



AN OVERVIEW OF WATER LAW RECENT UPDATES IN ROMANIA

1. General context

The slow and lengthy process of completing the cadastral works and real estate publicity seems to affect not only the private property, but also the public one. In this context where the lands are not delimited and registered with the national Land Book Registry (“**Land Book**”), both the private investments and the projects of public interest and utility are hampered. Therefore, there was necessary to establish a complete and optimal legal framework, capable to ensure the complete evidence of assets falling under the public property of waters. The regime of waters and land areas of riverbeds are under the provisions of Water Law no. 107/1996 (“**Water Law**”). This background given, Law no. 122/2020 amending and supplementing the Water Law (“**Law 122/2020**”) was enacted by the Romanian Parliament and published in the Official Gazette of Romania on July 13, 2020.

As anticipated, the amendments brought to Water Law aim mainly to accelerate the registration with the Land Book of the public property of waters and land areas of riverbeds. Law 122/2020 also brings several amendments and completions with respect to the protection and preservation of water resources and the conditions for carrying out certain activities on water or related to it. Thus, these legislative novelties will provide the infrastructure development, will encourage the private investments and will ensure the monitoring and scientific research of the quality of waters.

In a nutshell, the legal novelties brought to Water Law concern the following aspects:

- (i) registration with the Land Book of the public property right over the assets included in the public regime of waters;
- (ii) the use of lands included in the public regime of waters;

- (iii) the regime of the water management permits and authorizations;
- (iv) water protection and preservation.

2. Land Book registration

First of all, it is important to note that, as provided by Water Law, the lands and constructions included in the public regime of waters are under the management of the "Romanian Waters" National Administration ("**Water Administration**").

As presented herein above, the simplifications brought to the economic environment mainly refer to the tabulation process. Therefore, Law 122/2020 provides three new ways for registering with the Land Book of the public property right over the assets falling under the public regime of waters, as follows:

- (i) the public property right of the State over the lands and constructions under the management of Water Administration shall be registered with the Land Book upon Water Administration's request, based on the property title and the cadastral documentation;
- (ii) by way of exemption, if there is no property title, it is also given the possibility to register the public property right of the State on the land areas of minor riverbeds¹ and related constructions based on a copy of the excerpt of the centralized inventory of goods², along with a statement issued by the Water Administration, confirming the identity between the land appearing in the cadastral documentation and the one highlighted in the centralized inventory;
- (iii) at last, if the land areas of minor riverbeds and related constructions cannot be registered in one of the ways provided at points (i) and (ii) above, then the public property right of the State can be provisionally registered, based on a statement issued by the Water Administration, confirming the identity between the respective land and the one appearing in the cadastral documentation.

3. Use of lands

Law 122/2020 also provides significant amendments with respect to the right of use of lands included in the public property of waters, which can be obtained by way of concession or lease agreement. In this regard, the Romanian State can now conclude concession or lease agreements with respect to the surfaces from the inland maritime waters and the territorial sea.

¹ According to Annex no. 1, point 1 of Water Law, the minor riverbed includes the lands permanently or temporarily covered with water and the land that after the withdrawal of water can have no other use.

² The centralized inventory of goods was approved by the Government Decision no. 1705/2006 for the approval of the centralized inventory of the goods in the public property of the state.

Furthermore, if the use of lands included in the public property of waters is necessary for investments of interest and public utility, the Romanian authorities now have a simplified method at hand. Thus, Law 122/2020 provides for the conclusion of a protocol between the interested central or local public authority and the Water Administration, with the express consent of the Ministry of Environment, Waters and Forests representing the State.

In addition, if an objective of national interest or the national safety and security is at stake, then the said project can be implemented on watercourses that are not affected by human activities, even though the ecological status of the waters will be affected.

4. Water management permits and authorizations

Another major amendment facilitating the development of public and private investments refers to the possibility of transfer of the water management permit and authorization. Law 122/2020 allows for these administrative documents, with certain exemptions, to be transferred from one project holder to another, provided that the conditions established therein have been fully complied with. The regulatory framework for this procedure shall be enacted by the Ministry Environment, Waters and Forests.

It is also important to note that, starting with July 16, 2020, the water management permits and authorizations, including their annexes or substantiation studies, are public administrative acts. Accordingly, a list containing the water management permits and authorizations issued shall be available for information purposes on the website of the relevant authority. Moreover, one can have access to the respective documents, which are publicly available in their entirety, upon request, in compliance with the provisions on personal data protection and intellectual property rights.

5. Improvement of water protection and preservation

Although the main background reasons for initiating the legislative process for completing and amending the Water Law are related to the tabulation process, Law 122/2020 also contains several provisions for improving the transparency and rigor of the water protection legal framework.

For instance, the most important legal novelty refers to the irrigation process. In this respect, Law 122/2020 establishes that the use of groundwater for irrigation purposes is allowed only in areas where there is no surface water available. Besides, only the water from the superior water table can be used for irrigation.

There are also implemented new measures in order to prevent water pollution. For the transport of dangerous substances on watercourses located in protected areas and natural sites of United Nations Educational, Scientific and Cultural Organization, the approval of the site administrator will also be required. Similarly, for the execution and

operation of works and installations that may have a major pollutant potential for water resources, it is now necessary to obtain the water management permit and authorization.

6. Conclusions

In conclusion, the novelties and amendments brought by Law 122/2020 in the water sphere are mainly of economic and administrative importance. Thus, the procedure for the completion of the cadastral works and for the use of lands in the public property of waters is simplified.

Also, given the permanently developing objective for ensuring an ecologic environment, Law 122/2020 brings important provisions for the limitation of unreasonable use of water and pollution.



Ada Pascu

Senior Associate

ada.pascu@mprpartners.com



Alina Savastre

Associate

alina.savastre@mprpartners.com