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Procedural Problems in the Authorization of the Mining Restoration Plan in Spain

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Abstract: The transposition into Spanish order of Directive 2006/21/EC of 15 March is carried out, on a basic basis, by Royal Decree 975/2009 of 12 June, and aims to unify and improve the provisions relating to the protection of the environment in the research and use of mineral resources regulated by the current Law on Mines. The procedural processing of the authorization of the restoration plan is partially regulated, setting specific guidelines, and some novelties, creating some problems in its implementation. Some Autonomous Communities maintain in force the own regulations of mining restoration prior to this royal decree, applying in what does not object to the provisions of this State rule, and in others have subsequently been adopted provisions that have regulated some aspects of the authorisation procedure.

Key words: authorization, restoration Plan, procedure, mining waste, revision

1. Introduction

The purpose of the investigation is to analyse the procedural requirements in the processing of the authorization of the restoration plan regulated in Royal Decree 975/2009, of 12 June after ten years of its publication. The State rule raises problems in regulating partial aspects of the various stages of the authorisation procedure because it contains inaccuracies, and some of the new requirements it incorporates are generic in its interpretation.

This study excludes the particularities of the restoration plan authorization processing for the management and rehabilitation of natural space affected by mining waste facilities in category A facilities.

The starting point is that the State legislature, by transposing Community Directive 2006/21/EC of 15 March on the management of waste from extractive industries, has taken advantage of the impact of the Directive[1] to expand the object and to seek to unify and improve environmental protection provisions in the field of research and use of mineral resources governed by the Mines Act and other existing provisions, and by enabling the Autonomous Communities to regulate aspects of the procedural procedure for the restoration plan authorization.

2. Normative Requirements in the Procedure for the Approval of the Minera Restoration Plan After the Approval of Real Decreto 975/2009, of June 15, Modified by Real Decreto 777/2012, of May 4

Royal Decree 975/2009, of 12 June, has as its background the Law on Mines 22/1973, of 21 July, (hereinafter the Law on Mines) in relation to the research and use of mineral deposits and other geological resources, and incorporates, on a basic[2]

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[1] Its scope is the management of extraction waste, i.e., waste resulting from the prospecting, extraction, treatment and storage of mineral resources, as well as quarrying.
[2] SSTC 45/2015 of 5 March, FJ3º “In accordance with its second final provision, the entire Royal Decree 975/2009 is basic, except for Annex V.”

basis, into Spanish domestic law Directive 2006/21/EC of 15 March on the management of waste from extractive industries, amending Directive 2004/35/EC[3], but with a broader content[4]. It jointly regulates this Royal Decree, on the one hand, the rehabilitation of spaces affected by extractive activities, and, on the other hand, the management of mining waste. In this respect, law 22/2011 of 28 July on contaminated waste and soils is implemented in addition, since RD 975/2009 of 12 June does not contain all the requirements, or all obligations, necessary for mining waste Dangerous. That aspect was not found in Law 10/1998 of 21 April on Waste, which expressly fixed its supplementary Article 2.2 of Law 10/1998 of April 21 on Waste, which expressly fixed its supplementary character[5].

The procedural processing of the authorisation[6] of the restoration plan is regulated in Articles 4, 5 and 6, which, by failing to indicate the different stages of the procedure, i.e. the initiation, organisation, instruction and completion of the procedure[7],do not establish a complete procedure for the authorisation[8]. of catering plans. In addition, RD 975/2009, of 12 June, it does not distinguish the restoration plan between the use of resources in Section A) and Section C), which, the Mines Act does carry out in their respective procedural administrative processes[9]. By having the Autonomous Communities's application of the mine regulations, it is up to them to establish specific procedures within the framework of basic State legislation, legislative development and the implementation of the mining and energy legal regime.

2.1 Procedural Aspects in the Authorization of the Restoration Plan

The procedural processing of the restoration plan authorization is regulated in Articles 4, 5 and 6, which, by not indicating the different stages of the procedure, i.e. the initiation, ordering, instruction and completion of the procedure, do not reach establish a complete restore plan authorization procedure. In addition, RD 975/2009 of 12 June does not distinguish the plan of restoration from use of resources in Section A) and Section C), which, the Mines Act does, in their respective procedural administrative procedures Autonomous Communities implementing mine regulations are responsible for establishing specific procedures under basic State legislation, legislative development and the implementation of the mining legal regime and Energy.

