Formal and Legal Regulations Governing the Award of Concessions in Polish Open Pit Mining

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Abstract This paper presents current legal conditions related to the procedures of awarding concession contracts in Polish open pit mining industry. It lists legal acts which regulate mining activity and the concession-awarding institutions. It additionally discusses the types of awarded concessions. The focus is placed on the difference between minerals covered by the mining ownership and minerals covered by the real estate ownership. The paper also deals with the stages of the process of obtaining an exploitation concession. These stages include primarily the urban planning procedure and the environmental procedure. The urban planning procedure allows the new function of the terrain for open pit mining to be specified in the local urban spatial development plan. The environmental procedure, on the other hand, closes by either granting or denying the so-called environmental decision. Both procedures are performed with public participation. The purpose of the environmental procedure is to select such a mining variant which keeps the environmental burden to a minimum. The last stage of the concession process is to file a concession application to the competent authority. The duration of the concession process depends individually on the legal and actual situation. In practice, the procedures are long-lasting and may take as much as several years. This article also discusses some problems of the Polish concession system. Considerations include the burden of both the planning and the environmental procedures, as well as the problems caused by the number of legal regulations and their frequent changes, or by the reluctant acceptance that mining projects win in local municipalities. Another problem addressed in this paper relates to the protection of documented deposits, as investment projects having different protective status are not equally protected in the law. No adequate measure exists, either, which would protect documented resources from building development.

1. Introduction
Mining projects may be classified as either large-area projects (energy coal, metal or sulfur ores) or small-area projects, typical of rock raw materials projects. Large-scale and small-scale mining projects differ mostly in the output volume and in the related impact range of the mine on its surrounding area, defined as the so-called mining area. From the economic perspective, both types of mining activities in Poland have similar production volumes and probably similar total economic and environmental impact. However, from the organizational perspective, coal mining projects and metal ore mining projects are concentrated only in a small number of Polish mining companies, while rock raw material mining projects are scattered in several thousand economic entities. This diversification affects the...
policies and practices related to the management of natural resources, as it influences – with significant strength and in a number of aspects – the social, economic and natural landscape on a both local and regional scale. Figure 1 demonstrates the impact of mining projects on the surrounding area. Situation 1a brings great economic benefits to single municipalities, while in situation 1b, the impact range of a single mine extracting rock raw materials is local (municipality-scale).

Figure 1. The impact range of large-area (a) and small-area (b) mining projects on the local economic, social and natural landscape [5]

In such state of affairs, the decisions to award mining concessions are issued at various levels of geological administration, depending on the type of the mineral. In Poland, concessions for minerals covered by the mining ownership are granted by a minister responsible for environment, and concessions for minerals covered by the real estate ownership are granted by the Marshal of the Voivodship or by the Starost, respectively. Due to the above-described complexities, this paper aims at explaining the current formal and legal regulations governing mining activity and related to concession-granting authorities, types of concessions granted, as well as to the procedures and stages of granting a concession for open pit extraction of minerals in Poland.

2. Legal acts regulating mining activity
In Polish law, concession activity is regulated in accordance with the Constitution. Any company has a right to perform economic activity with respect to the freedom of establishment principle, and only some types of economic activities are regulated with concessions. Such a regulation must be specified directly in a legal act. According to Polish legal regulations, mining activity is a type of activity which requires a concession. Concession is a special legal act – an administrative decision which enables an entity to perform specific economic activities, observing the objectives of the State in relation to raw materials management. A concession procedure is initiated at the request of an entity and may not be initiated by the regulator of its own motion. The concession procedure for open pit mining of minerals is regulated in the following legal acts:
- the Geological and Mining Act of 9 June 2011 [11],
- the Act of 21 August 1990 on real property management [7],
- the Environmental Protection Law of 27 April 2001 [8],
- the Act of 27 March 2003 on spatial planning and development [9],
- the Act of 2 July 2004 on business activity freedom [6],
- the Act of 3 October 2008 on access to information on the environment and its protection, social participation in its protection, and environmental impact assessments [10].

3. Concession types
In the Geological and Mining Law of 9 June 2011 (further: GML), the legislator provided 11 types of concessions, listed in Division 3, Chapter 1 of the GML and divided into exploitation concessions,
exploration or prospecting concessions and underground exploitation concessions. According to the GML, the types of concessions related to open pit mining include:

1. prospecting or exploration of mineral deposits covered by the mining ownership, excluding hydrocarbon deposits,
2. extraction of minerals covered by the mining ownership excluding hydrocarbon deposits and waters,
3. extraction of minerals covered by the real estate ownership.

Importantly, Polish concession system differentiates between minerals covered by the mining ownership and minerals covered by the real estate ownership. Minerals covered by the mining ownership are owned by State Treasury and remain at its sole disposal. The type of mined mineral determines the geological administrative authority competent to grant a concession. Mined minerals covered by the mining ownership, and thus being the property of State Treasury include deposits of hydrocarbons, hard coal, methane as an associated mining product, lignite, metal ores except for turf-iron ores, metals in native state, ores of radioactive elements, native sulfur, rock-salt, potassium salt, potassium-magnesium salt, plaster stone and anhydrite and precious stones regardless of their location. Concessions for the above minerals shall be issued by a minister responsible for environment represented by Chief National Geologist. Figure 2 and Table 1 detail the types of concessions and the competent authorities for open pit mining.

