

# SHALE GAS IN POLAND – THE LEGAL FRAMEWORK FOR GRANTING CONCESSIONS FOR PROSPECTING AND EXPLORATION OF HYDROCARBONS

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**Synopsis:** The article explains from the practical point of view the procedure for the acquisition of a concession for prospecting and exploration of hydrocarbons in Poland. Based on this analysis arguments are presented in support of a thesis that the current legal framework in Poland concerning the prospecting and exploration of hydrocarbons strongly protects the energy interests of the country.

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## I. INTRODUCTION

Recently newspapers all over the world reported that vast reserves of shale gas are believed by experts to exist in Poland.<sup>1</sup> For instance, The Sunday Times

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1. Marcin Sobczyk, *U.S. Giants Bet on Shale Gas in Poland*, WALL ST. J., Apr. 8, 2010, <http://blogs.wsj.com/new-europe/2010/04/08/us-giants-bet-on-shale-gas-in-poland/>; Robin Pagnamenta, *Dash for Poland's Gas Could End Russian Stranglehold*, TIMES, Apr. 5, 2010, [http://business.timesonline.co.uk/tol/business/industry\\_sectors/natural\\_resources/article7087585.ece](http://business.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article7087585.ece); Gareth Price, *First Vertical Drilling for Shale Gas in Poland Begins*, WARSAW BUS. J., June 26, 2010, [http://finanse.wp.pl/kat,97514,title,First-vertical-drilling-for-shale-gas-in-Poland-begins,wid,12395429,wiadomosc\\_prasa.html?icaid=1bf33](http://finanse.wp.pl/kat,97514,title,First-vertical-drilling-for-shale-gas-in-Poland-begins,wid,12395429,wiadomosc_prasa.html?icaid=1bf33); Darrell Delamaide, *Chevron to Seek Shale Gas in Poland as Europe Focuses on Unconventional Reserves*, OILPRICE.COM, Mar. 9, 2010, <http://oilprice.com/Energy/Gas-Prices/Chevron-to-Seek-Shale-Gas-in-Poland-as-Europe-Focuses-on-Unconventional-Reserves.html>;

reports that “Wood Mackenzie, the oil and gas research group, estimates that there could be as much as 48 trillion cubic feet (1,36 trillion cubic metres) of unconventional gas stretching across northern and central Poland.”<sup>2</sup> Polish officials believe that exploitation of shale gas in Europe could change its energy paradigm and climate policy of the country.<sup>3</sup> The finding of shale gas could free Poland from its energy dependency on Russia.<sup>4</sup> Poland could become a major exporter of this resource, enriching its economy.

The Geological and Mining Law<sup>5</sup> in Poland grants benefits to companies which successfully explore for hydrocarbons. The entrepreneur who explored and documented a mineral deposit being the property of the State Treasury and prepared geological documentation with the accuracy required for granting of a concession for mineral exploitation, may demand the establishment of the mining usufruct for its own benefit, with priority over other parties.<sup>6</sup> Encouraged by the prospect of finding huge deposits of shale gas, which they could then benefit from, foreign companies are seriously investing in prospecting and exploration of this resource.<sup>7</sup>

This article will explain from the practical point of view the general procedure for the acquisition of a concession for prospecting and exploration of hydrocarbons in Poland.<sup>8</sup> If the resource is found, another concession for the exploitation of the hydrocarbon is required. This however remains outside the scope of this paper.<sup>9</sup>

Several arguments will be presented in support of a thesis that the current legal framework in Poland concerning the exploration and prospecting of hydrocarbons strongly protects the energy interests of the country. From the

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Katarzyna Klimasinska, *Poland 'Bubbles Up' as Marathon Target for Next Shale-Gas Boom*, BLOOMBERG, Dec. 9, 2009, <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a0PZ7A5zkBjM>; Judy Dempsey, *Eastern Europe, Seeking Energy Security, Turns to Shale Gas*, N.Y. TIMES, May 11, 2010, <http://www.nytimes.com/2010/05/12/business/global/12shale.html>.