2.2 Requirements in the Restoration Plan's Application for Authorization

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[3] Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental responsibility in relation to the prevention and repair of environmental damage.

[4] In the same sense María Guadalupe Rosique López, in her doctoral thesis "Management of waste and contaminated soils from metal mining: Technical Aspects, Environmental Problems and Regulatory Framework". Polytechnic University of Cartagena, Jan. 2016, 196.

[5] Article 2.2 of Law 10/1998 of April 21

[6] SSTC 45/2015, of 5 March, FJ 6o "The so-called 'restoration plan' consists of the treatment of the land affected by mining activities to return it to a satisfactory state, especially in terms of soil quality, fauna, habitats freshwater systems, the landscape and appropriate beneficial uses. Through it, the legislator intends that the exploitative entities of the extractive industries sector take all necessary measures to prevent or reduce as much as possible the actual or potential negative effects on the environment and human health as a result of the management of mining waste, in particular, and mining activity in general."

[7] SSTC 45/2015, 5 March, FJ6o: "(...) does not regulate the entire administrative procedure for the authorization of the restoration plan; refers only to one of its elements, making it clear that it is for the Autonomous Communities to schedule it in a complete manner; the information to accompany the application is set out as a minimum expandable cast (through the formula 'at least' in Article 4(3) and the majority of the procedures characteristic of any administrative procedure is not even mentioned."

[8] This criterion is defended by Quintana Lopez (2013) Mining Concession and Environmental Protection, Editorial Tirant Lo Blanch, p. 196. The same position is defended by Toribio Jimenez J., "Legal regime for environmental restoration in mining activities", Doctoral Thesis, University of Seville, 2015, p. 244.

[9] Administrative Processing Section A) in Articles 16 to 22 of the Mines Act and Articles 27 to 37 of the Regulations; of the investigation permits in Articles 43 to 59 of the Mines Act and Articles 62 to 78 of the Regulations, and of mining concessions in Articles 63 to 78 of the Mines Act and Articles 84 to 97 of the Regulations.

The regulation included in the request for the authorization of the restoration plan, of Article 4, includes a framework of objectives and "minimum" contents, with new requirements in the restoration plan, in general, or for some of its studies, projects or Memories[10]. In this regard, the normative text does not define restoration and rehabilitation[11].

2.2.1 Capacity and Economic and Financial and Technical or Professional Solvency Sufficient to Ensure Compliance with the Restoration Plan

Pursuant to the second subparagraph of Article 4.1, the applicant must prove to the competent authority that, in accordance with the law of public sector contracts, he has sufficient capacity and economic and financial and technical or professional solvency to ensure compliance with the restoration plan. This reference to the legislation of contracts is already indicated in the current Law on Mines, and the Regulations that develop it. Under this article, new requirements are for applicants for Section A resource use authorizations, as provided for in the Mines Act, and for capacity and financial solvency requirements, for applicants for permits Section C resource research).

2.2.2 Financial or Equivalent Guarantees for the Rehabilitation of the Natural Area Affected by the Exploitation, Preparation, Concentration and Benefit of Mineral Resources, and for the Management and Rehabilitation of the Natural Space Affected by the Mining Waste Facilities

The risks intrinsic to extractive activities require the establishment of financial guarantees to ensure the existence of the necessary economic funds available for the rehabilitation of the land, even if it is the authority competent should take on the rehab[12] work. Article 4.2 conditions the joint authorisation of the restoration plan[13], which maintains the consideration of a special condition of the mining title, to the non-grant of the research permit, authorisation or grant of exploitation if, through the plan restoration, the rehabilitation of the affected natural environment, both by mining work and by its services and facilities attached, is not adequately ensured. In this regard, paragraph 3(c) incorporates an environmental advance by including as information to be provided in the application the proposal for the corresponding financial or equivalent guarantee, in accordance with Articles 41, 42and 43.

In relation to the financial or equivalent guarantee for the rehabilitation of the natural area affected by the exploitation, preparation, concentration and benefit of mineral resources and not only of the land affected by the mining activities contained in the Article 42[14]. The competent authority must require [15]., before the commencement of any work activity, and without specifying a specific period, that compliance with the obligations imposed in the authorisation [16] of the restoration plan be ensured. The calculation[17] of this financial guarantee[18] or equivalent shall be carried out considering two criteria, namely "the environmental impact of mining work and the future use of land to be rehabilitated". It is appropriate to recall, in that regard, the need for the reasons for administrative acts. The standard also makes it possible, if necessary, for independent, duly qualified third parties to evaluate and perform any necessary rehabilitation work,

[10] Arts. 3.4; 12.1; 13, second paragraph; 14, first subparagraph; Article 17.2 and 18.1 of Royal Decree 975/2009 of 12 June.

