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## **New Legal Framework for Concessions in Maritime Ports of the Republic of Croatia**

### **Abstract**

With the enactment of the new Act on Maritime Domain and Sea Ports in the summer of 2023, the Republic of Croatia has, after many years, established a new contemporary legal framework for regulating maritime domain and thereby the maritime ports, the most economically significant part of the maritime domain. The new law aligns the concession model on the maritime domain and ports with European regulations and the general legislation governing concessions in the Republic of Croatia after several years of delay. Besides public traffic ports, the law comprehensively regulates special-purpose ports, anchorages, and berthing areas. The concession granting procedures now adhere to the general law and have been adjusted to the specificities of concessions on maritime domain. This paper highlights the most significant changes introduced by the new legal framework.

**Keywords:** maritime domain, maritime ports, port activities, concessions, Croatia

### **1. Introduction**

The maritime domain was first regulated in modern Croatia by the Maritime Code of 1994. [1] Subsequently, in 2003, the matter was governed by the special Act on Maritime Domain and Sea Ports. [2] This Act underwent several amendments, but these did not address the deficiencies that had emerged in its implementation.

Following the adoption of the new European concessions framework, Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (hereinafter: Concessions Directive) [3], a new Croatian Concessions Act was enacted in 2017 [4], aligned with the European framework. The new European and subsequently Croatian legal frameworks for concessions led to discrepancies in the legal regulation of the maritime domain and thus the maritime

ports in Croatia. Activities in maritime ports are based on concessions [5], and the 2003 Act on Maritime Domain and Sea Ports, with its amendments, was not aligned with the new concession model.

It should be noted that as of November 2012, the only law still not aligned with the then-existing Concessions Act was the Act on Maritime Domain and Sea Ports. The process of aligning this legislation was supposed to be completed by the end of 2012. [6] This was a misalignment with the old Croatian concessions framework with the 2008 Concessions Act [7], which had been out of force since 2012.

The misalignment of the laws governing the maritime domain and concessions, including maritime ports, with European and Croatian concession frameworks negatively impacted legal security and, consequently, investments in Croatian maritime ports. Investments in maritime ports are costly infrastructure projects requiring long-term concessions—when fundamental laws are not aligned, finding serious investors and initiating new and necessary investment cycles cannot be expected. Also, the ambiguity of the procedures can lead to numerous irregularities.

Although this paper does not focus on the economic aspects of developing Croatian maritime ports, we will mention a few basic data points. In 2023, the total cargo throughput in Croatian maritime ports amounted to 232 million tonnes, which represented a 17% decrease compared to 2022. [8] This indicates that Croatian maritime ports have been stagnating for the last decade and a half; for instance, in 2010, the cargo throughput in Croatian maritime ports was 243 million tonnes. [9]

One might ask why the new legislative framework was so delayed. It should be considered that the maritime domain in Croatia is exceptionally large (internal maritime waters 12,498 km<sup>2</sup>, territorial sea 18,981 km<sup>2</sup>, plus the maritime coast), and the general legislation not only regulates maritime ports but also a wide range of economic activities on the maritime domain and the Croatian coast, a country highly oriented towards tourism related to the coast, beaches, and sea. Therefore, enacting a general law that affects more than a third of the national territory is also a significant political issue subject to numerous lobbying efforts and compromises.

After countless working versions, the draft law was submitted to the parliamentary procedure in late December 2022. After two readings and numerous amendments, it was passed in July 2023. The new Act on Maritime Domain and Sea Ports (hereinafter: MDSP) [10] came into effect on July 29, 2023.

The new MDSP is significantly more comprehensive than the old one—it contains 236 articles, while the 2003 Act originally had 124 articles. An analysis of the entire MDSP would far exceed the scope of this paper, so here we will limit ourselves to the new concession model related to maritime ports. We will first outline the basic provisions of the Croatian legal framework for the maritime domain.

## 2. Port Area as Part of the Maritime Domain

The Republic of Croatia adheres to the Roman tradition whereby the sea, and thus the maritime coast, is common property—thus, it is without a titular owner. [11] Article 4 of the MDSP stipulates that the maritime domain is common good of interest to the Republic of Croatia and enjoys special protection [12] and is used and utilized under the conditions and in the manner prescribed by the MDSP itself.

Furthermore, the Republic of Croatia takes care of, manages, and administers the maritime domain, and when the management of the maritime domain is entrusted to another public law entity (for example, a port authority) or a legal entity with public powers, this entity is responsible for the maritime domain.

As common good, the maritime domain is outside the scope of legal commerce, as prescribed in Article 5 of the MDSP. Thus, the maritime domain is inalienable and on it cannot be acquired ownership rights or any other real rights on any basis. [13] Maritime domain cannot be the subject of lease agreements or rental agreements. According to the provisions, buildings and other structures on the maritime domain that are permanently connected to the maritime domain are considered attachments thereof. [14]

What does the maritime domain include? The components and boundaries of the maritime domain are defined in Article 6 of the MDSP, which states that the maritime domain comprises: internal waters and territorial sea, their seabed, subsoil, and undersea; and part of the land which is by its nature intended for general use and which is designated as such, as well as everything that is permanently connected with this part of the land on the surface or below it, and are real estates that are by their natural features, appearance, purpose, position, and manner of use. Moreover, according to the explicit provision of the MDSP, all real estate within the scope of the port area is maritime domain. [15]

According to the MDSP glossary (Article 3), the *port area* is the area of a maritime port that includes one or more maritime and land spaces (port basin) used for carrying out port activities and managed by the port authority, concessionaire, or state administration body. We will also mention two important terms here. *Port superstructure* are buildings constructed in the port area. *Port substructure* (infrastructure) includes operational quays and other port land surfaces, breakwaters, and other infrastructure buildings (e.g., port roads and railways, water supply and sewage networks, energy grid, electronic communications infrastructure, navigational safety facilities in the port, etc.), built in the port area. [16]

Thus, the entire port area is maritime domain, and both the port superstructure and substructure are also part of the maritime domain—common goods, in other words, they are situated on land without a titular owner.