2. Pagnamenta, *supra* note 1.

3. Sobczyk, *supra* note 1.

4. Polish Oil and Gas Company (PGNiG), Annual Report 43 (2009), available at <http://www.pgnig.pl/pgnig/ri/838/18452> (follow the “Raport Roczny” hyperlink). According to the Annual Report of PGNiG - a leading energy provider company on the Polish natural gas market - Poland’s total import of natural gas in 2008-2009 amounted to 9,135.9 millions of m<sup>3</sup>. 8,137.2 millions of m<sup>3</sup> of natural gas was imported from Russia.

5. Ustawa z dnia 4 lutego 1994 r. - Prawo geologiczne i górnictwo [Act of Feb. 1994, Geological and Mining Law], tekst jednolity: Dz. U. z 2005 Nr 228, poz. 1947 ze zm.

6. *Id.* Art. 12 S. 1 (This provision grants a right to apply for a preferential mining usufruct which specifies the terms of the exploitation, and which is a necessary element to obtain the concession for the exploitation of the resource).

7. For instance, companies such as ExxonMobil, ConocoPhillips, Lane Energy, and Chevron are currently prospecting for shale gas in Poland. According to informal information from the granting authority in Poland, up to December 2010 about 70 concessions for the prospecting and exploration of shale gas were granted.

8. Variations in the procedure were intentionally omitted. Variations might apply if, for instance, the granting authority would decide to issue a limited number of concessions or the environmental laws would require to conduct environmental studies before granting any concessions.

9. Discussion of all the differences in the procedure for the acquisition of a concession for exploitation would be better served in a separate article. Differences in the procedure and the concession itself include, but are not limited to, specific: a) application requirements; b) elements that need to be included therein; and c) obligations imposed on the holder of the concession.

analysis of the regulatory structure it may be inferred that its drafters had the foresight to develop a system that will protect from and reduce the potential adverse effects of intensified interest in the State's strategic resources. This potentially may be attributed to vast reserves of coal that exist in Poland.

To enhance the readability of this article a brief outline of the procedure for the acquisition of a concession for the exploration and prospecting of hydrocarbons in Poland will be presented first.

## II. BRIEF OUTLINE OF THE PROCEDURE

The following outline presents a step-by-step guide for obtaining concession for prospecting and exploration of hydrocarbons in Poland.

The steps are as follows:

1. Obtain a mining usufruct right – an agreement with the State Treasury.
2. Apply for the concession for the prospecting and exploration of hydrocarbons.

The application should include:

- the designation of the applicant (address, number in the register of entrepreneurs or official business record);
- designation of the type and scope of business activities that are going to be included in the concession;
- designation of the applicants rights to the plot on which the activities are going to be performed or the designation of the right that the applicant is applying for;
- designation of the time period for which the concession should be granted along with the date from which the activities are going to be performed;
- designation of resources available to the applicant to effectively carry out the activities that are in the scope of the application;
- geological work programme.

3. Compensate the State for the mining usufruct right and the concession.

## III. DISCUSSION

Brief background information relating to the procedure for the acquisition of the said concessions, followed by a discussion of the relevant law, will be presented in order to gain a better understanding of the current Polish regulations and the arguments that evolve from them, in favor of a thesis that the current legal framework in Poland concerning the exploration and prospecting of hydrocarbons strongly protects the energy interests of the country.

### A. *Background Information*

A legal entity interested in prospecting and exploration of hydrocarbons in Poland must obtain a concession from the Polish Minister of Environment. The Department of Geology and Geological Concessions (here referred to as the granting authority) handles the process of issuing such permits. In order to obtain one, the company must meet specified legal requirements - in particular imposed by the Geological and Mining Law and the Act on Freedom of Economic Activity.<sup>10</sup>

### B. *Procedure for Granting Concession for the Prospecting and Exploration of Hydrocarbons*

In order to obtain the concession for prospecting and exploration of hydrocarbons the applicant is required to acquire a mining usufruct.<sup>11</sup>

