

Legal News

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February 2016

I. Law no. 9/2016 “On some changes and additions to the law no. 33/2012 “On registration of immovable properties”

On February 2, 2016, the Albanian parliament passed the Law no. 9/2016 “On some changes and additions to the law no. 33/2012 “On registration of immovable properties”. The law will enter into force on March 8, 2016.

Although the legislator did not severely intervene in the body of law, the amendments to its provisions will play a significant role. To this effect, the legislator provides for an amendment to paragraph 2 of article 46 of the law, establishing that the registrar (real estate office) shall register the construction permit within 15 days from its submission (by the local government authorities). Following the registration of the construction permit, the registrar upon request of the interested persons, perform registrations of the notarial deeds, the undertaking contracts and other type of contracts, entered into between the developer in quality of investor and the owners of the land or eventual byers of the construction units.

Additionally, the same amendment provides that the developers or landowners are prohibited to stipulate contracts in case the construction permit has not been registered with the (special) register.

The novelties brought by this amendment are essentially two; the first one is the term of 15 days for the registrar to perform the registration of the construction permit and the second, the prohibition to stipulate contracts in absence of the registration of the construction permit.

Both novelties are to be welcomed, as far as imposes a term to the registrar to perform registrations of construction permits and force somehow investors to oversee and make sure construction permits are

registered by the competent authority, as the absence of the registration impedes them to make arrangements over the property.

With the amendment to article 47 of the law, the legislator aims to regulate the conflicts following an enforcement procedure, when the development is the skeleton phase and there are involved the interests of the bank as creditor and of the buyers of the different units within the development. With this change the rights over the development (skeleton) are transferred to the bank. The bank may conduct transactions with third parties, for those units within the skeleton for which no registrations are made in the registry such as notary deeds or contracts. Those as free units may be transferred by the bank to third parties. The property documents issued by the registrar in this phase are of temporary nature, having validity until completion and full registration of the completed development.

Such intervention of the legislator is to be welcomed as allows individuals to emancipate from an insolvent developer, whose facility has being put under enforcement procedures by the banks. Before such intervention, the insolvency of the investor rolled over and hit also individuals that generally were buyers of apartments, forcing them to undergo lengthy judicial process in order to maintain their rights over the purchased units.

II. Decision no. 7 “On some amendments in the Decision no. 3, dated 20.11.2012, “On determining the states having adequate level of protection for personal data”

The Decision no. 7, dated 09.02.2016 “On some amendments in the Decision no. 3, dated 20.11.2012, “On determining the states having adequate level of protection for personal data” provides a more detailed definition for “states having adequate level of protection for personal data”. The Instruction provides that this states not only should be party of the Convention no. 108 of the European Council, “For the protection of individuals regarding the automatic processing of personal data” and its additional protocol of 1981, but they should also approve a specific law and create a supervising authority which exercises its activity in total independence, by securing the relevant

legal mechanisms, including the treatment of complaints, investigations and guarantee transparencies in the processing of personal data.

III. Instruction no. 43 “On some amendments to the Instruction no. 21, dated 24.09.2012, “On establishing the rules for maintaining the security of personal data processed by big controllers” as amended

The Instruction no. 43, dated 09.02.2016 “On some amendments to the Instruction no. 21, dated 24.09.2012, “On establishing the rules for maintaining the security of personal data processed by big controllers” as amended, provides that the storage of data by these services (cloud computing, etc.) is made in accordance with the purpose of their collection. As such, the data are held in excess of the term only after informing the personal data subject and after he/she has given his/her consent clearly. The personal data subject has the right to refuse retention in excess of personal data. The process of destruction of personal data should be irrevocable.

Personal data processed by these services (cloud computing, etc.) should not be transferred out of the territories of EU Member States and Albania, without the preliminary opinion of the public authority responsible for the protection such data.

Another amendment to the Instruction, relates to the manual processing of personal data. To this end, the amendment provides that, if not determined by the legislation in force, which regulates the processing of specific data (manual processing), the retention periods of the personal data are determined by each data controller in accordance with the scope of the data retention. For every change in the term of storage, the controller reassesses the storage period, and notifies the subject of the personal data. Upon completion of the storage period of the personal data, the data subject is removed in an irrevocable manner from all active systems of data processing.

The above acts were published with the Official Gazette no. 22 and are effective as of the date of their publication (i.e. 15.02.2016).

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