### 3. Legal Framework of Maritime Ports in the Republic of Croatia and the Concession Granting Process

The MDSP regulates two different types of concessions granted in Croatian ports. Therefore, for ease of understanding the legal framework of concessions in maritime ports, we will briefly outline the general legal framework of maritime ports in the Republic of Croatia, namely the classification of maritime ports.

The fundamental division mentioned in Article 83 of the MDSP classifies ports into *ports open to public traffic* and *ports of special purpose*. It should be noted that there is also a classification of ports according to importance, such that ports open to public traffic are classified by significance into ports of particular (international) economic interest to the Republic of Croatia, county-significant ports, and locally significant ports. Ports of special purpose are classified according to importance into ports of state significance and county-significant ports.

Ports open to public traffic, according to Article 86 of the MDSP, are ports in which everyone is enabled to use operational quays, breakwaters, anchorages, and other port facilities under equal conditions, according to their intended use and within the limits of available capacities. We should also note that ports open to public traffic are those that fulfil the obligation of providing public services in accordance with Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports. [17] Such a port may include one or more port basins, anchorages, and separate port facilities, and is managed by a special public institution—port authority. [18]

According to Article 89 of the MDSP, for the construction, management, and use of a port open to public traffic, which is of particular (international) economic interest to the Republic of Croatia, a port authority is established. The founder of the port authority is the Republic of Croatia, and the founding rights on behalf of the Republic of Croatia are exercised by the Government of the Republic of Croatia. The port authority, among other tasks, grants concessions and rights for special use.

The right to carry out port activities is acquired by the provider of port services based on a concession in accordance with a special regulation that regulates the establishment of a framework for providing port services and common rules on financial transparency of ports.

The other category includes ports of special purpose. The MDSP glossary states that a port of special purpose is a maritime port that is in special use or has been granted as a concession to an economic entity. According to Article 136 of the MDSP, a port of special purpose can be: 1. a military port, 2. a shipbuilding port, 3. an industrial port, 4. a fishing port, 5. a port of nautical tourism, 6. a sports port, and 7. a port for the supply of fuel to vessels.

Apart from military ports managed by the ministry responsible for defence, the management of other special-purpose ports is carried out based on a concession. Also,

based on a concession, the management of anchorages and berthing areas, which are listed as a separate category in the MDSP, is carried out.

In summary, in ports open to public traffic, a concession is granted for each individual port service, exceptionally more than one port service. Concessions are granted by the port authority. In the case of ports of special purpose, nautical anchorages, and berthing areas, a concession is granted for the entire area—thus, we get a concessionaire for the port, not individual activities in such a port. The concession is granted by the state, or regional self-government, exceptionally also by local self-government.

In the text, we will follow the structure of the MDSP itself, so we will first outline the procedure for awarding concessions in ports of special purpose, which is regulated together with all other concessions on maritime domain (involving sea, beaches, fish farming, and others) contained in the MDSP in “Part Three - Special Use and Economic Utilization of Maritime Domain”. Namely, the provisions of “Part Five - Maritime Ports” that regulate the procedure for acquiring the right to perform port activities in ports open to public traffic refer to the procedures regulated in Part Three of the MDSP. Finally, we will briefly mention as a separate category the provisions concerning anchorages and berthing areas.

## 4. Special Use and Economic Utilization of Maritime Domain

### 4.1. General and Special Use

The basic form of use of the maritime domain is general use. It is expressly emphasized (Article 4, paragraph 5) that the maritime domain is in use by all, and everyone has the right under equal conditions to use the maritime domain in accordance with its characteristics, nature, and intended purpose, except when differently prescribed by the MDSP itself. [19]

Besides general use, Article 11 of the MDSP specifies two other possible uses of the maritime domain—*special use* and *economic utilization*.

*Special use of the maritime domain* is a temporally limited right to use the maritime domain for the purpose of carrying out activities that are not performed for profit, with or without the right to use buildings and structures in the area. *Economic utilization of the maritime domain* is a temporally limited right to use the maritime domain, with or without the right to use buildings and structures in the area.

The procedure for granting rights for special use and rights for economic utilization is significantly different due to the commercial component of economic utilization.

Article 45 of the MDSP states that special use of the maritime domain includes the use of the maritime domain that may involve the construction of buildings on the maritime domain for the needs of state administration bodies or legal entities that have public powers (needs of defence, internal affairs, navigation safety, protection

from harmful water action, nature and environmental protection, and other similar needs). Further, this category includes the use of infrastructure that may involve the construction of infrastructure that is partly located on the maritime domain (bridges, water supply, sewage, energy, etc.).