[11] Article 3.7 of DR 975/2009 of 12 June, which refers only to "the treatment of the land affected by mining activities in such a way as to return the land to a satisfactory state."

[12] SSTS 1404/2018, 20 September, FJ5 and FJ8º.

[13] For the mining subsector dealing with this work, the provisions of Article 28 on Environmental Responsibility apply to Article 28. In this regard, Yanguas Montero, Gui, and others: Practical Guide to Law 26/2007, of October 23, on Environmental Responsibility, Editorial Uría Menéndez, Madrid, 2017, pp. 97-98.

[14] Article 42 follows the line of the content of Article 3.4 of Royal Decree 975/2009 of 12 June and extends the definition of rehabilitation in Article 3.7(a).

[15] Article 42.2 of Royal Decree 975/2009 of 12 June.

[16] STSJ MU 3164/2015, Resource No: 272/2012, dated 18/12/2015, FJ 3o.

[17] Quintana López, T. Ibid. 186. "(...) the Royal Decree does not contain any determination of the cost of rehabilitation work, (...))".

[18] Article 42.2 of Royal Decree 975/2009 of 12 June.

avoiding, to some extent, a single criterion of administration Autonomic.

These articles regulate two corresponding financial or equivalent guarantees: one for the rehabilitation of the natural area affected by the exploitation, preparation, concentration and benefit of mineral resources; and another for the management and rehabilitation of natural space affected by mining waste facilities. These guarantees are compatible, in some cases with the mandatory guarantee regulated in the environmental liability regulations. In particular, Article 41.2 states that the competent authority, i.e. the autonomous administration, shall calculate each of the financial or equivalent guarantees independently, according to the criteria set out in Annex IV to this Royal Decree.

In relation to the financial or equivalent guarantee for the rehabilitation of the natural area affected by the exploitation, preparation, concentration and benefit of mineral resources and not only of the land affected by the mining activities contained in the Article 42 , the competent authority must require, before the commencement of any work activity, and without specifying a specific period, that compliance with the obligations imposed in the authorisation of the restoration plan be ensured. The calculation of this financial guarantee or equivalent shall be carried out considering two criteria, namely "the environmental impact of mining work and the future use of land to be rehabilitated" It is appropriate to recall, in that regard, the need for the reasons for administrative acts. The standard also makes it possible, if necessary, for independent, duly qualified third parties to evaluate and perform any necessary rehabilitation work, avoiding, to some extent, a single criterion of administration Autonomic.

With regard to the timetable for the implementation of rehabilitation work, no specific time limit or implementation schedules are established, and we must resort to the provisions of Article 3.3, indicating that the restoration plan should justify the phases of the planned rehabilitation, in order to minimise, during the development of the holding, the negative effects caused to the environment and the risks of deferring rehabilitation to more advanced phases of the operation. In any case, restoration and operation plans shall be coordinated so that rehabilitation work is carried out as advanced as possible as the operation is carried out.

2.2.3 The Mining Waste Management Plan

The waste management plan (hereinafter PGRM) is a novelty, when presented as a requirement in the application for authorisation of the restoration plan and included in it. Its regulation is contained in Articles 4,3(b) and Articles 16 to 18, and its definition in Article 3.7(g) "any area designated for the accumulation or deposit of mining waste, whether in solid and liquid state or in solution or suspension".

Article 16 states that the management of mining waste does not include those which do not result directly from research and use, with the application of Law 22/2011 of 28 July on contaminated waste and soils. This aspect of supple mentality is already set out in Article 2.3 and Annex I, 2.4.3 for "waste and intended handling" of Royal Decree 975/2009 of 12 June.

The content of the PGRM includes "at least"[19] the characterization of the mining waste to be generated during the research and use, and to be deposited in the facilities, in accordance with the criteria set out in Annex I to this Real Decree; proposed classification for mining waste installations, in accordance with the criteria set out in Annex II. The rule makes it easier for the operating entity not to consider it to be necessary to have category A installation, "sufficient information" to justify it should be provided, and the competent authority may accept such simplified projects and studies, ensure that the waste installation is properly located.

