

Review of the Draft Bulgarian Condominium Law

Interim Results, February 19, 2006

*Requested by the Ministry of Regional Development and Public Works of Bulgaria
Facilitated by the Bulgarian Housing Association BHA and Foundation Housing+^{1 2}*

To be discussed at the Round Table, February 22, 2006

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1. SUMMARY OF REVIEW

The Round Table on February 22 2006, and this review is organised by the Ministry of Regional Development and Public Works and facilitated by the Bulgarian Housing Association and the Foundation Housing+ within the framework of the project “Sustainable Housing Management; strengthening the role of homeowners and homeowners’ associations”. In the summary of the interim results of the review, the comments of the following persons are considered:

- Mihai Mereuta, President of the National Habitat League of Homeowners’ Associations in Romania
- Eric Beyer, Dutch International Guarantees for Housing DIGH
- Dick Reinders, Woonbron, Netherlands
- Huib van Eyk, Petra Bassie, Netherlands Ministry of Housing, Spatial Planning and Environment
- Stratos I. Paradias, President of UIPI, International Union of Property Owners
- Soóki-Tóth Gábor, Ecorys Hungary

Chapter 1 General Provisions

Establishment of HOAs

- Most reviewers support mandatory establishment of HOAs in condominiums from the start (both in existing and new condominiums. For existing buildings, a transition period about 2 years is proposed before the Law will be enforced. The legislation should provide that until the moment of transformation, the current associations would apply de facto the HOAs legislation.
- After the transition period, all legislation relevant for homeowners should refer to HOAs (fiscal, contractual, etc.). In Romania, this has proven an important incentive for establishing HOAs.
- The reviewers recommend that a qualified majority of all homeowners could establish a HOA (50%+1, or two thirds) without consent of the remaining homeowners.
- After establishment of the HOA, all owners share the rights and obligations under the HOAs, but only its members have voting and decision-making rights.
Alternatively, all owners are automatically members.

Splitting up HOAs in large buildings

- Most reviewers remark that the building should have one “umbrella HOA”, particularly because of the single plot on which the building stands. Each structurally separated part of the building, particularly staircases, could establish a “sub-HOA”.
- The organisational and operative by-laws could set the allocations of responsibilities to the different HOA-levels. The split-up, however, may cause an increase in management costs.

Registration

- An appendix to this law should contain a guiding model of HOAs Statute and Association Agreement. The registration procedure should be kept as simple as possible.

- Government could subsidies initial administration fees for HOAs. No registration fees should be required.

Decision-making within a HOA

- Decision-making based on consensus should be avoided. The Law could clearly establish which majority (simple (50%+1), or qualified (75%)) is required for which type of decision.
- The Law could also mention the minimum share of ownership to be present at a meeting (quorum, 50%+1). In case there are not enough members present, a new meeting should be planned in, e.g., 15 days. At that date, decisions can be adopted regardless the number of the members present.

Enforcement

- Enforcement rules could be elaborated more in the Law.

Incentives

Providing adequate incentives is crucial according to all reviewers. The following incentives could be introduced.

- Granting the right of ownership if the building in question has been renovated is a good incentive, but not sufficient. Also the surrounding areas could be considered.
- Subsidising the costs of registration.
- Support to HOAs in management/financial planning should be provided
- Tax exemption on revenues obtained from lending condominium parts for billboards, mobile phone antennae, etc. just for HOAs.
- Easier access to loans and grants for HOAs. The Law should explicitly address the eligibility of HOAs for grants under the Bulgarian National Renovation Programme.
- Tax deduction of the owners' contributions to a maintenance fund.

Maintenance of common parts

- The reviewers have different opinions on the method for distribution of utility costs for the common parts on the basis of inhabitants (compared to the alternative based on the size of the condominiums).
- The Law should oblige that every HOA has a description of its common parts and for each common part a list of owners using it.
- HOAs should be free to decide whether of not to hire an external (qualified) manager. There are different opinions on the need to specify the different maintenance contracts and the relation between HOA and the managers in the Law. This depends on to what extend this differs from common practise.
- The Law should include the obligations for establishing a day-to-day management fund, and provide for the possibility (not compulsory) of setting up other funds (maintenance reserve, repairs, etc.). The latter could be linked with a long-term maintenance plan.