![Diagram of Concessions](image)

**Figure 2.** Types of concessions according to the Geological and Mining Act of 9 June 2011

4. **Description of a concession procedure for lignite exploitation**

In order to be granted a concession in Poland, prior to filing an exploitation concession application, an applicant entity must produce documents proving the completion of planning and environmental procedures. The planning procedure allows the new function of the terrain for open pit mining to be specified in the Local Urban Spatial Development Plan (further: LUSDP) [4,13, 15]. At the same time, the applicant entity produces the environmental decision as an attachment to the exploitation concession application. Both procedures are difficult and time-consuming and are regulated by different legal acts. Figure 3 shows a scheme of a concession procedure for the exploitation of lignite under a condition that the investor has prospecting/exploration concessions and the geological information rights.

With documented mineral deposits and with geological information rights, the investor may start to apply for a concession entitling to lignite open pit mining. Each stage of the procedure requires different documents and studies, which are prepared and accepted on the basis of specific procedures. The documents and studies required to execute the request include:

- geological documentation,
- geological information rights,
- LUSDP preceded by the Study of Conditions and Directions of Spatial Management (further: SCDSM),
- decision on environmental conditions preceded by a Report,
- Deposit development plan.

**Table 1.** Concession types and competences of authorities

| Concession type                                                                 | Competent authority                                                                 | Organ of cooperation (arrangements)                                                                 | Organ of cooperation (opinions)                                                                 |
|---------------------------------------------------------------------------------|-------------------------------------------------------------------------------------| ------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| **Exploration or prospecting concessions**                                       | A minister responsible for environment represented by Chief National Geologist       | 1. *For ores of radioactive elements, the President of Polish Atomic Energy Agency                   |
| No. 1 for minerals owned by State Treasury excluding hydrocarbons e.g. for lignite|                                                                                     | 2. Head of a municipality (town mayor or city president)                                             |                                                                                             |
| **Exploitation concessions**                                                     |                                                                                     |                                                                                                     |                                                                                             |
| No. 5 Extraction of deposits owned by State Treasury, excluding waters and hydrocarbons | A minister responsible for environment represented by Chief National Geologist       | 1. a minister responsible for economy represented by the regional geologist                         |
|                                                                                 |                                                                                     | 2. Head of a municipality (town mayor or city president)                                             |                                                                                             |
| No. 7a extraction of minerals covered by the real estate ownership without the conditions of Article 22 of the GML, i.e. - over 2 ha - explosives - above 20 000 m³/year | a competent Marshal of the Voivodship, represented by the regional geologist         | *minerals extracted from deposits underneath inland waters and from areas listed in Article 88d(2) of the Water Law, competent authority – Polish waters |
|                                                                                 |                                                                                     | 2. Head of a municipality (town mayor or city president)                                             | *minerals extracted from deposits underneath inland waters and from areas listed in Article 88d(2) of the Water Law, authority competent to issue a water permit |
| No. 7b extraction of minerals from deposits covered by the real estate ownership within the conditions specified in Article 22(2) of the GML (up to 2 ha, without explosives, with open pit methods, up to 20 000m³) | a competent Starost, represented by a district geologist                                | 1. A competent Marshal of the Voivodship                                                            |
|                                                                                 |                                                                                     | 2. *minerals extracted from deposits underneath inland waters and from areas listed in Article 88d(2) of the Water Law, authority competent to issue a water permit |                                                                                             |
5. Spatial planning

Several circumstances are recognized in the legal regulations which may be related to the introduction of modifications to the LUSDP in order to zone land for mining activity. In the case of lignite, which is owned by State Treasury, one of the possibilities is to modify hierarchically higher planning acts, e.g. due to tasks assigned by the Government or to meet public interest objectives. In any scenario, however, this is preceded by adopting a spatial planning document, i.e. by a change in the SCDSM [14]. The municipality council adopts a resolution on the modification of the local urban spatial development plan for the municipality, having regard to the above legal acts which shape the spatial order. This action is preceded by an investment implementation schedule as agreed between Marshal of the Voivodship and head of a municipality, town mayor or city president. If this obligation is not complied with, the Voivod urges the municipality council to include a public purpose investment into the LUSDP, and if the request is ineffective, the Voivod prepares the LUSDP or a change thereto to the extent necessary to secure the execution of the public purpose investment. Such a modification in the municipality's the LUSDP opens a possibility for the investor to apply for a concession entitling to lignite open pit mining and protects the area of the deposit from being assigned another function. Figure 5 presents the order in which modifications are introduced to the spatial planning documents.