#### 1. Mining Usufruct Agreement

Under Article 7 section 1 of the Geological and Mining Law,<sup>12</sup> mineral deposits which do not constitute a component of the land real estate<sup>13</sup> are the property of the State Treasury. The State Treasury, in compliance with the law, may use and dispose the rights to the deposits by granting mining usufruct rights. According to Article 9 of the Geological and Mining Law,<sup>14</sup> within the bounds specified by the mining usufruct agreement and other regulations, the mining usufructuary may, to the exclusion of other parties, prospect for and explore a

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10. Ustawa z dnia 2 lipca 2004 r. o swobodzie działalności gospodarczej [Act of July 2, 2004 on Freedom of Economic Activity], tekst jednolity: Dz. U. z 2010 Nr 220 poz. 1447 ze zm.

11. The term mining usufruct is a term of art used in the Geological and Mining Act, Art. 7 S 2. Generally, it is a concept used to describe the right to extract mineral resources in Poland. The mining usufruct is based on the civil law institution of usufruct. According to Geological and Mining Act, Art. 13, in all matters not regulated by the Act, the provisions of the Civil Code regarding the usufruct shall apply, respectively, to the mining usufruct. The right of usufruct is regulated in Articles 252-284 of the Polish Civil Code (Ustawa z dnia 23 kwietnia 1964 roku Kodeks Cywilny, Dz. U. z 1964 Nr 16 poz. 93 ze zm) (Polish Civil Code). It is a limited property right which grants its holder limited rights over the real estate that is held by some other entity. Generally its holder has a right to use the encumbered property and collect its fruits, while the owner of the property retains its ownership rights.

12. Geological and Mining Act, Art. 7 S 1 (Pol.).

13. Under Article 47 paragraph 2 of the Polish Civil Code, a component part of a thing (here land real estate) is anything that cannot be separated from it without damaging or essentially changing the whole or without damaging or essentially changing the object separated. Mineral deposits that are located within the boundaries of the land real estate are considered the components of that land real estate. Under Article 47 paragraph 1 of the Polish Civil Code, a component part of a thing cannot be a separate object of ownership and other property rights. To put it another way, it shares the fate of the land real estate. From the practical point of view the problem arises with the identification of criteria used to designate the boundaries of the land real estate. According to Article 143 of the Polish Civil Code, within the limits of the socioeconomic designation of land, the ownership of land shall cover the space over and below its surface. These criteria are considered very flexible. See A. Lipiński & R. Mikosz, *Komentarz do Art. 7 ustawy z dnia 4 lutego 1994 r. Prawo geologiczne i górnictwo* [w:] A. Lipiński, R. Mikosz, *Ustawa Prawo geologiczne i górnictwo. Komentarz*, Dom Wydawniczy ABC, 2003, wyd. II [Treatise on Geological and Mining Law] points 5 and 11. In this article it is assumed that shale gas deposits, due to their deep location under the surface of the earth, are not within the boundaries of any land real estates and therefore are the property of the State (of course only these minerals that are within the boundaries of Poland's sovereignty).

14. Geological and Mining Act, Art. 9 (Pol.).

designated mineral. However, the ownership right of the deposits is reserved by the State.

The mining usufruct is established in the form of a written, for consideration Agreement with the State Treasury. The Agreement specifies the rights and obligations of the parties in relation to the activities that are permitted to be conducted on the subsurface of the real estate.<sup>15</sup> This typically includes the right to prospect and explore for hydrocarbons and later exploitation. The Agreement also specifies the amount of consideration for the mining usufruct right. This payment constitutes the income of the State Treasury.

Under Article 11 of the Geological and Mining Law<sup>16</sup> the general rule is that establishment of the mining usufruct right in the field of prospecting, exploration, and also exploitation of hydrocarbons should be preceded by a tender procedure.<sup>17</sup> However, exceptions exist. For instance, the tender procedure does not have to be used if the information about the areas to which this procedure does not apply was communicated to the public and published by the authority granting the concession in the Official Journal of the European Union. As a result, the Minister of Environment may now, upon request, grant mining usufruct rights for prospecting and exploration of hydrocarbons in specified areas of Poland.

