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## LEGAL BRIEFING – Real Estate

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### From dirt roads to boulevards of “restored” dreams

It's the beginning of August in Greece and we're experiencing a heatwave of rare intensity. Not the most appropriate time (if there ever was one) for a planning briefing, but apparently our government is working at full speed even during this time. So, bear with me, this is important.

On 20.07.2021 the Parliament passed a bill on waste management (don't worry, this is not the issue I want to address), which was published in the Government Gazette as Law 4819/2021. The law includes an amendment (in Greek, «τροπολογία») proposed by the Ministry for the Environment and Energy, which modifies the procedure for characterizing the country's official road network.

Now, if you haven't - yet- considered a greenfield development in a non-urban area of Greece, you might not be aware of how critical this issue is. But if you have, I'm pretty certain that, at some point, one of your advisors (technical or legal) asked you the million-dollar question:

*Does your plot have a frontage on a public road? And if so, has this road been characterized as such by means of a presidential decree? If not, your investment is a no-go (unless it can qualify as a strategic investment, but that's for another time).*

Let me offer some background and context.

Land uses and building terms for “beyond-city-boundaries” areas are regulated by the Presidential Decrees of 17.10.1978 and 31.05.1985 (Government Gazette D 538/1978 and D 270/1985, respectively), as in force. According to these provisions, a plot is generally buildable, if its surface exceeds 4,000 sq.m. and it predates the enactment of Law 3212/2003 (Government Gazette A 308/2003). Pursuant to the said law, plots formed following 2003 are considered as buildable, only

if they have a frontage (“a face”) on an officially recognized road, with such frontage having a width of at least 25 meters.

However, the Council of State has repeatedly ruled<sup>1</sup> that the requirement of a frontage on a common-use area (such as a public road), which was officially introduced by Law 3212/2003, also applies to plots which had been formed prior to its enactment. The reasoning of these rulings is that areas located outside city boundaries should be protected from “heavy” building terms and, in any case, such building terms cannot be more favorable than those applicable to plots located within city boundaries (i.e., in urban areas). More specifically, the Council of State’s view is that the above interpretation of Law 3212/2003 is the only one consistent with the Constitution and, hence, the only one that may be applied.

In case the significance of these rulings is not evident, let me clarify that the Council of State is the highest administrative court in Greece; any petition for annulment of any license or permit required for the development of any plot (e.g., a building permit) would at some point be brought before the Council of State for hearing (either directly or through an appeal).

In 2014, the Council of State went one step further and ruled that, in order for a road to be considered as public, it would need to have been characterized as such by means of a presidential decree. More specifically, the Court (again, through repeated rulings<sup>2</sup>) consistently expressed the view that the planning of the road network constitutes an integral part of urban planning and, as such, should be subject to a unified approach and not a fragmentary one. In other words, according to the Council of State, a plot lying outside city boundaries is buildable, only if it has a frontage on a road of common use, which has been characterized as part of the official road network by means of a presidential decree.

And that’s where the plot (pun intended) thickens.

Up to 2020, the legal framework for the issuance of such presidential decrees was inadequate. Hence, it should not come as a surprise that roads officially characterized by presidential decree are few and far between...

Law 4759/2020 introduced an amendment (prescribed, in essence, by the Council of State), allowing for the Local Spatial Plans (“LSPs”, in Greek, «Τοπικά Πολεοδομικά Σχέδια») to define the road networks. The LSPs, which determine the land uses and building terms for larger areas (usually municipalities), are approved by a presidential decree and, therefore, fulfill the criteria set by the Council of State.

However, it’s been 9 months since the enactment of the new Law and, to the best of my knowledge, the assignment of the studies required for the LSPs (run by the Ministry for the Environment and Energy) is yet to commence. Even after this first step completes, the procedure for the approval of the LSPs is expected to take at least a couple of years. It follows that Greece’s road network will not be approved in the coming months and, therefore, virtually no new building permits may be issued for plots situated in non-urban areas, leaving countless developments stuck in limbo.

One can only assume that this is the exact reason why article 166 of Law 4819/2021 was just voted. This new provision allows for a new procedure for characterizing the road network, independent of the provisions on LSPs. Specifically, this new article provides for the issuance of a decision of the

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<sup>1</sup> Decisions No. 551/2008, 3504/2010 and 2329/2012 of the Council of State.

<sup>2</sup> Decisions No. 2790/2014, 1671/2014, 4046/2015, 847/2016, 665/2018 and 848/2018 of the Council of State.

Minister for the Environment and Energy, which shall determine the criteria, conditions and specifications, as well as the procedure for the recording of the existing road network per municipal unit (in Greek, «δημοτική ενότητα»). The ratification of the public road network shall then be effected by means of a decision of the Coordinator of the Decentralized Administration, but only further to the issuance of a presidential decree, which shall specify the criteria and conditions for the characterization and ratification of the road network. Moreover, the newly enacted article provides for the recognition of a road as municipal or of common use, but only by way of exception until the ratification of the total common-use network and, again, further to the issuance of a presidential decree, which shall specify the relevant conditions and the competent body.

In light of the above, it appears that this parallel procedure does not entail the issuance of a presidential decree for the characterization of the road network, which may be effected by a decision of the Coordinator of the Decentralized Administration. If you've managed to follow the above analysis (through the sound of the waves and/or beach rackets and/or children playing in the water), you surely realize this new provision runs counter to the settled case law of the Council of State. But the provision for the issuance of a presidential decree to regulate all relevant details in fact safeguards the applicability of this new procedure: the Council of State will be called to issue its opinion upon the normative scrutiny of the said decree and will, therefore, set (or approve) the conditions under which it will accept the legality of the new provisions. In other words, the Council of State will have the opportunity to define the parameters for a transfer of the urban planning competence from the President of the Hellenic Republic to the Coordinator of the Decentralized Administration.

All in all, I would say this is a smart move. If anything, it goes to show that the government is investigating ways to promote the development of non-urban properties in coordination with the Council of State, in order to limit the investment risks where possible.

On that happy note, I'll leave you to enjoy the rest of your holidays.

