

Legal Alert

19 - 23 June 2017

In this issue:

A new Regulation regarding the reception of construction works and corresponding installations shall enter into force on 29 July 2017

The Regulation dated 18 May 2017 regarding the reception of construction works fully replaces the Regulation for reception of construction works and installations dated 14 June 1994. The Regulation brings some welcome changes related to constructions, as well as some clarifications regarding aspects previously regulated.

The deadline for complying with the risk analysis for physical security applicable to companies falling under the provisions of Law 31/1990 and other legal entities is approaching

Until 1st July 2017 the latest, the companies falling under the provisions of Law 31/1990 and other legal entities have the obligation to prepare the risk analysis for physical security. The deadline was established through Decision no. 1002/2015 regarding the modification and completion of Government Decision no. 301/2012 for the approval of Methodological Norms for the application of Law 333/2003 regarding the security of objectives, assets, valuables and the protection of persons.

Significant changes brought by the new Regulation regarding the reception of construction works

The Regulation regarding the reception of construction works dated 18 May 2017 was published in the first part of the Official Gazette no. 406 dated 30 May 2017 and shall enter into force on 29 November 2017 (the "**Regulation**"). This new legislation shall not be applicable to the constructions for which the reception at the completion of works, respectively the final reception, is ongoing as of the date of entering into force of the Regulation.

The reception at the completion of the works.

Deadlines

A first clarification brought by the Regulation is that the contractor of the construction works has to communicate to and request from the investor the performance of the reception at the completion of the works **during the validity period of the permit** based on which it had executed the works.

After receiving such communication, the investor has 5 days (*as opposed to 3 days, stipulated in the previous regulation*) to request the appointment of the representatives which shall be part of the reception committee at the completion of works, to establish the details for the commencement of the committee's activity and to hand-over to the State Inspectorate for Constructions ("**SIC**") the communication received from the contractor, together with the reports drafted by the planner and the site supervisor, about the execution and value of the works.

The names of the representatives who shall be part of the reception committee at the completion of works have to be sent by the relevant institutions within **10 days** after receiving such request from the investor. The investor has **maximum 3 days** from the date when it receives the names of the representatives (*as opposed to the previous regulation, which provided for a 15 days term since the contractor notifies the completion of works*) to notify the members of the commission, the contractors and the designer related to the date, hours and place for the assembly of the commission.

The composition of the reception committee at the completion of works

The reception committee at the completion of works shall be comprised of **minimum 3-5 members** and, if the case, of a SIC representative, a representative from the Inspectorate for Emergency Situations ("**IES**"), a representative from the Direction for Culture and/or a representative from the main credit-release authority. The Regulation expressly provides the situations when the representatives of the above-mentioned institutions shall be part of the reception committee, conditioning their participation on the category of construction of the immovable asset and on the special laws applicable in each situation.

The Regulation also brought some clarifications regarding the quality of the members of the reception committee at the completion of works, namely:

- the representative of the public authority is **the one appointed by the issuing authority of the building/demolition permit**;
- the authorized site supervisor is the secretary of the committee, but is **not** a member of the committee;
- the participation of the designer and of the contractor is mandatory, but they participate as invitees, not members;
- the SIC representative participates at the reception of the constructions included in the category of importance classified as "regular" and "reduced", not only at the reception of the constructions included in the category of importance classified as "exceptional" and "extraordinary", as was the case according to the previous regulation, if the investment objectives are of public or social interest, financed totally or partially from public funds;

- the IES representative participates at the reception of the constructions which fall under the provisions of Law no. 307/2006 regarding the fire protection;
- the representative of the Direction for Culture participates when the construction is listed as a historical monument;
- the representative named by the credit-release authority participates when the works are partially or fully financed from public funds and a number of other criteria is met.

The activity of the reception committee at the completion of works

The committee validly functions only when 2/3 of its named members are present and takes decisions with the majority of their votes. However, the Regulation provides for some exception from this rule, namely:

- if the members of the committee whose participation is mandatory, irrespective of the type of construction, have different opinions, the committee shall **respect the opinion of the representative of the public authority** having issued the building/demolition permit;
- if the committee is also comprised of representatives whose participation is mandatory in special situations, and these members recommend the rejection of the reception, than the reception **cannot be accepted**.

