

THE IMPORTANCE OF THE PROCEDURES FOR THE AWARD OF CONCESSIONS FOR MARINAS IN THE REPUBLIC OF CROATIA – DE LEGE LATA ET DE LEGE FERENDA

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ABSTRACT

This article analyses the award of concessions procedure for marinas in the Republic of Croatia, de lege lata (the current law) and de lege ferenda (the law that is to be proposed) and gives measures for improving the valorisation of the maritime domain.

Croatia is one of the most desirable nautical destinations in the world due to its natural resources (climate conditions, beautiful landscape, 6278 km of coastline with 1185 islands, rocks and reefs), good infrastructure, quantity and locations of the nautical tourism ports and personal safety.

Croatia's tourism development strategy to 2020 identifies nautical tourism as one of the main strategic target. For this reason, it's important to efficiently manage the natural resources including the maritime domain as one of the most important Croatian strategic resources. Maritime concessions serve as a vehicle of economic development and allow supervision over the use of the maritime domain in order to protect it. The award of concessions for marinas is regulated by legal acts which will be analysed in this article.

KEY WORDS: Croatia, nautical tourism, maritime domain, concessions, marinas.

1. INTRODUCTION

Nautical tourism is one of the most promising types of tourism in Croatia, with demand growing year after year. In order to take advantage of the great development potential of nautical tourism, investments need to be made in marinas construction, including supporting facilities constructions.

The Croatian coast is 6,278 km long, of which is 4,398 km the length of the islands' coast, with a total of 1244 islands, islets and reefs, of which 50 are inhabited. The inner sea waters and territorial sea extend on a surface amounting to 31,479 m², the surface area of inland waters is 12,498 km², the territorial sea is 18,981 km², and the surface of the Republic of Croatia is 56,488 km². Due to its significance and the surface, maritime domain is one of the most valuable parts of the territory of the Republic of Croatia.

It is in the common interest of state bodies, as well as of all those who work in maritime domain or live of it, to regulate business terms applicable to maritime domains for a longer period of time and thus create certain and foreseeable business terms that are prerequisites both for the improvement of current business and for new investments.

Croatia is one of the most desirable nautical destinations. The reasons are:

- Natural background: climatic conditions, sea quality, landscape beauty, indented coast and islands, ecologically preserved coastline
- Traffic accessibility of the nautical tourism port of departure in relation to the main emissive markets, personal safety and navigation safety, number, spatial distribution and equipment of nautical tourism ports,

The development of nautical tourism has been identified as one of the strategic goals in the tourism development strategy of the Republic of Croatia by 2020. The main goal of the Tourism Development Strategy of the Republic of Croatia until 2020 is to increase the attractiveness and competitiveness of Croatian tourism. With the dominant “sun and sea” product, the Strategy also mentions nautical tourism as a particularly important product for the development of Croatian tourism by 2020. According to the strategy, the strategic goals of tourism development by 2020 are: Improvement of structure and quality of accommodation, new employment, investments and increase of tourist consumption. The desired position for Croatian nautical tourism sector in 2020 is for Croatia to be the most desirable yachting destination in the Mediterranean, and to meet the demands of luxury mega yachts.¹

2. NAUTICAL TOURISM IN CROATIA

The entire tourism sector in the Republic of Croatia has a seasonal character and so does the nautical tourism. The largest number of vessels in Croatia was recorded in the summer months, mainly in July and August.