Umbrella organisation for HOAs

- The Law can provide for the rights of HOAs to establish umbrella organisations. There is no need to specify what kind of umbrella organisations could be established. This should be left to the HOAs to decide.
- The Law should oblige national/local bodies to consult HOAs on issues regarding their operation/establishment.

Role municipalities

- Municipalities could play in: providing technical assistance to the HOAs. They could work together with other local institutions (fax collection, labour regulations, fire department, etc.) on order to coordinate the control and relations with HOAs. Also, the municipality could set up a registry of HOAs.
- These activities can only be carried out if municipalities get the mandatory (regulatory framework) and the adequate resources.

2. RIGHTS AND OBLIGATIONS TO ESTABLISH A HOA

Chapter 1: General Provisions

Article 2: Paragraph 1 and 2

The current draft only makes establishing a HOA obligatory for new condominiums. Implicitly, establishment in existing condominiums is left voluntary.

Questions:

- Should it be made obligatory for existing condominiums as well to establish and register a HOA after the Law coming into force?

SP, VROM, EB, SG: Yes

MM: Yes. In Romania, a decision of the Constitutional Court was issued regarding the obligatory character of HOAs establishment. At the moment of flat acquisition, you assume certain obligations and the observance of rules. The owners' obligations differ from the tenants or residents' ones.

DR: For HOAs in newly built estates it should be obligatory, for existing condominiums not. Nevertheless all kind of incentives should be created that make it interesting for homeowners to establish a HOA voluntary. Dutch history in this field shows that obligatory HOAs easily can turn into sleeping HOAs with all consequences connected (bad maintenance etc.).

- Is a transition period necessary for existing condominiums (voluntary but with provision of incentives)? How long should the transition period be (e.g. 5 year)?

SP: two years, can be extended later, if necessary

VROM: 1 to 3 years

MM:

- *Transition period should be 2 years.*
- *In addition, the connected legislation (fiscal, tax, contractual, etc.) should deal after 2 years with HOAs only. In Romania, this was the most important measure to determine the acceleration of the transformation process (from tenants associations into HOAs).*

EB: 3 years, in combination with an incentive scheme

DR: No, the incentives should be enough, but if the legal obligation to establish a HOA in existing condominiums is desired a transition period of 5 years seems reasonable.

SG: No more than 1 year

- Or, as an alternative, should the Law set a date at which the voluntary establishment is evaluated and leave open whether an obligation will be introduced in the future?

SP: No

VROM: Not in favour. May cause problems in the future

MM: The legislation should provide that until the moment of transformation, the current associations would apply de facto the HOAs legislation.

DR: Also possible.

- If voluntary, should it be made possible that a HOA is established if not all the owners are willing to become members?

MM, DR: yes

- If so what should be the majority of homeowners that can enforce the establishment of the HOA and obligatory membership on those who are not willing? This option would facilitate the establishment of HOAs in the transition period.

MM: 50 + 1. The owners have all the obligations incurred by the condominium operation but they don't have the rights conferred by membership (voting, decision-making process, etc.).

DR: The threshold should not be too high, 75%.

SP: If there is a majority of 2/3, then the HOA will be established and they will all be (compulsory) members.

VROM: To prevent this happening, membership should be made mandatory

SG: the homeowners association as a legal form should not be kept an open choice – this is part of the condominium legal structure. Automatically all condominiums registered must be in line with legislation with regards their organisational and administration setup.

- If a voluntary HOA has been established in an existing condominium, should it be made obligatory for newcomers to join?

SP, VROM, DR: Yes

MM: No. After a while, they will come by themselves to the decision of joining in order to participate in the decision-making process.

- In large buildings, it may be more efficient and feasible to establish several HOAs for individual parts of the building. In what way should this be incorporated into the Law?

SP: HOA should be only one, with more than one “sectors”, for each separate part of the building. But if the plot of land is common, there can be only one HOA.

