

Analysis of the legal framework for mining in Bosnia and Herzegovina



Foundation Atelier
for Community
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Foundation Atelier for Community Transformation - ACT is a non-profit organization founded in 2020, headquartered in Sarajevo, Bosnia and Herzegovina, with a clear geographic focus on the region. ACT is envisioned as a home, platform, and catalyst for activists and artists who, through collective action, creativity, and solidarity, work to transform their local communities. By connecting individuals, communities, and grassroots initiatives across different disciplines and movements, ACT provides them with the knowledge, tools, resources, and support needed to advance environmental protection, climate justice, human rights, and social justice.

ACT's mission is based on strengthening civil society and empowering people to actively participate in shaping the future of their communities. The organization promotes volunteerism, environmental activism, art, and culture as key drivers of social change, while advocating for the rule of law, democratic participation, and the development of peaceful and sustainable communities. Special emphasis is placed on connecting people and groups involved in environmental struggles across ethnic, national, administrative, and entity divisions, as well as across state borders, recognizing shared natural goods as a foundation for collective action and mutual understanding.

ACT plays a key role in the exchange of knowledge, expertise, and financial support for grassroots groups within the environmental movement in Bosnia and Herzegovina and the region. Through capacity-building programs, legal and media support, financial assistance, and safe physical and collaborative spaces, ACT provides support to activists, artists, scientists, and the academic community in their efforts to protect rivers, forests, biodiversity, and human dignity. Artists in this process play an important role in bringing visibility, creativity, and emotional depth to environmental and social struggles, reaching wider audiences and encouraging collective engagement.

In the context of shrinking civic space, growing pressure on civil society and human rights defenders, as well as the rise of far-right influence and the exploitation of people and nature, ACT pays special attention to the resilience and protection of its work and its members. The organization develops protection mechanisms for activists facing threats, smear campaigns, and SLAPP lawsuits, recognizing that safeguarding freedom of expression is essential for democratic and environmental progress.



Through public advocacy campaigns, field activities, and regional partnerships, ACT continuously raises awareness about the importance of protecting nature, especially rivers and forests in Bosnia and Herzegovina and the region. At the same time, the organization strengthens regional cooperation among grassroots movements across the Balkans, encouraging knowledge exchange, joint action, and the building of solidarity networks that transcend borders.

ACT's vision is a society in which the people of the Balkans live in harmony with one another and with nature, within revitalized and resilient local communities. ACT believes that sustainable peace in the region is built through joint, courageous struggles to protect shared natural goods, which create trust, solidarity, and long-term cooperation among people. Through an inclusive approach that implies the equal participation of women, men, youth, the LGBTQ+ community and all other marginalized communities, ACT advocates for a future based on mutual respect, shared responsibility, and collective action for a just, peaceful, and sustainable Balkans.





ANALYSIS OF THE LEGAL FRAMEWORK FOR MINING IN BOSNIA AND HERZEGOVINA

In the context of accelerated global changes driven by the energy transition, digitalization, and the pursuit of strategic autonomy, the demand for critical raw materials has been continuously increasing. Minerals such as lithium, cobalt, copper, nickel, and rare elements have been promoted as key resources of modern development, and their availability is increasingly shaping geopolitical and economic relations. In this context, Bosnia and Herzegovina is recognized as an area with significant potential due to its reserves of various mineral resources. This fact positions the country, together with the states of the region, as an increasingly attractive market for geological exploration and exploitation, which is further emphasized through the strategic documents of the European Union.

The increased interest of international investors in the mineral resources of Bosnia and Herzegovina is accompanied by the intensification of mining activities and exploration projects across the country. The motivation of investors in this process is clear and legitimate within the free market of which Bosnia and Herzegovina is a part, and is primarily reflected in profit generation. However, precisely because of the nature of mining activities, which have long-term and significant consequences for the environment, human health, and local communities, it is necessary to establish a balance between economic interests and the protection of public goods.

In this regard, the key responsibility lies with the institutions of Bosnia and Herzegovina, primarily the legislative and executive authorities at all levels, to ensure effective protection of the public interest. This includes the preservation of the environment, the protection of the health and safety of citizens, as well as the safeguarding of domestic economic interests. However, the analysis of the existing legislative and institutional framework indicates numerous weaknesses, inconsistencies, and legal gaps that hinder the achievement of these goals. The lack of clear and binding mechanisms, such as financial guarantees for remediation and reclamation, insufficiently developed environmental impact assessment systems in the early stages of projects, limited public participation in decision-making processes, as well as an inadequate penalty policy, create space for abuses and place the public interest in a subordinate position compared to private profit.



A particular challenge is also the fragmentation of competencies in the field of mining, where authorities are divided between entities, and in the Federation of Bosnia and Herzegovina additionally between cantons, without a unified strategic approach to the management of mineral resources. The lack of comprehensive strategic and planning documents further complicates coordination and long-term planning of the sector's development, which is reflected in unaligned policies and potential conflicts between mining activities and other development priorities, such as nature protection or water resource management.

In such a context, Bosnia and Herzegovina faces the risk that, despite its resource potential, it will not achieve the position of an equal partner in international value chains, but instead become an area of exploitation with very limited or no benefits for domestic society. In order to avoid this risk, it is necessary to establish a clear, detailed, efficient, and strict legislative framework that will be aligned with modern international standards and good practices, including the legal framework of the European Union, the experiences of countries in the region, as well as the highest standards of responsible mining, such as the IRMA standards.

Based on the above, the objective of this analysis is to identify the key shortcomings of the existing legislative framework in the field of geological exploration and exploitation of mineral resources in Bosnia and Herzegovina, and to provide concrete recommendations for its improvement. The analysis is based on a comparative approach, taking into account relevant regulations and practices of the European Union, countries of the region, as well as international standards governing sustainable and responsible management of mineral resources. Through this approach, the aim is to contribute to the establishment of a system that will enable balanced development, with full respect for the public interest, environmental protection, and the rights of local communities.

the editor, LL,B, Azra Berbić

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I Legal framework for geological surveys

1. *No obligation to provide security is defined*

To ensure that geological exploration and mining operations are conducted in accordance with the highest professional and environmental protection standards, a large number of legislative acts impose an obligation on the exploration operator (or the operator) to provide a form of security for the remediation and reclamation of land that may be degraded as a result of exploration or exploitation. As a rule, the security, or financial guarantee, should be provided before the company undertakes any activities. Therefore, given the significant potential consequences of exploration activities, which manifest as land degradation and other negative impacts on the environment (contamination of watercourses, groundwater, etc.), the provision of a security instrument is often required before an exploration permit is granted. In this way, companies are incentivised to plan and carry out activities with minimal environmental impact (which is inevitable as a result of mining activities), and the state ensures that the significant costs of remediation and reclamation do not fall upon the citizens. The financial guarantee instrument discourages irresponsible environmental practices, as it requires the guarantee to be lodged *ex ante*, before any environmental damage occurs as well as reduces potential costs for local, regional and national governments in having to remediate any damage from public budgets.

The Law on Geological Exploration of RS (“Official Gazette of RS” no. 64/22 and 63/24) and the Law on Geological Exploration of FBiH (“Official Gazette of FBiH” no. 9/10 and 14/10) do not recognise the provision of security funds in the event that the exploration holder fails to provide the necessary funds for remediation resulting from geological exploration. However, an even more significant drawback is that neither the Law on Mining of RS (“Official Gazette of RS” no. 62/18) nor the Law on Mining of FBiH (“Official Gazette of FBiH” no. 26/10), do not stipulate this obligation for the mining operator, given that exploitation, by its very nature, leads to greater degradation of the terrain and the environment.¹

1 Neither the draft Law on Mining of the FBiH from 2024, which was subsequently withdrawn from the procedure for further processing, nor the draft Law on Mining of the FBiH from 2025 recognises this type of security.



Good practices in the EU

The concept of financial assurance was introduced in the EU for the mining sector through the Directive on the management of waste from the extractive industries². Article 25 of the Directive provides that the operator of a waste facility used in the extractive industries must be required to provide financial assurance, in accordance with the procedures of the Member State. As a **minimum standard**, the Directive requires that **the financial guarantee be sufficient to cover all obligations arising from the permit**, including land reclamation costs, and that the guarantee be submitted before commencing activities that may lead to environmental degradation. Bearing in mind that the **preventive function of the financial guarantee** can be lost if, for example, the guarantee amount is set too low, the question of the guarantee amount, which is determined by each Member State according to an established methodology, remains crucial.³

Sweden, as one of the leading mining countries in the EU, is a good example of how guarantees, provided in accordance with mining and environmental protection regulations, ensure compliance with high technological and environmental standards. **Thus, an exploration licence includes an obligation for the licence holder to provide financial assurance before commencing exploration activities.**⁴ This guarantee is intended to ensure that landowners and other interested parties receive adequate compensation for economic losses (e.g., the inability to cultivate certain crops near exploration boreholes, etc.). **Any person who has suffered financial losses due to geological exploration may claim compensation for their losses** from the mining inspectorate, which initially determines the amount of the guarantee

2 Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries, available at: <https://eur-lex.europa.eu/eli/dir/2006/21/oj/eng>, accessed on 02.08.2025.

3 A comparative legal overview of the application of provisions relating to financial guarantees can be found in the 'Assessment of Member States' performance regarding the implementation of the Extractive Waste Directive; appraisal of implementation gaps and their root causes; identification of proposals to improve the implementation of the Directive', available at <https://op.europa.eu/en/publication-detail/-/publication/f39af478-8d2e-11e7-b5c6-01aa75ed71a1>, accessed 01.08.2025.

4 Section 10, Chapter 2 and Section 3, Chapter 3 of the Mineral Resources Act (1991:45), <https://www.sgu.se/en/mining-inspectorate/legislation/mineral-act-199145/>, accessed 02.08.2025.



that the exploration licence holder is required to provide.⁵ **In addition, the exploitation concessionaire must post a (second) financial guarantee to ensure the fulfilment of land remediation obligations upon mine closure.**⁶ Unlike the financial guarantee in the exploration phase, which is intended to cover damage arising from civil liability, the guarantee lodged by the exploitation holder serves to cover damage arising from environmental liability, should the exploitation holder be unable to meet those obligations. Furthermore, the law governing environmental protection prescribes the obligation to provide a specific financial security instrument in order to prevent and reduce the negative effects of mining activities and to manage mining waste in a way that is sustainable in the long term.⁷

In Serbia, for example, it is necessary to submit a guarantee for the execution of remediation and reclamation works for land degraded by mining with the application for an exploitation permit, as well as with the application for a permit for the construction of mining facilities and the carrying out of mining operations.⁸ Amendments to the Law on Mining and Geological Exploration from 2021. the obligation was also introduced that, with the application for a permit for applied geological research, a letter of intent must be submitted from a bank or a company within the group to which the applicant belongs, stating that it will issue a bank guarantee or a corporate guarantee for the applicant's obligations, or a statement from the company that it will provide a bill of exchange.⁹ However, the aforementioned letter of intent, or declaration, does not provide protection for the activities to be carried out during the geological investigations, but merely indicates the “seriousness” of the geological investigation holder, i.e. their ability to provide the necessary security measures in the exploitation phase. Financial assurance models may

5 Mining, remediation, and financial guarantees the Swedish implementation of the Extractive Waste Directive 2006/21, 16

6 Section 6, Chapter 4 and Section 4, Chapter 13 of the Mineral Resources Act (1991:45), <https://www.sgu.se/en/mining-inspectorate/legislation/mineral-act-199145/>, accessed 02.08.2025.

7 Section 3 of Chapter 16 of the Environmental Protection Act (2000:61), <https://www.government.se/contentassets/be5e4d4ebdb4499f8d6365720ae68724/the-swedish-environmental-code-ds-200061/>, accessed 02.08.2025.

8 Article 77 and Article 103 of the Law on Mining and Geological Exploration (“Official Gazette of the RS”, no. 101/15, 95/18 and 40/21).

9 Article 34 of the Law on Mining and Geological Exploration (“Official Gazette of RS”, no. 101/15, 95/18 and 40/21)



be based on practices described by the International Council on Mining and Metals, the global mining industry association.¹⁰

The provision of security is of particular importance, given that if a company fails to carry out its obligation to remediate and reclaim the land, it may face a financial penalty. Indeed, the Law on Geological Research of the FBiH and the Law on Mining of the FBiH stipulate that a breach of this obligation constitutes an offence, **while the amount of the fine is negligible and symbolic** (the penal provisions will be explained in more detail later in the analysis). **In this way, if a legal obligation to provide security funds is not prescribed, a company that fails to carry out remediation and reclamation will pay minimal fines, which are far lower than the costs of remediation and reclamation. This represents a disproportionate concession to companies, to the detriment of the public interest.**

A topic for further research

*In practice, a key question also becomes the type of guarantee provided for the event that the exploration/exploitation operator fails to fulfil their remediation/reclamation obligations. Thus, in Serbia, a blank bill of exchange ‘without protest’, an unconditional, irrevocable and at-call bank guarantee, and a corporate guarantee can be provided as security. In practice, no distinction is made between the size and type of mine (and therefore the potential for degradation) and the type of guarantee provided, so **in practice most operators provide a bill of exchange as a security instrument, which does not provide adequate assurance, and thus does not incentivise operators to refrain from behaviour that amounts to maximising private profit at the expense of the public interest.** Some legal systems therefore only accept, for example, bank guarantees.¹¹*

10 ICMM Closure Working Group. (n.d.). Financial concepts for mine closure. https://www.icmm.com/website/publications/pdfs/environmental-stewardship/2019/guidance_financial-concepts-for-mine-closure.pdf

11 More information on the available financial instruments used as a means of assurance for remediation and rehabilitation can be found at the International Institute for Sustainable Development “GLOBAL REVIEW: Financial assurance governance for the post-mining transition”, 2021, available at: <https://www.iisd.org/system/files/2021-09/financial-assurance-governance-for-post-mining-transition.pdf>, accessed on 31 July 2025.