In 2016, according to the Croatian Bureau of Statistics, there were 139 nautical ports on the Croatian coast, of which 71 marinas - 13 land and 58 others. There were 58 anchorages, 7 moorings and 3 are unclassified). The total number of moorings is 17,428²

Table 1. Nautical tourism ports capacity by counties in 2016 (number of moorings)

COUNTIES	Total	Sea	Land
Primorje-Gorski Kotar	2,891	1,403	1,488
Zadar	3,966	3,085	881
Šibenik-Knin	3,671	2,721	950
Split-Dalmatia	2,451	1,848	603
Istria	3,512	2,760	752
Dubrovnik-Neretva	937	731	206
TOTAL	17,428	12,548	4,880

Source: NAUTICAL TOURISM Capacity and Turnover of Ports, 2016, http://www.dzs.hr/Hrv_Eng/publication/2016/04-03-04_01_2016.htm, p. 2 i 3

The Zadar County has the highest number of moorings 23% of total moorings (3,966) followed by Šibenik-Knin 21% (3,671), Istria with 20% (3,512), Primorje-Gorski kotar with 17% (2,891), Split-Dalmatia with 14% (2,451) and Dubrovnik-Neretva with only 5% (937). It needs to be said

that the number of berths in Zadar County is divided into 30 anchorages, 2 moorings and 12 marinas. It is also the county with the largest number of anchorages (30 out of 58 in Croatia). It should also be noted that Primorje-Gorski Kotar County has the largest number of land marinas, 5 out of 13 in the Republic of Croatia. This is evident in a larger number of places on the land (1,488) than the moorings in the sea (1,403).

Table 2. Number of moorings by vessel length in 2016.

Length	Number of vessels	%
Up to 6 m	606	3.5
6 - 8 m	1,276	7.3
8 – 10 m	2,821	16.2
10 – 12 m	4,449	25.5
12 – 15 m	4,848	27.8
15 – 20 m	2,666	15.3
20 m and more	762	4.4
Total	17.428	100.0

Source: NAUTICAL TOURISM Capacity and Turnover of Ports, 2016 http://www.dzs.hr/Hrv_Eng/publication/2016/04-03-04_01_2016.htm, p. 2

The largest number of moorings is in the category 10 - 15 m (9,297). The share in the total number of moorings is 53.3%. The share of moorings for vessels over 20 m is only 4.4%

Given the market trends that indicate an increase in the average length of the vessel and the high utilization of the leading marinas in the Mediterranean, it is expected that demand in the Adriatic will follow the market trends. According to the placed superyachts orders, there is an increase in demand and increase of the average length of vessels. According to Superyacht Intelligence Group, the number of superyachts (30m +) is increasing. According to the same source about 60% of the global fleet of superyachts is permanently moored in one of the Mediterranean marinas.

There is a continued growth in global superyacht fleet. Although the total fleet of superyachts grew slower in years after the global economic crisis, the number of vessels in the fleet is constantly increasing, which is why demand for suitable moorings and new moorings is expected to also be increased. According to the new orders, it is possible to expect a continuation of this trend in the years to come, and the demand for the mooring of the above mentioned length categories is expected to increase with it.

According to the Nautical Tourism Development Strategy of the Republic of Croatia for the period 2009 - 2019, 15,000 new moorings (10,000 water and 5,000 land ones) are planned.³ Realization is slow. Capacity in nautical

¹ Vlada RH: Strategija razvoja turizma Republike Hrvatske do 2020. godine (travanj 2013.), <http://www.mint.hr/default.aspx?id=9504>, 25.07.2017.

² NAUTICAL TOURISM Capacity and Turnover of Ports, 2016 http://www.dzs.hr/Hrv_Eng/publication/2016/04-03-04_01_2016.htm