VROM: HOA should not be too small. Depends on the structural unity of the different segments of the building

MM: A decision on condominium delimitation/splitting where a separate approach is possible from technical/structural point of view. For example, HOAs may be established on each staircase case. Taking into account the Romanian experience, this delimitation determine increase of the management costs.

EB: Per staircase you need one HOA. All parts linked to that staircase the HOA is responsible for.

DR: Through one umbrella HOA and several sub-HOA's who financially contribute to the umbrella organization for their common parts. The chairs of the sub-HOA's are the members of the umbrella organization.

SG:

- *In Hungary large buildings may have sub-HOAs based on technical/use conditions (e.g. people whose apartments open from the same staircase or different wings of the building). However since the building is one complex finally there should be one administrative entity.*
- *There are several examples where the “organisational and operative bylaws” a mandatory document to be made by all condominiums to set their operational and administrative system allocates different issues to different level of the HOA.*
- *Sub-HOAs have a decisive power over issues that directly impact their area, however general issues must be decided by the general assembly meeting (where all HOA members are to be present) which is held minimum 1 time per year.*

- As a consequence of the Condominium Law, future HOAs will go through potentially difficult procedures. In what way could the Law be changed to make one simple registration possible?

VROM: Government could subsidy the initial administration fees

MM: No registration fee. The courts should designate judges with special competences on HOAs registration. The courts decision on HOAs registration should be adopted without the obligation to have present the HOAs representatives. The decision should be transmitted by post.

EB: I can't oversee this. Is the procedure really that difficult? Notary, tax office, registrar within municipality. It looks quite normal to me.

DR: I don't know Bulgarian law too well, but the registration procedure for HOA's should be made as simple as possible; because they are not (commercial) companies

but voluntary organizations they should be treated like that. In my opinion a simple registration at the municipality and at the tax office should be sufficient.

SG: in Hungary the land registry system registers the condominium and as subtitles the individual apartments. The HOA is not an officially registered entity but all owners of the condominium automatically became members of the condominium which means there are rights and responsibilities not just as individual owner of the apartment. A HOA could be a legal entity which has the benefit that if well managed it could be financed as a legal entity (this is not the case in Hungary).

3. DECISION-MAKING IN A HOA

*Chapter 3 Establishment and Management of a HOA
Article 13 and 17 in particular*

The draft Law appoints the General Meeting as decision-making body on both daily management as well as on upgrading and extension of the building (*Article 13*). *Article 17* states that the meeting is legal if more than three quarters of the members are presented. The draft Law does not specify with what majority vote decisions can be taken.

Questions:

- Should the Law also specify which type of decision is required on the different issues as listed in Article 17 (simple majority, qualified majority or consensus)?

SP: of course

VROM: yes, but any consensus requirements will always cause problems. A qualified majority could be 2/3, ¾ or 5%+1. Can Bulgarian Law be used to settle this?

EB: Yes, but in general terms. Investments, loans, and main obligations: 75% majority. All other decisions: simple majority.

DR: yes, with as only options simple majority (>50%) and qualified majority (>75%). Consensus should be avoided, because it makes it possible for the smallest minority to harm the interest of the largest majority. The experiences in pilot project Zaharna Fabrika show that this is not an imaginary situation but common practise.

SG: Yes. Also it is required to set a minimum share of ownership to be present for the meeting to be considered decisive at all. In case there are no enough owners present another date could be set. In Hungary this second meeting shall be decisive even if only a minority of the owners are present and any decisions made are obligatory for the others who were absent.

- Is the enforcement procedure specified sufficiently (*Article 14 and 15*)?

MM:

- *The general meeting should be legal if 50+1 of the owners is present. In case of day to day decision, a simple majority (50+1) of the present members should be enough. And in special cases, two thirds voting of the present members is feasible.*
- *In case there are not enough members present, a new meeting should be planned in 15 days. At that date, decisions can be adopted regardless the number of the members present.*

EB: This can be put more clearly: the non-paying members can be forced to pay (by serving a writ (bailiff) or go to court)

DR:

- *In my opinion these articles should not only regulate financial enforcements but also enforcements in case of annoyance. In the Netherlands for instance it is possible that the general meeting forbids an owner the use of his property if he uses it against regulation and gives annoyance to his neighbours.*
- *George Georgiev fears political opposition to enforcement procedures if owners through such procedures are kicked too easy out of their house. In the Netherlands this would mean you have to go to a rental or stay with family, in Bulgaria it's street or family. So, political reluctance is understandable.*

4. INCENTIVES

It is crucial that adequate incentives are provided for homeowners to organise themselves in HOAs, particularly in a transitory voluntary period.