According to Article 46 of the MDSP, the decision on special use is made upon request in an administrative procedure. The decision on special use can be made by the Government of the Republic of Croatia, regional self-government. The decision on special use and/or construction in the port area of ports open to public traffic is made by the Administrative Council of the competent port authority for a duration of up to ten years. Based on the decision on special use, an administrative contract on special use is concluded, which details the relations between the parties to the contract. According to Article 47, paragraph 2 of the MDSP, the fee for special use is determined according to the square meters of the assigned maritime domain (land and sea part), and the method of determining it is regulated by a decree of the Government. As we see, the process of granting rights for special use of the maritime domain is relatively simple.

#### **4.2. Economic Utilization of Maritime Domain**

In terms of the procedure for granting rights, economic utilization of the maritime domain is significantly more complex. Namely, according to Article 48 of the MDSP, a concession on the maritime domain is granted for economic utilization of the common good. A concession on the maritime domain is a temporally limited right of economic utilization of the maritime domain, with or without the right to construction, which is acquired by a concession contract. A concession on the maritime domain is granted based on public tendering, and exceptionally it can be granted upon request in specially defined cases. A concession contract on the maritime domain is an administrative contract. [20] [21]

Article 49 of the MDSP specifies several activities for which concessions on the maritime domain are granted. Firstly, a concession on the maritime domain is granted for purposes planned by the spatial plan. Among the listed activities are special-purpose ports, nautical anchorages, and berthing areas. It is emphasized that public traffic ports are not mentioned here because in them a concession is not granted for the port itself but for activities within the port, which is significantly different, and more will be discussed on this in the article.

We also note that a concession can be granted for already built and/or executed buildings and/or interventions in the space which, according to special regulations governing construction, are not considered construction, and may include the construction and economic utilization of buildings on the maritime domain and the execution and economic utilization of interventions in space that, according to special regulations governing construction, are not considered construction.

### 4.3. Procedure for Granting Concessions for Economic Utilization

The procedure for granting concessions can be considered one of the most complex administrative procedures not only because of the need to prepare very extensive documentation but also because of the very complex interplay of many regulations.

The fundamental regulation that governs the granting of concessions is the already mentioned Concessions Act. However, this Act in its Article 14 states that preparatory actions are carried out by the concession grantor in accordance with the Concessions Act, special law, regulations governing public procurement [22], and other regulations depending on the type and subject of the concession. Thus, when a concession is based on tendering—subordinate regulations on public procurement will also apply. As it is an administrative procedure, the General Administrative Procedure Act [23] is also relevant. [24]

The Concessions Act itself allows for the application of other laws, so part of the procedure for granting concessions for economic utilization of the maritime domain is regulated by the MDSP. The MDSP itself is a *lex specialis* in relation to the general regulation, the Concessions Act, and therefore, in the process of granting concessions on the maritime domain, the standard rule applies—*lex specialis derogat legi generali*, so the general regulation will apply in all activities around granting concessions that are not explicitly defined by a special regulation.

Furthermore, the goals of granting concessions are detailed in the Concession Directive, thus the recitals of the Directive can provide valuable guidelines for preparing tender documentation for the specific process of granting a concession, especially since many of the concessions introduced by the MDSP are new and there is no developed administrative practice.

### 4.4. Preparatory Actions for Granting a Concession

Preparatory actions for granting a concession are primarily regulated by the general regulation, the Concessions Act. The MDSP, therefore, as a special regulation, mentions only some specifics in the process of granting a concession on the maritime domain, elaborating on the provisions of the general regulation.

Article 50 of the MDSP states that preparatory actions, in addition to what is mentioned in the general concession regulation, are considered all actions carried out by the competent body defined by the MDSP itself.

The MDSP mentions two ways to initiate preparatory actions for granting a concession on the maritime domain. Preparatory actions can be independently initiated by the competent body, or preparatory actions are initiated based on an expression of interest by the interested economic entity. In this second case, the interested economic entity submits documentation expressing interest in the economic utilization of the maritime domain.

The process of granting concessions is handled by a special body—the expert committee for concessions, which every concession grantor is required to establish. The work of the expert committee is regulated by the general regulation, but the MDSP specifies its composition. permanent members of the expert committee are experts in the fields of maritime affairs, spatial planning, economics, and finance, and variable members from the fields of tourism, agriculture, environmental protection, and culture. At least one permanent member of the expert committee for concessions must have a valid certificate in the field of public procurement. Variable members of the expert committee participate in the work of the expert committee considering the specifics of the subject of the concession.

The concession grantor is required to prepare a feasibility study for granting a concession in accordance with the general regulation governing concessions. This study determines the term for which the concession is granted, especially taking into account that this term does not limit market competition, the method of paying the concession fee, which is determined depending on the subject of the concession, the estimated value of the concession, the risks and costs assumed by the concessionaire, the expected profit, the equipment and value of the assets, and the area of the maritime domain that is granted in the concession.

The Government of the Republic of Croatia, by decision, grants concessions on the maritime domain for subjects of concession that are of interest and importance to the Republic of Croatia and concessions in parts of nature protected by law declared by the Croatian Parliament for a term of up to 50 years. When there are justified economic interests and the concession includes the construction of new buildings with investments that cannot be amortized within 50 years, the Government of the Republic of Croatia may grant a concession for a term exceeding 50 years with prior consent of the Croatian Parliament on notification of the intention to grant a concession.

A regional self-government unit grants a concession that is of interest and significance for the regional self-government unit and concessions in other protected parts of nature for a term of up to 20 years. It is important to note that on behalf of the regional self-government unit, the decision to grant a concession is made by the representative body.