Moreover, Article 4(e) of paragraph 3 requires, where environmental impact assessment of the draft is necessary in accordance with the rules in force for that

[19] Article 18, Contents of the mining waste management plan.

purpose, that the application for authorisation of the restoration plan shall contain “the documentary justification for the completion of this procedure before the competent body”. In this regard, we consider that it should have been drafted in a different way, since that documentary justification was already obtained at a later stage of the initial procedure, in accordance with Articles 7 and 12 of Royal Legislative Decree 1/2008 of 11 January, adopted the consolidated text of the environmental impact assessment act for projects, which has already been repealed. In the same vein, Articles 25 and 41 of Law 21/2013 of 9 December on Environmental Assessment, where the promoter will incorporate the content of the strategic environmental declaration into the plan or programme and, in accordance with the provisions of the legislation sectoral sectorial sector, shall submit it to the adoption or approval of the substantive body.

2.3 Partial Regulation of the Process of Public Participation

Article 6 issued under Article 149.1. 23 of the Constitution, which confers on the State exclusive competence over the environment, regulates public participation concisely, which is part of the specific administrative procedure of the current Law on Mines and the Regulations implementing it[20], being of extra application the provisions of Articles 82 and 83 of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations (hereinafter Law 39/2015, of 1 October). Subsequently, Law 19/2013, of December 9, on Transparency, Access to Public Information and Good Governance was adopted at the state level, Article 12 of which enshrines the right to public information under the terms provided for in Article 105(b) of the Spanish Constitution, developed by this Law[21].

[20] Resolution of 19 December 2018, of the Transparency and Good Governance Council, which publishes the summary of the Report of Compliance with the Law on Transparency, Access to Public Information and Good Governance, and of activities during the 2017 financial year.

[21] Article 13. Public information.

The first and second paragraph of Article 6 distinguish estibuts, depending on whether environmental impact assessment is required. The first states that, where an environmental impact assessment process is required for the authorization of the research project or the use of geological-mining resources, to avoid duplication of processes and documents, the process of public information shall also include public participation in relation to the authorisation of the restoration plan, provided that the matters referred to in paragraph 3 of this Article are included.

In the second case, if environmental impact assessment is not necessary, as determined by the autonomous environmental authority, the mine-responsible delegation shall submit the restoration plan to public information, within the same restoration plan authorization procedure. Documentation included in the PGRM and the serious accident prevention policy document, where appropriate, shall be submitted to public participation.

Once the documentation has been completed in accordance with the provisions of Articles 4 and 5 above, a period of public information is opened, which shall not be less than 30 working days from the last of the provincial or regional publications (and only in the autonomous if the Autonomous Community is unprovincial), in accordance with Article 70 of the current General Regulations for the Mining Regime and Article 6 of Royal Decree 975/2009 of 12 June for the public concerned to participate effectively , with the warning that no opposition will be allowed after this period.

Paragraph 5 reiterates the same 30-day period as provided for in paragraph 3, so that the interested public exercises the right to express comments and opinions, and includes a critical partial access to information to “the main reports or other information relevant to the resolution”, and it is unaware that the application of the limits must be justified and

proportionate to its object and purpose and must meet the circumstances of the particular case[22].

For the public concerned's access to environmental information, Article 6.5 of Royal Decree 975/2009 of 12 June, is referred to in Law 27/2006 of 18 July regulating the rights of access to information, on public participation and access to justice in environmental matters (hereinafter Law 27/2006, of 18 July), a standard of environmental content, within the competence of environmental protection, which in this case affects its instrumental and foreseeability merely setting the reporting principles on information and environmental participation, and minimum guarantees[23] relating to the procedure for access to environmental[24] information, which the Autonomous Communities can implement.

Issued the decision of the restoration plan authorisation, the competent authority shall inform the public concerned of the content and reasons for the decision, "through procedures deemed appropriate"[25], making available a copy of This. We consider that an inadequacy of technical precision is offered to oblige the competent authority once authorisation has been granted to inform the public concerned of the content and reasoning of the decision. In relation to environmental information, if the public considers that an act or omission attributable to the competent authority has infringed the rights[26], it may directly lodge a complaint with the Public Administration under whose authority it carries out its activity[27].