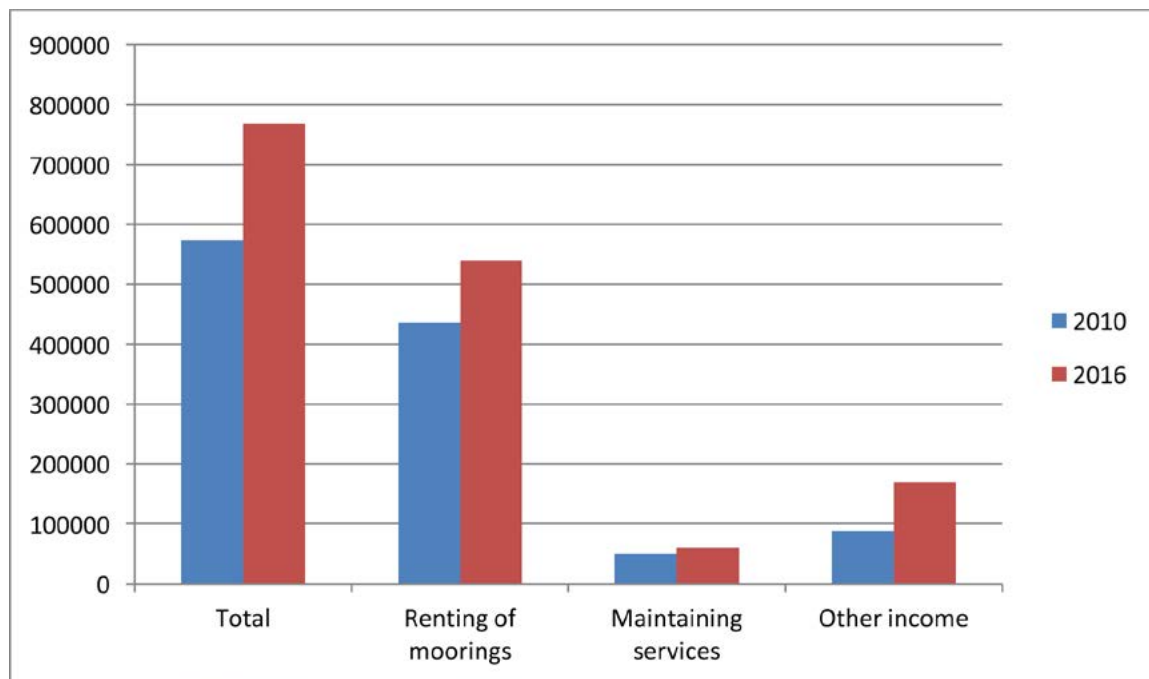
³ Vlada RH - Strategija razvoja nautičkog turizma za razdoblje 2009.-2019., <http://www.mint.hr/default.aspx?id=375>, 26.09.2017.

ports increased only by 580 moorings between 2009 and 2016 (2009 – 16,848 and 2016 – 17,428).⁴ As the length of vessels increases, it is not possible only to consider the number of moorings but the length as well.

Total income in nautical ports has been growing steadily over the last five years despite a decline in the number of

vessels in Croatia. The possible explanation for such trends is that number of smaller vessels is actually reducing, while the number of vessels longer than 20m is slightly increasing, which is again in line with the global trend of increase in the average length of vessels. In addition, the average length of the vessel's stay in transit in the nautical tourism ports in Croatia is increasing.

Figure 1. Income realised by nautical ports, not including VAT in 2010 and 2016 (in HRK 000)



Source: NAUTICAL TOURISM Capacity and Turnover of Ports, 2010 https://www.dzs.hr/Hrv_Eng/publication/2010/04-04-05_01_2010.htm, 25.07.2017.; NAUTICAL TOURISM Capacity and Turnover of Ports, 2016 http://www.dzs.hr/Hrv_Eng/publication/2016/04-03-04_01_2016.htm, 25.07.2017.

The total realized income of nautical ports in 2016 amounted to HRK 769 million, of which HRK 539 million was realized from renting of moorings, 70.1% of total income. Compared to 2015, total income increased by 2.1%, and leasing income increased by 3.8%.

The total realized income of nautical ports in 2010 amounted to HRK 574.1 million, of which HRK 435.9 million was realized from the leasing of the moorings, 75.9% of the total income.

In the 2010–2016 period nautical tourism income increased by HRK 195 million or around 34%. In the observed period, the share of income from leasing moorings is decreasing, and it is growing from maintenance services and other services.

