

REFORMS FOR ECONOMIC GROWTH AND BUSINESS RESILIENCE 2024

REAL ESTATE COMMITTEE



AMCHAM SERBIA
A LEADER IN CHANGE

REAL ESTATE COMMITTEE

CIJ 1: DEVELOP A DIGITAL SPATIAL PLANNING SYSTEM

...BY INTRODUCING AN ONLINE SPATIAL PLANNING SERVICE

CHALLENGE: The production of spatial and urban plans, which designate intended land uses and prescribe building requirements, is a major bottleneck for property development in Serbia. If all procedures are followed to the letter, it takes at least six months to enact a detailed zoning plan, with general zoning plans requiring at least one year. However, due to inefficient communication and co-ordination between the relevant authorities, adopting these plans often takes years.

Serbia currently boasts good planning document coverage, but these are in many cases incomplete and require further elaboration by means of plans at greater levels of detail, which property developers quite frequently must finance before being able to build yet lack any certainty as to how long their projects will take to complete. The absence of a single comprehensive and up-to-date register of all plans makes it difficult even for professionals to know exactly what building requirements apply to which zone.

Although the e-Prostor ('e-Space') online platform is envisaged by the current Planning and Construction Law, this service is yet to be introduced. In addition, the secondary legislation required for its full-fledged implementation are still awaiting adoption.

RECOMMENDATION: Establish the e-Prostor platform to facilitate the development of spatial and urban plans, documents which determine land use and set out building requirements. This service would permit institutions to exchange information electronically, make comments, issue building requirements and approvals, and use the online service simultaneously to develop plans instead of having to wait for each to complete its own part of the work in isolation, as is the case now. Linkages between e-Prostor and the National Land Survey Authority (RGZ), which administers the cadastre, would allow easy access to cadastral information required for construction whilst also allowing regular updates to data in the cadastre.

OBJECTIVE 2: EFFECTIVELY RESOLVE OUTSTANDING PROPERTY ISSUES

...BY COMPLETING THE LEGALISATION PROCESS

IZAZOV: According to the National Land Survey Authority (RGZ), which administers the property cadastre, more than five million buildings remain unregistered with the cadastre, with more than five million having been constructed without the appropriate building permits. The legalization process has to date failed to ensure existing buildings are regularised and prevent construction of new unpermitted structures. In a bid to address this issue, the government has progressively reduced legalization charges, but this has not resulted in a corresponding increase in legalization applications. This policy has also placed non-compliant investors at an advantage over honest ones and has disincentivised compliance.

Amendments to the 2018 Legalisation Law have introduced additional complexity into the legalization procedure. The changes have made it impossible to engage in transactions involving buildings undergoing legalisation, which has threatened the completion of bankruptcies and enforcement actions where debtors' assets were not legalised and have denied legitimate owners the ability to dispose of units in buildings that do not comply with construction permits. Lastly, the law prevents legalisation of discrete units in residential buildings by prohibiting their regularisation unless the entire building has received planning permission. The 2020 and 2023 amendments to the law have failed to make progress in overcoming these issues.

RECOMMENDATION: The legalisation model should be changed to allow all unpermitted buildings to receive planning permission within a reasonable period, prevent unfair competition from threatening compliant developers, and disincentivise and prevent construction of new buildings without planning permission.

A transparent and efficient legalisation process must be based on the use of digital technology, where **unpermitted buildings eligible for regularisation would be marked as such in the cadastre, as would buildings not eligible for regularisation under current rules**, with the cadastre database facilitating searching and identifying these structures.

To ensure legalisation can be completed within a reasonable timeframe, the process ought to be streamlined as much as possible. This can be achieved by **digitalising the process, including the setting of clear time limits for each stage**.

Costs of legalisation must be at a minimum equal to or greater than the costs of obtaining planning permission to avoid giving illegitimate developers an advantage over compliant ones. This could be ensured by registering a legalisation charge against the property owner in the cadastre. Paying the legalisation fee would be required for any refurbishment/reconstruction or change in ownership of the property, and its amount would be adjusted for inflation until it was paid. By contrast, applicants that have paid legalisation fees under past rules should be exempt from paying any additional charges.