The committee analyses the provided documentation regarding the design and execution of the works and, as an innovation in comparison to the previous regulation, must also analyze the energy-performance certificate. Furthermore, it is provided that the specialty report, which has to be analyzed by the committee, is prepared by the designer and by the site supervisor (*not only by the designer, as stipulated in the previous regulation*).

The admission, rejection or suspension of reception

The committee will decide whether to accept, reject or suspend the reception of works after analyzing the documents it is provided with, and also the documents it considers necessary and are requested by it, in writing, from the investor. The committee has to analyze the documents which comprise the technical book of the construction, including the technical project of execution, updated as of the date of the completion of works – “as built”.

The situations when **the reception can be suspended** are expressly provided in the Regulation, these circumstances being similar to those of postponement stipulated in the previous regulation. In case the committee decides on the suspension, the decision shall also comprise a protocol for the suspension of the reception, which shall contain remedial measures of the ascertained aspects. This decision will be sent in **maximum 3 days** to the contractor, and the remedy period cannot exceed **90 days**, excepting the case when *“the climate conditions and other factors, independent of parties’ will, will determine the impossibility of remediating the ascertained aspects”*. If this is the case, the Regulation provides that the contractor has to notify the investor and request the postponement of the remediation period with **up to 90 days**.

The Regulation also stipulates the situations when the **reception at the completion of works may be rejected**, namely in situations such as the non-performance of remedial measures regarding the ascertained matters, impossibility to directly examine the construction, non-performance of the implementation measures provided for in the approval for fire safety, the ascertainment of some deficiencies which cannot be repaired, non-compliance with the building permit or in case of a rejection proposal made by the representatives of the institutions whose presence is required in special situations. If the rejection of the reception is decided, then the use of the construction is forbidden until all remedial measures are completed.

After the committee makes its decision, the investor has **3 days** to either accept or reject the reception and to sign the protocol for the completion of works. As opposed to the previous legislation, where the committee was recommending the acceptance/rejection of the reception, the Regulation now expressly provides

that the decision is taken by the reception committee and the investor's part is to **approve the acceptance or rejection of the reception, according to committee's decision**. This approval, made by the investor, has a special importance, namely **the date when the investor signs the reception protocol at the completion of works is considered to be the date of reception**. The previous regulation contained a 20 days period during which the reception protocol at the completion of works could be challenged, but the Regulation no longer provides for such a period and thus the ordinary law is applicable, which could lead to discussions given that there is no clear consensus as to the legal nature of the reception protocol.

An important provision of the previous regulation is that the investor cannot raise any other claims, besides the ones contained in the reception protocol at the completion of works. The Regulation enlarges the protection granted to the contractor, mentioning that the investor cannot raise further claims after the reception protocol at the completion of works is issued, while the previous regulation was restricting the applicability of this provision to the situations when the reception was accepted. On the other hand, the Regulation provides that, aside from the hidden defects, the investor can, after the reception protocol at the completion of works takes place, also raise claims concerning the defects affecting the supporting structure, resulting from the non-compliance with the projection and execution norms applicable as of the date when the construction was built, discovered during the entire existence of the construction.

The reception protocol at the completion of works is communicated by the investor within **5 days** period from the completion of the reception, not only to the owner, contractor and the public competent authority, who issued the building/demolition permit, but also to the SIC and to all the agents part of the reception at the completion of works stage, who signed the reception protocol at the reception of works.

The final reception

The final reception is organized by the **owner**, during a **10 days** period (as opposed to 15 days, provided for in the previous regulation) from the expiry of the guarantee period.

The members of the final reception committee are different from the ones who participated in the reception at the completion of works, in the sense that the committee for the final reception only has to be comprised of a representative of the owner, a representative of the investor (if it is not the same as the owner) and 1-3 specialists in construction works. At the same time, the representative of the contractor and the representative of the designed must participate at the reception, but as invitees, not as members.