Questions:

- *Chapter 5 Administrative Orders; Paragraph 5 states that the owners of apartments in condominium buildings who have entered the HOA are granted the right of ownership on the relevant share of the land under the building if the building in question has been renovated in compliance of requirements in Item 169 of the Urban Planning Act. Is this in this form an adequate incentive?*

SP: It is a very clever and a very important one.

VROM: depends on how important landownership is in Bulgaria

MM: As far as I know, the ownership right on a relevant share of the land under the building is not conditional. At least, In Romania there were no discriminations on granting this rights in accordance to the condominium share owned.

EB: Not enough

DR: Yes and no. No, because land ownership for many owners is a too abstract concept of which they do not completely understand the benefits. Nevertheless this incentive of course should be provided in the law because of its indirect benefits, but other, more direct incentives too.

- Apart from getting the ownership on the land the draft Condominium Law does not contain any other incentives to establish a HOA. Is this incentive enough and, if not, what other incentives should be offered in the law?

SP: All kinds of EU or State or municipality subsidies should only be given to building owners who have adopted the HOA scheme, and their association is a member of the local HOAs Union.

VROM: possible incentives are: subsidy of registration costs, support of HOAs in management/financial planning etc

MM:

- *The observance of law should be obligatory (with a transition period, but finally without exception). An incentive could be the tax exemption on revenues obtained from lending condominium parts for billboards, mobile phone antennae, etc. just for HOAs.*
- *A good awareness campaign should be promoted.*
- *Another argument is that on the occasion of transforming into HOA, there is the opportunity for clarifications after tens of years of non-regulated issues and non-controlled aspects.*

EB: Access to loans and/or grants. Also for banks it should be clear that financing can't be done (also to individuals) when a HOA is lacking.

DR:

- *No, it is not enough. A good incentive would also be the possibility of tax deduction of the owners' contributions to the maintenance fund in case there is an established and registered HOA.*
- *Another tax provision would be to leave out of account ones share in the maintenance fund in regard to wealth tax. Direct incentives could also come out of the subsidy scheme of the National Renovation Programme, but should be addressed in that programme and its yearly budgets, not in the Condominium Law.*
- *The Condominium Law should however in a general way state that HO's established under this law are entitled to apply for subsidies and are in that way seen as legally acknowledged entities. A comparison could be made with the 'legally admitted' status of Dutch Housing Associations, which makes them exclusively eligible for subsidy schemes.*

- The Bulgarian National Renovation Programme (adopted 2005) foresees a subsidy scheme for renovation (20% of investment costs). Should the Law make explicit reference to the eligibility of HOAs under the programme?

SP, MM, EB: Yes

DR: See previous remark

5. MAINTENANCE OF COMMON PARTS

Questions

- The draft Law mandates a distribution of utility costs for the common parts on the basis of number of inhabitants (*Chapter 4; Article 33*). Is this a suitable method?

SP: This is not a safe method, because the number of people living in an apartment may change continually, or may be misreported to the HOA. A safer criterium is the size of each apartment.

VROM: Is possible. An alternative is a certain percentage

MM: This is the fairest method (to calculate it depending on consumers).

EB: yes

DR: it is better to do it on the base of the share that an owner has in the common parts; large share, large vote, large contribution but also small share, small vote, small contribution.

SG: No. The only well accountable measure is the floorspace the individual apartments occupy in the building. It is up to the owner how dense they occupy the apartment and it is not easy to control

- In large buildings, there is a need to divide the common parts to be able to draw specific maintenance plans based on differentiated responsibilities. How can this best be incorporated into the Law (in *Chapter 1*)?