2.4 Authorization of the Restoration Plan

The audit of the restoration plan by the environmental body is a novelty in state regulations[28]. Thus, the competent mining authority, in the light of the proposed restoration plan, may authorise it, require extensions or make amendments after reporting by the environmental authority, in accordance with Article 5.1. While there is one scenario in which the environmental lynomic autonomous authority may determine that environmental processing is not necessary, it is that of research permits whose work does not involve relevant conditions on the environment Environment. In addition, Article 5.1 includes another step forward, in this case to ensure a high level of protection of human health: the mandatory report of the competent health authority, where the implementation of the restoration plan "may pose a risk to the human health". In this sense, it is for the Autonomous Communities, within the scope of their competences, to organize and manage public health surveillance[29].

About the environmental report provided for in Article 5.1, following the adoption of Law 39/2015 of 1 October, the reports are issued through electronic means, reiterating the general provision of Article 75,

[22] STS 3530/2017, Appeal No. 75/2017, dated 16/10/2017, in its FJ 4o states that "(...) the right of access to public information is recognised as a genuine subjective public right, (...), and which may be exercised without the need to state reasons for the request. (...). This broad formulation in the recognition and legal regulation of the right of access to information requires strict, if not restrictive, both limitations to that right (...)."

[23] Pigrau Sola, A and Others, Antoni and Others (2011): "The fit of Law 27/2006, of July 18, regulating the rights of access to information, public participation and access to justice in environmental matters in the constitutional system of distribution of c Ompences", in: *Access to Information, Public Participation and Access to Justice in Environmental Matters: Ten Years of the Aarhus Convention*. Chapter IV. (Coord. Oliveras i Jan, N and Romon Martin, L.), Editorial Atelier. Legal Books, Barcelona, p. 170.

[24] Pigrau Sola, A. and Others, Ibid., p. 178. Similarly, Lozano Cutanda B, and Alli Turrillas J. C.: "Horizontal Techniques for Environmental Protection: Access to Information, Participation, and Responsibility for Environmental Damage" is pronounced, In: Administration and Environmental Legislation. Manual and Complementary Materials, Chapter Six, Dykinson Editorial, 6th edition, 2011, p. 201.

[25] As a supplementary, Law 39/2015 of 1 October on the Common Administrative Procedure of Public Administrations, in Article 40.2.

[26] Ruiz De Apodaca Espinosa A., "New perspectives on access to justice in environmental matters", in: *Environmental Law and Transformations of the Activity of Public Administrations*, Part Three, Chapter VI, Editorial Atelier legal books, Barcelona, 2010, p. 195.

[27] Article 21. Claims and enforcement.

[28] In the autonomous legislation this advance already existed, thus in Castile and León, Decree 329/1991 of November 14 and in Aragon, Decree 98/1994, of April 26, on environmental protection rules applicable to extractive activities was approved "in Aragon" exercise of legislative and executive power over additional environmental protection standards.

[29] Law 14/1986 of 25 April, General of Health, Article 41.1.

which further requires the realization acts of instruction. In the event that no such mandatory report is issued, the period of the maximum legal period for resolving the procedure may be suspended in accordance with the terms set out in Article 22(1)(d) and if the report is not received within the prescribed period , the procedure will continue[30].

If the operating entity complies, according to the competent authority, with all the relevant requirements of Royal Decree 975/2009 of 12 June, the authorisation of the restoration plan shall be made in conjunction with the granting of the investigative permit, authorization or the concession of exploitation, and includes the authorization of the PGRM[31] and, in particular, the commencement of activity or construction of mining waste facilities, clearly indicating their category. Therefore, the refusal of authorisation of the operating plan shall entail the rejection of the authorisation of the restoration plan, since it is joint and simultaneous processing, having a function subordinate to that[32].

The reference to the PGRM is due to the reason that the restoration plan is a document containing a double content[33], one relating to the requirements relating to the rehabilitation of the space affected by mining activities, and another is a pecific of the PGRM, and that, sharing the opinion of Quintana Lopez, constitutes an essential part of it[34].

2.5 Restoration Plan Review

Two different assumptions, mandatory revision, and modification are set out in Article 7 if substantial changes have occurred. The initial reference of the article to "Without prejudice to Article 5" refers, without expressly, to the provisions of the PGRM, which is included in the restauration plan in accordance with Article 4.3(b).

The mandatory review every five years is at the request of the exploiting party. However, what is done is to request the review to be approved by the competent authority. The review of the restoration plan is as a justification for the implementation of the timetable for the implementation of the measures envisaged for the rehabilitation of the natural area affected by the research and exploitation of mineral resources, and the measures pre-seen for the rehabilitation of services and facilities annexed to the research and exploitation of mineral resources, already authorized by the competent management. In this regard, the impact of mining activities on the environment is different depending on underground or open pit holdings or metallic minerals[35].