2. An environmental impact assessment is not carried out at the earliest stage

Exploratory drilling is widely used in the mining sector, and in the case of deeply concentrated ore deposits, boreholes may intersect several underground aquifers. As a rule, if exploration boreholes are adequately designed and managed in accordance with technical and environmental protection standards, they should not have a significant impact on the environment.¹² However, in practice, accidents often occur, drilling is not carried out in accordance with technical standards, and it happens that pollutants contaminate groundwater or the soil near the boreholes. Therefore, it is of utmost importance that **the environmental impact assessment procedure be carried out at the earliest stage**, namely at the stage of submitting the application for a permit for geological exploration. In this way, the public is also informed about the planned project, **and public participation in decision-making processes is enabled when all options are still open.**

In addition, it is important that exploration companies **collect comprehensive baseline data describing the prevailing environmental and social context in which the project or operation takes place. Such baseline data should be collected by competent and qualified professionals and should form the basis for environmental and social impact assessments.** This approach is also reflected in international standards, such as the IRMA Standard 2.0, which for exploration and development projects (Critical Requirement 2.1.6.3) requires the establishment of a socio-environmental baseline and ongoing impact assessment.¹³

The Law on Geological Exploration of FBiH does not stipulate that the decision from the previous impact assessment or the resolution approving the impact assessment study needs to be submitted at the stage of applying for a permit for geological exploration. The Law on Geological

12 JRC Science for Policy Report "A review of European Union legal provisions on the environmental impact assessment of non-energy minerals extraction projects", 2021, available at: <https://publications.jrc.ec.europa.eu/repository/handle/JRC125111>, accessed on 01.08.2025.

13 IRMA Secretariat. (2025). IRMA Standard for Responsible Exploration, Extraction, and Processing of Minerals. In IRMA Standard (2nd ed.). https://responsiblemining.net/wp-content/uploads/2025/07/IRMA-Standard-v2.0-DRAFT-2-EN_Chapter-2.1-Socio-Environmental-Baseline-and-Ongoing-Impact-Assessment.pdf 25.02.2026.



Exploration of RS stipulated the obligation to submit an opinion on the need for an environmental impact assessment with the application for a research permit, but this obligation was abolished following the latest amendments to the law in 2024.

It is important to determine at precisely what point the approvals from the environmental impact assessment procedure are obtained, which is an obvious shortcoming in the regulations governing the procedure for issuing geological exploration permits. If this procedure is considered in accordance with the regulations in the field of environmental protection (or in accordance with international standards and the purpose of the environmental impact assessment procedure) it can be concluded that during the phase of issuing authorisations for geological exploration, a decision must be submitted approving the environmental impact assessment study, or a decision that an environmental impact assessment study is not required, if the exploration satisfies any of the criteria prescribed in Annex II of the Regulation on Projects for Which an Environmental Impact Assessment is Required and Criteria for Deciding on the Need for and Scope of the Environmental Impact Assessment ("Official Gazette of the Republic of Srpska", no. 124/12)(the "RS List of Projects Regulation"), or the Decree on projects for which an environmental impact assessment is mandatory and projects for which a decision on the need for an environmental impact assessment is made ("Official Gazette of FBiH" no. 51/21, 33/22 and 104/22). However, as environmental protection regulations do not distinguish exploration works as a separate project when defining a project, the aforementioned interpretation represents an extensive interpretation, and the practice of the authority issuing the exploration consent may differ. For example, the regulations in RS do not contain a definition of a development consent at all, however, the RS Law on Environmental Protection only states that a building permit for projects that may have a significant impact on the environment is issued on the basis of previously obtained decisions approving an environmental study or an environmental permit.

***Note:** Given that it is not known whether exploitation will commence following exploration, it is recommended that exploitation and exploration be considered separate projects for the purposes of environmental impact assessment. A good example of a sound regulatory solution is the new Law on Environmental Impact Assessment in Serbia, which has not yet been harmonised with the Law on Mining and Geological Exploration, nor have the subordinate acts for its implementation been adopted, so the practical application will still have to confirm the effectiveness*



of the aforementioned legal solutions.¹⁴ If geological exploration and exploitation were to be considered a single project, it would be very challenging to define alternatives and provide sufficient data on the subsequent exploitation, which would reduce the quality of the study and the ability to adequately assess the project's environmental impact. Therefore, at the time the environmental impact assessment for the geological exploration phase is prepared, data on future exploitation are not known, and it would not be possible to adequately analyse the effects of exploitation at that earliest stage of geological exploration. For this reason, **it is recommended that two separate environmental impact assessments be carried out for the exploration and exploitation phases, with the note that the impacts and effects of the previous exploration on the environment will, in any case, be taken into account when assessing the impacts of exploitation.**

A topic for further research

A detailed analysis of the regulations governing environmental impact assessment is required in both RS and FBiH, with a particular focus on the degree of transposition of the Directive on the assessment of the effects of projects on the environment 2014/52 and the Directive on the assessment of the effects of plans and programmes on the environment 2001/42/EC, and bearing in mind that the strategic environmental assessment and the environmental impact assessment are key preventive mechanisms for mitigating and eliminating the negative effects of mining projects on the environment. For example, the laws do not provide for the possibility that, in the event an authority decides that an environmental impact assessment is not required for a specific project, such a decision nevertheless contains certain environmental protection measures and conditions, which can provide significant protection when conducting geological exploration in cases where a study is not required. In the specific case, the best solution is to amend the regulations in the field of environmental protection, bearing in mind that it is not appropriate for the matter of environmental protection to be regulated by regulations in the field of mining and geological exploration, while the aforementioned laws will regulate the point at which the decision on the need for a study and the approval of the study are submitted. The environmental law does

¹⁴ Article 2, paragraph 3 of the Law on Environmental Impact Assessment ("Official Gazette of RS", no. 94/24) it is stipulated that other activities, works and interventions in nature and the natural environment are considered to be projects, including works and activities involving the exploitation of mineral resources or geological exploration, with the exception of hydrogeological, hydrogeothermal, petrogeothermal and engineering geological-geotechnical surveys.



not have to be changed first; the mining regulation can be amended first, and then the horizontal provisions can be aligned subsequently.

Further ambiguity is created by the Law on Geological Exploration of RS, which explicitly stipulates the obligation that, in the case of submitting an application for the approval of detailed geological exploration for the purposes of geothermal energy exploration and deep drilling for water supply, the application must also be accompanied by a decision from the Ministry of Spatial Planning, Ministry of Spatial Planning, Construction and Ecology on the need for an environmental impact assessment, in accordance with the regulation defining the projects for which an environmental impact assessment is conducted, which, according to the Law on Environmental Protection, would constitute a decision on the request for a prior assessment of impact.

Note: The aforementioned wording from the Law on Geological Research of RS, although it should be clearer and explicitly specify which act is concerned without referring to the environmental protection regulation, is an improvement on the wording contained in the 2022 law. Specifically, it stipulated that an ‘opinion’ from the competent authority on the need for an environmental impact assessment was to be submitted. However, it is not clear what this opinion constitutes, as the Law on Environmental Protection of the RS recognises two phases in the environmental impact assessment procedure, neither of which concludes with an opinion. In this respect, the aforementioned law does not recognise an opinion as a legal institution in the environmental impact assessment procedure. Due to potential abuses, and bearing in mind that the legislation in the RS is largely modelled on solutions, or rather innovative institutes, which are used to circumvent legally prescribed procedures, contained in the legislation of the Republic of Serbia, we point out that any ‘opinion’ which, in an informal procedure and without public participation, de facto circumvents the obligation to conduct an environmental impact assessment must be approached with great caution.¹⁵ Furthermore, it is important to refer to the justification for the amendments and additions to the Law on Geological Investigations of RS from 2024, which states

15 You can read more about the issue of issuing opinions in the publication ‘Application of the Law on Environmental Impact Assessment in the Republic of Serbia – 20 Lost Years’, available at: <https://reri.org.rs/wp-content/uploads/2024/07/Primena-Zakona-o-proceni-uticaja-na-zivotnu-sredinu-u-R-Srbiji.pdf> and in the draft amendments to the Law on Environmental Impact Assessment prepared by RERI, available at: <https://reri.org.rs/wp-content/uploads/2024/11/Amendments-to-the-Draft-Law-on-Environmental-Impact-Assessment-20.11.2024.pdf>.



that the law is being amended to align with the regulation that defines the projects for which an environmental impact assessment is carried out, as the Regulation on the list of RS projects ‘clearly defines the research for which the Ministry assesses the impact’, and that the research ‘does not fall into the category of projects for which an impact assessment is always carried out’. Without delving into the absurdity of aligning a law with a subordinate legal act (given the hierarchy of legal acts) on this occasion, it should be noted that the justification overlooks the following: 1) certain activities carried out during geological exploration may in themselves satisfy the criteria set out in Annex II of the regulation (e.g. provisions relating to waste storage) and thus also require the conduct of a prior environmental impact assessment; 2) Article 3, paragraph ž), point 3 does not list deep drilling projects in a numerus clausus manner, but rather provides examples of when deep drilling is most commonly carried out during exploration; 3) Article 4 of the Regulation, which provides for the possibility of conducting a prior assessment of impacts, is disregarded for all other projects relating to site-specific characteristics (e.g. where activities are carried out in protected areas, etc.).

Good practices in the EU

The EU Court of Justice has taken the position that, where national regulations allow for the granting of approval for a project to be carried out in multiple phases, an assessment of the project’s environmental impact must be conducted at the earliest stage, in order to identify and evaluate all effects the project may have on the environment.¹⁶ This may be a relevant argument if the exploration is considered inseparable from the exploitation project. Deep drilling is the only exploration method explicitly mentioned in the Environmental Impact Assessment Directive; however, other exploration methods may also fall within the scope of the Directive. When defining deep drilling in the Directive, the term “in particular” is used, which implies that the list of examples is indicative rather than exhaustive, and applies to both exploration and exploitation-related drilling. An environmental impact assessment may be required when obtaining an exploration licence or when establishing a mining area and changing land use status, and the EU Court of Justice has determined that exploration drilling is a deep drilling method in accordance with

¹⁶ Suzanne Kingston, Veerle Heyvaert, Aleksandra Čavoški, European Environmental Law, Cambridge University Press, 2017, p. 387



the Directive.¹⁷ Member States have different thresholds defining deep drilling, either a general threshold above which drilling is considered deep (e.g. 300 m) or they take the type of drilling into account.¹⁸ In any case, borehole depth is not the only criterion, and the criteria in Annex III of the Impact Assessment Directive must also be taken into account, since boreholes only a few metres deep can have significant impacts if, for example, they are located in a protected area.

Environmental impact assessment during the exploitation phase

The Law on Mining of the FBiH stipulates that the application for an exploitation permit and the application for a work permit in accordance with the mining project must be accompanied by an environmental permit (which is issued following the environmental impact assessment procedure). The RS Mining Law does not mention the requirement to obtain an approval for the environmental impact assessment study when submitting the application for a permit to construct mining facilities, but it indirectly indicates that during the construction of mining facilities, the concessionaire is obliged to “possesses the approvals established by special regulations as a condition for the construction of mining facilities”. Decisions following a conducted prior environmental impact assessment are not submitted in the phase of issuing the exploitation field permit (as is the case, for example, in Serbia) in RS, whereas FBiH does not even have a separate procedure for issuing an exploitation licence (more on this below). Such or a similar solution would ensure that the documentation from the environmental impact assessment procedure is submitted at an earlier stage, becoming an integral part of the issued permits and approvals.¹⁹

17 Interpretation of the definitions of project categories of Annex I and II of the EIA Directive,
https://ec.europa.eu/environment/eia/pdf/cover_2015_en.pdf. See judgments in cases C-531/13, C-127/02.

18 Ibid.

19 For example, Rio Tinto has been unable to make progress on obtaining mining permits for more than four years because it lacks a decision on the scope and content of the environmental impact assessment study. See <https://reri.org.rs/ministarstvo-rudarstva-i-energetike-neopravdano-produzava-rok-kompaniji-rio-tinto-za-dobijanje-dozvole-za-eksploataciju-litijuma/> for more.



3. *Discretionary extension of the term for geological exploration*

The Law on Geological Exploration of RS, modelled on the Law on Mining and Geological Exploration of the Republic of Serbia, provides for the possibility of extending the term for geological exploration in the event that the exploration licence holder has been unable to conduct the exploration within the prescribed period, provided that the specified scope of work has been carried out in each year of exploration. There are differing opinions on the justification for introducing the institution of extending an exploration licence for the aforementioned reasons, and certain legislatures stipulate that an exploration licence automatically expires at the end of the period for which it was issued, without the possibility of extension.²⁰

However, **the latest amendments to the law have gone a step further, providing that even in the event that the holder of exploration rights has not conducted the required applied geological exploration, they may extend the term**, provided that the holder of the exploration rights, due to the occurrence of unforeseen circumstances (floods, earthquakes, epidemics, pandemics, war, protests and others), was unable to carry out detailed geological investigations within the approved exploration period, **which opens up scope for abuse of this provision** and unjustified extensions of the period in the face of various unforeseen circumstances.²¹ Particularly problematic is the fact that the **unforeseen circumstances are broadly defined**, and that under “force majeure”, in addition to states of war and natural disasters, protests are also envisaged, which represent one of the fundamental rights in a democratic society and one of the pillars of a democratic society. Further confusion is introduced by the justification for the 2024 amendments to the law, year, which states that “the right to request an extension of the exploration period, as defined by the applicable Law, is available to the exploration licence holder if they have carried out more than 75% of the planned works, and subsequently unforeseen circumstances occur which prevent them from completing the commenced exploration”. However, a linguistic interpretation of this article of the law does not lead to this conclusion, and there is a possibility of different interpretations in practice. The aforementioned justification clarified that “an extension of

20 Articles 40–46 of the Croatian Mining Act (“Narodne novine” no. 56-13, 14/14, 52/18, 115/18, 98/19 and 83/23).

21 Article 38, paragraph 1 of the Law on Geological Exploration of the RS.



the exploration period will be granted for the duration of the unforeseen circumstances”.

The Law on Geological Investigations of FBiH provides that the validity of a permit for geological investigations may be extended, if the conditions on which the permit was issued have not changed and if more than 50% of the planned exploration works have been carried out.²² A detailed analysis of the application of the regulations is required, and the justification for the existence of the aforementioned legal provision must be established. If, however, it proves necessary to grant an additional period for exploration, **the Law on Geological Exploration of the FBiH must raise the threshold of the planned exploration works carried out in the FBiH and specify that the scope of the planned exploration must be fulfilled in each exploration year. In the Law on Geological Research of RS, it should be stipulated that the deadline can only be extended once, and only if the cumulative conditions have been met that a certain volume of work has been carried out** (with the stipulation that the said volume of planned exploration work must be fulfilled in each year). and that the exploration works could not be carried out due to ‘force majeure’, which **shall be defined by a clausal enumeration (numerus clausus) in accordance with international standards**, taking into account the public interest rather than the private interests of mining companies.