The largest income of nautical tourism in 2016 is recorded by the Šibenik-Knin County. Zadar is in the second place, although it has the largest number of moorings, just a bit in front of Split-Dalmatia County, which is penultimate by the number of moorings.⁵ The fact that anchorage moorings

are included in total number of moorings, and there are 30 in Zadar County, has an impact on the income.

There were 13,422 vessels permanently moored in nautical ports on 31 December 2016, which was 0.2% more than on 31 December 2015. Water moorings were used by 87.6% of the vessels, while 12.4% used only land moorings. There were 198,151 vessels in transit in nautical tourism ports in 2016, which was 8.6% more than in 2015.⁶

After the decline in the number of vessels permanently moored in 2015, there is a growth again in 2016. The number of vessels in transit is steadily increasing.

The influence of nautical tourism on the destination is the subject of many studies in Croatia due to the relatively rapid development, the impact on the environment and the economy in recent years. The results of the research of “TOMAS NAUTIKA Jahting” published by the Institute for Tourism, dealing with the attitudes of yachtsmen in Croatia, point to the importance of the development of nautical tourism for the destination. Year-on-year increase

⁴ NAUTICAL TOURISM Capacity and Turnover of Ports, 2009 https://www.dzs.hr/hrv/publication/2009/4-4-5_1h2009.htm; NAUTICAL TOURISM Capacity and Turnover of Ports, 2016 https://www.dzs.hr/Hrv_Eng/publication/2016/04-03-04_01_2016.htm, 29.09.2017.
⁵ NAUTICAL TOURISM Capacity and Turnover of Ports, 2016 http://www.dzs.hr/Hrv_Eng/publication/2016/04-03-04_01_2016.htm, 25.07.2017.
⁶ NAUTICAL TOURISM Capacity and Turnover of Ports, 2016 http://www.dzs.hr/Hrv_Eng/publication/2016/04-03-04_01_2016.htm, str. 1

in economic and non-economic impacts is noted, such as: increase of income in the destination, employment, expansion of offer, increase of economic activity etc.

According to the last available study „TOMAS NAUTIKA Jahting 2012“ yachtsmen were, during the summer 2012, the most satisfied with the beauty of nature and scenery, and personal safety; they were also satisfied with hospitality and availability of information in marinas, vessel's condition and transport at airports and in marinas for charter guests as well as gastronomy offer in destinations, accessibility of departure port, geographical spread of marinas and overall nautical product; they were not entirely satisfied with value for money of the overall nautical product; yachtsmen were unsatisfied with the shopping facilities in marinas. The main disadvantage of Croatian nautical product, compared to Spain, France and Italy, are the charter service, availability of transit moorings and supply of marinas. Value for money of the overall nautical tourism product is higher compared only to Italy. The analysis of competitiveness of Croatian nautical tourism product in comparison to other Mediterranean destinations showed that the main advantages are environmental preservation, natural beauty, climate, clean sea and tidiness of coastal towns, safety, friendliness of hosts, image of the country and the geographical spread of marinas.⁷

3. THE PROCEDURES FOR THE AWARD OF CONCESSIONS FOR NAUTICAL PORTS IN THE REPUBLIC OF CROATIA – DE LEGE LATA ET DE LEGE FERENDA

Concession encompasses the right by virtue of which a part of maritime domain is partly or entirely excluded from general use and conceded to natural and legal entities for special use or commercial exploitation.

The law distinguishes general, special and economic use of maritime domain:

- General use of maritime domain, meaning that anyone has the right to use maritime domain according to its nature and purpose.
- The special use of maritime domain is any use other than the general or economic use of the maritime domain

The main goal of the award of concessions is ensuring balance between the protection of the maritime domain and its economic use. Other goals are:

- creating conditions for investment in maritime affairs, especially in port superstructure
- respect and promotion of the highest standards regarding environmental protection of the maritime domain
- Systematic and precise legal regulation that monitors contemporary, generally accepted European and world achievements, to provide the necessary preconditions for economic development

- Re-examine port management models open to public traffic

The Legal acts governing the award of a concession for the use of the maritime domain are: The Constitution of the Republic of Croatia, The Concession Act, Maritime Domain and Seaports Act, Regulation on the Determination of Maritime Boundary, Regulation on the procedure for granting a concession on a maritime domain and Regulation on procedure for granting concession permits.

