



REVIEW OF THE LAW ON AMENDMENTS TO THE LAW ON MINING AND GEOLOGICAL EXPLORATIONS

After five years of applying the Law on Mining and Geological Explorations, according to the assessments of both those who used it in practice and the wider professional public, the time has come to amend it in order to enable a more efficient achievement of its goals. Therefore, the package of recently adopted energy regulations includes the Law on Amendments to the Law on Mining and Geological Exploration ("Official Gazette of the Republic of Serbia" no. 40/2021) (hereinafter: the Law), whose main solutions we will aim to present in this review.

Although it does not bring such significant innovations in the Serbian energy legislation such as the Law on Use of Renewable Energy Sources or the Law on Energy Efficiency and Rational Use of Energy, its importance lies in the fact that it elaborates and complements the existing legal framework while at the same time further harmonizing it with the relevant EU legislation. The Law amended the initial law primarily in three areas: a) determination and more precise interpretation of existing legal procedures, bearing in mind particular characteristics of different types of mineral and geological resources; b) harmonization with regulations in the field of, inter alia, environmental protection, and c) introduction of electronic business in procedures regulated by law.

The purpose of passing the Law perhaps best illustrates the proclamation of the following four new principles prescribed in Article 1: a) continuous

supply of sufficient quantities of mineral raw materials is necessary for strengthening the market economy in the Republic of Serbia and its sustainability; b) regulating relations regarding geological exploration and mining in a balanced manner, which ensures the economic, social and environmental sustainability of these activities and projects, under the conditions of the market economy; c) holders of rights obtained under this law are obliged to do all their activities in accordance with best professional, social and environmental rules, and to apply the best technical methods and means during geological exploration and exploitation of mineral resources, to improve project sustainability and safety of all, as well as to prevent, reduce and eliminate damages and disturbances from activities regulated by this Law to the greatest extent possible; and d) guarantee of safety, predictability and continuity of exploration and mining rights in accordance with this law. We conclude that the stated principles essentially implement two goals. On the one hand, the public interest is protected, while on the other hand, the aim is to create a suitable framework for attracting investments and meeting the need for increased investment in the sector. Continuous application of the Law in the coming period will show the extent to which these goals will be achieved in practice as well as the manner of their interpretation, both by public authorities and by users of the Law.

Article 2 of the Law prescribes new definitions, such as the definition of mineral resources, and complements the existing ones, such as geothermal resources, which should resolve certain dilemmas that previously arose when interpreting the Law. Article 15 of the Law established the Chamber of Mining and Geological Engineers of Serbia in order to improve the conditions for performing professional work in the field of mining and geology, design, geological exploration, construction of mining facilities and other areas important for mining and geology of the Republic of Serbia, protection of guild and individual interests, improving the provision of services as well as to achieve all other goals that improve the expertise and professionalism. The Chamber's competencies and structure are determined by the Law itself. One of the significant competencies of this expert public body is the adoption of codes of professional and ethical standards for geological and mining engineers and other engineering professions that work in mining and geology, which will further contribute to engineers' professionalization and ethics and thus improve the development of these professions in the Republic of Serbia.

Article 45 of the Law deals with the expropriation of real estate by stipulating which documentation the investor submits to the Ministry for

the implementation of projects for construction and reconstruction of line infrastructure facilities of special importance for the Republic of Serbia, for which the public interest in expropriation, administrative transfer and incomplete expropriation of real estate has been determined. However, the expropriation of real estate for the needs of privately owned companies, which was already stipulated in the basic text of the law, still envisages a somewhat different solution from the one established by the Law on Expropriation.

One of the significant innovations is the introduction of the concept of investment agreement and the possibility of its conclusion between the Republic of Serbia and the investor who has acquired the right to exploit mineral resources. It regulates in more detail the issues of interest for each of the contracting parties and may contain deferral and termination conditions and deadlines. In addition, Article 37 of the Law specifies that this agreement regulates in more detail the issues of construction of missing infrastructure, environmental protection, pre-emptive purchase of products for the benefit of domestic processors and producers, fiscal i.e. financial benefits in accordance with regulations governing these and other questions of importance for the realization of a particular project. Although some criticisms of this legal solution have already appeared, it seems that the intention of the legislator is to satisfy certain specific interests of investors, while fully respecting the principle of protection of the public interest. The implementation of this Law will demonstrate the effectiveness of the realization of the proclaimed principle.

It could be said that the best example of a more precise protection of the public interest can be seen in Article 32 of the Law, which prescribes cases when the competent authority revokes an exploration permit before the expiration of a prescribed investigation period, thus aiming to achieve greater efficiency of the permit holder. Similarly, Article 61 of the Law prescribes cases when the competent authority may revoke the approval for the construction of mining facilities and performance of mining operations.

The exploitation of energy sources used for the production of conventional energy, such as coal, crude oil and natural gas, which are in nature below the earth's surface, is carried out under the Law on Mining and Geological Explorations. Additionally, certain renewable sources are located below the surface of the earth, and their exploitation is carried out in accordance with the same law. It is important to draw ones attention to the fact that these amendments do not simplify, with the purpose of regulating incentives for the use of renewable energy sources

in this area, the use of hydrogeothermal and terrageothermal energy for heating and/or cooling of buildings, which is realized on the basis of mining works and technical documentation provided by the Law on Mining and Geological Explorations and at the same time represents the means of use of renewable energy sources.

It is prescribed that the procedures that commenced prior to the day of entry into force of the Law will be completed pursuant to the regulations under which they commenced, unless the applicant requests the application of the Law in writing. The transitional and final provisions of the Law also prescribe some specific solutions, e.g. the Chamber of Mining and Geological Engineers of Serbia will be established within six months from the day the Law enters into force, and until then the Chamber will be governed by a temporary administration formed by the competent minister. Although the application of the Law already commenced, the deadline for the adoption of bylaws for its implementation, which will actually trigger its efficient implementation, is one year from its adoption. In order to see the effects of the presented legal amendments as soon as possible, we hope that the vast majority of bylaws will be adopted before the prescribed deadline.

Author: **Miloš Kuzman**

Reviewer: **Nikola Radovanović and Branislava Lepotić Kovačević, PhD**

Translator: **Nataša Rajković**

SERBIAN ENERGY LAW
ASSOCIATION

30 Tadeuša Košćuška Street
Belgrade

office@upes.rs
www.upes.rs