4. Inspectional oversight of the application of the provisions of the law governing geological exploration

It is necessary to align the obligations of exploration right holders, as prescribed in the laws governing geological exploration, with the rights and duties of the inspection authorities. For example, the Law on Geological Exploration of the RS does not provide inspectors with the authority to determine:

- whether a larger quantity of mineral raw materials is being taken for testing than the quantity specified in the exploration permit;
- whether the prescribed health and safety at work measures are being implemented, as well as the necessary measures to secure property, protect human health and safeguard the environment;
- whether the exploration licence holder has provided professional

22 Article 30, paragraph 3 of the Law on Geological Exploration of FBiH.



supervision over the conduct of geological exploration and exploitation, etc., even though the breach of some of these obligations is provided for in the penal provisions.

Similarly, the Law on Geological Exploration of FBiH does not, for example, provide the inspector with the authority to determine whether the commencement of exploration works has been reported, whether a project for geological exploration and an elaboration on the reserves and quality of mineral raw materials within the exploitation field have been prepared, etc.

Indeed, due to the aforementioned omissions by the legislature, it may happen in practice that an inspector refuses to determine an illegality, pointing out that they are not authorised to ascertain the fulfilment of an obligation that is not explicitly specified in the law in the provisions which set out their powers, rights and duties. This alignment could be achieved by introducing a general clause stating that the inspector is authorised to determine whether the exploration licence holder is also fulfilling other obligations prescribed by the law and regulations made thereunder. Another possibility is to clearly and unambiguously prescribe the inspector's powers regarding the enforcement of each individual obligation of the research holder. To avoid any doubt that may arise in practice, potential abuse by the inspectorate, and to ensure the correct application of regulations in this area, the best solution would involve a combination of both approaches.

5. *Inadequate penal policy in the field of geological exploration*

One of the key reasons for breaches of the regulations is the lack of punitive mechanisms in the event of non-compliance. The Law on Geological Exploration of the RS does not prescribe all activities/failure to sanction certain activities as stipulated by the aforementioned law, such as failing to define liability for conducting exploration without authorisation (or merely in contravention of an approved project), and retaining the right to an exploration area without authorisation, failing to enable the inspectorate to carry out its supervisory duties adequately, conducting investigations without notification, etc. The Law on Geological Investigations of the FBiH prescribes penal provisions in a more comprehensive manner, and in that case, it remains recommended that actions which prevent the inspection from carrying out its supervisory duties be sanctioned.

6. *Research in protected areas*

The Law on Geological Investigations of FBiH stipulates that geological investigations for the exploitation of mineral raw materials are not permitted in areas where waterworks facilities and water supply installations are located, objects and areas significant for defence, cultural monuments, natural rarities, cemeteries and areas protected in accordance with other laws.²³ On the other hand, the Law on Geological Research of RS allows detailed geological research in protected areas of nature, areas under preliminary protection, areas planned for protection in units of cultural-historical, architectural and archaeological significance, under the conditions prescribed by laws governing nature conservation, the protection of cultural assets, the protection of national parks, as well as by the act declaring the area protected.²⁴ It is necessary to consider restricting and prohibiting (where necessary) geological exploration and, consequently, exploitation in protected areas in order to preserve these areas as assets of general interest.

7. *Interested public as a party in administrative proceedings in accordance with the laws on mining and geological exploration*

The Law on Geological Investigations of the RS and the Law on Geological Investigations of the FBiH do not provide for the possibility of the interested public to participate in administrative proceedings in which decisions (administrative acts) are made. This possibility is also not provided for by the Law on Mining of the RS and the Law on Mining of the FBiH. The possibility for a person claiming party status to be included in the proceedings after they have commenced is also dealt with briefly in the Law on General Administrative Procedure of RS and the Law on Administrative Procedure of FBiH, which state that “if a person who has not previously participated in the proceedings as a party appears during the proceedings, then, upon a request to participate in the proceedings as a party, the official conducting the proceedings shall examine their right to be a party and shall make a ruling on the matter.” However, it is not prescribed on what criteria the competent authority

23 Article 16 of the Law on Geological Investigations of the FBiH.

24 Article 12 of the Law on Geological Exploration of the RS.



will base its decision, whether this right is reserved for natural persons only, or for legal entities as well, which leaves room for discretionary decision-making on a case-by-case basis. Public participation in permitting procedures (building, mining, exploration) is guaranteed by the Aarhus Convention, and the Aarhus Committee has indicated in several decisions that environmental decision-making is not limited to the conduct of an environmental impact assessment procedure, but extends to all subsequent stages of decision-making, such as land use and building permits, as long as the planned activities have an impact on the environment.²⁵

There are two ways in which the right of public interest representatives to be involved in permitting procedures can be provided for, in accordance with the regulations governing the exploration and exploitation of mineral resources. The first is to prescribe the conditions for recognising party status in the laws governing administrative procedure and to apply them accordingly to permit-issuing procedures, expressly providing that public interest representatives may be parties to the proceedings if the outcome could affect the interests they represent.²⁶ A second option involves providing in the special laws, namely those regulating mining and geological exploration, for the possibility of public interest representatives (associations, NGOs) to participate in decision-making procedures as a party. Experience has shown that it is best to provide for this in both general and specific legislation (to guard against potential abuse), but it is always more difficult to influence the content of regulations in the mining sector. The purpose of including this provision in national regulations is to enable entities that do not represent their own interests or personal rights to participate in administrative proceedings and, subsequently, in administrative disputes aimed at protecting the wider public interest. This is particularly because the procedure in question is not one for issuing any permits, but rather concerns activities and facilities for which an environmental impact assessment is, as a rule, required due to the significant negative impacts they may have on the environment.

25 Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012; Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013.

26 A good regulatory solution could be as regulated in Article 44(3) of the Law on General Administrative Procedure of Serbia ("Official Gazette of the Republic of Serbia", No. 18/16, 95/18 and 2/23).



Topics for future research

It is necessary to examine in detail the compatibility of regulations in the field of environmental protection and other special regulations with the provisions of the Aarhus Convention relating to access to justice (the possibility of challenging all decisions that have an impact on the environment, not just those made in the field of environmental protection).

8. Exclusion of the right of appeal

The right of appeal is manifested through the principle of two-tiered review and it entails that an appeal can be lodged against any first-instance decision made in an administrative procedure, unless it is expressly excluded by law. Furthermore, a particularly important aspect of the two-tier system is the right to appeal against 'administrative silence' if the competent authority fails to act on a request within the legally prescribed period.

Despite the proclaimed principle of appeal and two-instance procedure in the Law on General Administrative Procedure of the RS²⁷, The Law on Geological Exploration of the RS excludes an appeal against all administrative acts issued in accordance with this regulation. The Law on Geological Exploration of the FBiH, on the other hand, refers to the applicable administrative procedure regulations, unless a particular matter is otherwise regulated by the provisions of this law, and where appeals are not excluded by law. The Law on Administrative Procedure of FBiH also emphasises the principle of two-instance proceedings, and indicates that "only by law can it be prescribed that in certain administrative matters an appeal is not permitted", as well as that when deciding on the right to appeal "account should be taken that, as a rule, an appeal should be provided against all first-instance decisions to ensure the principle of a two-tier system in administrative proceedings, and that an appeal can be excluded only for particularly justified reasons."²⁸ Furthermore, an appeal as a rule suspends the enforcement of the decision (unless expressly provided for by law) and the deadlines for a decision are

27 A good regulatory solution could be as regulated in Article 44(3) of the Law on General Administrative Procedure of Serbia ("Official Gazette of the Republic of Serbia", No. 18/16, 95/18 and 2/23).

28 Article 11 and 222 of the Law on Administrative Procedure of the FBiH ("Official Gazette of the FBiH", no. 2/98, 48/99 and 61/22)



shorter than in administrative litigation, which can last for years. In this regard, it is necessary, whenever possible and in accordance with the regulations, to provide for an appeal against the first-instance decision.

It should be emphasised that in the field of mining and geological exploration, as a matter of public policy, the right of appeal against administrative acts issued in connection with exploitation and geological exploration should be provided for. It is necessary to explicitly provide for the possibility of filing an appeal against all permits,²⁹ regardless of whether they are issued by the Federal or a cantonal ministry. **Indeed, in the event of the exclusion of a two-tier system, the only legal mechanism for challenging the legality of a decision is to initiate administrative litigation, which by law does not suspend the enforcement of the decision. This, in turn, allows a company to carry out the administrative act without hindrance. (conducts geological exploration, extraction, builds mining facilities, carries out mining works), until a decision is made in the administrative dispute, which is an uncertain period of time (the law does not prescribe a deadline for deciding on a lawsuit, whereas there is a statutory deadline for deciding on an appeal).** Finally, it should be noted that even in the event that the court in the administrative dispute finds the contested administrative act unlawful, it annuls it and remands it for a fresh decision to the authority that issued it, thus practically devaluing and rendering meaningless the right to an effective and purposeful legal remedy, or legal means against unlawful acts.

9. *Resolved property relations as a prerequisite for obtaining a permit for exploration*

According to the Law on Geological Exploration of FBiH, in order for an investor to obtain a permit for conducting geological exploration, it is necessary to submit the consent of the landowner on whose land

²⁹ In accordance with Article 37 of the Law on Mining of the FBiH: permit for exploitation, permit for complete and permanent suspension of exploitation, permit for carrying out works in accordance with the mining project, permit for the use of mining structures, plants, devices and installations - certificate of fitness, permit for carrying out periodic inspections, measurements and tests of working tools and equipment, physical, chemical and biological impacts and for issuing the corresponding documents in mining, temporary permit for carrying out works and final permit for carrying out works.



the exploration will be carried out.³⁰ However, the Law on Expropriation of the FBiH also recognises other models for resolving property rights issues which the Law on Geological Research of the FBiH does not, such as the establishment of a lease for the purposes of exploring for mineral and other resources, and it is necessary to specify which of these documents must be submitted when applying for geological exploration. The Law on Geological Exploration of RS, on the other hand, until its most recent amendments in 2024, contained an obligation for the investor to submit, along with the application for a permit for geological exploration, proof of settled property rights on the plots of land where the planned exploration works would be carried out. (a notarised consent from the parcel owners, along with a power of attorney from co-owners, if any; a notarised lease agreement for the parcel for the period of the permit's validity; or a notarised sale agreement for the parcel), with a clause for restoring the previous state of affairs.³¹ The amendments to the law have removed this obligation and instead stipulate that the holder of the exploration right may commence the planned exploration works exclusively on plots of land where they have resolved the property-law relations, or obtained the written consent of the plot owner, which, among other things, in practice excludes the obligation to involve a notary in this process; therefore, the parties may, but are not required to, have a notarized document.³² It is not justified that an approval for geological exploration can be issued without settled property rights, and the law must therefore precisely (exhaustively) specify which documents must be submitted with the application for such an approval. In the Republic of Serbia, for example, the exploration operator is obliged to obtain proof of the right of use, lease, owner's consent or easement over the land before commencing the works.³³

Good practices in the world

International best practice, as reflected in the IFC Performance Standards (PS1 and PS5), states that the legal right to minerals (granted by the State) must be decoupled from the right to surface access. Because

30 Article 27, paragraph 3(g) of the Law on Geological Investigations of the FBiH.

31 Article 33 of the Law on Geological Exploration of RS ("Official Gazette of RS" no. 64/22).

32 Article 34a, paragraph 2 of the Law on Geological Exploration of RS.

33 Article 50 of the Law on Mining and Geological Exploration of the Republic of Serbia.



exploration permits typically grant an exclusive right to prospect, a failure to secure underlying land rights before initiating surface-disturbing activities (such as drilling or trenching) creates significant social and legal risk. Consequently, global best practice mandates that applicants demonstrate settled property-law relations as a condition precedent to permit issuance. This requirement prevents the “legal vacuum” where an investor receives a license from the government that they cannot practically exercise without infringing upon private property rights.

To ensure regulatory certainty, it is considered good practice for national legislation to mandate an **exhaustive list of acceptable legal instruments** for land access — such as notarized lease agreements, registered easements, or owner consent agreements that include explicit provisions for land restoration. Relying on vague or indicative requirements for “settled property relations” allows for regulatory ambiguity, which increases the likelihood of community conflict and project delays. By requiring verified documentation prior to authorization, states can better protect private property rights, enhance investor transparency, and secure a social license to operate from the earliest stages of the mining life cycle.

10. Lack of strategic and planning documentation

The key strategic document that establishes the development goals for mining and geological exploration, and which contains the measures and activities undertaken to achieve the goals in the field of geological exploration and mineral exploitation in the RS, is the Strategy for the Management of Mineral Resources. In April 2024, a decision was made to develop the Strategy for the Management of Mineral Resources of FBiH, but the strategy has not yet been adopted. The decision to develop the Strategy for the Management of Mineral Resources of Republika Srpska was made even earlier, in early 2023, but this strategy has still not been adopted. The Regulation on the Content and Methodology for the Preparation of the Mineral Raw Materials Management Strategy sets out even more precisely the purpose and objective of the strategy (among other things, determining the importance of mineral raw materials for the development of the Federation of Bosnia and Herzegovina, the potential of mineral raw materials in the Federation of Bosnia and



Herzegovina, the importance of utilising domestic mineral resources, ownership of mineral resources, etc.). The Strategy for the Development of the FBiH has been adopted for the period up to 2027, and as one of its key activities, it provides for the adoption of the Strategy for the Management of Mineral Resources, whereas the RS still does not have a Development Strategy. Without a clear strategic framework for managing mineral resources, effective management of these resources cannot be ensured. Furthermore, it is imperative to inform and involve the public in the decision-making processes for these strategic decisions.³⁴ Finally, the lack of adequate planning documentation, specifically the highest-level planning document that should define development directions, is also a particularly significant problem. Currently, the Spatial Plan of the Federation of Bosnia and Herzegovina, which was drawn up for the period 1981 – 2000, and in July of 2025 the Government of the Federation of Bosnia and Herzegovina forwarded a draft decision on initiating the preparation of the spatial plan of the Federation of Bosnia and Herzegovina for a 20-year period, with a preparation timeframe of 18 months from the date of signing the contract for its preparation.³⁵

Topics for future research

For an adequate framework for geological research and mining activities, it is of paramount importance to analyse the planning framework and participate in the procedure for the preparation and adoption of the FBiH Spatial Plan.

34 Good practices for the preparation of strategic and planning documents in the mining sector from Sweden, Finland and Portugal can be found in Endl, Mulholland and Berger "Minerals policy governance in Europe: good practice examples in EU Member States", available at <https://ec.europa.eu/research/participants/documents/downloadPublic?documentIds=080166e5af380fdf&appId=PPGMS>, accessed 10 August 2025.

