



European Construction Sector Observatory

Policy fact sheet

Czech Republic

Amendment to the Building Act

Thematic objective 4

April 2019



In a nutshell

Implementing body	Ministry of Regional Development and different local & regional authorities
Key features & objectives	Reform of construction proceedings to facilitate and accelerate construction
Implementation date	1 January 2018
Targeted beneficiaries	Investors, construction companies, small builders, local & regional authorities
Targeted sub-sectors	All construction sub-sectors
Budget (EUR)	n/a
Good practice	★ ★ ☆ ☆ ☆
Transferability	★ ★ ★ ☆ ☆

After three years of preparation, the Amendment to the Building Act entered into effect on 1 January 2018. The amendment is a cornerstone in the Czech government's ambition to simplify construction procedures, accelerate construction and attract investors.

The prior version of the Building Act was criticised by the construction industry for imposing heavy administrative burdens and complicated procedures, thereby slowing down construction in the Czech Republic^{1, 2}.

To address the concerns of industry critics, the amendment has introduced several key changes:

- It gives investors the option to bundle different permit proceedings into one joint proceeding, resulting in a single construction permit;
- A different authority becomes responsible for issuing a binding opinion on construction projects;
- The procedural rights of NGOs are reduced;
- Simplifications for small builders and homeowners are introduced; and
- Transparency is increased.

It remains unclear however, whether the amendment has achieved its goals. The joint proceedings are helping to simplify the construction permit process. They promise tangible time savings, particularly for smaller construction projects. They are welcomed by investors; however, they are not ambitious enough because the process continues to be overly complex and lengthy.

It is unclear if changes in administrative responsibilities will have a positive impact on the planning and appeals procedures or whether the changes will actually result in further delays. In addition, the reduction of NGO procedural rights may help to achieve time savings but it is criticised for reducing democratic accountability and for jeopardising the Czech Republic's international obligations under the Aarhus Convention.

Given these mixed results, the Czech Ministry of Regional Development has already started working on an entirely new Building Act.

1.

General description

Construction procedures in the Czech Republic have been criticised by the construction industry as being particularly slow and burdensome. Under the prior version of the Building Act, for instance, it took between 20 and 21 procedures to obtain a construction permit – compared to 12.7 in the average OECD high income country³.

To address this and other inefficiencies in Czech construction law, the 2018 Amendment to the Building Act introduced a significant number of changes that affect construction companies, small builders, environmental NGOs, and local and regional governments.

Joint proceedings

The Amendment introduces a joint procedure (also called a coordinated procedure) for construction permits.

Under the old Building Act, planning procedures, building procedures and environmental impact assessments had to be applied for separately.

The Amendment provides companies with the option to bundle these procedures into a joint procedure, which results in a single joint permit for (a) the location and (b) the realisation of construction. This joint permit is valid for two years, or up to 5 years upon request. The new procedure stipulates a new set of time limits (between 60 and 120 days, depending on the case).

Only one appeal is possible against decisions in a joint procedure. A joint procedure can be conducted for both a single and a group of (mutually related) buildings. And, most importantly, investors are free to choose this new joint procedure or to stick with the old procedures, depending on their preferences^{4,5}.

Changes to administrative opinions

The Amendment shifts the responsibility for issuing binding opinions on construction projects from building authorities to regional administrative authorities for territorial planning.

In the binding opinion, the administrative authority assesses compliance of construction projects rules on, for example, the protection of nature, historical monuments or public health. A one-year appeal deadline has been introduced and it is now impossible for stakeholders who are not part of the proceedings to challenge the opinion of the administrative authority^{6,7}.

Limitation of procedural rights of civil society

The amendment reduces the procedural rights of civil society organisations (such as environmental NGOs⁸) to participate in planning or building proceedings.

Prior to the Amendment, NGOs were able to participate in ordinary planning and building proceedings under the Building Act and to challenge the decisions adopted therein^{9,10}. With the new Amendment, environmental impact assessments (EIAs) are now their only main avenue for participating in building procedures¹¹.

Additionally, the rules for participation in EIAs have also been tightened: there is no more obligation to convene oral public hearings; deadlines to submit comments have been shortened; influence on the type of proceeding has been reduced; and in certain cases, joined procedures allow companies to skip the EIA process¹². This change aims to limit the possibilities of delay and accelerate procedures¹³.