VROM: An option is a certain percentage related to the sq meters of the dwellings.

MM: The possibility to make decisions on divided common parts of large condominiums should be possible only if a structural delimitation is possible. The principle of joint responsibility on common parts, regardless their “geographical” situation, should not be eliminated.

EB: Again: one HOA per staircase. In Chapter one

DR: the Law should oblige that every HOA has a description of its common parts (according to the definitions in the property law) and for every common part a list of owners using it or having benefit of it. For instance, although in a large panel building only few people are living directly under the roof, all owners are benefiting of the existence of the roof, so all owners have to contribute according to their share.

SG: By way of setting up sub-HOAs. It is important that some logic of architecture/structure is being taken in sight when dividing the building among sub-HOAs.

- Should HOAs be free to decide whether or not to hire an external manager?

SP, MM, EB, DR: Yes

SG: No. In Hungary it is obligatory to have a manager with the necessary qualifications (such qualifications are provided by the state based on an exam).

- Should the Law specify the different types of contracts that can be used (*Chapter 2*)?

SP: No

VROM: This can be used an incentive. Different contract types can be specified in the Law, if required. Important to state responsibilities.

MM: HOAs have to observe the same legislation as any non-profit body.

EB: Don't overload the law. It won't work.

DR: That would depend on the nature of the contract and the possibility of getting an incentive (for instance tax deduction).

SG: Yes, the clearer the better. Also management responsibilities must be clearly set.

- Should the Law specify in more details the relation between the HOA and the managers?

SP: The basics should be in the law.

MM: No. HOAs have legal status. They have to posses the responsibility of their decision, they have to self regulate in relation to the competence limits granted to their managers.

DR: The managers provide contracted services to the HOA, the HOA is their commissioner. If that is common practise in Bulgaria, this should not have to be detailed in the law. If it is not, than it should.

- The draft Condominium Law only obliges HOAs to establish and maintain a reserve fund for catastrophes. The draft Law does not include specific provisions for the establishment of a maintenance fund. Should the Law specify the establishment of a maintenance fund? If so, should such a fund be obligatory or voluntary and what would be the legal requirements for such a fund?

SP: It would be more practical if it would be mandatory for the HOAs to insure the common parts as well all the apartments of the buildings, in a private insurance company. This would really help repair any damage.

VROM: Yes. Start with technical survey and use this for long-term planning and maintenance plan.

EB: Voluntary

MM: In Romania, the law specify as obligatory the day-to-day management fund. The law provides the possibility (not compulsory) of the general meeting/assembly to set other funds (maintenance, repairs, etc.).

DR: Yes, the law should specify this and make it obligatory. The law should also mention a certain minimum size of the fund and a minimum quality standard of the technical condition of the condominium in order to prevent (further) deterioration. If tax deductions are used as incentive provisions like these would be very logical in this law

SG: It is better to have a reserve fund obligatory, however it would not seem logical to set standards with regards the amount to be set. Maybe a more soft indication: to assign payments that convey with longer-term maintenance plans agreed by hoa members.

6. OTHER ISSUES

Questions:

- In many other countries, **national umbrella organisations** (Unions) of HOAs have been established to 1) represent their interest towards national and local government and other stakeholders and 2) support HOAs in their work. How can the Law support the establishment of such a Union in Bulgaria? Should a reference be made in the Law establishing the future relation between Government with such an organisation?

SP: No one knows how many such Unions of HOAs will be established all over the country, and when there will be one (or even more) national federations (or further confederations) of all these unions. This will be seen in the future. It is better not to try to regulate it now by the law.

VROM: May be useful

MM:

- *The law can provide for the rights of HOAs to form umbrella organisations (the restriction to only one umbrella organisation should not be made under no circumstances).*
- *The law should oblige the national/local bodies to consult the HOAs on the matters that regards their operation/establishment or certain other aspects.*

EB: Such an umbrella organization can be very useful especially when it acts also as a kind of service centre. A certain support from the government in the beginning phase is very welcome. But that should be arranged as side programme and shouldn't be mentioned in the law.