Another exception to the tender procedure is regulated in Article 12 of the Geological and Mining Law.<sup>18</sup> This however applies strictly to concessions that grant exploitation rights. The entrepreneur who explored and documented a mineral deposit being the property of the State Treasury and prepared geological documentation with the accuracy required for granting of a concession for mineral exploitation may demand the establishment of the mining usufruct for its own benefit, with priority over other parties. The time period during which the party may request the establishment of this right expires two years from the date the geological documentation was accepted in writing by the geological administration authority.<sup>19</sup>

It is worth noting that the successful prospector's interests are de facto protected for a longer period. According to Article 47 section 3 of the Geological and Mining Law, the entrepreneur who has incurred the costs of carrying out the geological works, conducted on the basis of decisions granted pursuant to the Act, shall have the exclusive right to use the geological information free of charge for research and scientific purposes and for conducting the activities regulated by the Act.<sup>20</sup> This right shall expire five years from the date of the loss of effect of the decision authorizing the works which were the source of the information or allowing for the performance of another activity regulated by the Act or separate regulations. Unless a concession or a decision approving a geological work programme provides otherwise, the party which has the right to

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15. Ewa Zalewska, *The Concession Granting Policy for Prospecting, Exploration and Production of Hydrocarbons in Poland*, 55 PRZEGLĄD GEOLOGICZNY [GEOLOGICAL OVERVIEW] NR 12/1 P. 999 (2007).

16. Geological and Mining Act, Art. 11 (Pol.).

17. The tender process, which remains out of the scope of this paper, is regulated by Rozporządzenie Rady Ministrów (Ordinance of the Council of Ministers), June 21, 2005, Dz. U. z 2005 Nr 135 poz. 1131.

18. Geological and Mining Act, Art. 12 S 1(Pol.).

19. *Id.* Art. 12 S 3.

20. *Id.* Art. 47 S 3.

use the geological information acquired in this manner may make it available to other parties.<sup>21</sup>

From the practical standpoint this mechanism assures that no other entity than the successful prospector will receive or apply for concession to exploit the resource on “his” territory within the specified period of time. To obtain such concession the “hostile” applicant would have to present appropriate geological information which he does not have in the usual circumstances.

## 2. Concession for the Prospecting and Exploration of Hydrocarbons

In order to prospect and explore hydrocarbons in Poland a legal entity has to obtain a concession, which is granted if the company is duly registered in Poland (in compliance with the Act on Freedom of Economic Activity) and meets all requirements imposed by the Geological and Mining Law. As opposed to mining usufruct, the concession is not an agreement but an administrative decision issued by the granting authority to the applicant.

According to Article 15 section 5 of the Geological and Mining Law,<sup>22</sup> the concession is granted for three to fifty years. Typically, it is given for a period of three to six years.<sup>23</sup> Article 23 section 2 of this Act<sup>24</sup> specifies that a single concession cannot cover surface area exceeding 1,200 sq km. There is however no limit as to the number of concessions that one entity can hold. Before the concession is granted the granting authority is obligated to conduct consultation with the competent head of the commune, town mayor, or city president. This provision does not apply if the prospecting and exploration is conducted in the marine regions of Poland.<sup>25</sup>

The contents of the concession application are set out in Article 18 of the Geological and Mining Law.<sup>26</sup> This includes: the designation of the applicant (address, number in the register of entrepreneurs or official business record); designation of the type and scope of business activities that are going to be included in the concession; designation of the applicant’s rights to the terrain (space) in which the activities are going to be performed or the designation of the right that the applicant is applying for; designation of the time period for which the concession should be granted along with the date from which the activities are going to be performed; and designation of the resources available to the applicant to effectively carry out the activities that are in the scope of the application.<sup>27</sup>

All information provided in the application has to be evidenced.<sup>28</sup> The granting authority may ask the applicant to provide additional documents, such as data regarding the land real property that is going to be influenced by the applicant’s activities.<sup>29</sup>

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21. *Id.*

22. *Id.* Art.15 S 5.