Simplifications for small builders and homeowners

The process for small scale construction projects (such as swimming pools) will be easier, as in some cases it is no longer necessary to apply for a building permit and in other cases, people will only

have to announce the building to their local Building Authority.

Limitations on the building footprint have also been abolished (formerly 150 m²), and neighbours' consent, for example to build a fence higher than 2 metres, is no longer required^{14,15}.

Digital transparency

Authorities will now have to publish town and country planning (zoning) documentation on the internet. When updating or modifying planning (zoning) documentation, a precondition of its effectiveness will be the publication of the complete updated or modified document^{16,17}.

2.

Achieved or expected results

One key indicator to assess the success of the amendment is the time and costs saved for building projects. Since the amendment only entered into force on 1 January 2018, there is limited hard data available on the results achieved by the 2018 Amendment to the Building Act. However, different stakeholders have provided feedback on its achievements.

Limited hard data on achieved time savings

The 'Doing Business Report' by the World Bank Group continues to rank the Czech Republic far below the OECD average with regards to construction permit procedures, as shown in Table 1¹⁸. The report simulates the construction of a warehouse in high income OECD countries and compares different indicators for the construction process. The simulation shows that the Czech Republic continues to operate many more procedures than the average OECD high income country. In addition, the construction process in the Czech Republic lasts longer, costs are lower and building quality is lower.

A comparison of the reports from 2017 and 2018 show almost no change in time savings before and after the amendment went into force. It is, however, unclear if the analysis from 2018 takes into account the new amendment. Improvements might only be visible in the 2019 report (see footnote regarding problems with the 2018 report)¹⁹.

Table 1: Construction Permit Process in Czech Republic and in OECD high-income countries

Indicator	Czech Rep.	OECD high income
Procedures (number)	21	12.7
Time (days)	246	153.1
Cost (% of exemplary warehouse value)	0.2	1.5
Building quality control index (0-15) (higher is better)	8.0	11.5

Source: Doing Business Report 2019, Czech Republic²⁰

Other sources estimate that tighter deadlines, less public input and bundling EIAs (Environmental Impact Assessments) in joint proceedings could reduce the time for EIA by some 45 days. Some even say that "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"²¹.

Simplification through joint proceedings

Legal experts expect mixed results from the new joint procedure. They are expected to deliver a range of advantages. For example, they should speed up and simplify the construction of smaller buildings^{22,23}. This is obtained by bundling three separate procedures into a single procedure and by stipulating only one set of time limits (between 60 and 120 days, depending on the case)^{24,25}. Furthermore, other parties to the joint proceedings are only allowed to appeal against the administrative decision once, whereas in separate proceedings, the investor frequently faces repeated objections and appeals²⁶.

It is now easier to apply the joint procedure to separate proceedings in one investment project, if the proceedings are mutually related²⁷. The law firm Havel and Partners sums up these advantages, saying that the outcome for developers is clear. It implies only one procedure, one set of documents, and there is only one threat of a possible law suit²⁸.

Another important advantage of this new procedure is that it is optional. Investors can now choose this new procedure, or stick to the old procedure, whichever is more advantageous for them. Knowing when to choose the new procedure is important, given its downsides.

For bigger projects, the joint procedure can actually be disadvantageous, because having to prepare all documentation in one go is complex, time consuming, less flexible and more prone to errors.

Preparing documents step by step in separate proceedings can reduce the risk of errors and the costs of redrafting^{29,30}. In the case of changes or errors, corrections only have to be done in a single proceeding and it is not an entire bundle of proceedings that has to be redone.

Some critics warn that it might actually take public bodies longer to reach final decisions for joint procedures, due to the increased complexity and to avoid the threat of having the entire decision overturned by the administrative courts³¹. In addition, another risk of the joint procedure might be the lack of capacities and/or coordination within the administration and the delays this may cause.

Procedural and capacity issues of new administrative opinions

Experts have identified two problems with the new administrative opinions:

- Critics point to issues in the procedure to appeal against these opinions. Stakeholders cannot appeal against the opinion itself, but have to appeal against the decision which is taken after the opinion. This causes a problem. Whereas the one-year deadline for appeal starts with the issuing of the opinion, the ensuing decision might be taken more than one year later. This could lead to situations where the decision is issued one year after the opinion was issued, i.e. when the deadline for appeal is already passed.

