



NEW MARITIME DOMAIN AND SEA PORTS ACT ENTERED INTO THE FORCE IN THE REPUBLIC OF CROATIA ON 29TH JULY 2023

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Necessity for modernization of the maritime domain management in the Republic of Croatia.

The Croatian Parliament passed the new Maritime Domain and Sea Ports Act, which entered into force on 29th July 2023. The new Act more accurately determines the boundaries of the maritime domain, addresses the legal status of embankments and, among other legal matters, governs the commercial use of maritime domain.

The previous Maritime Domain and Sea Ports Act was considered one of the longest-standing laws in the Republic of Croatia being in force for the past 20 years. During those 20 years, the Act encountered numerous problems in its implementation and was inconsistent with other legal acts, such as the Concessions Act.

Significance of the new regulation

To put things into perspective, the maritime domain of the Republic of Croatia covers more than a third of its total state territory, i.e. inland waters consisting of 12.498,00 km², territorial sea consisting of 18.981,00 km² and also the pertaining sea coast.

According to the Maritime Domain and Sea Ports Act, maritime domain is the general property of interest to the Republic of Croatia, it enjoys unparalleled special protection and it represents the common good for general use.

“Everyone has the right, under equal conditions, to use the maritime domain in accordance with its characteristics, nature and purpose (...).” Art. 4. para. 5 of the Maritime Domain and Sea Ports Act.

However, such as any other freedom, the broad utilization of the maritime domain cannot be unrestricted. It comes with several exceptions that restrict or even prohibit its usage for various economic and security reasons.

Problems regarding maritime domain revolve around the fact that its border on the largest part of the coast has not been determined and consequently, registered. Therefore, cadastral records and the registration of maritime domain in the land registry are being regulated by the

new Act. It will hopefully help to establish order in the determination of Croatia's maritime domain in its entirety.

Since the new Maritime Domain and Sea Ports Act contains 236 provisions, this article covers most significant novelties regarding the management and supervision of maritime domain and its commercial use, as follows:

1. Sea beaches

The new Act for the first time regulates the concept of *sea beaches* and their replenishment as they constitute the most significant component of Croatia's tourist offer and tourist and sport industries.

It regulates their division into *public sea beaches* (which are also divided into *natural sea beaches* and *arranged sea beaches*) and *sea beaches for special purposes*.

Art. 78 of the Act states that "*it is not possible to grant a concession on natural sea beaches if the natural sea beach is outside the construction area.*"

Shortcoming of the Act – The Act in later provisions does not go into details regarding the relation of natural sea beaches and possible concession on them if, hypothetically speaking, the natural sea beach is located inside of the construction area.

2. The relation of the Act and public interest (Art. 81)

The grantor of a concession for the commercial use of a public sea beach is obliged to ensure and protect the public interest in the use of the beach when deciding on the beach area where

the concessionaire can perform commercial activities.

Therefore, the concession for a public beach in the settlement area must be granted in such a way that the entire beach would be available for use by all, and that the concessionaire may carry out commercial activities for which the concession has been granted on no more than 40% of the land and 20% of the sea part of the beach.

Also, the concession for a public beach outside of the settlement must be granted in such a way that the entire beach is available for use by all, and that the concessionaire may carry out commercial activities for which the concession is granted on no more than 60% of the land and 40% of the sea part of the beach.

Shortcoming of the Act – The Act does not prescribe criteria for calculating the percentage of the beach on which commercial activities can be carried out, which makes these provisions open to wide interpretation.

3. The relation of the Act and concessions

The Concessions Act defines concession as a right acquired through a contract (contractual right).

“The grantor of the concession determines the period for which the concession is granted in a way that this period does not restrict market competition more than is necessary to ensure the amortization of the real value of the concessionaire’s investment and the reasonable return of the invested capital, while taking into account the costs and risks assumed by the concessionaire during the concession.” (Art. 17. para. 2 of the Law on Concessions)

Therefore, concessions on maritime domain are granted through public tenders.

The exemption from the abovementioned rule is the possibility of *concessions on request*.

Concession on request on maritime domain can exceptionally be granted to the concessionaire for the reasons prescribed in the Art. 63 of the Maritime Domain and Sea Ports Act.

The Maritime Domain and Sea Ports Act states that the concession fee for concessions on request shall be determined by a study on the justification for granting the concession – a necessary precondition for the start of the concession granting procedure. However, the concession fee must not be lower than twice the amount of the concession fee obtained through public tender for the same or similar subject-matter of the concession during a period of five years from the date of submission of the application.

It is not clear for which period the concessions on request can be granted but it is commonly assumed that they can be granted for a maximum period of five years.

4. Novelties regarding port activities

The new Maritime Domain and Sea Ports Act prescribes the duty of the county port authority to perform port activities single-handedly, while the concession for performing port activities can be granted only exceptionally to a commercial entity.

The Act also introduces a *single port tariff* consisting of port fee and port charge for provided port services.

Among other novelties, the Act also prescribes that maritime wardens and guardians of nature (in natural areas protected by law) are responsible for maintaining the order on the maritime

domain.

5. Administrative novelties

The Ministry of the Sea, Transport and Infrastructure is responsible for organization and management of *the Single National Database of Maritime Domain of the Republic of Croatia*, as an interoperable database of spatial data for the purpose of record keeping and data exchange.

The Ministry of the Sea, Transport and Infrastructure is also responsible for organization and management of *the Registry of Concessions* (as a separate part of the Single National Database of Maritime Domain of the Republic of Croatia) in which all concession grantors are required to regularly enter all concessions, sub-concessions on maritime domain and special uses of maritime domain, as well as any relating changes.

The Government of the Republic of Croatia must adopt *a National Plan for the Management and Direction of Maritime Domain and Sea Ports* and all maritime domain management plans of Croatian counties, cities and municipalities must be harmonized with it.

The Act prescribes the establishment of a special institution for the purpose of integral maritime domain management. Minister of the Sea, Transport and Infrastructure stated that the jurisdiction and organization of aforementioned institution will be regulated by a special act which shall be passed within two years from the adoption of the Maritime Domain and Sea Ports Act.

Concluding thoughts

The reasons for adoption of the new Maritime Domain and Sea Ports Act can be seen in outdated legal solutions which the previous Act offered, as well as in its shortcomings and non-uniformity in application.

The new legal framework is providing better mechanisms for the protection and management of the maritime domain while simultaneously protecting the public interest and general use of maritime domain.

It remains to be seen whether the new Act will help solve the problems previously encountered by its predecessor and establish order on Croatia's maritime domain.

Authors: Koraljka Devčić (Associate) and Anita Krizmanić (Partner).



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