation of nature and landscape. The new regulation will only allow participation of environmental associations in proceedings that fall under Act No. 114/1992 Coll. (for example, related to the approval of an exception from the protection of especially protected animals), or under Act No. 100/2001 Coll. (e.g. in “big EIA” proceedings), in proceedings for the approval of water treatment under Act. 254/2001 coll. the Water Act, or related to the adoption of zoning planning documentation or amendments thereto (e.g. adoption of or changes to zoning plans); however, environmental associations will not be allowed to participate in ordinary zoning, building or joint proceedings.

Excluding associations from ordinary approval proceedings does not, in itself, speed up the approval processes; however, a fundamental acceleration will be seen where environmental associations could have, in the past, been able to contest approval proceedings. Before the legislative changes, when an environmental association entered into individual stages of the proceedings, it could effectively leverage procedural instruments in order to block the approval process for months or years. The exclusion of environmental associations was passed only in the draft of the amendment; the intention was to prevent environmental associations that had been set up by competitors or profiteers from blocking approval

proceedings, when their only goal was to gain certain advantages (including financial benefits). Excluding these associations from ordinary approval proceedings dramatically reduces their ability to obstruct approval proceedings; on the other hand, the general public has also been restricted from monitoring ordinary approval processes.

This is not a comprehensive analysis of all the changes introduced by the amendment or the transposition amendment; instead, it focuses on the major changes that might make the approval processes more efficient. Although this article takes a rather optimistic approach to the changes introduced by both amendments, the authors believe that the amendment to the Building Act and transposition amendment constitutes only an initial legislative step on the road to a comprehensive reform of the approval processes. The authors firmly believe that legislative work to render building approval processes more efficient will continue, so that approval processes in the Czech Republic might eventually approximate the more user-friendly regulations applicable, in particular, in Western Europe.

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