DR: Yes, that could be useful but is not a necessity. If such reference is added to the law, than also the possibility of subsidies should be addressed.

- Should the role and responsibilities of **municipalities** in supporting HOAs be further specified?

SP: Municipalities can only have a role, if they have available funds to subsidize certain activities, like buildings facades renovation, energy savings etc. So there is no need for specification in the law.

VROM: depends on the intended role (e.g. in providing incentives). In principle yes, because municipalities will have the insight how many HOAs have been established and in how they are functioning.

MM: A specific role should be methodological guidance. The municipalities should work together with other local institutions (tax collecting, labour regulations, fire department, construction discipline, etc.) in order to set joint control themes/actions of HOAs.

EB: No. Also part of side programme.

DR: Yes, in the law should be emphasized that every municipality sets up a register of HOAs, that municipalities are obliged to hand over the ownership of the land if the HOA applied to the conditions mentioned in the law, that municipalities are obliged to support HOAs within the limits of their possibilities but in no way are allowed to counteract against HOAs interests as long as those interest fit within public interest.

SG:

- *It is my experience that in transition countries only those administrative systems work where there is a strong central government incentive in both the positive and negative way (sanctioning). Since there are limited means for the Bulgarian government to provide positive stimuli, the ownership of land is seen as a good start, maybe also not only land occupied by the building but surrounding areas should be considered, as this could also induce the change of space use on large housing estates by “personalizing” spaces, creating semi-private areas to be managed and maintained by residents). I would see more firm obligations with regards how condominiums should manage themselves.*
- *It is necessary that government level agency together with municipalities provide all technical assistance to enable owners to set up their system. There should be model documentations available and also there should be a wide reaching information campaign so all necessary information should be there with as little cost for the residents as possible.*

7. OTHER REMARKS BY THE REVIEWERS

Recommendation to use the UNECE Condominium Guidelines in the review (AE)

Recommendation to use the book of UIPI published on June 2005 in Oslo, containing a special report on the everlasting problem of condominiums (pages 98-103). (SP)
Invitation to the National Seminar „Building Energy Certification Contractual Parties“ In the framework of the Project STABLE “Securing the Take-off of Building Energy Certification: Improving Market Attractiveness through Building Owner Involvement” under the EU EIE Program. (VD)

VROM:

HOA's need support to arrange maintenance, renovation, etc. but also for meetings of home-owners, administration etc.

Remarks on the "Excerpts of the Condominium Law":

Art 1 (2). Possibility to state minimal 20 units in a HOA .

Art 5 (1) Make it as easy as possible for homeowners in a HOA. If each homeowner makes his own agreement, legal proceedings will be more difficult, diverse and probably more frequent.

Art 6: Add "and certified at the Notary service".

Art 13 (1) 1: Add "and the long term plans".

Art 13 (1) 12: Are there any guidelines for salary?

MM:

My general opinion is that the law needs improvements and at least during our cooperation I have noticed that there was a good transfer of information and guidance to the Bulgarian authorities. Unfortunately, this law version does not reflect this effort.

Another subject, maybe an advice to the Bulgarian authorities is not to stick to a deadline if there is no possibility to achieve a complete law and if they do not have the administrative capacity to implement it (counselling, training, good relationship between the municipalities and the future HOAs). Please have in mind that any change on the condominium matter determines deep effects on social plan and if they are not dealt correctly, negative effects will occur.

Bulgarian authorities and other actors involved should take more into consideration the Romanian experience of almost a decay in regulating the HOAs establishment and operation. Especially, since we share the same background (ex communist countries). Thus, Bulgaria could avoid a lot of dysfunctionalities and errors that occurred in Romania. On the occasion of working with the Dutch and Bulgarian partners, I sent the Romanian law on condominium and accounting.

Soóki-Tóth Gábor:

I have already sent a copy of the Hungarian Condominium Law to Ms Miriana Iordanova of the Bulgarian Academy of Sciences. This document was in Hungarian as I did not find any English version, but they said it will be ok, they can have someone translate it for them. My reactions are mainly based on the Hungarian practice where there are still problems with panel houses, albeit to a lesser extent than in Bulgaria.