The concession contract for the right to exploit a common good or other goods is a contract which regulates the exploitation of a common or other good of interest to the Republic of Croatia, defined as such by the law.

CONCESSION AWARD PROCEDURE

The Maritime Domain and Seaports Act applies to this matter (Official Gazette No. 158/03, 141/06, 38/09, 123/11, 83/12 and 56/16), the Concession Act (Official Gazette 69/17) and the Regulation on the Concession Procedure of the maritime domain (Official Gazette No. 23/04, 101/04, 39/06, 63/08, 125/10, 102/11, 83/12 and 10/17).

PRECONDITIONS FOR AWARD OF CONCESSION:

1. Determined boundaries of maritime domain;
2. Maritime domain is noted in official land registers;
3. The activity planned to be performed on the basis of the concession must be provided in a detailed adaptation plan or a location permit must be obtained.

CONCESSION GRANTORS:

1. Government of the Republic of Croatia – for use or construction of buildings of importance for the Republic of Croatia - up to 50 years - for over 50 years approval of the Parliament of the Republic of Croatia is required.
2. County Assembly – for use or construction of buildings of importance for the county - up to 20 years - exceptionally with the approval of the Government of the Republic of Croatia, the county assembly may extend the duration of the concession for a total of 30 years.
3. Special purpose ports –for up to 200 moorings the concession grantor is the County Assembly and over 200 moorings The Government of the Republic of Croatia.
4. Port administrations open to public transport grant concessions in the port area as the port area represents the maritime domain in accordance with the provisions of the Law - for a period of 30 independently, for a period of 30 to 50 years with the approval of the Government of the Republic of Croatia, for a period of 50 to 99 years with the approval of the Parliament of the Republic of Croatia.

⁷ Institut za Turizam, TOMAS NAUTIKA Jahting 2012“ <http://www.iztg.hr/hr/institut/projekti/istravanje/>, 12.09.2017.

ISSUING NOTICE OF INTENT TO AWARD A CONCESSION ON MARITIME DOMAIN

Based on:

- Investor's letter of intent;
- Court proclamation of maritime domain that is also noted in land registers;
- A statement from a detailed adaptation plan or a location permit;
- Letters of intent by a bank to cover the investment or other evidence of availability of sufficient financial resources for the realization of the project.

PUBLIC INVITATION FOR COLLECTION OF BIDS

When Government of Republic of Croatia is concession grantor, procedure is conducted by the Ministry handling maritime affairs. When the concession grantor is a County Assembly, the procedure is conducted by the county administrative authority.

The offer must contain following documents:

1. proof of tenderer's capacity (that it is registered for carrying out the economic activity for which he is seeking a concession, to have adequate technical, professional and organizational capacity for utilization of the potentially conceded goods, to have a guarantee for the undertaking of the plan and program needed for the realization of the concession, that there are no unsettled liabilities from previous concessions, That he has not been deprived of awarded concessions so far etc.);
2. The offered amount of a permanent part of the concession fee and the percentage of the variable part of the concession fee;
3. Economic justification study;
4. Commercial guarantee issued by a bank as a guarantee of serious intent by a bidding party in the amount of 1% of the offered value of the investment;
5. Letter of intent issued by a commercial bank to pledge the fulfilment of obligations under the concession contract;
6. Certificate of the competent authority for issuing the location permits that the project presented in the draft project is planned in accordance with the physical planning documents;
7. Conceptual design for the intervention in maritime domain created in accordance with the documents of physical planning and the economic justification study.