In turn, this could effectively strip stakeholders of their right to appeal against the decision. This issue has led to a petition to the constitutional Court^{32,33}.

- Administrative responsibility for issuing these binding opinions has shifted to authorities for territorial planning. An expert in the domain points out that territorial planning authorities are already overloaded with cases and their new responsibility to issue binding opinions will probably lead to significant delays³⁴.

Mixed expectations on the weakening of NGOs

Observers expect mixed results from this legal change. Reducing the number of stakeholders and their procedural rights will probably accelerate the building process. In many cases, for instance, NGOs no longer have the power to slow down or block approval processes³⁵. However, critics argue that these limitations to civil society participation actually weaken democratic participation and procedural scrutiny, which may have a negative impact on the environment³⁶.

Furthermore, according to critics, the Czech Republic still does not comply with its international obligations under the "UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matter" (short: Aarhus Convention). The Amendment does not address the criticism of the Aarhus Convention Compliance Committee. On the contrary, it has actually made public participation harder^{37,38}.

As a result of this controversy, a group of senators lodged a constitutional complaint stating that the right to judicial and other legal protection and the right to a favourable environment have both been violated³⁹.

Additional improvements

The simplifications for small builders and home owners described above are expected to cut red tape, by reducing, for example, requirements for permits and building footprints^{40,41}.

Observers expect that the obligation to publish documentation on the internet will lead to higher transparency and certainty as well as easier access to documents. Proponents hope that this will make it easier for builders to challenge arbitrary decisions and hold authorities accountable^{42,43}.

3.

Perspectives and lessons learned

From a **government perspective**, the amendment is viewed as both a success and a wake-up call. The government says that it has resulted in simplifications and a “considerable acceleration of the building permit proceedings”⁴⁴. According to the Ministry of Regional Development, the time of authorisation is supposed to be reduced by one third for large buildings and halved for small buildings⁴⁵. However, the Ministry also recognises that the amendment has not delivered sufficient improvement and that there is a “need for a fundamental change [to] all public building law in the Czech Republic”⁴⁶. Acknowledging the deficiencies in the current law, it is therefore already planning an entirely new Building Act (see conclusions for details).

From an industry perspective, the amendment constitutes progress, but it is only a start. On the one hand, industry representatives welcome the introduction of simplifications, acceleration through tightened deadlines, optional joint proceedings and the reduced power of NGOs. On the other hand, however, they remain critical of the amendment, because of the continuing complexity of construction procedures.

During a Technology Forum, for example, industry stakeholders criticised the amendment for not matching initial ambitions⁴⁷. For instance, the President of the Czech Chamber of Chartered Construction Engineers and Technicians, ČKAIT, argues that the amendment “did not bring any expected acceleration”⁴⁸. Given the lack of substantial simplification and acceleration, the Czech Chamber of Commerce places high hopes in the new Building Act, which they will be preparing in cooperation with the Ministry in the coming years⁴⁹.

From a **civil society perspective**, the amendment is a blow to NGO participatory rights and environmental protection, and it violates the Czech

Republic’s international obligations. NGOs argue that the amendment “fundamentally weakens public participation”⁵⁰ by excluding them from territorial and construction proceedings. They say that this has “potentially significant environmental impacts, reducing the possibility of public control”⁵¹. The OECD echoes this criticism⁵² and a group of senators have lodged a constitutional complaint on the matter⁵³.

Additionally, the Czech Ombudswoman and different NGOs argue that the amendment violates the “Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters”. The Ombudswoman believes that this non-compliance may result in the Czech Republic being penalised by the European Commission and the Supervisory Authority of the Convention. That could then have a negative impact on EU subsidies⁵⁴.

Based on these different stakeholder perspectives, **three main lessons can be learned.**

To produce a viable legislative outcome, it is essential that policy-makers include external stakeholders in the policy-making process.

Including civil society stakeholders, for example, would ensure that democratic participation and legal obligations under the Aarhus Convention are not hampered. Similarly, by closely engaging with industry stakeholders, the government would be able to focus its legislative resources on the most important industry challenges. To its credit, the Czech government has already begun to apply this lesson, by formally involving the Czech Chamber of Commerce in the next reform of the Building Act⁵⁵. On balance however, more external stakeholders should be involved in the legislative process to make the reforms more legitimate and effective. More balanced stakeholder involvement would be better, with a reduced number of administrative stakeholders.