If there have been “substantial changes” affecting the provisions of the authorized restoration plan, including changes in land end-use once the harvest is completed, it is necessary to “notify the competent authority for authorisation”. In this regard, the article 3.4 should be used to indicate the structure of the minimum content of the restoration plan and its development in Articles 14 and 15, which the promoter must comply with once authorized. The competent authority on the environment shall be within the provisions of Law 21/2013 of 9 December on environmental assessment in Article 7.1(c) and point 2(c)[36].

In such a case of modification of the restoration plan, it is necessary to authorise the competent authority, and it is necessary to refer to the second subparagraph of Article 4(1) of Royal Decree 975/2009 of 12 June, which provides that the applicant must prove that it has sufficient economic and financial and technical or

[30] Just Cobos R., Practical Guide to Law 39/2015, of the Common Administrative Procedure of Public Administrations, Editorial UOC, 2016, p. 121.
[31] Article 5.4 of Royal Decree 975/2009 of 12 June. In this regard, STSJ CL 1055/2017, Resource No. 99/2014, dated 15/03/2017, FJ 1o.
[32] STSJ AS 129/2017, Resource No: 290/2015, dated 20/02/2017, FJ 5o.
[33]. Article 3.4 and Article 4.3(b) of Royal Decree 975/2009 of 12 June.
[34] Quintana López T., Ibid., p. 183.

[35] Castell X. Elias, “Industrial Waste Recycling”, in: *Mining Waste: Environmental Impact of Metal Mining*, Chapter 4, Ediciones Diaz de Santos, Madrid, 2012, pp. 666-668.
[36] Article 7.1 of Law 21/2013 of 9 December.

professional capacity and solvency to ensure compliance with the restoration plan. The content of the restoration plan authorization request shall be in accordance with Article 4.3.1, and the provisions of Article 5 apply to it. In this regard, Article 6.4 provides that the formality of public information shall be mandatory where the conditions for the authorisation of the restoration plan, and in particular those relating to installation or the PGRM, are amended in accordance with Article 5.5.

Moreover, the revision every five years of the restoration plan provided for in Article 7 is without prejudice to the revision of the conditions for the authorization of the PGRM, every five years, and if necessary, where certain circumstances set out in the article 5.5. The reference to the PGRM is due to the fact that the restoration plan is a document containing a double content[37], one relating to the requirements relating to the rehabilitation of space made by mining activities, and another specific to the PGRM, and that, sharing the opinion of QUINTANA LOPEZ, constitutes an essential part of it[38].

3. Autonomic Regulation on Minera Restoration After the Approval of Real Decreto 975/2009, June 12

It should be noted that the autonomous regulations governing the procedure for the authorisation of the restoration plan are exceptional. In some Autonomous Communities, the own regulations on mining restoration pre-Royal Decree 975/2009 of 12 June[39], remain in force, applying to what is not contrary to the provisions of this State rule. In others, provisions have subsequently been adopted which have governed certain aspects of the authorisation procedure. In the Autonomous Communities where only Royal Decree 975/2009, of 12 June, in the formalities that may be developed, the provisions of Law 39/2015, of October 1, and Law 22/2011, of 28 July, of contaminated waste and soil.

Royal Decree 975/2009 of 12 June merely lays down minimum legislation capable of regional [40] development and does not meet all the objectives of the authorisation procedure.

3.1 Singularities in the Application for Authorization

In Catalonia, two rules regulate restoration: Law 12/1981, of December 24, of Catalonia, (hereinafter Catalan Law 12/1981) laying down additional rules for the protection of areas of special natural interest affected by activities regulation of its essential content, transfers the regulation of restoration [41] to the regulatory route. Decree 343/1983, of July 15, on environmental protection [42] standards applicable to extractive activities, regulates the determination of the documentation that is part of the "restoration programme"[43], its processing and approval, and the

[37]. Article 3.4 and Article 4.3(b) of Royal Decree 975/2009 of 12 June.

[38] Quintana López T., Ibid., p. 183.

[39] In the Community of Aragon, only Royal Decree 975/2009 of 12 June applies. In the Basque Country the Restoration Plan of any quarry will comply with Royal Decree 975/2009, of 12 June, on waste management of the extractive industries and the protection and rehabilitation of the space affected by mining activities and Decree 115/2000 of 20 June, of the Department of Trade Industry and Tourism, on restoration of the natural area affected by Extractive activities (the latter will only apply to the files whose processing has been initiated prior to the entry RD 975/2009), which obliges holders or applicants for research permits and resource exploitation concessions in sections A) or B), as well as holders applying for research permits and resource exploitation concessions sections C) and D) to develop a Space Restoration Plan affected by mining work and its implementation once approved.

