

PUBLIC
LAW

SPECIAL PROCEDURE FOR EXPROPRIATIONS CO-FINANCED INFRASTRUCTURES AND LOGISTICS PLATFORMS

Published on November 12, Decree-Law 123/2010 sets out a **special procedure for expropriations** that are indispensable for the completion of co-financed infrastructures under the QREN¹, namely infrastructures relating to **water supply** and **wastewater treatment**², **recovery of solid waste**³ and **business hosting areas**⁴.

This special procedure is also applicable, *mutatis mutandis*, to the completion of infrastructures related to the development of **logistics platforms** in the national network approved by Decree-Law 152/2008, 5 August, and to the conclusion of the mentioned infrastructures financed by the Cohesion Fund in the period 2000-2006, whose expropriation procedures begin after the entry into effect of this legal diploma.

*More simplicity
and speed in the
expropriation procedure*

Decree-law 123/2010, 12 November, which came into effect on the day following its publication, aims to ensure the maximization of EU funds available under the QREN, providing the fastest performance of these infrastructures and introducing more simplicity and speed in

the expropriation procedure.

From the legal regime that was now published, we highlight the following aspects, corresponding some of them to special provisions with regard to the general procedure of expropriation set out in the Expropriations Code, approved by Law 168/99, 18 September:

- i) All expropriations indispensable for the completion of the mentioned infrastructures are to be considered **public interest and are deemed urgent** (*see* article 2, paragraph 1);
- ii) Thus, the declaration of public interest (“DUP”) consists in the designation of the expropriated property made by the relevant ministry, after a proposal of the entity responsible for implementing the infrastructure. Moreover, the **concretization of the DUP** may also consist of the approval of the plan of the expropriated properties, containing the precise demarcation of their boundaries or of the adoption of the map that indicates the areas, owners and interested third parties and, when possible, the land register certificates and tax certificates (*see* article 3, paragraph 2);

¹ National Strategic Reference Framework 2007-2013 (QREN) approved by the Resolution of the Council of Ministers 86/2007, July 3rd.

² Infrastructures under PEASAR II, approved by Minister Order 2339/2007, 14 February.

³ Infrastructures under PERSU II, approved by Ministerial Order 187/2007, 12 February.

⁴ Infrastructures under the Specific Regulation of NSRF: “Business Hosting Areas and Logistics”.

⁵ The mentioned article 12 requires that the applicants’ request for DUP be supported by the following documents: *i)* copy of the expropriation resolution and documentation; *ii)* all information concerning the attempted acquisition by private law; *iii)* indication of the budget that will bear the expropriation costs and the corresponding guarantee; *iv)* schedule of the works prepared by the contracting authority, in case of urgency; and its reasons *v)* environmental impact study, when legally required.

*Exemption from some
formalities but the previous
deposit is mandatory*

iii) The proposal for the DUP is made **without the initial request set out in article 12 of the Expropriations Code and without the formalities relating to it** (*see* article 3, paragraph 1). Thus, the entity responsible for the expropriation is also exempt from submitting the documentation referred to in article 12³ and from performing the procedures related to it, including the resolution concerning expropriation and acquisition under private law. However, this does not waive the deposit of the amounts or guarantees necessary to cover expropriation costs, which are mandatory to take possession of a property (*see* articles 2, paragraph 2 and 4);

iv) The **entity responsible for implementing each infrastructure**, acting as the **expropriating authority**, should promote and develop the necessary measures in the expropriation procedure under and for the purposes of this Decree-law and the Expropriations Code applicable in a subsidiary manner (*see* article 2, paragraph 2, and article 11).

This legal regime is not different from the general regime in what concerns the right to receive **fair compensation**, in accordance with the criteria and procedures of the Expropriation Code (*see* article 5).

*Identical guarantees in what
concerns the right to fair
compensation*

Finally, we note that the powers conferred by this Decree-Law to each of the entities responsible for implementing infrastructures **expire upon the respective entry into operation** or, when applicable, **with the declaration of the end of the implementation procedure** (*see* article 12).

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