35 Draft decision on the accession to the preparation of the spatial plan of FBiH, available at: <https://fmpu.gov.ba/prostorno-planiranje/prostorni-planovi/> and https://parlamentfbih.gov.ba/v2/userfiles/file/Materials%20in%20procedure_2025/1469-25%20Draft%20Decision_spatial%20plan.pdf.



II Legal framework for the exploration of mineral resources

As regards the provisions of the Law on Mining of the Federation of Bosnia and Herzegovina (“Official Gazette of the FBiH” no. 26/10) (the “**FBiH Mining Law**”) as well as the Law on Mining of Republika Srpska (“Official Gazette of Republika Srpska” no. 62/18) (“**RS Mining Law**”), their weaknesses, incomplete and unclear provisions, as well as legal loopholes regarding significant issues within the fields they regulate, can create scope for abuse in the implementation of mining projects, which are typically in favour of private interests and to the detriment of the public interest, public health and the environment.

1. There is no obligation to obtain a permit for the exploitation field

The Law on Mining of the FBiH does not separate the procedure for issuing an exploitation licence from that for an exploitation permit, but instead exclusively prescribes the procedure and conditions for obtaining an exploitation permit. Namely, the Law stipulates that with the application for an exploitation permit, a company is obliged to submit, among other things, documentation of the exploration works carried out, the mineral deposit, and the determined quantities and quality of mineral raw materials (certificate of revised reserves), a situational plan - a map with the boundaries of the exploitation field marked at a scale that allows the boundaries of the mining area to be determined on the ground, with public transport and other facilities located in that area, with a description of the boundaries of the exploitation field, indicating the municipality in whose territory the exploitation field is located. On the basis of the above, **the competent authority issues an exploitation permit, which contains, among other things, information on the location and exact boundaries of the exploitation area.**³⁶

However, the permit for the exploitation field is an administrative act that the competent authority must issue following a separate administrative procedure, in which the fulfilment of the necessary conditions has been

³⁶ Article 38 of the Law on Mining of the FBiH.



established, and by which various rights and obligations are determined, such as: the type of mineral resource, the location, area and coordinates of the boundary control points of the exploitation field, the deadline by which preparatory works must be completed and permission obtained for the construction of mining facilities and/or the carrying out of mining operations, conditions and obligations concerning the exploitation, including minimum and maximum distances, as well as the protective zone around the exploitation area required for its possible expansion.³⁷

A clear legal distinction between the area and the activity, i.e. by separating the procedures for issuing a permit for the exploitation area and a permit for exploitation, ensures greater legal certainty and adequate, improved supervision, whereby the area on which exploitation will take place is first approved, and then, a separate permit is granted for the activities, i.e., the specific works within the field itself. Furthermore, separate procedures facilitate the implementation of any changes to the exploitation (such as a change in the technological process or capacity), which are coordinated through an amendment to the exploitation licence, while changes such as the expansion or reduction of the exploitation field are dealt with separately, without affecting the exploitation itself. Finally, it should be noted that the exploitation field is defined for a longer period, whereas exploitation permits should be issued for shorter periods, in order to encourage the alignment and adaptation of mining activities, as well as the protection of the environment.

As for the draft Law on Mining of FBiH³⁸, it does not provide for a separate procedure for issuing an exploitation licence. As for the Law on Mining of RS, it provides that the minister shall issue a decision approving the exploitation area on the basis of an application submitted by the concessionaire, and that they shall issue a regulation prescribing the procedure for approving the exploitation area and the method for keeping records of approved exploitation areas, but does not prescribe the procedure for issuing a special exploitation permit.³⁹

Note: Although it is stated that there is no obligation to conduct a separate administrative procedure for obtaining a permit for the exploitation field,

37 Article 71 of the Law on Mining and Geological Exploration of the Republic of Serbia.

38 The Draft Law on Mining was submitted by the Government of the Federation of Bosnia and Herzegovina to the Parliament of the Federation of Bosnia and Herzegovina on 4 August 2025 ("The 2025 Draft Law on Mining of the FBiH").

39 Article 15 of the Law on Mining of Republika Srpska.



as the area of the exploitation field is approved within the procedure for issuing the exploitation permit, it is important to highlight the opinion of a practitioner expert from the mining sector who was consulted during the preparation of this analysis, and who believes that the existing regulatory provision and practice should not be changed, as the proposed remark would further complicate an already demanding permit acquisition process. Additionally, the applicable regulations, through two administrative procedures (1. permit for carrying out mining works and 2. use permit), further define the exploitation field, i.e., the exploitation area, from all necessary aspects.

2. Incompleteness of the provisions on the obligation for environmental remediation and restoration following mining activities

The Law on Mining of the FBiH stipulates the obligation of a company to carry out final land remediation, environmental rehabilitation and the elimination of consequences arising from mining activities after obtaining a permit to cease mineral extraction, as well as the obligation to continuously carry out land remediation and technical rehabilitation of the degraded areas resulting from mining activities.⁴⁰ However, as potential consequences for the company, should it fail to comply with this legal obligation, The Law on Mining of FBiH prescribes a nominal monetary penalty for an offence⁴¹ which, considering the high costs of remediation and reclamation, motivates the company to abandon the devastated areas after operations cease, potentially paying nominal fines in infringement proceedings.

The Draft Law on Mining of the FBiH of 2025 provides for the same amount of fine for an offence, in the event that the company fails to

40 Article 59 of the Law on Mining of the FBiH.

41 Article 112 of the Law on Mining of the FBiH prescribes a monetary penalty from 10,000.00 KM to 15,000.00 KM for a legal entity if, after the completion or permanent cessation of mining operations, it fails to carry out final remediation of degraded land and the reclamation of degraded areas and the environment resulting from the impact of the mining operations within the period specified in the project, and fails to remove the consequences of the mining operations or to take the necessary safety measures for protection to life and health, and to property, or if, during the execution of mining operations, it does not continuously carry out the remediation and reclamation of degraded land.



carry out the final remediation of the land and technical rehabilitation of the degraded surfaces resulting from mining operations, within the timeframe specified in the mining project.⁴²

Furthermore, in order to further ensure the fulfilment of a company's obligation regarding remediation and reclamation in the context of geological exploration and exploitation, it is recommended that provisions be prescribed in the Law on Mining of the FBiH, the Law on Geological Investigations of the FBiH, as well as the Law on Geological Investigations of RS, that in the event of the opening of liquidation or bankruptcy proceedings against a company, priority in the liquidation or bankruptcy estate shall be given to covering the costs of remediation and land reclamation on the land where exploitation took place.⁴³

Although the Law on Mining of the RS does not prescribe adequate sanctions in the event of a breach of the statutory obligation for remediation⁴⁴, this law classifies a breach of the obligation regarding land reclamation as a more serious offence⁴⁵. Furthermore, it should be noted that the RS Mining Law provides that if bankruptcy or liquidation proceedings are initiated against a concessionaire, the costs of remediation and land reclamation on the land where exploitation has been completed shall be prioritised for payment from the bankruptcy or liquidation estate.⁴⁶

42 Article 118 of the draft Law on Mining of FBiH provides that a company and other legal entity shall be punished for an offence with a fine of between KM 10,000.00 and KM 15,000.00:if, after the completion or permanent cessation of mining operations, they fail to carry out final land remediation and technical rehabilitation of degraded areas resulting from the mining activities, and fail to remedy the environmental consequences or take the necessary safety measures to protect human life and health and property or if during the execution of mining operations they do not continuously carry out the remediation and reclamation of degraded land.

43 Article 79 of the Law on Mining of the RS.

44 Article 102 of the Law on Mining of RS stipulates that a fine of between 20,000 KM and 60,000 KM shall be imposed on a legal entity if, in the event of a permanent cessation of operations, it fails to comply with Article 78 of this Act (the said article provides for the following):Article 78 of the Law on Mining of RS.000 KM fine for an offence by a legal entity, if in the event of a permanent cessation of works, it fails to act in accordance with Article 78 of this Act (the said article prescribes the obligation for remediation and reclamation).

45 Article 101 of the Law on Mining of RS prescribes that a legal entity shall be fined between DM 50,000 and DM 150,000 if it fails to restore the land to its original or another purpose, in accordance with the land reclamation project.

46 Article 79 of the Law on Mining of RS.



Global best practice

International best practice, as reflected in the standard of the Initiative for Responsible Mining Assurance and the World Bank, emphasizes that reliance on punitive fines alone is insufficient to guarantee environmental restoration, particularly when remediation costs far exceed the value of nominal penalties. To effectively mitigate the risk of “orphaned” mine sites, jurisdictions must shift from sanction-based models toward mandatory financial assurance mechanisms. These instruments—such as environmental performance bonds, escrow accounts, or irrevocable bank guarantees - require operators to set aside dedicated funds for closure and rehabilitation before or during the operational life of the project. By decoupling the availability of remediation funds from a company’s future liquidity or bankruptcy status, these mechanisms ensure that the “polluter pays” principle is operationalized in practice rather than merely in theory. Consequently, robust mining legislation should explicitly mandate these instruments as a condition for permitting, ensuring that the financial responsibility for reclamation is secured against corporate insolvency, thereby shielding the public purse from the long-term liabilities of devastated lands.

3. Revocation of the exploitation permit

The Law on Mining of the FBiH stipulates that the competent ministry will revoke the permit for mineral exploitation in the event of:

- when the company to which the permit was issued does not commence exploitation within the period specified in the permit;
- when the company fails to obtain the permit for carrying out works in accordance with the mining project within the prescribed period;
- when mining operations endanger the lives and health of employees, other citizens and property, and other measures provided for by law and other regulations are insufficient to prevent this;
- when the environment is endangered and the reclamation of the area damaged by mining operations is not carried out in accordance with the approved project, or the concession agreement has been terminated.⁴⁷

⁴⁷ Article 39 of the Law on Mining of the FBiH.

However, in order to ensure compliance with environmental protection regulations, the provision on revoking the exploitation licence needs to be supplemented, **and additional situations for revocation should also be provided for**, in cases where serious breaches of regulations have occurred and there is a danger to the wider public interest, which justify the introduction of a sanction in the form of revoking the exploitation licence. Such situations would include, for example:

- when a company undertakes mining operations or the construction of mining facilities without a permit from the competent authority;
- when exploitation threatens a cultural asset, its protected environment, or an area of cultural, historical, architectural and archaeological significance;
- when the company fails to comply with the conditions defined by acts of other bodies and institutions in the fields of environmental protection, water management, and the protection of cultural heritage.⁴⁸

It should be noted that the statutory possibility for the competent authority to revoke an exploitation permit represents a useful (extrajudicial) mechanism, in cases where compliance with the law and relevant regulations could not be ensured by other means (primarily through monetary penalties in potential infringement proceedings), and where the only adequate measure to protect the public interest is to revoke the exploitation licence of the company.

As for the Law on Mining of RS, it does not provide for a provision for the revocation of a permit for a mining field. The 2025 Draft Law on Mining of FBiH introduces the possibility of revoking the exploitation licence even in cases where the concession agreement expires or is terminated for any reason⁴⁹, unlike the current Law on Mining of FBiH, which provides for revocation only in the event of the concession agreement being terminated.

⁴⁸ Article 72 of the Law on Mining and Geological Exploration of the Republic of Serbia prescribes these reasons as relevant for the revocation of an exploitation permit and/or exploitation field.

⁴⁹ Article 40 of the Draft Law on Mining of the FBiH of 2025.

Inadequate penal policy

When it comes to criminal policy in the mining sector, the importance of companies carrying out exploitation observing the law must be emphasised, primarily because of the potential consequences for public health and the environment that can arise from breaches of the law. In line with the above, a general tightening of the penal policy is necessary, primarily with regard to prescribing higher penalties, which would influence companies in terms of special prevention, but also achieve general prevention by deterring other companies from operating in breach of regulations.

It should be emphasised that the Law on Mining of the FBiH and the Law on Mining of RS do not prescribe criminal offences for more serious breaches of their provisions, but only contain provisions on misdemeanours. With regard to the Law on Mining of the FBiH, specific offences should be highlighted, such as the exploitation of mineral raw materials without a permit from the competent authority, carrying out mining operations without a permit for the execution of mining works in accordance with the project, and putting an object, plant or device into regular use before obtaining a permit for its use, as well as carrying out the exploitation of mineral resources outside an approved mining field. However, for the aforementioned offences, the legislator has prescribed a nominal monetary penalty of⁵⁰, and it is expected that fines in such ranges are an insufficient incentive for companies to align their business activities with the Law. Indeed, it is often more profitable for companies to commence the extraction of mineral resources or the construction of mining facilities before obtaining a permit from the competent authority, and that on a day-to-day basis they make profits in amounts many times greater than the prescribed fine, whereas in a potential court proceeding where they would be convicted of an offence, they would pay negligible sums of money, without any other legal consequences.

Finally, it should be emphasised that carrying out mining operations without a permit constitutes a breach of the law which, given the complexity of mining projects, poses a greater societal danger than building without a building permit. For this reason, it is necessary not only **to tighten the policy on criminal sanctions** but also to classify the most serious breaches of the law as criminal offences, in which context it is 'also necessary to introduce criminal liability for legal entities.'

⁵⁰ Article 112 of the Law on Mining of the FBiH prescribes a monetary penalty of KM 10,000.00 to KM 15,000.00 for the aforementioned offences.



The Draft Law on Mining of the FBiH of 2025 does not contain adequate solutions regarding criminal provisions and, following the example of the current Law on Mining of the FBiH, prescribes administrative liability and monetary fines for violations within the same ranges.

In this regard, the provisions of the Law on Mining and Geological Exploration of the Republic of Serbia⁵¹, which stipulate the obligation of an undertaking that carries out geological exploration or the exploitation of mineral raw materials without the necessary approvals, to compensate the owner for the occupied land, and to the Republic of Serbia when unauthorised geological exploration or exploitation is carried out on its territory, in an amount equal to three times the value of the extracted mineral raw material or other geological resources, and to carry out the remediation and reclamation of the land on which it conducted the exploration or exploitation.

Finally, it is necessary to prescribe special penal provisions concerning the execution of the concession agreement, which are specific to the field of mining. The Law on Mining of the RS prescribes a penalty for an individual who exploits mineral resources without a concession agreement, whereas a similar provision is not provided for in the FBiH.⁵² There is no provision for penalising a person if they carry out work in breach of the concession agreement. In any case, the introduction of penal provisions should be accompanied by the establishment of adequate powers for the inspection authority, which would be able to identify these deficiencies when carrying out its supervision. Thus, under the Law on Mining of the RS, an inspector has the authority to determine whether mineral extraction is carried out under a concession agreement, as well as to prohibit activities if they are conducted without one.⁵³ Similar provisions do not exist in the Law on Mining of the FBiH.