[40] SSTC 45/2015, 5 March, FJ6o: "(...) the restoration plan (...) describes content or objectives expressly qualified as 'minimum'. (...). The Autonomous Communities, in addition to the implementing legislation, the implementation of environmental regulations and the power to self-organize (SSTC 33/2005 of 17 February, FJ 6; 161/2014, FJ 4) are responsible for implementing environmental regulations and the power to organize state discipline on common administrative procedure, regulate their own special administrative procedures."

[41] De Arcenegui I.: "The protection of the environment in the light of the mining legislation of the state and law 12/1981, of December 24, of the Generalitat of Catalonia", *Journal of Public Administration*, Chapter 2, No. 100-102, 1983, p. 2663.

[42] The content and scope is determined in Articles 4th, 5th and 6th in Law 12/1981, of December 24, of Catalonia.

[43] STS 710/2008, Resource No. 3281/2005, dated 02/04"008, FJ 1o. And previously STS 796/1998, Resource No. 2679/1990, dated 09/02/1990, FJ 3rd and 4th.

management of deposits to be deposited to ensure the implementation of all environmental protection measures and restoration work, to fully recover the land affected by mining extraction activities[44].

A differentiating element of Catalan Law 12/1981[45], to the provisions of Article 4.3(c) and 42 of Royal Decree 975/2009, is that, although in both rules the restoration must be justified in phases[46], only in state legislation is it necessary for the constitution to be established guarantee stakes or equivalents are made in a single way, whereas in the Catalan rule it may be met in a staggered manner[47] and, therefore, the amounts deposited will be in real relation to the costs of the restoration at each stage of the operation[48], providing the mining developer with a lower initial contribution.

The completion in phases of the restoration, from the very beginning of the operation, is also followed by Law 10/2014, of October 1, on the Mining Management of the Balearic Islands[49] (hereinafter, LOM de Baleares).

Regarding the determination of the amount of the bond, unlike the provisions of Article 42.2 of Royal Decree 975/2009, of 12 June, in Catalan Law 12/1981, Article 8.2[50] indicates other criteria, which must be added to those set out in that real decret state. These requirements are based on "the area affected by the restoration, by the overall cost of restoration, or by both aspects together".

The total amount of the bond is the sum of the partial amounts corresponding to the different phases of the restoration. The operating authorisation establishes the total amount and partial amounts, which must also determine the amount of the initial bond to be constituted before the start of the holding. In addition, minimum quantity amounts are indicated. A similar criterion applies to the regulations of the Balearic and Galician autonomous communities. In the LOM of the Balearic Islands the mining authority must fix the guarantee according to a wider parameter than those indicated in Royal Decree 975/2009 of 12 June.

Thus, the guarantee, in any mining operation, must represent at least an initial amount of 7 EUR .000, and from that amount, the guarantee must represent at least the highest amount. In the Law on Mining Management of Galicia, Law 3/2008, of May 23 (hereinafter LOM de Galicia), the amount corresponds to the sum of two concepts: one responds to the fulfillment of the obligations of financing and viability of the mining works, and another of the compliance with the environmental restoration plan, which sets the actual cost criteria for all restoration work according to the approved restoration project; affected area in each year of research or exploitation; timetable and implementation programme; and the current and expected use of the land.

Moreover, unlike the provisions of Royal Decree 975/2009 of 12 June, which states that a financial guarantee or equivalent must be constituted before the commencement of any work activity, in the Balearic LoM the person holding a right to me nero must constitute a sufficient guarantee within two months of being notified of the grant, while in accordance with

[44] STS 796/1998, Resource No. 2679/1990, dated 09/02/1990, FJ2o, STS 3814/1997, Appeal No. 235/1993, dated 30 May, FJ 2o, STS 5920/1997, Resource No: 572/1993, dated 07/10/1993, FJ 2o, STS 710/2008, Resource No.: 3281/2005, dated 02/04/2005, FJ 2o.

[45] The uniqueness in this regulation is that double the amount is established in so-called spaces of special natural interest. In accordance with Article 15 of Law 12/1985 of 13 June on natural areas, the PEIN is a territorial planning instrument, with category of sectoral territorial plan and is equated with the other instruments of this type derived from Law 23/1983, of 21 November, of territorial policy. The fundamental objectives of the ESMPS are two: to establish a system of protected natural areas representative of the landscape richness and biological diversity of the territory.