In addition to the mandatory content of the offer, the bidder is obliged to submit other data, based on published conditions of public collection of bids which may alter.

CONCESSION AWARD DECISION

Concession Act accounts for selection of criteria: quality, which includes technical merit, aesthetic, innovation, functional and environmental characteristics, running costs and management costs, cost-effectiveness, after-delivery service and technical assistance, delivery date and delivery period or period of completion of works, price of the service for the final beneficiaries, the amount of the concession fee, or highest fee offered for the concession.

Maritime Domain and Seaports Act will differentiate the criteria in relation to the type of concession, taking into account previous experience.

The submitted bids are evaluated by the expert commission for the evaluation of the Bid for Concession and they propose the most favourable one (the expert commission for the Evaluation of Bids for Concessions awarded by the Government of the Republic of Croatia acts in the Ministry of Sea, Transport and Infrastructure and it is appointed by the Government of the Republic of Croatia).

The Ministry of the Sea, Transport and Infrastructure prepares a proposal for a concession award decision and submits it to the competent state administration bodies for the purpose of giving an opinion. Upon receipt of the opinion of the competent authorities, the proposal of the Decision is submitted to the Government of the Republic of Croatia for the adoption of the Decision.

The Government of the Republic of Croatia / County Assembly issues a concession award decision. Based on these concession award decisions, a concession contract is concluded.

The concession contract is the basis for obtaining a building permit and the realization of the project.

According to The Concession Act legal protection is ensured in accordance with public procurement regulations, which means that disputes are solved by the State Commission for Control of Public Procurement Procedures.

The procedure for issuing notice of intent to award a concession on a maritime domain and the very procedure for granting a concession for the use of a maritime domain is a lengthy and complex process.

For this reason, the limitations noticed in the procedure need to be continually eliminated by drafting addendums to the regulations, and some of them are:

- Inaccuracy of Physical Planning Documents;
- Lengthy duration of the process of establishing the limits of the port itself;
- Entering designated port area in the land register in the status of maritime domain;
- Planning all activities within the port area;
- Justification studies for granting the concession, which do not foresee different possibilities of using the port area during the concession.

According to the new Maritime Domain and Seaport Act it is proposed to change the jurisdiction and the concession-granting procedure in the maritime domain in order to comply with Concessions Act, as well to implement means to decentralize maritime management.

The subdivision of the concession on the maritime domain is aligned with the Concession Law, which establishes:

- Concession for the right to exploit a common good,
- Works concession,
- Services concession.

It also defines the approval for the special use of the maritime domain. The concessionary permit is abolished; the permit for carrying out activities on the seashore, which is an administrative act, is being issued by the mayor, thereby strengthening the role of local government in the management of maritime domain.

4. CONCLUSION

Mediterranean is the most popular nautical tourism destination. The fact that more than 60% of the global fleet of superyachts is permanently moored in one of the Mediterranean marinas, and that almost all of the most

expensive marinas in the world are in the region, speaks for the Mediterranean as the most popular nautical tourism destination. The congestion of capacity in the traditionally most popular countries and on the islands of the Western Mediterranean is evident, which is an opportunity for the surrounding countries including Croatia to offer an alternative location of moorings and attracting yachtsmen by offering more peaceful, undiscovered sailing areas and / or better infrastructure.

Croatia needs to use resources and great potential for further development of nautical tourism and position itself as one of the most desirable nautical destinations in the Mediterranean. To that end, it is necessary to undertake activities to improve the offer and increase the attractiveness of products for users/visitors and investors, and to continuously work on improving the procedures for granting concessions on the maritime domain.

Warning measures for improving the valorisation of the maritime domain are: strengthening both the general and individual awareness about the importance of the coastal belt; regular review of concession conditions; systematic settlement of the entry of the maritime domain in land registers; by acknowledging the specialty in the economic use of the maritime domain of various subjects (traditional from economic use).

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