In specific conditions defined in Article 54 of the MDSP, a local self-government unit, i.e., a city or municipality, may be the concession grantor. The representative body of the regional self-government unit may authorize the local self-government unit to grant a particular or all concessions.

#### **4.5. Duration of Granting a Concession**

The Concession directive provides a framework for determining the duration of the concession contract. Thus, recital 52, among other things, states: “The duration of a concession should be limited in order to avoid market foreclosure and restriction of competition. In addition, concessions of a very long duration are likely to result in



the foreclosure of the market and may thereby hinder the free movement of services and the freedom of establishment. However, such a duration may be justified if it is indispensable to enable the concessionaire to recoup investments planned to perform the concession as well as to obtain a return on the invested capital.”

According to Article 55 of the MDSP, the concession grantor determines the term for which the concession is granted in accordance with the provisions of the MDSP itself, based on financial data and indicators from the feasibility study for granting a concession. Further, it is stated that the concession is granted so that the term does not limit market competition more than is necessary to ensure the amortization of the actual value of the concessionaire’s investments and a reasonable return on invested capital, while taking into account the costs and risks assumed by the concessionaire during the duration of the concession, which is a provision consistent with the European framework and general regulation.

#### **4.6. Concession Fee**

The concession fee is regulated in Article 58 of the MDSP. The concession fee for the economic utilization of the maritime domain consists of an annual fixed and variable part. The MDSP also regulates the method of determining the concession fee.

The fixed part of the concession fee is determined according to the area of the maritime domain (land and sea part) granted in the concession. The variable part of the concession fee is determined as a percentage of the revenue generated by performing the activity for which the concession is granted, provided that the annual amount of the variable part of the concession fee for all years of use cannot be less than the amount offered in the economic feasibility study. Exceptionally, if the concession grantor deems the feasibility study for granting a concession justified, the concession fee may be determined exclusively in the fixed part.

Furthermore, it is prescribed that the initial amounts of the concession fee during the public tendering are determined based on calculations and analyses from the feasibility study for granting a concession depending on the subject of the concession, the estimated value of the concession, the duration of the concession, the risks and costs assumed by the concessionaire, the expected profit, the equipment and value of the assets, the area of the maritime domain granted in the concession, and in accordance with the decree issued by the Government and the general regulation governing concessions.

#### **4.7. Concessions on Request**

Concessions on request are a novelty in the legal regulation of concessions on the maritime domain in Croatia. The Act on Maritime Domain and Sea Ports from 2003 explicitly stipulated that a concession for the economic utilization of the maritime domain is granted based on a conducted public tendering, and only a

concession for special use of the maritime domain (various non-commercial activities and infrastructure objects) could be granted upon request.

The introduction of concessions on request in a significantly broader form, which was introduced by the new MDSP, were also the subject of extensive political discussions in the Parliament and in the general and professional public. In the following, we outline the basic provisions, but we emphasize that these concessions are a novelty and there will certainly be more open questions in creating new administrative practice.

Article 63 of the MDSP lists concessions for the economic utilization of the maritime domain that can exceptionally be granted upon request. These are concessions for the implementation of an already obtained concession (e.g., salt pans, exploitation of mineral and ore resources), concessions for conducting economic activity on maritime beaches, and concessions related to the subject of this paper.

Thus, according to the same article of the MDSP, concessions can be granted upon request for: a) a temporary pontoon berthing area that is infrastructurally connected to only one catering facility to which access is not possible in any other way except by sea or if road access is not possible, supply to the facility or access for guests; b) an industrial port that is infrastructurally connected to only one plant; c) a fishing port that is infrastructurally connected to only one plant; d) a traditional shipyard; and e) a sports port in the system of top sport.

We especially emphasize the possibility of obtaining a concession upon request for industrial and fishing ports connected to a specific plant and which serve precisely for the needs of that plant. These ports do not provide the possibility of public service [25], they are open only for ships that specifically dock for that specific plant, so the process of granting a concession by collecting offers is senseless and can lead to abuses. It would be possible to make an offer, for example, just to slow down or limit the economic activity of a sardine factory and similar without the intention of providing a service.

The process of granting a concession upon request and the content of that request are regulated in Article 64 of the MDSP. In addition to the documentation prescribed by the general regulation governing concessions, the application for granting a concession upon request is accompanied by an economic feasibility study, by which the applicant proves the economic justification, cost-effectiveness and profitability of the economic utilization of the maritime domain, proposes the amount of the fixed and variable parts of the concession fee for the economic utilization of the maritime domain, the amount of the proposed total investment, including investment in environmental protection, and submits a business and financial plan to the body conducting preparatory actions for granting a concession.

Based on the request, the body conducting preparatory actions for granting a concession will prepare a feasibility study for granting a concession and, according to the data from the study, may accept the request in whole or in part, or may reject the request by decision as unfounded with an explanation. If the body conducting preparatory actions for granting a concession accepts the request, it will propose to the competent body to make a decision on the concession.

