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Energy & Natural Resources - Croatia



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Mirosljub Macesic



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Mining Act changes help to return control to the state

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Introduction

Recently, the holder of an exploration permit for certain areas in northern Croatia lost its permit because it did not commence exploration activities within the period required. The permit was granted for an unlimited period under the former legislation that existed before the Mining Act 2009, but was revoked following the April 2011 amendments to the act.

According to geological data of the Ministry of Economy, oil and gas reserves exist in northern Croatia. A public tender for the exploration of these areas is expected to be announced in 2012.

Changes to the Mining Act

In April 2011 Parliament passed the first amendments to the Mining Act (*Official Gazette 75/2009*). The amendments affect several articles and are designed to fill the gaps in the mining legal framework that was brought into effect by the act. The amendments introduce, among other changes, the following four articles:

- Article 17 – this provides for compensation for damages to owners of property damaged due to exploitation and/or exploration by natural persons and legal entities that do not hold the required permits including:
 - compensation for occupation of the property; and
 - abandonment compensation.
- Article 40 – this obliges the holder of a licence issued under the former legal framework (before the 2009 act) to submit a report on mineral reserves. Holders of new and old licences must submit their annual reports by January of the following year.
- Article 51 – bidders in public tenders for the exploration and exploitation of mineral reserves must submit a statement issued by the Public Prosecutor's Office and State Inspectorate that they are not involved in any proceedings for unlawful exploration and/or exploitation.
- Article 136a – a holder of the rights to mineral reserves obtained under the legal framework in force prior to 2009 (ie, an exploration area permit or a field exploitation licence) will lose the respective right automatically if exploration or exploitation is not commenced within the timeframe set out in the licence.

The amendments are in line with the overall tone of the Mining Act, which is designed to give control over mineral reserves back to the state (as opposed to companies).

New legal framework

The mining legal framework rests on the cornerstone principle that mineral reserves are resources of special interest to the state and are its property. Previously, the government gave the company exploring and exploiting oil and gas in Croatia a lot of freedom, and the new approach shows a shift towards investors ready to explore and exploit oil and gas in Croatia. The initial stage of this process is the introduction of tendering processes for exploration and exploitation.

The new legal framework continues the existing licence regime; however, it introduced a public tendering process for the award of exploration permits and exploitation licences in line with the Market Competition Protection Act (*Official Gazette 79/09*) and the Concessions Act (*Official Gazette 125/08*). The state will award an exploration permit for a maximum of five years. An exploration permit does not guarantee to the holder that it will also be awarded an exploitation licence. If the exploration permission holder does not win the exploitation tender, it has the right to compensation for all exploration costs and expenses that it has incurred from the exploitation licence winner. The winner of

the exploitation tender enters into a concession contract with the state. The concession may last for a maximum of 40 years.

Neither the permit nor the licence is transferable to a third party.

In order for the winner of an exploitation tender to conclude an exploitation concession contract, it must meet the following requirements:

- It must have its seat or a corporate presence in Croatia carrying out registered exploration or exploitation activity.
- It must have resolved any real estate property relationships in the exploitation field.
- It must obtain permission for the mining project.
- It must obtain permission for the environmental protection study.

Issues

Since the former mining legal framework did not specify a duration for exploration permits and exploitation licences, it has been hard to implement the new framework, as no transfer and harmonisation method has been established in order to convert the old, unlimited permits and licences to the new time-limited permits and licences. It is unclear how the new framework applies to holders of old permits and licences.

As a result, further amendments to the Mining Act are expected in the future.

For further information on this topic please contact [Miroљub Maćešić](#) or [Miran Maćešić](#) at Law Offices [Maćešić & Partners](#) by telephone (+385 51 215 010), fax (+385 51 215 030) or email (macesic@macesic.hr or mmacesic@macesic.hr).

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