

ASPECTS CONCERNING THE NON-PERFORMANCE OF TAKING OVER UPON COMPLETION OF CONSTRUCTION WORKS (*in Romanian: RECEPȚIA LA TERMINAREA LUCRĂRILOR DE CONSTRUIRE*)

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Date: 12 May 2016

(original version published in *Arena Constructiilor* no. 4/2016)

In practice, there are quite frequent cases when, after the completion of the construction works, the investor does not accomplish the taking over proceedings upon completion of works and, most of the times, the deadline for the performance of the construction works, as stipulated in the building permit, is allowed to expire.

Until recently, such passive behaviour of the beneficiary was not punished by an express sanction. With the coming into force of law no. 53 of 30 March 2016 amending and supplementing law no. 50/1991 on the authorisation of construction works, the non-performance of taking over proceedings upon completion of construction works in accordance with the legal provisions is expressly defined as a civil offence sanctioned with a RON 2,000 fine.

Beside such pecuniary sanction, the non-performance of the taking over proceedings upon completion of construction works has direct effects on the operations that need to be carried out subsequent to the construction works, such as the registration of the construction with the tax authorities, the obtaining of the certificate issued by the local authority that had issued the building permit, confirming that the construction was erected observing the building permit and that the taking over protocol upon completion of works was concluded, as well as the registration of the construction in the relevant land book.

In what this last aspect is concerned, the impossibility of registering the construction in the land book as a consequence of not having accomplished the taking over upon completion of works gains increased relevance once the cadastre works are completed and the land book registrations start generating rights. Thus, the passive behaviour of the investor in relation to the taking over upon completion of works will be sanctioned by the very fact that it will not benefit of ownership rights over the construction.

As soon as the investor decides to accomplish the taking over proceedings upon completion of works after a long period of passivity, it may face a series of practical difficulties. Thus, as stated in the introductory part, the biggest problem concerns the validity of the building permit, but the formalities for the registration of the construction within the fiscal records are also issues that cannot be neglected.

The building permit must be valid upon the taking over proceedings

As a preliminary note, the current relevant legislation in force does not include any express provision requiring a valid building permit for the accomplishment of the taking over proceedings upon completion of construction works.

Nevertheless, this requirement arises from the interpretation of the provisions included in law 50/1991 on the authorisation of construction works ("**Constructions Law**"). Thus, the Construction Law requires that two conditions, a factual and a formal one, be met in order for constructions works to be considered completed. Firstly, from a factual perspective, it is necessary for all the elements provided in the building permit to have been achieved. Secondly, as a formal condition, the taking over proceedings upon completion of works need to have taken place. Consequently, pursuant to the legal provisions, the completion of construction works is conditioned by the very conclusion of the taking over protocol upon completion of works, being actually irrelevant whether the works have been completed within the validity term of the building permit or not. Furthermore, the Constructions Law expressly provides that the constructions in relation to which the taking over proceedings upon completion of works were not accomplished shall not be deemed completed.

Such provision must be corroborated with the stipulation in the Constructions Law according to which the failure to complete the construction works within the established deadlines (therefore, also the failure to conclude the taking over protocol upon completion of works within the building permit's validity term) triggers the building permit's invalidity and the need for a new building permit. The formalities for the issuance of a new building permit are simpler if the construction characteristics do not change relative to the initial permit, case in which a new building permit may be issued without having to obtain a new urban planning certificate.

The obligation of having a valid building permit when the taking over proceedings upon completion of works are accomplished also arises from the investor's obligation to execute the construction works in line with the building permit's provisions – including in accordance with the terms stipulated therein (the validity term of the building permit and the duration of the construction works).

It is no less true that certain offices for construction works discipline agree that taking over upon completion of works can be accomplished even based on an expired building permit, and they invoke a customary practice in this respect. Even so, note should be made that a taking over protocol upon completion of works concluded under such circumstances may be challenged by third parties that can prove an interest in this respect.

Additionally, the taking over upon completion of works based on an expired building permit is sanctioned with a civil fine of RON 2,000 recently introduced by the Constructions Law as a penalty for not having conducted the taking over upon completion of works in accordance with the legal provisions. The competent authorities' right of finding such civil offence is barred by the statute of limitations within 3 years as of the perpetration of the offence (*i.e.*, as of the conclusion of the taking over protocol)

Fiscal implications of not having completed construction works within the term provided in the building permit

In close relation to the investor's obligation of conducting the taking over proceedings upon completion of works within the validity term of the building permit are also the provisions included in the Fiscal Code, regulating the obligation to declare a newly erected building in order for it to be registered in the records of the local tax authorities.

Within 30 days as of the date it acquires the construction, the investor has the obligation of filing a statement with the local tax authority within the jurisdiction of which resides the building, in

order for it to be registered in the records of the tax authorities. In what concerns the newly built constructions, the acquisition date varies by reference to the compliance or non-compliance with the term stipulated in the building permit. Thus, for the buildings fully constructed before the expiry of the term indicated in the building permit, the acquisition date is the date of the taking over protocol, which must not exceed 15 days as of the actual completion of the works. For the building fully constructed at the term indicated in the building permit, the acquisition date is the date indicated in the building permit, which triggers the obligation to execute the taking over protocol within the term provided by the law.

The acquisition date in case of buildings whose construction works have not been completed within the term indicated in the building permit and for which the extension of the building permit's validity was not requested, is the expiry date of such validity term and only in relation to the gross built-up area having the basic structural elements of a building, particularly walls and roof. In such a situation, on the expiry of the term provided by the building permit, a partial taking over protocol will be drafted, indicating the status of the works, as well as the gross built-up area by reference to which the tax on buildings will be determined.

By interpreting the said legal provisions it results that the taking over upon completion of works must be accomplished, either entirely or partially, before the registration of the construction in the tax records, being a condition in this respect.

Filing the statements outside the due term or not filing them at all are civil offences and are sanctioned with a fine ranging between RON 70 and 696. These limits are increased by 300% if the offender is a legal person. Therefore, the lack of a taking over protocol upon completion of works is also sanctioned from a fiscal perspective.

Note must be made that, according to the Fiscal Code, tax payers who are owners of real properties, even of ones that have been erected without a building permit, have the obligation to declare the buildings for tax purposes and to register them in the records held by the local public administration.

The recent judiciary practice has resolved, however, that such registration with the tax authorities cannot take place if the provisions of the building permit have not been met, and that such a situation represents a grounds for the authorities to refuse the registration of such building within their tax records. Thus, it is emphasized that the law imposes an obligation on the investor, to declare the construction for tax purposes, but does not impose the correlative obligation on the fiscal authorities, namely that of registering the construction thus declared, in the tax records. Therefore, although the legal provisions make reference to both aspects (the obligation to declare the buildings and to register them in the records maintained by the local public administration) the courts of law interpret that the investor must ensure that a building making the object matter of tax charges was erected in compliance with the legal provisions, and thus the registration in the tax records is a corollary of the investor's compliance with all legal requirements.