#### **4.8. Lien on a Concession**

To realize often large investments on the maritime domain, the investor usually must seek financing, for which the financial institution requires appropriate collateral. Since it is not possible to establish a classic mortgage on the maritime domain, the legislator has already enabled the establishment of a lien on a concession on the maritime domain by the Act on Maritime Domain and Sea Ports from 2003. [26] [27]

The MDSP also prescribes the possibility of establishing a lien on the maritime domain as common good. According to Article 65 of the MDSP, a lien can be established on a concession to secure a claim arising from a loan contract that the concessionaire as debtor concluded with a financial institution as creditor for the purpose of obtaining financial resources exclusively for the implementation of the concession contract. Furthermore, it is prescribed that the lien on the concession is acquired by registration in the Register of Concessions and ceases by deletion from the Register or by termination of the concession. The right to a concession can be encumbered by only one lien.

Experience has shown that the regulation of the lien on the maritime domain, which has thus been regulated since 2003, has not taken hold in practice, and there are also opinions that even the new solution is not sufficiently elaborated, which could continue to hinder quality investments in the maritime domain. [28]

#### **5. Concessions in Ports Open to Public Traffic**

In ports open to public traffic, as we previously mentioned, concessions are granted for port activities. Port activities are basic port activities and auxiliary port activities, and they are detailed in Article 107 of the MDSP.

Basic port activities are: 1. mooring and unmooring of vessels and floating objects and seaplanes; 2. loading and unloading as well as transshipment and transfer of cargo and its storage; 3. boarding and disembarkation of passengers using port equipment; 4. loading and unloading of motor vehicles using port handling equipment; 5. port towing and pushing; 6. supply of vessels with goods and services; 7. providing terminal services to passengers (providing sanitary facilities, waiting areas, wardrobes, catering services, ticketing service, etc.); 8. collection and delivery of all types of waste from vessels to a person engaged in waste management activities in accordance with the regulation governing waste management; 9. fuel supply to vessels; 10. fresh water and power supply to vessels.

In addition, the MDSP also lists auxiliary port activities. These are: 1. economic activities carried out in ports and which are directly related to the basic port activities and are in logistic, technological, or economic connection with them (fumigation and deratization, laundry service, maritime agencies, dispatching (forwarding), representation in customs and tax procedures, quantity and quality control of goods and other activities of delivering goods and providing services of a smaller scale); and

2. economic activities carried out in ports, but not directly related to the basic port activities.

Furthermore, it is further determined (Article 108 of the MDSP) that a concession for performing port activities, which includes the exclusive right to use built port substructure and superstructure and/or the right to build new port substructure and superstructure, is acquired based on a conducted public tendering.

Conversely, a concession for performing port activities that does not require the exclusive use of built port substructure and superstructure nor the construction of new port substructure and superstructure is acquired based on a conducted concession granting process upon request.

It is important to note that public tendering is mandatory for port activities that include the exclusive right to use port substructure and superstructure, while for activities that do not require the exclusive use of this space and equipment, a concession is granted upon request. This is a similar solution to what has existed until now.

A concession for performing port activities is usually granted for performing one port activity. Exceptionally, if there is no economic interest or economic justification for performing one port activity, the port authority will ensure economic justification and provision of services of public interest by combining several activities in one concession.

The concession grantor in a port open to public traffic is, as we have already mentioned, the port authority. As we have already mentioned, for the construction, management, and use of a port open to public traffic, which is of particular (international) economic interest to the Republic of Croatia, a port authority is established, whose founder is the Republic of Croatia. Colloquially, these port authorities are called *state port authorities*. On behalf of the port authority, the decision to grant a concession is made by the Administrative Council of the port authority in accordance with the provisions of the MDSP and the general regulation on concessions.

The deadlines for granting concessions are also regulated by the MDSP. If performing activities in the port area requires the construction of substructure and superstructure facilities, the concession is granted for a period of up to 30 years. If performing activities in the port area does not require the construction of superstructure facilities, the concession is granted for a period of up to ten years.

It is also possible for concessions to have a longer duration. The MDSP, as an exception, stipulates that when there are justified economic interests and the concession includes the construction of new buildings with investments that cannot be amortized within 30 years, and the overall economic effects cannot be achieved within that period, the port authority may grant a concession for a term of up to 50 years with prior approval of the minister on notification of the intention to grant a concession.

In the port area, the port authority grants special use, i.e., a temporally limited right to use the maritime domain for the purpose of performing activities that are not performed for profit, for: 1. construction and/or use of buildings for the needs of state administration bodies and legal entities with public powers, whose activity is directly

related to the port area or with navigation safety, maintenance of navigation safety facilities, and radio service on maritime navigation routes, and which are performed in the public interest; and 2. construction and/or maintenance of infrastructure that is partly located in the port area and whose construction is regulated by a special regulation and may be built on the maritime domain and in the port area (railways, bridges, water supply, sewage, energy, electronic communications infrastructure, etc.).

In addition to state port authorities, the MDSP also regulates *county port authorities*. According to Article 115 of the MDSP, in a regional self-government unit, due to the construction, management, and use of ports open to public traffic that are of county and local significance, a county port authority is established.

The activity of the county port authority is the management and use of ports open to public traffic of county and local significance and includes the granting of concessions and special use.

While state port authorities always grant concessions for performing port activities, county port authorities are required to independently ensure the provision of basic port activities, namely: a) mooring and unmooring of vessels and floating objects; b) loading and unloading of cargo; c) supply of vessels with water and energy; d) service of lifting and lowering vessels into the sea; and e) port towing and pushing.