In support of the assertion that the penal policy needs to be tightened, it is also noteworthy that many natural resources and assets of general interest are used by commercial companies without concession agreements, on the basis of unilateral acts of municipal, municipal, cantonal and federal authorities, and in the case of public enterprises, even without such acts.⁵⁴ The RS Concessions Commission states that a

51 Article 8 of the Law on Mining and Geological Exploration of the Republic of Serbia.

52 Article 101 of the Law on Mining of Republika Srpska.

53 Article 97 and 98 of the Law on Mining of the RS.

54 Report on the work of the Commission for Concessions of FBiH for 2023,



certain number of enterprises do not provide the full necessary technical documentation before carrying out the works, and that inspections of deposits where exploitation is currently underway revealed that most concessionaires have not carried out any reclamation work.⁵⁵

A topic for further research

It would be useful to investigate how many cases of mineral exploitation without a concession agreement have been prosecuted, whether the competent judicial authorities have imposed sanctions, whether these sanctions are adequate or serve as a deterrent for companies to continue violating regulations, and whether they are enforced.

4. Risks in expropriation proceedings for the implementation of mining projects

Expropriation is one of the most sensitive and complex legal and social issues in countries rich in natural resources, including Bosnia and Herzegovina. The Law on Expropriation (“*Official Gazette of the FBiH*”, no. 70/07, 36/10, 25/12, 8/15) provides for the possibility of expropriation for the purposes of the Federation of Bosnia and Herzegovina, cantons, cities, municipalities, public enterprises, their 100% owned subsidiaries and public institutions, unless otherwise provided by law.⁵⁶ The issue of expropriation is particularly important from the perspective of protecting the interests of the local population, to whom, in the event of a determination of expropriation, the Law on Expropriation of the FBiH provides for adequate compensation for the property taken.

Although the Law on Expropriation of the FBiH does not provide for the possibility of expropriation in favour of a private company, it should be emphasised that the provision regulating expropriation states that it is possible for the needs of the Federation of Bosnia and Herzegovina, cantons, cities, municipalities, public enterprises, their wholly-owned subsidiaries and public institutions, unless otherwise provided by law.

available at https://parlamentfbih.gov.ba/v2/userfiles/file/Materijali%20u%20proceduri_2024/Izvestaj_o_radu_komisije_koncesije_b.pdf.

55 “Report on the Work and Financial Report of the Commission for Concessions of the Republika Srpska for 2024”, <https://koncesije-rs.org/objavljen-izvjestaj-o-radui-finansijski-izvjestaj-komisije-za-koncesije-republike-srpske-za-2018-godinu/>, accessed on 10 August 2025.

56 Article 6 of the Law on Expropriation of the FBiH.



In this way, the possibility is left open for expropriation to be permitted **for the needs of other, private legal entities, if so determined by another law**, and it is important to bear in mind potential future proposals for amendments and additions to the Law on Mining of the FBiH and the Law on Concessions of the FBiH, which would prescribe this possibility, following the example of the Law on Mining and Geological Exploration of the Republic of Serbia. A similar legal provision is also contained in the Law on Expropriation of the Republika Srpska, which stipulates that expropriation may be carried out for the needs of the Republika Srpska and a unit of local self-government, **unless otherwise provided by law** (the user of the expropriation).⁵⁷

III Concessions

According to data from the report of the RS Concessions Commission, the number of contracts concluded in the RS for the exploitation and exploration of mineral resources was 156, while in 2024 alone, the Ministry of Energy and Mining of the RS issued 40 requests relating to the resolution of cases in the field of mineral resources, and submitted 7 concluded concession agreements in this area.⁵⁸ A record number of concessions in the field of mineral resources in RS were awarded in 2023, when 13 contracts were concluded.⁵⁹ By the end of 2023, there were seven active concession agreements in the FBiH in which the FBiH sector ministries act as concessionaires, all relating to the exploitation of water resources.⁶⁰ Despite the proclaimed competencies,

⁵⁷ Article 6 of the Law on Expropriation of the Republika Srpska.

⁵⁸ Of the 156 contracts, 20 were concluded for the use of drinking water. It should be noted that of the total of 551 concession contracts (as of 2024), the Ministry of Energy and Mining concluded a total of 403 contracts. For more on this, see the “Report on the Work and Financial Report of the Commission for Concessions of the Republika Srpska for 2024”, <https://koncesije-rs.org/objavljen-izvjestaj-o-radu-i-finansijski-izvjestaj-komisije-za-koncesije-republike-srpske-za-2018-godinu/>, accessed on 10 August 2025.

⁵⁹ Ibid.

⁶⁰ Report on the work of the Commission for Concessions of FBiH for 2023, available at https://parlamentfbih.gov.ba/v2/userfiles/file/Materijali%20u%20proceduri%202024/Izvjestaj_o_radu_komisije_koncesije_b.pdf.

the concession system at the level of BiH remains inefficient, and not a single concession has yet been awarded at the BiH level.⁶¹

Topics for future research

In order to comprehensively and up-to-date monitor the implementation of regulations on concession granting, it would be useful to request the 2024 reports of the concession commissions of BiH and FBiH through the right to access public information, given that they are not publicly available. Furthermore, it would be useful to collect and systematise data on mining concessions at the cantonal level.

When considering the methods of awarding concessions, a risky practice is noticeable in both RS and FBiH: the conclusion of a large number of concession agreements based on unsolicited offers. In principle, there is a need for more precise regulation of concessions in the laws governing mining and geological exploration, taking into account the specific characteristics of the sector. In this regard, caution should be exercised with proposals to shorten and accelerate procedures for the exploration and exploitation of mineral resources, as this often bypasses the rules and procedures prescribed by other regulations (such as those governing environmental protection).⁶²

In this sense, two groups of recommendations can be identified:

- recommendations relating to the amendment of the regulations governing the granting of concessions (the amendment of which will consequently also have an impact on the granting of concessions for the exploration and exploitation of mineral raw materials);
- recommendations that take into account the specificities of the problem of applying concessions when implementing projects in the mining sector, and which require amendments to the regulations on geological exploration and mining.

61 For more information, see the “Report on the Work of the Commission for Concessions of BiH for 2023”, <https://koncesijebih.ba/izvjestaj-o-radu-bs/>, accessed 08.08.2025.

62 For example, the 2024 report of the RS Concessions Commission proposes accelerating the process of obtaining permits and approvals for technical documentation. More information in the “Report on the Work and Financial Report of the Concessions Commission of the Republika Srpska for 2024”, <https://koncesije-rs.org/objavljen-izvjestaj-o-radu-i-finansijski-izvjestaj-komisije-za-koncesije-republike-srpske-za-2018-godinu/>, accessed on 10 August 2025.



1. *Alignment with EU public procurement rules and mutual coordination at the level of entities and cantons*

A concession entails state authorities granting a specific entity the right to exclusively exploit a natural resource and, in essence, operates on monopoly principles, which is why it is of crucial importance that the regulations governing the procedures and conditions for the awarding of concessions are transparent, non-discriminatory, competitive and based on the principles of fair contracting. The European Commission's latest annual report on BiH emphasised the need for alignment with the *acquis* in the field of public procurement, and particularly with Directive 2014/23/EU on the award of concessions.⁶³ An analysis of the compatibility between the BiH Concessions Law and the EU Concessions Directive found a significant lack of alignment, with the priority identified as the need to transpose provisions relating to the definition of a concession and the principles of equal treatment, non-discrimination and transparency.⁶⁴ Furthermore, it is necessary to harmonise the legislation regulating concession matters across the entire territory of BiH (both horizontally and vertically), in order to ensure the principle of legal certainty and create equal conditions for doing business throughout the country.⁶⁵

63 Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance, available at <https://eur-lex.europa.eu/eli/dir/2014/23/oj/eng>. The EC's recommendations are available in the European Commission's 2024 Report on Bosnia and Herzegovina, EUROPEAN COMMISSION Brussels, 30.10.2024 SWD(2024) 691 final COMMISSION STAFF WORKING DOCUMENT Bosnia and Herzegovina 2024 Repo, accessed on 06.08.2025.

64 Information on the TAIEX Expert Mission Report for technical support to the BiH Concessions Commission, with findings and recommendations, <https://ekonsultacije.gov.ba/legislativeactivities/details/8747->, accessed on 06.08.2025.

65 More details on the harmonisation of competences and an analysis of the entire concession-awarding system in BiH are available in "The Concession System in Bosnia and Herzegovina - Legal and Institutional Framework", <https://ti-bih.org/wp-content/uploads/2024/06/25062024-Sistem-koncesija-u-Bosni-i-Hercegovini-Pravni-i-institucionalni-okvir.pdf>. Similar conclusions were also set out in the publication "Analysis of the Legal Framework and Recommendations for Removing Barriers to Investment in the Energy Sector in FBiH", <https://www.epbih.ba/upload/documents/kapitalne%20investicije/ANALIZA%20PRAVNOG%20OKVIRA%20I%20PREPORUKE%20ZA%20OTKLANJANJE%20PREPREKA%20ZA%20INVESTIRANJE%20U%20SEKTOR%20ENERGIJE%20U%20FBiH.pdf> and OECD (2025), Public Administration in the Western Balkans 2024: Regional Overview of Assessments against the Principles of Public Administration, SIGMA Monitoring Reports, OECD Publishing, Paris, available at: https://www.sigmaxweb.org/en/publications/public-administration-in-the-western-balkans-2024_1ec4c18f-en.html, as well as the reports of the concession commissions of BiH and FBiH. SIGMA report 2024



On several occasions, it has also been pointed out that regulations need to be simplified, given the number of acts governing this matter, particularly in the FBiH.⁶⁶ One of the proposed solutions involves reducing the number of laws and subordinate acts in such a way that cantons wishing to apply the legal framework directly are permitted to do so, and defining principles that would ensure equal treatment of investors throughout the territory of FBiH.⁶⁷ Furthermore, the report of the BiH Concessions Commission shows that there is a very low level of coordination between ministries and commissions, and even basic information on the application of the law in the RS and FBiH is lacking.⁶⁸

With regard to harmonisation with laws governing public procurement, it is important not to exclude their application entirely but to provide for their appropriate application to matters not regulated by the concession laws. The general rule is that a *lex specialis* is adopted exclusively in exceptional circumstances, when a particular area cannot be adequately regulated by the systemic laws. In this regard, the corresponding application can be ensured through specific provisions, as is prescribed in Serbia, or through a general clause which proclaims that the public procurement law is to be correspondingly applied to the part not regulated by the law governing the granting of concessions, as is regulated in Croatia.⁶⁹

66 OECD (2025), Public Administration in the Western Balkans 2024: Regional Overview of Assessments against the Principles of Public Administration, SIGMA Monitoring Reports, OECD Publishing, Paris available at: https://www.sigmaweb.org/en/publications/public-administration-in-the-western-balkans-2024_1ec4c18f-en.html.

67 It is proposed that the principles include a single definition of the subject of the concession, a clear division of competence for granting concessions, a transparent procedure for awarding concessions, equal treatment and protection of participants in the procedure, an equal methodology for calculating the concession fee, a clear definition of the distribution of revenue from concession fees and the collection system, an equal right of assignment for concession agreements, the maintenance and regular updating of a register of concessions, and the harmonisation of the forms and templates used in the procedure, see more on this. "Analysis of the Legal Framework and Recommendations for Removing Obstacles to Investment in the Energy Sector in FBiH", <https://www.epbih.ba/upload/documents/kapitalne%20investicije/ANALIZA%20PRAVNOG%20FRAMEWORK%20AND%20RECOMMENDATIONS%20FOR%20REMOVING%20OBSTACLES%20TO%20INVESTING%20IN%20THE%20ENERGY%20SECTOR%20IN%20FBiH.pdf>, accessed on 06.08.2025.

68 <https://koncesijebih.ba/wp-content/uploads/2024/12/lzvjestaj-o-radu-Komisije-za-koncesije-BiH-za-2023.-godinu.pdf>

69 Law on Public-Private Partnership and Concessions of the Republic of Serbia, ("Sl. glasnik RS", no. 88/11, 15/16 and 104/16), available at: https://www.paragraf.rs/propisi/zakon_o_javno_privatnom_partnerstvu_i_koncesijama.html and the Law on Concessions ("Official Gazette of the Federation of Bosnia and Herzegovina" no. 69/17 and 107/20), available at: <https://www.zakon.hr/z/157/zakon-o-koncesijama>.

Topics for future research

It would be useful to analyse the BiH Reform Agenda in relation to the provisions in these areas, which was adopted in June 2025 but is not yet publicly available.

2. Abuse of the legal framework for awarding concessions through unsolicited proposals

The main reason for the existence of concessions is the need to define the process for investing capital in projects of general interest, where funds are not available in the budget. The FBiH Concessions Act lists natural resources, assets of general importance, and the performance of activities of general interest as the subject of concessions.⁷⁰ The Law on Concessions of the RS explicitly states that the subject of a concession may include, among other things, the exploration and exploitation of mineral resources.⁷¹

According to the provisions of the Law on Concessions of the FBiH and the Law on Concessions of RS, concessions are awarded in two ways: through a public call (tender) and through a spontaneous offer.⁷² **Despite both laws stipulating that concessions by way of a spontaneous proposal are to be granted only in exceptional cases⁷³, In practice the granting of concessions through spontaneous proposals is the rule rather than the exception.** In fact, all concession agreements to date in FBiH have been concluded on the basis of unsolicited proposals, and since the Law was enacted, no ministry has initiated a concession award procedure via public advertising (tender)⁷⁴. Although in the RS there are a number of contracts concluded on the basis of public calls, contracts concluded on the basis of unsolicited proposals predominate.⁷⁵

70 Article 4, paragraph 1(2) of the Law on Concessions of the RS.

71 Article 6, paragraph 1(d) of the Law on Concessions of RS.

72 Article 11 of the Law on Concessions of the RS and Articles 23 and 28 of the Law on Concessions of the FBiH.

73 Article 28 of the Law on Concessions of the FBiH and Article 26 of the Law on Concessions of the RS.

74 Report on the work of the Commission for Concessions of FBiH for 2023, available at https://parlamentfbih.gov.ba/v2/userfiles/file/Materijali%20u%20proceduri_2024/Izvjestaj_o_radu_komsije_koncesije_b.pdf.

75 More information on concluded contracts is available in the reports of the RS Concessions Commission, <https://koncesije-rs.org/category/izvjestaj/>.

