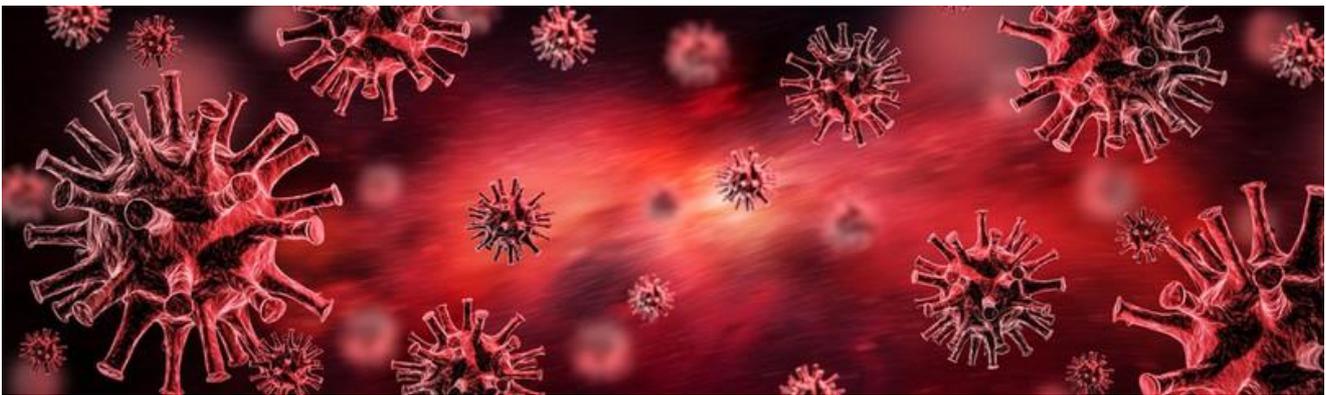


## Construction law proceedings in the time of Covid-19



### So, what are the amendments ?

The recently enacted laws specify the objective scope of matters which are to be handled in accordance with the regular procedure. In other words, the relevant administrative authorities are obligated to proceed as they have up until now, with due heed for the present social distancing lockdown measures.

### The online authority

Aiming for a balance between the need to keep administrative proceedings going and the restrictions associated with the coronavirus epidemic, the Ministry of Development issued **recommendations re online submissions and notifications** (also as regards initiation and conduct of formal proceedings) already in March 2020. In this context, vice minister Robert Nowicki explained that:

*“The construction supervision authorities ought to adapt their manner of considering cases to the present situation. Accordingly, I would suggest that accommodations are put in place enabling customers to submit any and all applications via e-mail, with accompanying documents in the form of scans”.*

In practice, this means that scans of documents may be sent to the administrative authority via the ePUAP government platform or via e-mail. **The online procedure is generally available for most construction law matters, including issue of a construction permit and its subsequent amendment, transfer of a construction permit, and issue of an occupancy permit.** The caveat is that, within 14 days after the state of epidemic risk has been repealed, the relevant party shall be obligated to present to the competent authority originals of the documents previously submitted in electronic form.

Administrative authorities may now **waive application of the general rule that the parties must be afforded the opportunity of active participation in all stages of the proceedings,**

although the parties should have a chance to state their position with respect to the relevant evidence, materials and/or demands before any decision is issued. In order for such a waiver to apply, all the parties concerned must agree.

It is also possible to **present the case files to a party in electronic form** to the e-mail address specified in the register of contact details of entities performing public duties or to another e-mail address specified by the party.

There is also the possibility of conducting actions in the course of proceedings which would normally require personal attendance, provided that this is warranted by the interests of the party and that the competent authority so agrees. In lieu of personal attendance, such action may then proceed via real-time audio-visual communications.

### **Deadlines in administrative proceedings suspended...**

Administrative proceedings as such – i.e. **consideration of cases** – has not been suspended, but the Covid-19 Act specifies acts in law **which are “paused” (do not begin to run, or temporarily stop running)** while the country remains on an epidemic risk or outright epidemic footing. These include:

- 1. Deadlines predicating legal protection before a court or authority (e.g. deadline for challenging / appealing a decision);**
- 2. Deadlines within which a party ought to perform actions of relevance to defining her rights and duties (e.g. deadline for perusing documentation prior to issue of an administrative decision).**

Please note that, while the state of epidemic risk persists, **the deadlines for tacit approval by administrative authorities** (e.g. the 1-month period within which a starosta may raise objections with respect to a notice of construction works commencement or a notice of occupancy commencement) **do not run**. To put this in other words, the fact that the local authority has not taken a position within one month after such notice has been submitted to it shall not be tantamount to its approval, **and the party filing such notice will have no guarantee that the works / occupancy can proceed**.