However, Article 126 of the MDSP specifies an exception. The county port authority exceptionally grants a concession in the port area for the exhaustively listed following port activities: 1. collection and delivery of all types of waste from vessels; 2. fuel supply to vessels; 3. port towing and pushing; 4. construction and economic utilization of new infrastructure; 5. service activities for vessels; 6. mooring and unmooring of vessels and floating objects; 7. auxiliary port activities; and 8. temporary economic utilization of part of a port open to public traffic. These concessions are granted for a term of up to 20 years. Thus, the county port authority can decide which port activities it will perform independently and which it will grant in concession. This allows independent performance of activities in small ports where there is no commercial interest of concessionaires, but also the granting of concessions, especially if there is interest in investment by the concessionaire.

Also, the county port authority will grant a concession for setting up and/or economically utilizing a facility for selling tickets to shipowners who operate scheduled coastal passenger maritime transport upon request.

## 6. Anchorages and Berthing Areas

Due to the exceptional importance of nautical tourism in the Republic of Croatia [29], but also numerous abuses that have occurred and are occurring in practice [30], the MDSP precisely regulates the issues of anchorages and berthing areas, although nomotechnically this matter should be more detailed regulated by subordinate legislation rather than directly by law.

First, let's state the definitions—a *anchorage* is a part of the maritime aquatorium intended for anchoring and/or mooring of floating objects, while a *berthing area* is a separate and independent infrastructure facility (pontoon, pier, wharf, quay, etc.) up to 50 meters in total usable operational coast and part of the maritime aquatorium outside the port area.

We note that this part of the MDSP does not regulate an anchorage of a port open to public traffic, which is part of the maritime aquatorium serving the purpose of waiting for vessels to perform loading/unloading in the port and is part of the port area.

The MDSP regulates two types of anchorages and three types of berthing areas.

The first category mentioned by the MDSP is a *natural maritime anchorage*. It is a part of the maritime aquatorium with completely preserved natural characteristics outside protected areas and serves for safe anchoring and is marked on nautical charts and official maritime publications. By explicit provision of the MDSP, natural anchorage is for general use, and anchoring cannot be charged.

Furthermore, a *nautical anchorage* is regulated. It is stated that a nautical anchorage is a part of the maritime aquatorium equipped with anchoring devices and is economically utilized through a concession in accordance with the MDSP. It is a concession for economic utilization, which we have previously described. The scope of the nautical anchorage is determined by the concession decision, considering unhindered navigation and unhindered access to the coast. This anchorage may have one emergency berth on the coast.

The concessionaire of a nautical anchorage is responsible for safety and order at the anchorage, must accept municipal waste from vessels, and may provide other services to nautical tourists in accordance with the concession contract and the MDSP itself.

As we have said, three types of berthing areas are regulated. The basic type of berthing area has no special name, but it is defined as a berthing area comprising an indivisible space of usable coast up to 50 meters in length with an associated anchoring system and part of the maritime aquatorium that serves for mooring boats and yachts and is economically utilized based on a concession in accordance with the provisions of the MDSP. Services for supplying vessels (water, electric energy, etc.) can be provided at the berthing area, and the concessionaire is required to charge for mooring and accept municipal waste from vessels.

Next, we have a *service berthing area*. It comprises an indivisible space of usable coast up to 50 meters in length, equipped with equipment for lifting, lowering, and extracting vessels, to which a land part of the berthing area with a maximum area of 1000 square meters is adjacent, and part of the maritime aquatorium that serves for performing service activities on floating objects and is intended for docking of vessels for service, and is also economically utilized based on a concession. Mooring cannot be charged at the service berthing area, and only vessels for service may dock.

Finally, we have a *temporary pontoon berthing area*. It is specific in that a concession for such a berthing area is granted upon request. Therefore, the conditions

are precisely defined. According to the MDSP, a temporary pontoon berthing area comprises an indivisible space of up to 50 meters of usable coast with an associated anchoring system and part of the maritime aquatorium that serves for mooring boats and yachts and which does not perform activities on the maritime domain but serves for performing catering activities in a catering facility classified as a restaurant or tavern according to a special regulation and located along the maritime domain if access for guests to that facility is not possible in any other way except by sea or if road access is not possible, supply to the facility or access for guests.

Mooring cannot be charged at such a berthing area, and the concessionaire is required to accept municipal waste from vessels.

Numerous irregularities and illegalities on the maritime domain—various illegal anchorages and berthing areas that have appeared in practice have led to such precise legal regulation of the area that would nomotechnically belong to subordinate legislation.

In any case, this has regulated the issues of anchorages and berthing areas in a new and detailed manner, including the increasingly important category—temporary pontoon berthing area related to providing luxurious and very desirable restaurant services on the coast and islands.

## 7. Legal Protection in the Process of Granting Concessions

The MDSP has introduced a significant change in prescribing legal protection in the process of granting concessions on the maritime domain and thus concessions in maritime ports. Legal protection is prescribed in a significantly different way than it was by the Act from 2003.

The Act on Maritime Domain and Sea Ports from 2003 prescribed a very general provision that “for discussing all issues and resolving all disputes related to granting, executing, revoking, or amending decisions on concessions on the maritime domain, the competent ministry” (referring to the ministry responsible for maritime affairs) was competent. No appeal could be filed against the ministry’s decisions, but an administrative dispute could be initiated. Such broad powers of the ministry were inappropriate and legally dubious. [31]

Article 96 of the MDSP stipulates that the State Commission for the Control of Public Procurement Procedures (hereinafter: State Commission) is competent to resolve complaints related to concession granting procedures. The State Commission is an independent and autonomous state body competent to resolve complaints related to public procurement procedures, concession granting procedures, and procedures for selecting a private partner in public-private partnership projects. Its operation is regulated by a special Act on the State Commission for the Control of Public Procurement Procedures. [32]

Exceptionally, according to Article 53 of the MDSP, in the case of concessions outside ports open to public traffic, an appeal against the decision of the Government



of the Republic of Croatia to grant or prohibit granting a concession is not permitted, but an administrative dispute can be directly initiated. This is a usual solution—there is no other administrative body above the Government that can review an administrative decision.