Awarding concessions through direct negotiations, without a public tender, does not ensure better value for money (in terms of higher concession fees, better product quality and environmental impact) and is contrary to the EU's fundamental principles of transparency and equal treatment of market participants.⁷⁶

A topic for further research

Reports on the work of concession committees at the cantonal level are either unavailable or not up to date. It would be useful to investigate how many contracts at the cantonal level were concluded through tenders and how many via spontaneous offers. The literature reviewed suggests that the cantons define procedures for awarding tenders on a voluntary basis differently to the FBiH, which requires further analysis.

In the EU, given the potential harmful effects on competition, the award of concessions without a prior public call is permitted only in very exceptional circumstances, and it is emphasised that this exception should be limited to cases where it is clear from the outset that publishing a tender would not have generated greater competition, (particularly because there is objectively only one economic operator capable of carrying out the concession). In doing so, care must be taken that the inability to award the concession to any other economic operator is not caused by the activities of the contracting authority in the concession-awarding procedure, and the availability of adequate alternatives must be assessed in detail.⁷⁷ Given that a direct award departs from the fundamental principle of transparency, the European Court of Justice requires that the use of this procedure remain exceptional, and that the reasons for the exemption must be prescribed and interpreted restrictively.⁷⁸ Therefore, the contracting authority is obliged to do everything reasonably expected of it to avoid the application of this exception.

The Law on Concessions of the Federation of Bosnia and Herzegovina provides that, when assessing a proposal for a concession for which a public tender has not been issued, “special consideration is given” to the fact that the project forming the subject of the proposed concession can only be realised if the process, design, methodology or engineering

⁷⁶ Transparency BiH Report.

⁷⁷ Point 51 of the preamble to Directive 2014/23/EU.
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0023>.

⁷⁸ See also cases C-275/08, *Commission v Germany*, and C-352/12, *Consiglio Nazionale degli Ingegneri*.

concept to which the bidder holds exclusive rights, and the urgency of providing the services or the existence of infrastructure for public use. The legal provision needs to be amended to explicitly state that a concession cannot be awarded unless the conditions for applying this exception are met, rather than merely stating that the aforementioned criteria should be taken into account when awarding the concession. Furthermore, the application criteria should be aligned with the requirements at the EU level, and it should be emphasised that they must be interpreted restrictively.

The RS Law on Concessions, on the other hand, prescribes discriminatory criteria which are not in the slightest aligned with those prescribed in EU legislation, and it provides that a spontaneous offer may be submitted whenever a public enterprise is performing an activity of general interest, which is the subject of the concession or a proposal by a public institution which, in its function of carrying out the public interest activity for which it was established, may be granted a concession, always when it concerns a legal entity that has carried out mineral exploration under a concession agreement or an exploration permit, and whose total value of exploration works exceeds 5,000,000 KM, in the case of implementing concluded Government agreements, increasing the installed capacity of a plant for which a concession was not required prior to the entry into force of this Act, and in other cases provided for by a special law.⁷⁹ These provisions must be deleted, as they leave ample scope for abuse. It is also necessary to delete paragraph 2. of the said article which provides that an annex to the concession agreement may be concluded by way of a negotiated procedure whenever the concessionaire offers to extend the term for which the concession was granted and in the event of the concessionaire's offer to exploit established reserves of mineral raw materials located outside the area for which the concession was granted, and which form an integral part of the mineral resource that is the subject of the concession agreement. Besides being unjustified to prescribe the aforementioned exceptions, by which the legal provisions can be easily circumvented, it is also unclear how the fulfilment of the criteria would be determined (e.g., how it is established whether it is an inseparable whole or not).⁸⁰

79 Article 26(1) of the Law on Concessions of the RS.

80 Article 26(2) of the Law on Concessions of the RS.



A topic for further research

It would be useful to analyse, through certain specific concession agreements awarded via competitive tendering, the manner in which the competent authority in FBiH assessed the fulfilment of the criteria. Further to this, the government of BiH should also consider joining the Extractive Industries Transparency Initiative to formalize and incentivise transparency and anti-corruption measures.

In Croatia, for example, a concession for the exploitation of mineral resources can only be granted through a public procedure, by publishing a public call.⁸¹ The UNCITRAL Legislative Guide on Private Finance for Infrastructure Projects provides examples of when it would be justified to provide for the possibility of awarding a concession through direct negotiation, without a public call, namely in the event of an urgent need to ensure continuity in the provision of the service, in the case of short-term projects and with an expected initial investment value not exceeding a certain amount, for reasons of national defence or security, where only one tenderer can provide certain services due to specific expertise, when submissions to previous calls have not met the criteria, etc. In this regard, it is recommended that in such a case the contracting authority should publish a notice of its intention to award the concession for the implementation of the proposed project without a public tender and should negotiate with as many companies as possible that are considered capable of implementing the project, offers should be evaluated and ranked according to the evaluation criteria previously established by the contracting authority and publish a notice of award, in which it will in particular set out the reasons for awarding the concession without a public tender.⁸²

Determining the public interest in unsolicited proposals

In essence, public interest can encompass anything that the citizens of a country agree, through participatory methods, to constitute public interest. This so-called “social contract” is subsequently incorporated into strategic and planning documents, and its protection is proclaimed

81 Article 19 of the Mining Act.

82 Recommendations 28 and 29 of the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000)
https://uncitral.un.org/en/texts/procurement/legislativeguides/privately_financed_infrastructure_projects.



and ensured through regulations. However, in the positive regulations of the FBiH, there is no definition of the public good, activities of general interest, or public interest, nor are there any criteria that a specific project must meet to be considered as such. Therefore, the public interest is determined on a case-by-case basis, and the absence of definitions for these terms (or overly broad definitions) and of qualitative and quantitative criteria that a project must meet to be considered as such. “Public interest” can lead to broadly defined discretionary powers for the bodies that declare them, and in practice, any mineral resource exploration and exploitation project can be declared a project of public interest.

***Note:** The logical sequence of events would be to first agree on what the development strategy for BiH is, and then how mineral resources are to be managed through the highest-level sectoral strategy. When developing strategies, it is crucial that they are horizontally aligned with environmental protection strategies. Once the strategic framework has been established, the procedure for determining public interest needs to be detailed in the laws governing concessions, and in some cases, even in specific laws, taking into account the particularities of the sector they regulate. Sub-legislative acts should then detail the criteria for assessing public interest in each individual project.*

Certain guidelines can be found in the Document on the Award of Concessions in FBiH, which states that “the assessment and determination of the public interest should indicate the economic, political, sociological and general justification for granting the concession, and define the short-term and long-term objectives to be achieved through concession-giving, and determining the impact of the concessionary activity on the environment, existing infrastructure and other economic sectors and systems”.⁸³ From this, it is clear that environmental protection is not a focus for decision-makers, and ecological justification is not assessed, only the impacts on the environment. However, the aforementioned definition at least mentions the environment, unlike the Policy Document on Concession Awarding in BiH, which states that “the assessment and determination of the public interest encompasses the economic,

⁸³ The policy document on the awarding of concessions in FBiH is not publicly available; the quote is taken from “Analysis of the Legal Framework and Recommendations for Removing Barriers to Investment in the Energy Sector in FBiH”, <https://www.epbih.ba/upload/documents/kapitalne%20investicije/ANALYSIS%20OF%20THE%20LEGAL%20FRAMEWORK%20AND%20RECOMMENDATIONS%20FOR%20REMOVING%20OBSTACLES%20TO%20INVESTING%20IN%20THE%20ENERGY%20SECTOR%20IN%20FBiH.pdf>.



political, sociological and general justification for granting a concession and is linked to the concept of the public good.” The Rules of Procedure for the Award of Concessions of the FBiH define public interest as “the common interest of all/or some local communities in natural resources, goods in general use and activities of general interest”.⁸⁴

Topics for further research

Are the decisions establishing the public interest available to the public, and how is the existence of the public interest justified in practice?

If the exploitation of certain mineral raw materials is declared to be in the public interest, it is necessary to do so in a way that precisely defines which mineral raw materials are of strategic importance and in the public interest. For example, Slovenia has stipulated in its Mining Act that geoenery is in the strategic interest, as are all mineral resources designated as such by the strategy.⁸⁵ In Croatia, it is good practice that only the parliament can declare a concession for certain goods to be of strategic interest to the Republic of Croatia, unlike in Serbia where the Government can declare the exploitation of any ore as of strategic importance.⁸⁶

3. *Criteria for the Granting of a Concession*

When it comes to concessions in the mining sector, it is necessary to stipulate in the mining laws those which ensure that, in a given case, the protection of the public interest will be secured in the most effective manner, and, following the example of the Croatian Mining Act⁸⁷, define clear and precise criteria such as:

⁸⁴ The Rules of Procedure for the Granting of Concessions in FBiH are not publicly available; the quote is taken from “Analysis of the Legal Framework and Recommendations for Removing Obstacles to Investment in the Energy Sector in FBiH”,

<https://www.epbih.ba/upload/documents/kapitalne%20investicije/ANALYSIS%20OF%20THE%20LEGAL%20FRAMEWORK%20AND%20RECOMMENDATIONS%20FOR%20REMOVING%20OBSTACLES%20TO%20INVESTING%20IN%20THE%20ENERGY%20SECTOR%20IN%20FBiH.pdf>.

⁸⁵ Article 9 of the Mining Act (“Official Gazette of the Republic of Slovenia” no. 14/14, 61/17, 54/22, 78/23 and 81/24).

⁸⁶ Article 8 of the Law on Concessions of the Republic of Croatia. More information is available in Rule of Law, Climate Ambitions and Foreign Investments, <https://reri.org.rs/wp-content/uploads/2023/12/The-rule-of-law.pdf>.

⁸⁷ Article 33 of the Mining Law of the Republic of Croatia.



- the technical justification of the proposed programme of total exploration works by type and scope, with a cost estimate, and a detailed work plan to be carried out in the first year of exploration, in accordance with the special conditions and limitations;
- the deadline by which the mineral exploration is intended to be completed;
- the timeframe and plan for the remediation of the exploration area, or the timeframe by which the exploitation of mineral resources is intended to commence;
- the amount of the appropriate financial resources sufficient to carry out mining works in accordance with the submitted programme of total exploration works;
- better professional competence and greater financial capacity for carrying out mining operations.

Therefore, the legal prescription of criteria in a clear and comprehensive manner contributes not only to legal certainty but also to clear evaluation rules, which helps to secure the most suitable partner and ensures the quality of the concession agreement itself.

A topic for further research

In the context of finding the most suitable criteria for awarding concessions in the mining sector, it would be useful to examine international standards and recommendations, as well as the criteria prescribed by comparative legislation.

IV It is necessary to legislate restrictions on contracting

4.1 Duration of the concession contract

The Law on Concessions of the FBiH stipulates the duration of a concession agreement as a period not exceeding 30 years. In the event that exceptional circumstances arise which require investments that necessitate a longer period, the contractual term may be extended, but it cannot exceed 50 years. The law also stipulates that a concession agreement may be renewed for a period not exceeding half of the originally contracted term.⁸⁸ The Law on Concessions of the RS

88 Article 29 of the Law on Concessions of the FBiH.



prescribes a concession term of up to 50 years.⁸⁹ When it comes to the duration of a concession agreement, the legal solution should ensure an effective model that balances the protection of investors' rights with the protection of the state's, or public, interest, whilst strictly adhering to environmental standards. In some cases, the aforementioned effects could also be achieved by prescribing shorter concession contract terms, and it is necessary to consider establishing specific criteria to determine the optimal term for each individual case.

Topics for future research

It is necessary to analyse in more detail the comparative legal solutions regarding the duration of mining concessions and the conditions for their extension.

4.2 Termination of the concession contract

The Law on Concessions of the FBiH prescribes the cases for termination of the concession agreement,⁹⁰ and provides for the possibility of termination exclusively in cases where the concessionaire is insolvent or goes bankrupt, as well as if the concessionaire, or the conceding party, fails to fulfil their obligations.

However, with regard to concessions in the mining sector, it is necessary to highlight the importance of prescribing more specific and precise obligations for the contracting parties, given the sector's particularities, the increased risks, and the consequences of insufficiently detailed obligations. Although the Law on Concessions of the FBiH, by a general provision, allows for termination in the event that the concessionaire, or the concessionor, fails to fulfil their obligations, this provision leaves open the possibility for individual concession agreements to regulate specific situations regarding obligations, and consequently termination, without any legal limitations, thus opening up the possibility for the contracting parties to create the contract solely on the basis of autonomy of will, which represents a high risk of potential abuse. In line with the above, an adequate legislative solution would be to exhaustively list the grounds for contract termination in the laws governing the mining sector.

⁸⁹ Article 28 of the Law on Concessions of the RS.

⁹⁰ Article 30 of the Law on Concessions of the FBiH.



For example, the Croatian Mining Act sets out in detail the grounds for terminating contracts in this sector, which contributes to legal certainty and enables the state to terminate a concession agreement if certain conditions are met.⁹¹ The Croatian Mining Act provides for the general possibility of termination if the obligations under the concession agreement have not been fulfilled, but also:

- if the prescribed measures for occupational safety and the necessary measures for the safety of people, property and the protection of nature and the environment, as ordered by a decision of the State Inspectorate and the Environmental Protection Inspectorate, have not been implemented;
- if the carrying out of mining operations interferes with, or endangers, the exploration of other mineral resources in adjacent exploration areas and/or exploitation fields;
- if mining operations are carried out outside the boundaries of the exploitation field;
- if the concessionaire fails to pay the concession fee despite a written warning from the competent mining authority, even within a subsequently specified deadline;
- if so required by the defence interests of the Republic of Croatia;
- if the mineral deposit is exploited in an irrational manner despite a written warning from the competent mining authority;
- if the Croatian Parliament, by resolution, determines that this is required in the public interest.

Finally, it is of essential importance that mining laws also stipulate various obligations for the concessionaire, as a breach of these provisions would constitute a direct breach of the concession agreement, and consequently, a ground for termination.

Thus, for example, the Croatian Mining Act prescribes the obligation to make rational use of mineral raw materials, and that the concessionaire is obliged to make rational use of mineral deposits in accordance with the concession agreement. What is particularly significant is that the relevant provision stipulates that the concessionaire is obliged to carry out these obligations in accordance with nature and environmental protection regulations.⁹² In this way, throughout the entire duration of the concession, the concessionaire is obliged to comply with nature and environmental protection regulations, at the risk that any breach of these may lead to the state terminating the concession agreement.