Internal bureaucratic politics and the fragmented administrative landscape have been detrimental to the quality of the Amendment to the Building Act.

This problem concerns the policy-making process and the legislative outcome. Many different ministries and authorities were involved in the drafting process and they protected their administrative competences⁵⁶. These internal bureaucratic politics complicated the drafting of a streamlined Building Act. Based on this lesson, the Minister of Regional Development promised to

centralise decision-making and realise “the principle of one stamp, one office and one construction decision”⁵⁷;

It is not just ambitious reforms of Czech construction bureaucracy that are needed. There are smaller reforms that could go a long way towards improving the construction process.

The obligation to publish town and country planning documentation on the internet is an example of how a smaller reform can help to increase transparency, accountability and efficiency.

4.

Conclusion and recommendations

The Amendment to the Building Act was enacted just over a year ago (January 2018). Although it has introduced a number of welcome improvements, stakeholders do not feel that it is ambitious enough. Construction procedures have been simplified, but are still considered to be overly complex and lengthy. Administrative responsibilities have been introduced to improve planning and appeal procedures; however, it remains unclear whether they will actually help to improve procedures. Reduced NGO participation and procedural rights are intended to accelerate the building process, but critics fear that it is weakening democratic participation and procedural scrutiny.

Overall, the Amendment has achieved mixed results. Stakeholder opinions on it are also varied. As a result, the Czech Ministry of Regional Development has already begun working on a new Building Act.

The Amendment to the Building Act scores 2 stars for ‘good practice’, using a scale of 1 (low) to 5 (high). Although investors and small builders can expect time savings and simplifications, processes remain overly complex. Legal experts question the utility and legality of shifting responsibilities between different authorities. NGOs and legal experts argue that democratic rights have been reduced and that the Aarhus convention is being violated. As a result, the Ministry for Regional Development has already drawn its own conclusion and started working on an entirely new building law.

The Amendment to the Building Act scores 3 stars for ‘transferability’, using a scale of 1 (low) to 5 (high). The reason for this score is that elements of the Amendment are considered to be transferable to other countries and regions. Examples include:

- Option to bundle different procedures into one joint procedure;
- Reduced procedural formalities for small builders;

- Tighter deadlines providing there are enough personnel to handle the increased workload;
- Obligation for authorities to publish documents on the internet to increase transparency and accountability.

At the same time however, the Amendment to the Building Act is also a case-specific reaction to the complexity of Czech construction law. The Ministry for Regional Development has itself concluded that the fragmentation of competences across “many dozen affected bodies” was a particular hindrance to the Amendment. It also concluded that Czech construction law is particularly complex⁵⁸. No stakeholder in the Czech Republic is entirely satisfied given the remaining complexities.

This mixed picture shows that individual aspects of the Amendment could serve as a useful reference to policy-makers; however, the Amendment as a whole is a product of specific internal challenges and is too complex to be considered transferable in its entirety.

Based on the lessons learned from the Amendment, the key recommendation for future reform is that government should make the drafting process for new legislation more inclusive. To ensure that new legislation is fit for purpose, that it meets stakeholder expectations and delivers the improvements needed, it is essential that external stakeholders are involved in the drafting process.

Today, the administrative system is fragmented. There are many different authorities involved in the legislative drafting process, and each tends to defend their own competences to the detriment of an effective drafting process with optimal outcomes⁵⁹.

The Ministry recognises this issue and is calling for a “substantial reform of public administration in Czech Republic”. The main objective is to centralise

competence in one single authority and to reduce the 85 laws concerning construction⁶⁰.

The first step taken by the Ministry is to formally include the Czech Chamber of Commerce in the drafting of the new law in order to bypass administrative politics. Including a relevant external stakeholder in the drafting procedure could help to overcome bureaucratic politics between different authorities. However, the drafting process should also be opened up to other external stakeholders and interest groups. Environmental NGOs, for example, would help the government to ensure that

it fulfils its environmental obligations under the Aarhus Convention.

The Building Act should be further simplified by reducing and centralising the bureaucratic competences of the many different authorities, instead of reducing the rights of environmental groups. In the words of the Minister for Regional Development, the reform of the complex Czech administrative system is “one of the greatest challenges in the modern history of the country”⁶¹.

Endnotes

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