23. Zalewska, *supra* note 15.

24. Geological and Mining Act, Art. 23 S 2 (Pol.).

25. *Id.* Art. 16 S 4.

26. *Id.* Art. 18.

27. *Id.*

28. *Id.* Art. 18 S 2.

29. *Id.* Art. 18 S 2(3).

In compliance with Article 19 of the Geological and Mining Law<sup>30</sup> the application shall include a geological work programme, the contents of which are set out in Article 32 section 2. According to Article 47 section 4 (1) of this Act,<sup>31</sup> the geological information to which the State Treasury has rights may be accessed free of charge by the applicant if used for the purpose of preparing the geological work programme.

The granting authority may refuse to issue the concession if the intended activity affects the environment protection requirements (broadly defined) or prevents the use of the real estate for its intended purposes.<sup>32</sup> Specifically, the concession may be refused if the intended activity violates the requirements of environmental protection, including those associated with the rational management of mineral deposits, also in the scope of exploitation of accompanying minerals, or prevents the use of the real estates in accordance with their designation. Granting of a concession may also be refused within the scope of disposal of waste in the subsurface if there exists a technically, ecologically, or economically justified possibility to recover or neutralize waste in other way than waste disposal.

It is worth noting that the granting authority has the discretion, and not the obligation, to refuse the issuance of the concession. However, if for instance it decides to refuse the granting of the concessions for reason of possible violation of the requirements of the environmental protection, it should specify in its decision what would be the exact infringement and also why this infringement justifies the refusal.<sup>33</sup> The refusal to grant the concession can also be justified by existence of other environmental protection regulations, for instance those prohibiting exploitation of the resource in the specified regions of Poland.<sup>34</sup>

The provisions of the Act on Freedom of Economic Activity that concern the procedure for the granting of concessions apply in areas that are not regulated by the Geological and Mining Law.<sup>35</sup> For instance, Article 56 section 1 of the Act on Freedom of Economic Activity<sup>36</sup> states that the concession-granting authority may refuse a concession or limit its scope, relative to that requested in the application for concession, or refuse to modify a concession: 1) where the entrepreneur fails to satisfy conditions for the conduct of the economic activity covered by the concession laid down in this Act or conditions made known to entrepreneurs pursuant to Article 48 section 2,<sup>37</sup> or Article 51 section

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30. *Id.* Art. 19.

31. *Id.* Art. 47 S 4 (1).

32. *Id.* Art. 26b.

33. A. Lipiński & R. Mikosz, *Komentarz do Art. 26(b) ustawy z dnia 4 lutego 1994 r. Prawo geologiczne i górnicze* [w:] A. Lipiński, R. Mikosz, *Ustawa Prawo geologiczne i górnicze. Komentarz*, Dom Wydawniczy ABC, 2003, wyd. II [Treatise on Geological and Mining Act point 1].

34. *Id.* point 3.

35. Geological and Mining Act, Art. 15 S 2 (Pol.).

36. Freedom of Economic Activity Act, Art. 56 (Pol.).

37. Freedom of Economic Activity Act, Art. 48 (Pol.) (“1. The concession-granting authority may lay down in the concession, within the limits of provisions of separate Acts, certain special conditions for the conduct of the economic activity covered by the concession. 2. The concession-granting authority shall supply each interested entrepreneur with detailed information on the conditions referred to in section 1, immediately upon the institution of proceedings on the grant of concession.”).

1,<sup>38</sup> 2) for reasons of a threat to the defense and security of the State, or to citizens; 3) where, as a result of the tendering proceedings referred to in Article 52,<sup>39</sup> the concession was granted to another entrepreneur or entrepreneurs; 4) in cases laid down in separate provisions.

Attention should be brought to Article 58 section 3 of the Act on Freedom of Economic Activity<sup>40</sup> which states that the concession-granting authority may withdraw the concession or modify its scope on the grounds of a threat to the defense and security of the State, or security of citizens, and in the event of the entrepreneur being declared bankrupt.