Also, for as long as the country remains on an epidemic risk or epidemic state footing in connection with the Covid-19 outbreak, the normal **construction law procedure for issue of occupancy permits shall not apply**. This exclusion applies to all construction projects covered by art. 55.1.1 of the legislative Act – the Construction Law (including sports facilities, cultural, scientific, and educational facilities, healthcare and social services facilities, public administration facilities, **shops, restaurant and bars, service facilities, filling stations**, and road and railway infrastructure facilities). No occupancy permits will be issued in cases where actual use of the structure is to commence prior to completion of all construction works.

Applications for issue of construction permits filed before the emergency legislative package dubbed “Shield 2.0” came into force shall be regarded as notice of completion of construction works.

### ...but not in all types of cases

The general “freeze” described above shall not apply to:

1. Assessments and consultations of draft **studies, draft local plans** and resolutions laying down the general rules for siting **minor architectural structures**, advertising displays / devices, and fencing;
2. Assessments of local **revitalisation** programmes and definition of general development conditions;
3. Deadlines for defining the **location of residential developments**.

The extraordinary solutions regarding tacit approval, meanwhile, do not apply to the deadlines for filing an opinion or consultations among public administration authorities with respect to the matters referred to above. Accordingly, one may picture a scenario where a decision pertaining to a construction project arrives out of the proverbial blue, leaving the investor surprised. Accordingly, parties managing and/or financing construction projects are **well advised to exercise an abundance of caution when accepting and handling inbound mail**.

### Actions during suspension

The general standstill described above notwithstanding, **actions taken in exercise of a legal right, or in performance of a legal duty, shall remain valid**. They have legal effect, and they do not have to be repeated once the state of epidemic risk had passed. Accordingly, **if an appeal against a decision is lodged during the state of epidemic risk, such appeal shall be valid even though the normally applicable deadline for its lodging does not run**.

Apart from that, while the suspension of procedural deadlines remains in force, the administrative authority may issue:

1. A decision accepting / meeting the request of a party in full;
2. A certificate attesting that there is no basis to object – this is important insofar as silence of the authority may not be taken as tantamount to lack of any objections;
3. An individual interpretation.

While the standstill remains in force, the competent authority or court may set a deadline vis a vis a specific time within which such party must perform a specific action (and also set a deadline longer than the usual one arising from statute). The authority may go ahead and set a deadline for a specific action where warranted by a material public interest, or by a material interest of a party to the proceedings at hand. Such a deadline is then binding on the party, **and failure to observe the deadline shall incur the consequences provided for by statute, e.g. forfeiture of a right or a penalty**. For example, if the authority discerns a risk of a civil engineering disaster, it will be within its rights to set a deadline for discontinuation of works, or for tearing down of the hazardous structure, on pain of the usual penalties prescribed by construction law.

In another point worth remembering, administrative matters are considered by administrative courts which, under the present circumstances, **sit only in closed sessions**. The Supreme

Administrative Court, meanwhile, sits in closed sessions in the simplified procedure, i.e. in cases where the entitled party has waived its right to a hearing.

Due to the Covid-19 epidemic, correspondence addressed to the courts in paper form is “quarantined” for a period of up to 48 hours.

### Changes not only for the epidemic

The “Shield 2.0” legislation adds a new art. 39<sup>3</sup> to the Polish Administrative Process Code whereunder proceedings before the public administration authorities may involve **issue of written communications and decisions in the form of an electronic document bearing a qualified electronic signature, a “trusted” signature, or a personal signature, an advanced electronic seal, or a qualified electronic seal.**

The basic possibility of delivering documents in the course of administrative proceedings in electronic form was first introduced in Poland in 2005 in cases where the party / participant:

1. Applies in electronic form using the relevant authority’s electronic submissions box, or asks the authority to serve documents in such form as well as
2. Specifies an electronic address.

In the wake of “Shield 2.0”, service of documents in electronic form in pending proceedings may comprise **a print-out from the relevant system reflecting the contents of such document** even if the party / participant concerned:

1. did not submit an electronic application to the authority’s electronic submissions box;
2. did not request such delivery, or
3. did not agree to such delivery.

A print-out of an electronic document shall be accepted as **proof of what is stated / found in such document.**

The construction law has also been temporarily modified with respect to **erection of portable, free-standing antenna masts.** Now, such a project **shall not require a construction permit** even if:

1. it qualifies for an environmental impact study subject to the general rules or to the Natura 2000 programme,
2. the location of the planned antenna mast abuts on a historical heritage structure or zone.

Consequent to the amendments, construction of such a mast may proceed 3 business days after the project has been notified to an administrative authority competent for architecture and construction. This fast-track procedure will be available **only while the state of epidemic risk, epidemic, or natural disaster persists, and only telecoms enterprises and entities covered by art. 4 of the legislative Act – the Telecoms Law shall be eligible.**

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