**Figure 3.** Scheme of a concession procedure for the exploitation of lignite [1]
6. Environmental procedures

After a mining project investment has been introduced into the spatial planning documents, an exploitation concession requires an environmental procedure, which is completed by issuing a decision on environmental conditions. It should be here mentioned that a similar environmental procedure, the so-called strategic environmental assessment, is executed in Poland as part of the adoption process for the spatial planning documentation, i.e. the LUSDP. These environmental procedures are designed for strategic plans and programs, which are preceded by a Forecast of Environmental Impact and an ecophysiographic study. This strategic assessment is performed with the participation of the public and with the cooperation of authorities, as part of the administrative procedure. Still, prior to filing the actual exploitation concession application, the investor must produce the environmental decision. The environmental procedure is executed on the basis of the Act of 3 October 2008 on access to information on the environment and its protection, social participation in its protection, and Environmental Impact Assessments (further: EIA). Each of the environmental procedure stages requires a special document, and thus, in the case of this EIA procedure, the environmental report is the equivalent of the forecast for the strategic assessment. The authority conducting the procedure is obliged to always allow public participation in the procedure and to agree and consult the decisions with the administrative organs of cooperation. The EIA scheme is shown in Figure 5.

The environmental procedure is aimed at selecting the most environmentally friendly variant of mining. Preparing the environmental report, which is supposed to indicate both the short-term and the long-term, as well as the accumulated impacts of the investment, is a difficult and long-lasting stage. The EIA report is verified by the environment protection authorities. Such a report may take up to two or even four years to finish, with regard to full annual vegetation growing seasons. If the report is accepted, the environmental decision may be issued and as a result, the investor may file a concession application to the concession authority.

Figure 4. Documents and studies required in the concession application [3]
7. Concession procedure

The last stage of the concession procedure consists in filing a concession application, which must be in accordance with formal provisions of the GML, in particular Articles 24 – 26 thereof. The complete application, which meets the environment protection requirements (the environmental decision) and complies with the provisions of acts regulating business activity, is recognized by a concession authority. A minister responsible for environment awards a concession for the extraction of minerals covered by the mining ownership, including for the extraction of lignite, provided that the intended activity:

- is not against public interest related in particular to national security or environment protection, including rational management of mineral deposits,
- does not prevent the property from being used in accordance with its intended purpose as defined respectively in the local urban spatial development plan or in separate acts, and in the case when no LUSDP exists – in the manner referred to in the SCDSM for a municipality.

The most important information to be included in the application define:

- mineral deposit or its part intended for mining;
- the intended volume and method of mineral extraction;
- the intended depletion degree of mineral resources in the deposit, including associated mining products and accompanying useful trace elements, as well as the methods used for that purpose;
- the designed location of the mining area and the mining protective area is shown in compliance with the requirements for mining maps and with national administrative divisions indicated;
- geological and hydrogeological mining conditions, and – if required – the conditions of water injections into the rock mass;
- the duration of the concession;
- the start date of the operations;
- financial resources of the investor;
- areas under special environmental protection;
- methods of preventing adverse environmental effects;
- information on the purpose of the land in accordance with the LUSDP and separate acts.

The application also includes the evidence of:
1) the right to use geological information, as granted to the applicant entity in the scope required for the intended activity, as well as the copy of the approval of the geological documentation;
2) deposit development plan defining the requirements regarding rational management of mineral deposit, in particular regarding complex and rational management of main mineral and of accompanying minerals, as well as extraction technologies ensuring limited adverse environmental impacts and the opinion from the competent mining supervision authority;
3) decision on environmental conditions.

A scheme of a lignite-mining concession procedure is shown in Figure 6. The duration of the exploitation concession process depends individually on the legal and actual situation. Nonetheless, in practice the procedures are long-lasting. The diagram below shows approximate – optimistic periods for individual procedures leading to the granting of a concession (Figure 7).

![Diagram showing approximate period required to obtain an exploitation concession][2]
Figure 7. Schematic diagram of a concession procedure for lignite extraction [own source based on 2]

8. Experiences gained and most important problems

Polish concession-awarding system is very complicated. The main problems include long-lasting planning and environmental procedures. The stage of awarding the concession is itself unproblematic. The greatest burden remains in the planning and environmental procedures. At the same time, some problems are related to the number of legal regulations and their frequent changes. In such course of action, a potential investment is effectively blocked already during the planning procedure. If a mining investment project is not accepted by the municipalities, and if it does not have a status of a public purpose investment, or if it is not assigned by the Government, the chances for the implementation are
close to none. A similar situation is observed in the case of exploitation concessions for minerals covered by the real estate ownership. Another problem is related to areas having different environmental protection status, as Polish law protects all of them on an equal level. In the case of a clash of interests, the law indicates priorities. No effective measure exists, either, which would protect resources from building development. The above presented procedure contains a number of areas which require modification, but the key problem seems to lie in the need to verify environmental procedures, which are multiplied across the process. A strategic environmental assessment is first performed as part of preparing strategic documents, i.e. the LUSDP and the SCDSM. In the next stages, decisions on environmental conditions are issued based on the assessment of the environmental impact and the influence of the project on the environment is evaluated again. Although these are not exactly identical procedures, a number of issues are treated identically. Each of the stages also allows for the opinion of the public, which is volatile and changes at different stages, hindering compromise. Another important aspect is the need to change the duration of the exploitation concession for minerals being the property of State Treasury. These should expire, as is for example the case for lignite, when the deposit is fully depleted.

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