Article 60 of the Law of Freedom of Business Activity<sup>41</sup> states that the entrepreneur, who proposes to undertake economic activity in a field subject to concession-granting, may seek a promise that the concession will be issued. The promise shall make the granting of concession conditional upon the satisfaction of conditions for pursuit of the economic activity subject to concession-granting. This promise is given for periods covering over six months.

If the concession expires or is withdrawn the mining usufruct expires.<sup>42</sup>

### C. Security of Claims

In light of Article 17 section 1 of the Geological and Mining Law,<sup>43</sup> a concession may be granted under the condition that the applicant secures future claims. This provision may be triggered if a particularly important interest of the State or public interest - especially related to environment protection - is involved.

The application of this provision lacks significant practice.<sup>44</sup> The most important areas of where the granting authority would want to require the security from the applicant is related to claims associated with environment protection and especially with the redress/prevention of damages that might arise after the completion of the licensed activities and the expiry of the concession.<sup>45</sup> The terms specifying the type and the procedure for the use and release of the

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38. Freedom of Economic Activity Act, Art. 51 S 1 (Pol.) (“Whenever the concession-granting authority expects to grant a limited number of concessions, it shall make an announcement to this effect in *Dziennik Urzędowy Rzeczypospolitej Polskiej ‘Monitor Polski’* (the official gazette of the Republic of Poland ‘*Monitor Polski*’)).

39. Freedom of Economic Activity Act, Art. 52 S 1 (Pol.). Where the number of entrepreneurs who satisfy conditions for the granting of concession, and are fit to properly carry on the activity covered by the concession, exceeds the number of concessions to be granted, the concession-granting authority shall order tendering proceedings, the object of which is the grant of concession. *Id.* at section 2. In proceedings on the granting of concessions for the dissemination of radio and television programmes the concession-granting authority shall order the tendering proceedings referred to in section 1 if, following evaluation of applications according to a procedure laid down in Article 36 of the Act of 29 Dec. 1992 on Radio and Television Broadcasting (*Dziennik Ustaw* 2004, No. 253, item 2531, with subsequent amendments) the number of entrepreneurs still exceeds the number of concessions.

40. *Id.* Art. 58 S 3 (Pol.).

41. *Id.* Art. 60 S 1 (Pol.).

42. Geological and Mining Act, Art. 10 S 3 (Pol.).

43. *Id.* Art. 17 S 1.

44. A. Lipiński & R. Mikosz, *Komentarz do Art. 17 ustawy z dnia 4 lutego 1994 r. Prawo geologiczne i górnictwo* [w:] A. Lipiński, R. Mikosz, *Ustawa Prawo geologiczne i górnictwo. Komentarz*, Dom Wydawniczy ABC, 2003, wyd. II [Treatise on Geological and Mining Act] point 1.

45. *Id.* point 1.

security should be addressed in the decision granting the concession.<sup>46</sup> In the Polish doctrine it is indicated that the simplest form of security is the obtaining of surety/guarantee.<sup>47</sup> In general, if the concession holder does not meet the terms of the security (for instance the surety/guarantee agreement terminates) the granting authority may, for instance, withdraw the concession or limit its scope without compensation.<sup>48</sup>

In practice this security of claims mechanism is not used by the granting authority in regard to concessions for prospecting and exploration. It is widely used when granting exploitation rights.

The terms of the security are subject to negotiations with the applicant. The amount of security generally depends on the size of the land covered by the concession and the possible effect that the permitted activity might have on the environment and the neighboring estates.

Currently only concessions for the prospecting and exploration of shale gas have been granted. According to informal information from the granting authority, none of them provide for the security of future claims. Since the topic of shale gas in Europe is a novelty, and there is not yet any practice as to exploitation of shale gas in Poland, the granting authority has only just begun work on developing procedures in regard to this subject.

#### *D. Compensation for Mining Usufruct and Payments for the Concession for Prospecting and Exploration of Hydrocarbons*

The entrepreneur interested in undertaking the business activity of prospecting and exploration of hydrocarbons is subject to two types of payments.