The committee, depending on the discovery of defects emerged during the guarantee period, other than those resulted from the inadequate use of the construction, may decide to accept, reject or suspend the final reception.

After the committee makes its decision, the owner has **3 days** to either accept or reject the reception and to sign the final reception protocol. **The date when the owner signs the protocol for final reception is considered the date of completion of the final reception.**

The final reception protocol is communicated by the owner, during a **5 days** period from the completion of the reception, not only to the contractor and to the public competent authority who issued the building/demolition permit, but also to the SIC.

The reception at the completion of works and the final reception may also be performed for parts/objects/sections from/of the construction

The Regulation introduces a new possibility of performing the reception at the completion of works and/or the final reception, namely for parts/objects/sections

from/of the construction, if these are separate/independent from a functional and physical perspective.

Moreover, the investor has the possibility of taking over only part of the construction in a certain execution stage, by concluding a partial reception protocol to this end, based on which the respective part of the construction can be registered with the land book. The Regulation provides for the aspects that have to be included in the protocol, namely the state of the respective part of the construction, the ascertained defects, if the case, together with the deadlines for remedying the defects, as well as the conservation measures of the executed works. However, this partial reception protocol has to be given for analysis to the committee which performs the reception at the completion of works.

The deadline for complying with the risk analysis for physical security applicable to companies falling under the provisions of Law 31/1990 and other legal entities is approaching

Decision no. 1002/2015 regarding the modification and completion of Government Decision no. 301/2012 for the approval of Methodological Norms for the application of Law 333/2003 regarding the security of objectives, assets, valuables and the protection of persons ("**H.G. 1002/2015**") was published in the First Part of the Official Gazette no. 984 dated 30th December 2015, being last amended on 13th January 2016. The main amendment brought by H.G. 1002/2015 concerns the postponement of the deadline for the elaboration of the risk analysis to physical security until 1st July 2017 the latest.

What is the risk analysis to physical security?

The risk analysis for physical security represents the activity performed in order to discover the threats and vulnerabilities which can endanger the life, corporal integrity or freedom of persons, or which can affect the valuables hold by entities, so as to determine the impact and evaluate the security risks, and based on which to implement the necessary measures for the limitation or elimination of such risks.

The risk analysis for physical security is materialized though documentation prepared as part of the risk standardized management process, namely through the following documents:

- the report for the evaluation and explanation of the risks to physical security;
- the evaluation grid, specific for the object of activity;
- the support documentation.

Who has the obligation to prepare the risk analysis to physical security?

The risk analysis is mandatory for the following:

- ministries and the other specialized public administration organisms, at a central or local level;
- autonomous administrations;
- national companies and entities;
- national institutes for research and development;
- the companies falling under the provisions of Law 31/1990, regardless of the nature of the share capital;
- other organizations who own assets or valuables under any title.

The risk analysis is performed by the entity, through its special structures or through authorized experts, who have professional competences acquired for the activity of evaluator of risk to physical security, or by specialists with more than 5 years of experience in the area of evaluation of the risk to physical security.

The risk analysis to physical security – a condition for the issuance of approval for the security plan

The risk analysis to physical security is **a condition for the issuance of the special approval regarding the security of the objectives, assets, valuables and the protection of persons**, approval issued by the competent police office.

Non-submission of the security plan to the competent police offices is sanctioned with a civil fine from RON 5,000 to RON 10,000.

For further questions, please contact us.



Irina Dimitriu
Partner Reff & Associates
+40 21 2075 297
idimitriu@reff-associates.ro



Simona Iacob
Managing Associate Reff & Associates
+40 21 2075 610
siacob@reff-associates.ro

Reff | Associates

Reff & Associates SCA is a law firm member of Bucharest Bar, independent in accordance with the Bar rules and represents Deloitte Legal in Romania. Deloitte Legal means the legal practices of Deloitte Touche Tohmatsu Limited member firms or their affiliates that provide legal services. Visit the global Deloitte Legal website <http://www.deloitte.com/deloittelegal> to see which services Deloitte Legal offers in a particular country.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional advisor. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.