The State Commission is an independent and autonomous state body—so a party dissatisfied with the decision of the State Commission (and the Government in the previously mentioned case) can initiate an administrative dispute before the competent administrative court. Namely, according to the explicit provision of the Constitution of the Republic of Croatia, Article 19, judicial control of the legality of individual acts of administrative authorities and bodies with public powers is guaranteed. [33]

Disputes are also possible during the duration of the concession. According to Article 97 of the MDSP, disputes that arise or may arise from a concession contract are exclusively within the jurisdiction of the territorially competent administrative court according to the seat of the concession grantor.

It is interesting that the parties to a concession contract may submit disputes that arise or may arise from the concession contract to arbitration unless otherwise provided by special law. It is specified that the place of arbitration is in the territory of the Republic of Croatia, and in the arbitration procedure, the law of the Republic of Croatia is exclusively applicable, and the language of the arbitration is Croatian. The provisions on arbitration are completely transcribed from the general regulation, the Concessions Act.

In practice, Croatian state and public bodies are very reluctant to agree to arbitration, so there are almost no examples of using this method of resolving disputes from a concession contract.

Precisely regulating legal protection in the process of granting concessions and later during the duration of the concession relationship is considered a very important contribution of the new legal framework. Without precisely regulated legal protection, significant investments in the maritime domain, including maritime ports, cannot be expected.

## 8. Conclusion

The Republic of Croatia has, after a full 20 years, received a new framework for the development of maritime ports of all levels, as well as anchorages and berthing areas. The new Act is, at first glance, more comprehensive—it is almost twice as long as the previous one. Many provisions that had raised doubts in practice are now more precisely and clearly regulated.

When speaking about maritime ports, the most important change is that the MDSP is finally aligned with the European and national concession models. The misalignment that had existed for more than a decade negatively impacted investments in the maritime domain. We note that the MDSP also contains certain procedural provisions that further elaborate on the provisions of the general regulation, the Concessions Act, in granting



concessions on the maritime domain. These new procedural provisions are also within the European legal framework.

This alignment was not only an obligation of the Republic of Croatia to the European Union but also a prerequisite for larger private capital investments in maritime ports—it is difficult to imagine serious investments in a member of the European Union that is not itself aligned with the European legal framework.

Furthermore, the concession contract is explicitly referred to as an administrative contract according to the Concessions Act (and legal doctrine), which is important from the standpoint of legal security. Also, for legal protection in the process of granting concessions, the State Commission is now competent, which is a much better solution than the previous one, which gave broad and very unclear powers to the competent ministry. The previous solution was justifiably criticized by the professional public.

As previously mentioned, it is not possible to establish a mortgage on the maritime domain as common property, but the possibility of establishing a lien on the concession has been provided for. This possibility existed in the 2003 Act but has been elaborated in more detail in the MDSP. However, despite this, the professional public notes that the provisions are still not precise enough for application in practice. Stanković and Tuhtan Grgić point out that the provisions on the lien on the concession contain several nomotechnical inaccuracies and raise a series of questions that are not answered, concluding that such regulation “will undoubtedly negatively affect the bankability of development projects on the maritime domain.” [28]

What has been (at least for now) overlooked is the organization of educational sessions, both professional and scientific conferences related to the new regulation of the maritime domain and maritime ports. This is a very complex and extensive regulation where the application requires the cumulative use of many regulations, not only the MDSP, but also regulations on concessions, public procurement regulations, and the General Administrative Procedure Act. [23] Given the numerous very different and inherited conditions and irregularities in the maritime domain, and in maritime ports, additional engagement is required after the enactment of the new legal framework to bring it to life in practice.

In conclusion, the MDSP has introduced a new legal framework for Croatian maritime ports—aligned with the European and national legal frameworks for granting concessions. However, whether this framework will lead to results in practice, quality investments in ports, and generally in the maritime domain, depends not only on the legal framework but also on education, and the creation of business and administrative practices in the coming years.