According to Article 83 section 1 of the Geological and Mining Law,<sup>49</sup> the payment for the mining usufruct is to be set out in the Agreement with the State. Typically this amount depends on the size of the concession area.<sup>50</sup>

Article 85 section 2 and section 4 point 1(a) of the Geological and Mining Law sets out the concession payments for prospecting and exploration of hydrocarbons.<sup>51</sup> The payment amounts to the multiple of the payment rate (currently PLN 200) by the number of square kilometers of the subject area.

#### *E. Assessment of the Current Legal Framework – Protections Afforded by the Law*

Based on the analysis of the presented procedure several arguments can be made in favor of a thesis that the legal framework in Poland strongly protects its energy interests.

First, through specific regulation the State protects its sole control of strategic resources. Article 7 section 1 of the Geological and Mining Law<sup>52</sup> states that resources which are not components of the land real estate are the property

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46. *Id.* point 2.

47. *Id.* point 3.

48. Geological and Mining Act, Art. 27 S 2 (Pol.).

49. *Id.* Art. 83 S 1.

50. Zalewska, *supra* note 15.

51. Geological and Mining Act, Art. 85 S 2 & 4(14)(a) (Pol.).

52. *Id.* Art. 7 S 1.

of the State Treasury. Put differently, the shale gas that is going to be explored, prospected, and potentially exploited will remain the property of the State. The State through the mining usufruct – for which payment is obligatory - will only allow the entrepreneur to prospect, explore, or exploit the resource.

Second, through existing regulation, control over who is prospecting, exploring, and exploiting the resources in Poland is also retained by the State. It can be argued that obtaining the concession to prospect and explore does not mean that the mining usufruct for the exploitation and later the concession for exploitation will be automatically granted. Article 12 section 1 of the Geological and Mining Law<sup>53</sup> provides that the successful prospector may within two years preferentially request the granting of an exploitation mining usufruct. The law however does not impose an obligation on the State to grant such usufruct, nor does it specify the period for which such right has to be granted. The State can refuse the application (for instance because it is not in compliance with the Act on Freedom of Economic Activity) or the State can specify only a short period of time for which the mining usufruct is valid.<sup>54</sup>

Third, the energy interests of the country are protected because it also retains control over the valuable geological information obtained by prospectors during their activities. Under Article 47 section 6 of the Geological and Mining Law<sup>55</sup> he who conducts activities on the basis of this Act shall be obliged to forward on a current basis to the geological administration authorities the geological information referred to in section 1, as well as samples and the results of their research. A concession or, respectively, a decision approving a geological work programme may set out the scope and timetable of the presentation of the information and samples.

Fourth, it can be argued that in cases where the energy dependency of Poland would be compromised by actions of entities holding concessions to explore, prospect, or exploit the resource, the State could defend its interests by revoking the concession on grounds of Article 58 section 3 of the Act on Freedom of Economic Activity<sup>56</sup> and the very general threat to the defense and security of the State clause provided there.

These arguments show that the drafters of the system had the foresight to develop protections that will reduce the potential adverse effects of intensified interest in the State's strategic resources. The highlighted arguments seem to be especially worth noting from the stand point of a potential prospector or exploiter.

#### IV. CONCLUSION

Currently, due to the increased interest in potential gas deposits in Europe, there are several companies prospecting and exploring vast territories of Poland. The prize for the successful prospector is the right to apply for a preferential mining usufruct. This in turn means potential benefits and proceeds. The race

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53. *Id.* Art. 12 S 1 & 3.

54. See A. Lipiński & R. Mikosz, *Komentarz do Art. 12 ustawy z dnia 4 lutego 1994 r. Prawo geologiczne i górnicze* [w:] A. Lipiński, R. Mikosz, *Ustawa Prawo geologiczne i górnicze. Komentarz*, Dom Wydawniczy ABC, 2003, wyd. II [Treatise on Geological and Mining Act] point 4.

55. Geological and Mining Act, Art. 47 S 6 (Pol.).

56. Freedom of Economic Activity Act, Art. 58 S 3 (Pol.).

has just begun, and if the expert predictions are true, there is still room for more mining companies taking its share of the pie.