Lastly, a long-term **plan to address unpermitted construction** is required that would envisage future steps to reduce building without planning permission to a minimum or eliminate it altogether. In this context, stricter controls are necessary, together with closer co-ordination between state-owned enterprises, to ensure that unpermitted buildings cannot be connected to public infrastructure, including the power grid, water supply and sewerage, and district heating.

Before any such sweeping limitations are introduced, amend the Legalisation Law to **restrict the transfer of legal title only for properties that may not be legalised under current rules**.

...BY ADOPTING SECONDARY LEGISLATION AND SETTING TIME LIMITS FOR AUTHORITIES TO DEMOLISH UNPERMITTED BUILDINGS

CHALLENGE: The Planning and Construction Law explicitly envisages that the authorities may engage a demolition company to remove an unpermitted building that is not removed by its investor, with the cost of the demolition charged to the investor. Any business interested in demolishing the building may pay for the demolition and recoup the costs from the investor. Nevertheless, these provisions are not adhered to, with the authorities not demolishing unpermitted buildings or even planning to do so within the time periods required by the Regulation on the Procedure for Adoption and Content of the Building Removal Programme.

RECOMMENDATION: Amend the secondary legislation to clearly set out the time limits for enforcing decisions to demolish unpermitted buildings and the procedure for any interested demolition company to advance the costs of the demolition. Regulate in detail the time limits and procedure for the local authority to select the demolition company. These changes are expected to enhance the effectiveness of the relevant bodies and give firms interested in demolishing unpermitted buildings access to a broader range of legal instruments for doing so.

OBJECTIVE 3: ENHANCE GREEN BUILDING

...BY APPROPRIATELY APPLYING STATUTORY PROVISIONS GOVERNING THE MOVEMENT OF CONSTRUCTION WASTE

CHALLENGE: Amendments to the Planning and Construction Law enacted in 2023 envisage that no occupancy permit may be issued before the authorities are presented with statements evidencing that any general or hazardous waste produced by construction and demolition ('construction waste') has been transferred to the operator of a waste treatment or storage facility. In November 2023 the Serbian Government adopted an order that for the first time governs the management of construction waste, with the objective being to prevent unregulated landfills and allow waste to be reused in the construction industry.

For these provisions to be appropriately implemented, more work ought to be done to raise awareness of the management of this waste and ensure companies have clarity when applying the new rules. This could include the publication of guidelines for documenting the movements of general and hazardous waste and information as to whether occupancy permits require all waste movement documentation to be submitted or whether alternative arrangements will be established.

Article 6 of the Government Order on Management of Construction and Demolition Waste requires the waste producer to produce a Construction and Demolition Waste Management Plan, obtain approval of the Construction and Demolition Waste Management Plan, and ensure the Construction and Demolition Waste Management Plan is put into effect, including by transferring such waste to an operator licensed to dispose of such waste. Any construction permitting application must also be accompanied by the approval of the Construction and Demolition Waste Management Plan, but this requirement is yet to be introduced into the regulation governing the consolidated permitting procedure.

Further, existing capacity of regulated hazardous waste landfills for storage of hazardous construction and demolition waste are limited, as is the capacity for recycling construction waste.

Where capacity does exist, disposal of construction waste in landfills is prioritised over its reuse and recycling.

RECOMMENDATION: Introduce **detailed procedures** for documenting movements of both general and hazardous waste that allow waste producers to prove the waste is the product of construction and demolition and that it has been transferred to treatment and storage facility, as well as to capture other waste-related information, pursuant to regulations governing consolidated procedure. In particular, the Construction and Demolition Waste Management Plan ought to be aligned with the Government Order on Management of Construction and Demolition Waste.