91 Article 90 of the Croatian Mining Act.

92 Article 81 of the Croatian Mining Act;



As for the Law on Concessions of the Republika Srpska,⁹³ it provides a broader, but insufficient, range of grounds for termination, and in that respect the regulations need to be harmonised.

4.3 Concession Fee

When it comes to the concession fee, its method of determination and its amount, it is important to emphasise the significance of prescribing the amount of the minimum annual concession fee in the field of mining. It is of particular importance to stipulate that in the event of an amendment to the statutory and subordinate regulations which determine the concession fee, **the concessionaire shall be obliged to pay the concession fee in accordance with the applicable statutory and subordinate regulations.** Indeed, if the concession fee is determined at the time of concluding the concession agreement, this would mean there is a risk that the fee would remain the same for the entire duration of the agreement, unless the contracting parties agree to amend the agreement. Whereas the Law on Concessions of the FBiH does not provide for a legal provision for adjustment, the Law on Concessions of RS stipulates that the concession agreement may determine a change in the amount of the fee during a specified period, as well as the conditions under which this can be done, for the duration of the concession agreement.⁹⁴ This legal provision of the RS Concessions Act gives the contracting parties the option to adjust the fee during the term of the contract, but since it does not impose an obligation to adjust, if the concessionaire does not agree to the fee change, there will be no legal means to compel them to do so.

Therefore, in the event that regulations, after the conclusion of the concession agreement, increase the fee for the greater protection of the public good, and the agreement does not provide for mandatory adjustment, the concessionaire could invoke their rights acquired under the contract and refuse to pay the higher fee. Prescribing a statutory provision that an amendment to the statutory and subordinate regulations governing the concession fee entails a statutory obligation to amend the concession agreement in order to bring it into line with the law ensures the mandatory adaptation of the agreement to the new, valid statutory and subordinate regulations.

93 Article 45 of the Law on Concessions of the RS.

94 Article 29 of the Law on Concessions of the RS.

4.4 *Transfer of the concession*

According to the Law on Concessions of the FBiH, a concession agreement cannot be transferred to another concessionaire without the prior consent of the Commission for Concessions of the FBiH,⁹⁵ and the commission verifies:

- the financial standing of the proposed new concessionaire;
- the expertise and ability of the proposed new concessionaire to provide the services and fulfil their obligations under the concession agreement and
- the impact that the concession to be awarded will have on the concentration of ownership in a particular sector of activity.

Although the commission assesses the expertise and ability of the proposed new concessionaire to provide services and fulfil its obligations under the concession agreement during the approval process, it is essential to restrict the transfer of the concession to specific changes in legal status. For example, in Croatia, the transfer of the concession agreement may only be permitted in cases related to the acquisition of the concessionaire, following a restructuring procedure, through mergers between the existing concessionaire and a future concessionaire, or other forms of acquisition resulting from a restructuring procedure.⁹⁶

Such a restriction is particularly significant in the mining sector, as concession agreements in this field are concluded for a long period of time, and the possibility “the ‘resale’ of the concession to a third party can substantially undermine the very essence of the contract, to the detriment of the public interest, and may also call into question the quality and continuity of the performance of the concluded contract.” A legislative solution, or the possibility of transferring a concession without restriction, opens up the risk that third parties could acquire the concession without a public tender, or even without establishing the public interest. The Law on Concessions of the FBiH stipulates that a commission shall verify the suitability of the new concessionaire, but does not require a new tender to be held, creating a risk that the transparent award of the concession could be circumvented through a technical procedure.

95 Article 29 of the Law on Concessions of the FBiH.

96 Article 66 of the Croatian Concessions Act.



As for the Law on Concessions of the RS, it provides that a concession agreement may be assigned to a third party or a financial organisation with which the concessionaire has entered into a financing agreement in connection with the concession, in the event that the concessionaire is unable to fulfil their contractual obligations within the deadlines and in the manner stipulated by the concession agreement, for organisational, financial or other justified reasons, or in the event of the concessionaire's bankruptcy or insolvency. organisational, financial or other justified reasons cannot fulfil its contractual obligations within the deadlines and in the manner stipulated in the concession agreement, or in the event that the concessionaire is unable to meet its obligations under the financing agreement.⁹⁷ However, even this legal provision, without any restrictions on the assignment of rights, also significantly opens the door to abuse.

4.5. Legal mechanisms for annulling the concession agreement

When it comes to the possibility of annulling a concession agreement, it is first necessary to analyse its legal nature, bearing in mind that the contracting parties are the authority⁹⁸ and a legal entity, and that the subject of the agreement is the disposal of public assets. Consequently, the question arises as to which authority is the absolute competent body to decide on the matter of its legality and its legal fate. On the one hand, a concession agreement can be viewed as a contract of obligation, which operates exclusively between the contracting parties, and any potential illegality can be challenged before the competent courts, should it be contrary to the Constitution of the Republic of Bosnia and Herzegovina, mandatory regulations, and public morality⁹⁹. However, although the right to invoke nullity does not lapse, nor does it become time-barred, it can only be invoked by an interested party, which means that the plaintiff

97 Article 40 of the Law on Concessions of the RS.

98 Article 4 of the Law on Concessions of the FBiH stipulates that the concessionaire may be any competent ministry or authority of the Federation designated by the Government of the Federation of Bosnia and Herzegovina to award the concession. The concessionaire is a legal entity established in accordance with the special laws of the Federation, owned by a domestic and/or foreign legal entity to which the concession is awarded and which executes the concession agreement.

99 Article 103 of the Law on Obligations of the FBiH (*"Official Gazette of SFRY"*, no. 29/78, 39/85, 45/89 and 57/1989, *"Official Gazette of the RBiH"*, no. 2/92, 13/93 and 13/94 and *"Official Gazette of the FBiH"*, no. 29/03 and 42/11).



must prove legal interest in seeking a declaration of nullity of the specific contract, and the initiation and conduct of this court proceeding is, in practice, conditional and uncertain for plaintiffs who do not have a direct legal interest in having the nullity declared.

On the other hand, it should be noted that the conclusion of the concession agreement takes place after a formal procedure, which is regulated by the Law on Concessions of the FBiH, but this law does not provide a legal mechanism for challenging the concession agreement in accordance with the rules of administrative procedure, although its conclusion is directly related to the administrative procedure that precedes it.

An example of good legislative practice is the legal provision set out in the Croatian Law on General Administrative Procedure, which provides that a public law body and a party shall conclude an administrative contract for the performance of rights and obligations in the decision by which the administrative matter has been resolved, if the conclusion of such a contract is prescribed by law.¹⁰⁰ However, the law provides that an administrative contract must not contravene mandatory provisions, the public interest, nor be concluded to the detriment of third parties, and that a contract concluded to the detriment of third parties is legally valid only with the written consent of those persons. In this way, the legislature allows any party who may have been harmed by such a contract to challenge it, and, in contrast to the obligational-law conception of the concession contract which closes off the possibility of third parties influencing the fate of the contract, the public-law approach expressly provides for that possibility. in which third parties are harmed by such a contract.

The Croatian Law on General Administrative Procedure also provides for the nullity of an administrative contract, both for reasons prescribed by the provisions of the Law on Obligations and in the event that the contract is contrary to the decision for the implementation of which it was concluded.¹⁰¹

Taking into account the aforementioned argumentation, and above all the lack of a clear definition of the legal nature of a concession agreement, as well as the fact that the Law on Administrative Procedure of the FBiH does not recognise the institution of an administrative contract, it is

100 Article 150 of the Croatian Law on General Administrative Procedure.

101 Article 151 of the Croatian General Administrative Procedure Act.



necessary to improve the legal framework of the FBiH and the rights concerning the challenge of such contracts, primarily because it is a contract concluded in the public interest, by which public assets are disposed of, and particularly because the contract may have negative consequences for third parties. Under the current legal framework, the right to challenge a concession agreement is reserved exclusively for the contracting parties.

Topics for further research

Given the legal gaps and inconsistencies in the regulation, it would be useful to analyse case law concerning the challenge of concession agreements, as well as the courts' views on the legal form of concession agreements and on the issues of standing and proving the legal interest of the interested public in the aforementioned proceedings. In relation to the issues of amending the legal framework governing administrative procedure, the recommendations in Chapter I (7) should also be considered.

5. *It is necessary to update the existing strategic framework*

The concession-granting policy documents for BiH and RS were adopted in 2006, while the Concession-Granting Policy Document for FBiH was adopted in 2005 and last updated in 2011. As one of the key reasons why the aforementioned document has not been updated to date, the FBiH Commission cites the fact that it does not possess the input data for the creation of a register of assets or activities that may be the subject of a concession.¹⁰²

When discussing the mining sector, it is first necessary to map and define the natural resources that can be the subject of a concession in BiH, in coordination with the competent authorities at all levels. It is necessary to strategically define the natural resources that will be used in the mining sector and granted under concession, bearing in mind that not all natural resources a country possesses need to be exploited, but rather that certain resources should be preserved for

102 Report on the work of the Commission for Concessions of FBiH for 2023, available at https://parlamentfbih.gov.ba/v2/userfiles/file/Materijali%20u%20proceduri%202024/Izvjestaj_o_radu_komsije_koncesije_b.pdf.



future generations or not be exploited at all. Subsequently, the drafting of Concession Award Policy Documents can proceed, and it is essential to involve the public and expert stakeholders from the very earliest stage of this process, with a particular focus on consultations with local communities.¹⁰³ Public participation in the decision-making process is particularly important, given the potential prioritisation of economic development over environmental and social development. It is therefore essential to ensure that the competent authorities have the opportunity to hear the public, local communities, and other interested parties as early as possible. Otherwise, there is a risk that these documents will only reflect the interests of established actors, particularly investors. Furthermore, given the growing dominance of the executive branch, work should be undertaken to strengthen the role of parliaments in overseeing the implementation of these documents.¹⁰⁴

6. *Concessions Register*

In Republika Srpska, there is a publicly available register of concessions,¹⁰⁵ whereas there is no publicly available register of concessions in the FBiH. In addition to establishing adequate registers at all levels of government, a unified register of concessions should also be established for the territory of BiH and the FBiH. Furthermore, with the aim of informing the public, consideration should be given to an initiative to establish a register through which all documents arising from the concession process (including contracts, commission acts, acts of competent authorities, etc.) could be accessed. A good example in Serbia is the public procurement portal, a model which should not be fully adopted as it has certain shortcomings.¹⁰⁶

103 At the level of BiH and FBiH, public participation in the procedures for adopting Concession Policy Documents is not prescribed, see. "Concessions - a community public good or a private government property?", available at: https://eko.ba/publikacije/download/111_eed2b6e6123f4dccdeb01f91c8b3c9f7, accessed on 05.08.2025.

104 A similar proposal is also put forward by the Concessions Commission of the FBiH.

105 https://koncesije-rs.org/registar_koncesija/

106 <https://jnportal.ujn.gov.rs/oglasi-svi>, the shortcomings are described in Rule of Law, Climate Ambitions and Foreign Investments, <https://eri.org.rs/wp-content/uploads/2023/12/The-rule-of-law.pdf>.

V Land-use change

5.1 *Risks in the procedures for changing the purpose of agricultural land*

Law on Agricultural Land of the Federation of Bosnia and Herzegovina (“Official Gazette of the FBiH”, No. 52/09) (“**Law on Agricultural Land of the FBiH**”) defines agricultural land as a natural resource and a good of general interest to the Federation and Bosnia and Herzegovina, which enjoys special protection, is used for agricultural production and may not be used for other purposes, except in cases and under conditions established by law.¹⁰⁷

The change of purpose of agricultural land may be permanent or temporary. While a permanent change of purpose of agricultural land entails the physical disappearance of the land caused by construction or other means of use, whereby the land is permanently lost for agricultural production, temporary change of agricultural land use entails a change of use for a specified period **after which the land may be returned to agricultural production**.¹⁰⁸

As prescribed by the Law on Agricultural Land of the FBiH, a temporary change of use of agricultural land may also be established **in the case of surface exploitation of industrial mineral materials** and other mineral materials and peat provided for in mining plans and projects, and the creation of landfills for solid and liquid waste and other mineral materials, until the end of the exploitation.¹⁰⁹

However, the Law on Agricultural Land of the FBiH in this way effectively equates temporary structures for organising fairs and public events, which have a lesser impact on the land and cannot significantly affect its quality, with mining facilities built for the purposes of exploitation, which the land, given the nature and duration of the exploitation, devastate it to a great extent. It should be emphasised that, when it comes to the extraction of industrial mineral materials, one cannot speak of a temporary, but rather a de facto permanent, change of use

107 Article 2 of the Law on Agricultural Land (“Official Gazette of the FBiH”, no. 52/09).

108 Article 47 of the Law on Agricultural Land.

109 Article 47 of the Law on Agricultural Land.



of agricultural land, after which there is a high probability of significant soil contamination, and **the impossibility of its subsequent use for agricultural production**. Indeed, mining projects involve the conclusion of concession agreements for multi-decade time periods, and it is clear that, in the event that the change of use is for the purpose of exploiting industrial mineral materials, this is done for a longer period (and not for a period of one to five years, as is the case for other temporary structures), until the exploitation is completed (as the relevant provision prescribes).

The Law on Agricultural Land of the FBiH stipulates that the change of purpose for non-agricultural purposes is carried out in accordance with spatial planning documents and acts specified by law.¹¹⁰ A permanent and temporary change of use of agricultural land for other purposes can only be carried out on the basis of an assessment of the soil quality and its productive capacity, and the use of agricultural land for non-agricultural purposes may be permitted only exceptionally, in the case of the lowest quality categories.¹¹¹

However, the Law on Agricultural Land of the FBiH provides an exception that agricultural land of the 1st to 4th bonity category (the most fertile agricultural land) may be designated as land for the construction of capital projects¹¹² when no other options exist, when it is required by the general interest as determined by the cantonal government, and when no less valuable agricultural land is available.¹¹³

First and foremost, it should be emphasised that when the legislature enacts rules and conditions for the purpose of protecting a good, which in this case is agricultural land, the granting of exceptions should be limited exclusively to situations where there is a specific interest that outweighs the interest in protecting the good in question. In the present case, by prescribing an exception whereby the most fertile land can be rezoned for any other purpose, the door is opened for the exception to

110 Article 48, paragraph 1 of the Law on Agricultural Land ("Official Gazette of the FBiH", no. 52/09).

111 Article 6, paragraph 2 of the Instruction on the Unified Methodology for Classifying Agricultural Land into Bonity Categories ("Official Gazette of the FBiH", no. 78/09).