## 9. Bibliography

1. Pomorski zakonik (no longer in effect), Narodne novine (Official Gazette of Republic of Croatia), 17/94.
2. Zakon o pomorskom dobru i morskim lukama (no longer in effect), Narodne novine, 158/03, 100/04, 141/06, 38/09, 123/11, 56/16, 98/19.
3. European Parliament and Council (2014) 'Directive 2014/23/EU on the award of concession contracts', ELI: <http://data.europa.eu/eli/dir/2014/23/oj>.
4. Zakon o koncesijama, Narodne novine, 69/17, 107/20.
5. Staničić, F. and Bogović, M. (2017) Koncesije na pomorskom dobru - odnos Zakona o koncesijama i Zakona o pomorskom dobru i morskim lukama, *Pravni vjesnik*, 33(1), pp. 73-104.
6. Government of Republic of Croatia (2012) *Izješće o koncesijama u Republici Hrvatskoj*, November 2012.
7. Zakon o koncesijama (no longer in effect), Narodne novine, 125/08.
8. Croatian Bureau of Statistics (2024) *Promet u morskim lukama u četvrtom tromesečju 2023*, [online] Available at: <https://podaci.dzs.hr/2023/hr/58563> [Accessed 21 April 2024].
9. Croatian Bureau of Statistics (2024) *Transport and communications*, [online] Available at: <https://podaci.dzs.hr/media/jvj0zui/transport-12-promet-u-morskim-lukama.xlsx> [Accessed 21 April 2024].
10. Zakon o pomorskom dobru i morskim lukama, Narodne novine, 83/23.
11. Aviani, D. (2009) Zasebno korištenje opće-uporabljivih dobara u Hrvatskoj: dometi i ograničenja, *Zbornik radova Pravnog fakulteta u Splitu*, 46(1), pp. 123-150.
12. Babac, B. (2009) Vrednovanje javnih dobara - o protutočjima i proturječjima Hrvatskog pojma "dobra od interesa za Republiku Hrvatsku", *Zbornik radova Pravnog fakulteta u Splitu*, 46(1), pp. 27-70.
13. Nakić, J. (2016) Pomorsko dobro - opće ili javno dobro, *Zbornik radova Veleučilišta u Šibeniku*, 10(1-2), pp. 7-34.
14. Wolff, V.S. (2007) Građevine izgrađene na pomorskom dobru: [prikaz presude], *Poredbeno pomorsko pravo*, 46(161), pp. 325-327.
15. Vojković, G. (2022) Utvrđivanje granice pomorskog dobra de lege lata i de lege ferenda, *Poredbeno pomorsko pravo*, 61(176), pp. 527-558.
16. Ljubetić, S. (2021) Granice pomorskog dobra i lučkog područja - Legislativno uređenje i problematika u praksi, *Poredbeno pomorsko pravo*, 60(175), pp. 173-204.
17. European Parliament and Council (2017) 'Regulation (EU) 2017/352 on establishing a framework for the provision of port services and common rules on the financial transparency of ports', ELI: <http://data.europa.eu/eli/reg/2017/352/oj>.
18. Tijan, E., Jović, M., Panjako, A. and Žgaljić, D. (2021) The Role of Port Authority in Port Governance and Port Community System Implementation, *Sustainability*, 13(5), p. 2795.
19. Vojković, G. (2003) *Pomorsko dobro i koncesije*, Split: Hrvatski hidrografski institut.
20. Tolić, V., Tokić, M. and Blažević, I. (2009) Upravni ugovor prema Zakonu o općem upravnom postupku, *Praktični menadžment: stručni časopis za teoriju i praksu menadžmenta*, 4(2).
21. Ljubanović, B. (2010) Upravni ugovori i upravno sudovanje, *Zbornik radova Pravnog fakulteta u Splitu*, 47(1), pp. 37-52.
22. Zakon o javnoj nabavi, Narodne novine, 120/16, 114/22.
23. Zakon o općem upravnom postupku, Narodne novine, 47/09, 110/21
24. Vojković, G. (2014) Novi pravni okvir koncesija u Republici Hrvatskoj, *Zbornik radova Pravnog fakulteta u Splitu*, 51(1), pp. 131-149.
25. Vojković, G., Grubišić, N. and Vojković, L. (2013) Ribarske luke u Republici Hrvatskoj – javne ili privatne luke, *Pomorski zbornik*, 47-48, pp. 205-213.
26. Tasić, Z. (2009) Založno pravo na koncesiji na pomorskom dobru, *Poredbeno pomorsko pravo*, 48(163), pp. 193-201.
27. Seršić, V. (2018) Založno pravo na koncesiji na pomorskom dobru, *IUS-INFO*, [online] Available at: <https://www.iusinfo.hr/strucni-clanci/zalozno-pravo-na-koncesiji-na-pomorskom-dobru> [Accessed 3 May 2024].

28. Stanković, G. and Tuhtan Grgić, I. (2024) Založno pravo na koncesiji na pomorskom dobru, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 45(1), pp. 67-89.
29. Croatian Bureau of Statistics (2024) *NAUTIČKI TURIZAM – Kapaciteti i poslovanje luka nautičkog turizma u 2023.*, [online] Available at: <https://podaci.dzs.hr/media/naenzpun/tur-2023-2-1-nauti%C4%8Dki-turizam-kapaciteti-i-poslovanje-luka-nauti%C4%8Dkog-turizma-u-2023.pdf> [Accessed 28 May 2024].
30. Morski.hr (2023) *Općina Medulin krenula u obračun s uzurpatorima: “Uklanjam o ilegalna privezišta i zidove na pomorskom dobru!*, [online] Available at: <https://www.morski.hr/opcina-medulin-krenula-u-obracun-s-uzurpatorima-uklanjamo-ilegalna-privezista> [Accessed 1 May 2024].
31. Đerđa, D. (2024) Neka otvorena pitanja na pomorskom dobru, *Stručni portal Pomorsko dobro*, [online] Available at: <https://www.pomorskodobro.com/neka-otvorena-pitanja-na-pomorskom-dobru> [Accessed 29 April 2024].
32. Zakon o Državnoj komisiji za kontrolu postupaka javne nabave, Narodne novine, 18/13, 127/13, 74/14, 98/19, 41/21.
33. Ustav Republike Hrvatske, Narodne novine, 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