The Government Order on Management of Construction and Demolition Waste should be harmonised with the waste management hierarchy set out in the Waste Management Law to ensure reuse and recycling of construction waste is given priority over its disposal in landfills.

Infrastructural capacity should also be enhanced to ensure that hazardous construction waste can be disposed of properly. Lastly, functional infrastructure for construction waste treatment ought to be introduced.

OBJECTIVE 4: ENHANCE THE RELEVANT AUTHORITIES

... ..BY ALIGNING STATUTORY AND ACTUAL TIME LIMITS FOR ACTIONS BY AUTHORITIES IN THE REAL ESTATE REGISTRATION PROCEDURE

CHALLENGE: Even though digitalisation and professionalisation have made the cadastre significantly more efficient, time limits for decision-making on applications for real estate registration are regularly breached due to excessive workloads of cadastre services. There are issues with both first-instance cases where applications were filed in person by applicants before the new law took effect, and with actions taken by the RGZ in second-instance cases.

RECOMMENDATION: Improve efficiency of decision-making, especially for applications not made directly by notaries public and other authorities, whilst enhancing oversight of compliance with statutory time limits.

Continue improving online communication arrangements for notaries public and other holders of devolved public authority that submit official instruments using the e-Šalter platform.

Permit businesses to designate staff lawyers as professional e-Šalter users who would then be able to file applications on behalf of those businesses.

... BY PROMOTING CONSISTENCY AMONGST THE VARIOUS CADASTRE SERVICES

CHALLENGE: Different cadastre services interpret legislation inconsistently and at odds with other laws and regulations.

For instance, **the cadastre often rejects applications for conversion of usage rights to title without charge made by entities not listed in Article 102(7) of the Planning and Construction Law** with the explanation that these applications should properly be directed to the Ministry of Construction, Transportation and Infrastructure. As a result, the Ministry is faced significantly increased workload in dealing with these applications and its ability to operate promptly has been greatly affected.

RECOMMENDATION: Produce more transparent and clearer instructions as to how the law should be applied, and offer appropriate training for civil servants, to ensure procedures employed by the cadastre are expedited and made more predictable.

Broaden the publicly accessible list of RGZ requirements and case law.

Clearly instruct cadastre services and Ministry of Construction, Transportation and Infrastructure as to which land conversion applicants fall within their respective remits.

... BY UPDATING THE CADASTRE TO REFLECT THE ACTUAL SITUATION IN THE FIELD AND PROMOTING THE RELIABILITY OF CADASTRAL DATA

CHALLENGE: The descriptive sections of cadastral files may differ from the cadastral plans they refer to. Moreover, information available on the online e-Katastar service is not always reliable as the data are not updated regularly.

RECOMMENDATION: Link information systems and ensure automatic exchange of information between public authorities and the online e-Šalter system.

CHALLENGE: Courts often ignore the legal presumption whereby cadastral data are reliable and require parties to investigate chain of title to ensure bona fides acquisition. Notaries public also seek additional information before agreeing to certify instruments even in cases where clear title is documented for past owners.

RECOMMENDATION: Train judges and notaries public. Amend the regulatory framework to clearly stipulate where cadastral data can be formally relied upon. Lastly, identify all rules that adversely affect formal reliance on cadastral data and amend them accordingly.

...BY BROADENING THE SCOPE OF ELECTRONIC COMMUNICATION WITH THE CADASTRE

CHALLENGE: The Law on Electronic Documents, Electronic Identification and Trust Services in Electronic Transactions was the first step in providing more opportunities for public administration, the general public,

and businesses to engage in online communication and transactions. Even though this piece of legislation formally took effect in 2017, it is yet to be fully applied by all government departments and embedded into sectoral regulations.

As such, more needs to be done to ensure use of digital technologies by notaries public and other public authorities that continue to provide physical submissions to the cadastre. Doing so would greatly enhance the cadastral registration procedure.

RECOMMENDATION: Prioritise the use of electronic documents by notaries public and other public authorities. This would greatly enhance the cadastral registration procedure and permit registrations to occur in real time.