112 Article 8, paragraph 1(23) of the Law on Agricultural Land of the FBiH provides that capital facilities of general interest are: roads, railways, airports, hydro-reservoirs, waterworks for flood defence and facilities for the exploitation of industrial resources. Article 2. Law on Agricultural Land ("Official Gazette of the FBiH", no. 52/09). and other mineral substances by open-cast mining.

113 Article 48 of the Law on Agricultural Land of the FBiH.



become the rule. However, what constitutes an additional risk are the criteria prescribed by the legislature for such a change of use:

- when no other options exist;
- when it is required by the public interest as determined by the cantonal government;
- when there is no less valuable agricultural land;

The criteria for applying the exception, defined without a precisely, accurately and clearly prescribed procedure which defines:

- how it is determined that no other possibilities exist (i.e. that other options have been considered);
- on which area the valuation of agricultural land is carried out (in order to determine that there is no less valuable land than that to which the exemption applies)

open up the possibility of the exception being abused, and for the highest-quality land to be used de facto permanently for mineral resource extraction without any legal consequences.

On the other hand, the Law on Agricultural Land of the Republika Srpska stipulates that the change of purpose of the first 4 bonity classes of agricultural land, if a spatial planning implementation document has not been adopted for a specific area or its adoption is not envisaged, may only be carried out for the construction of: a) objects for which the location conditions are issued by the ministry responsible for construction affairs; b) objects that are in the function of agricultural production and c) individual residential and auxiliary objects within the agricultural farm in that area.¹¹⁴

5.2 *Risks in procedures for changing the purpose of forest land*

The Law on Forests of RS stipulates that forests and forest land are natural resources of general interest which enjoy the special protection of RS, and that the total area of forests owned by the Republic cannot be reduced, except in special cases provided for by this law.¹¹⁵ The Law on Forests of the RS stipulates that the felling of forests and the

¹¹⁴ Article 27, paragraph 2 of the Law on Agricultural Land ("Official Gazette of Republika Srpska", no. 93/06, 86/07, 14/10, 5/12 and 58/19, "Official Gazette of BiH", no. 16/20 and "Official Gazette of RS", nos. 119/21 and 106/22).

¹¹⁵ Articles 2 and 3 of the Law on Forests of RS ("Official Gazette of RS", no. 75/08, 60/13, 70/20 and 49/22).



permanent change of purpose of forest land may be carried out, among other things:

- with the aim of implementing spatial planning documents and location conditions;
- on the basis of an act of the competent authority for determining the public interest;
- if necessary for the implementation of a concession agreement (introduced by amendments in 2020).¹¹⁶

The exceptions are too broadly defined, i.e., the cases in which the felling of trees and the permanent change of the purpose of forest land may be carried out, with the particularly problematic legal provision being the possibility of allowing this whenever it is necessary for the implementation of a concession agreement. This means that whenever it is necessary for the exploitation of mineral resources (which is carried out on the basis of a concession agreement), the operator can re-designate forest land and carry out deforestation to implement the project.

The FBiH does not have a valid Forestry Law, and in February 2024, a new FBiH Forestry Law was proposed.¹¹⁷ The proposed Forestry Law stipulates that the felling of trees is only permitted if the land is designated for other purposes in the current spatial planning plan. Furthermore, it is stipulated that forest land may be temporarily used for the exploitation of mineral resources and other natural wealth, for the duration of the concession agreement.¹¹⁸

***Note:** The Law on Forests of RS provides that an assessment of the impact of the proposed felling/change of land use on the environment must be submitted with the application for felling, in the event that the felling is carried out for the purpose of implementing a concession agreement or a decision on the determination of public interest (it is unlawful to prescribe the obligation to submit an impact assessment only in the aforementioned cases, given that, in accordance with the RS List of Projects Regulation, a prior impact assessment for the felling of forests for land-use change is always required), whereas the draft Law on Forests of the FBiH does not stipulate that a decision assessing the impacts of felling trees that is inevitable due to the temporary use of land must be submitted, although the felling of forests over an area of more*

116 Article 42 of the Law on Forests of RS.

117 <https://fmpvs.gov.ba/2024/02/20/javna-rasprava-o-zakonu-o-sumama-u-federaciji-bih/>

118 Article 63, paragraph 1 of the Draft Law on Forests of the FBiH, 2024.



than 5 ha is included on the list of projects for which, in the procedure for prior environmental impact assessment, a decision is made on the need for an impact assessment by means of a study. Furthermore, the provisions relating to the disposal and ownership of forests in the territory of the RS and the FBiH may pose a particularly significant problem, taking into account the decisions of the Constitutional Court of BiH which establish that the provisions relating to the determination of the property status of state assets, as well as the competence in this regard between state and entity bodies, should be regulated by a law to be adopted at the state level, as these matters, according to the Constitution of BiH, an exclusive competence of the state of BiH.

For example, in Croatia, the criteria for establishing a right of way over forest land owned by Croatia for the purpose of mineral extraction are prescribed by a special subordinate act, which, among other things, sets out restrictions on the area of land that can be used.¹¹⁹ Also, restrictions are prescribed regarding the planning of new mining fields for mineral extraction in forest and/or forest land owned by the Republic of Croatia (for example, they cannot be planned on an area larger than 20 ha, in the I. age class, in areas of forest and parts of forests registered for the production of forest seed, in areas of forest designated for scientific research, etc.).¹²⁰

VI Prohibition on the disposal of state property

What does state property include?

Article 1, paragraph 1 of the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina ("Official Gazette of BiH", nos. 18/05, 29/06, 85/06, 41/07, 74/07, 99/07, 58/08 and 22/22) prohibits the disposal of state property. Amendments to the aforementioned law from 2022 clarified, taking into account the

¹¹⁹ Article 3 of the Ordinance on the Procedure and Criteria for Establishing Servitude Rights on Forest and/or Forest Land Owned by the Republic of Croatia for the Purpose of Mineral Extraction ("Official Gazette" no. 133/07 and 9/11).

¹²⁰ Article 9 of the Ordinance on the procedure and criteria for establishing easements on forests and/or forest land owned by the Republic of Croatia for the purpose of mineral extraction.



decisions of the Constitutional Court of BiH, that agricultural land, which the Constitutional Court of BiH determined to be state property in its decision in case no. U-8/19, as well as rivers, forests and forest land, for which the Constitutional Court of Bosnia and Herzegovina determined that they constitute state property in its decisions in cases no. U-9/19 and no. U-4/21¹²¹. The 2022 amendments also clarified that “regardless of the provisions of any other law or regulation, state property may be disposed of exclusively by Bosnia and Herzegovina, as its holder, in accordance with the provisions of this law”.

The Constitutional Court of BiH, in its decision U 1/11, established, and confirmed in other decisions concerning the disposal of state property, that state property includes **movable and immovable property which is in the hands of public authorities and serves them for the exercise of authority**, but also **public good** (sea water and the seabed, river water and riverbeds, lakes, mountains and other natural resources, the public transport network, transport infrastructure, etc.), which, by its nature, primarily serves all people in the state. The Constitutional Court further states that, as such, ‘public good’ can be excluded from legal circulation due to its significance, as this is the only way to preserve and protect it.

Note: In dissenting opinions, Constitutional Court judges particularly challenge the equating of public good and state property, and the paradox that a public enterprise owned by an entity can own a forest and agricultural land, whereas the entity itself cannot.

What is considered disposal?

In accordance with Article 1(3), disposal is considered to be the direct or indirect transfer of ownership. The Constitutional Court of BiH has specified that disposal, for the purposes of this law, also includes a change of purpose and the granting of temporary use of forest land owned by the BiH state.¹²²

¹²¹ Decision on the adoption of the Law on Amendments and Supplementations to the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina, available at: <https://www.ohr.int/%d0%be%d0%b4%d0%b-%bd1%83%d0%baa-%d0%ba%d0%be%d1%98%d0%be%d0%af-%d1%81%d0%b5-%d0%b4%d0%be%d0%bd%d0%be%d1%81%d0%b8-%d0%b7%d0%b0%d0%b0%d0%be%d0%bd-%d0%be-%d0%b8%d0%b7%d0%b-c%d1%98%d0%b5%d0%bd%d0%b0%d0%bc/>, accessed 19.08.2025.

¹²² Decision of the Constitutional Court of BiH in case U 3/24 of 11 July 2024.



Note: *In view of the positions taken by the Constitutional Court of BiH regarding the disposal of forest land, it appears that the same standard may be expected to apply to the disposal of agricultural land.*

The Office of the High Representative in BiH, in the procedure for adopting the Decision on the Change of Purpose of Forest Land and Temporary Use of Forest Land for Other Purposes of the Government of the Federation of Bosnia and Herzegovina (“Official Gazette of the FBiH” no. 89/23 and 100/23) expressed the opinion that “the change of purpose of forest land obviously leads to significant legal consequences for the property in question” and therefore constitutes an act of disposal, while it considers that “the granting of a right of temporary use does not constitute an act of direct or indirect transfer of ownership and therefore should not be considered a disposal within the meaning of the prohibition on disposing of state property.”¹²³

However, the Constitutional Court of BiH took a different view regarding temporary use, pointing to potential abuses that would result in a de facto change of the purpose of the forest land, bearing in mind that it is not known how long the ‘temporary use’ would last and what would be implied by ‘temporary use’.¹²⁴ The Constitutional Court considers that matters which are directly related to the right of ownership, which grants the owner the authority to possess, use and dispose of the property freely and at will, cannot be regulated.¹²⁵ In this regard, it was also emphasised that a change of purpose for forests and forest land could call into question their character as a ‘public good’., thereby allowing forests and forest land to be used for purposes not directly related to the very character of forests and forest land as a ‘public good’ in state ownership.¹²⁶

Note: *In the proceedings before the Constitutional Court in case U 3/24, the Government of the FBiH pointed out that the decision on the change of purpose of forest land changes only the land use in accordance with the spatial planning plan, but not the ownership of such land. It also stated that the right to submit a request for a change of purpose of forest land is held solely by the property owner, which, in the case of state*

¹²³ Decision of the Constitutional Court of BiH in case no. U 3/24 of 11 July 2024 (paragraph 15).

¹²⁴ Decision of the Constitutional Court of BiH in case no. U 3/24 of 11 July 2024 (paragraph 42).

¹²⁵ Decision of the Constitutional Court of BiH in case no. U 3/24 of 11 July 2024.

¹²⁶ Decision of the Constitutional Court of BiH in case no. U 3/24 of 11 July 2024 (paragraphs 35 and 36).

property, it considers to be the bodies of BiH. The Constitutional Court dismissed all of the aforementioned arguments as unfounded. The said decision stipulated that forest land may, among other things, be temporarily used for the purpose of exploiting mineral raw materials and other natural resources, for the duration of the concession agreement.

Can the entities dispose of agricultural land, forests and forest land?

The Constitution of BiH does not contain any provision relating to state property; rather, ownership of state property is inferred indirectly from provisions on the continuity of the state.¹²⁷ The temporary ban on the disposal of state property is in force until the enactment of a law at the state level regulating ownership rights and the management of state property, to be adopted by the Parliamentary Assembly of BiH, or until the High Representative makes a different decision.¹²⁸ The fact that the law on state property has not yet been adopted does not mean, according to the assessment of the Constitutional Court, that the entities can unilaterally regulate the question of ownership of state property that has not yet been defined at the level of BiH through their own laws.¹²⁹ Certain state property may, at the request of an interested party, be exempted from the temporary ban on disposal by decision of the Commission for State Property.¹³⁰

The Constitutional Court of BiH has unequivocally determined that **agricultural land** within the territory of the entities constitutes part of the state property owned by BiH, citing Article I/1 of the Constitution of BiH, which guarantees the continuity of the state.¹³¹ In this regard, and bearing in mind that agricultural land in state ownership is not owned by the entities, they cannot dispose of it.

127 Articles I/1, III/3.(b) and IV/4.(e) of the Constitution of BiH.

128 Article 4 of the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina.

129 For example, see the decisions of the Constitutional Court of BiH in cases no. U 1/11, U 8/19, U 9/19 and U 4/21.

130 Article 3, paragraph 2 of the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina.

131 Decision of the Constitutional Court of BiH in case no. U 8/19 of 6 February 2020.



Similarly, the Constitutional Court of BiH has unequivocally determined in its decisions that **forest land and forests** constitute state property owned by BiH, which the entities cannot dispose of. The Constitutional Court also states that a forest is understood to be land covered with forest trees or forest undergrowth, while forest land, in addition to land covered with forest, also includes uncultivated, unutilised or barren land outside the forest to the extent that it secures or supports the functions of the neighbouring forest. Therefore, the Constitutional Court notes that forests and forest land, as public goods, are characterised, among other things, by their purpose which depends on their natural properties.¹³² The Constitutional Court also emphasised that the aforementioned judgments do not affect the obligation of the entities to carry out activities regarding the management and protection of forests and forest land.¹³³

Note: In the case U 8/19 before the Constitutional Court, the National Assembly of the RS emphasised that the disposal of agricultural land is carried out in accordance with regulations governing privatisation, which, without dispute and according to the Constitutional Court's view, fall within the competence of the entity. However, the Constitutional Court has determined that agricultural land owned by the state is considered a natural resource and a public good which cannot be subject to privatisation. As previously referenced, the Constitutional Court of Bosnia and Herzegovina, in case U 4/21, determined that the provisions of the Law on Forests of Republika Srpska, which define forests and forest land as "property of the Republic," are not in compliance with the Constitution of Bosnia and Herzegovina.¹³⁴ This confirmed the position of the Constitutional Court from cases no. U 1/11, U 8/19, and U 9/19 that the issue of the management and disposal of forests and forest land falls within the exclusive jurisdiction of Bosnia and Herzegovina. The argument put forward by the RS in cases before the Constitutional Court is that the provisions of the Constitution from which BiH derives its competence (Article I/1) to dispose of state property relate to the continuity of BiH in external relations, whereas continuity in domestic law does not exist.

132 Decision of the Constitutional Court of BiH in case number U 3/24 of 11 July 2024 (paragraph 35).

133 Decision of the Constitutional Court of BiH in case number U 4/21 of 23 September 2021 (paragraph 43).

134 Ibid.



Therefore, neither the entities nor the state can dispose of forests, forest land, or agricultural land in state ownership until a regulation is adopted at the level of BiH which would regulate the entities' competence to make decisions on the change of purpose of forest and agricultural land, or the temporary use of state-owned forest and agricultural land for other purposes. Such disposal cannot be carried out by laws, nor by any other general acts.¹³⁵

¹³⁵ For example, see the decision of the Constitutional Court of BiH in case U 6/24 of 11 July 2024.