[46] Article 3.3 of Royal Decree 975/2009 of 12 June

[47] Article 6.9 of Decree 343/1983 of 15 July on environmental protection standards applicable to extractive activities.

[48] STSJ CAT 2375/2008, N.º de Recurso: 165/2005, de fecha 06/03/2008, FJ6º. STSJ CAT 2375/2008, Resource No: 165/2005, dated 06/03/2008, FJ6o.

[49] Article 15.1(d). In addition, paragraph 2 states that, at the request for mining rights, a report shall be attached summarizing all the indications specified in the preceding paragraphs, including the restoration plan to facilitate its understanding for the purposes of the procedure public information.

[50] STS 3814/1997, Resource No: 235/1993, dated 30/05/1997, FJ 2o.

the provisions of the LOM of Galicia, the period is one month from the notification of its grant.

A unique criterion of the restoration plan is regulated in the Community of Valencia, in Decree 82/2005, of the Consell, of Environmental Management of Mining in Forest Spaces of the Valencian Community. Thus, it provides that the applicant for any use of mineral natural resources must submit a "comprehensive restoration plan" of the affected space, which shall be approved in conjunction with the exploitation project.

Other singularities that involve more requirements are given for the assumptions of opening new quarries and their facilities to exploit a mining resource of sections A) or C), in the LOM of the Balearic Islands. In this sense, the promoter must present, together with the appropriate documentation, a certificate issued by a competent technician on the situation of the quarry in relation to the areas included in the areas of locating resources of mining interest, according to the Plan sectoral director of quarries of the Balearic Islands, in force at the time of the application. Finally, it lays down special conditions in the application for mining rights on deposits of non-natural origin, underground and similar structures, in which, in addition to the documentation required for these applications, the declaration must be provided qualification as Section B resources), to be carried out by the competent mining body.

3.2 Regulation of the Process of Public Participation

In the regional field [51], the regulation of the processing of public participation has been expanded through the right to "public information and good governance", with the exception of the Communities of the Canary Islands and Madrid. Thus, state legislation is a minimum ordering, which the Autonomous Communities can develop, strengthen[52], in the sense of improving their protective scope[53].

The general rule is the obligation to actively publicly publicly provide public information of the restoration plan by the competent authority in mines, where the environmental procedure is not necessary. Where the environmental procedure is mandatory, it is the competent environmental body that carries out the public information [54] procedure, applying the provisions of Articles 6.3 of Royal Decree 975/2009, of June 12, the provisions of the autonomous legislation in environmental impact assessment, Article 83 of Law 39/2015 of 1 October on the Common Administrative Procedure of Public Administrations, and the articulation of the corresponding law on autonomous public transparency[55].

[51] Law 1/2014, of June 24, on Public Transparency of Andalusia; Law 8/2015, of March 25, Transparency of Public Activity and Citizen Participation of Aragon; Law 4/2011, of March 31, on the good administration and good governance of the Balearic Islands; Law on Transparency of Cantabria, Law 4/2016, of December 15, transparency and good government of Castilla-La Mancha; Law 3/2015, of March 4, Transparency and Citizen Participation of Castile and León, Law 19/2014, of December 29, on transparency, access to public information and good governance of the Autonomous Community of Catalonia; Law 4/2013, of May 21, open government of Extremadura; Law 2/2015, of April 2, Transparency, Good Government and Citizen Participation of the Valencian Community, Law 1/2018, of March 21, Transparency of public activity in Cantabria, and Law of the Principality of Asturias 8/2018, of September 14, Transparency, Good Governance and Interest Groups.

[52] Lozano Cutanda B., "Administrative Environmental Law", in: *Horizontal Techniques for Environmental Protection: Access to Information, Participation and Responsibility for Environmental Damage*, Editorial Dykinson, Chapter IV, 10th Revised and Updated Edition, Madrid 2009, p. 253. "(...). As this is an area of shared competence with the Autonomous Communities, the Law, (...) merely establishes a set of reporting principles (...) and it will then be the competent administrations which, when establishing and processing the corresponding procedures, will have to ensure compliance with these guarantees. (...)"

[53] Pigrau Sole A. and others, "Access to information, public participation and access to justice in environmental matters: ten years of the Aarhus Convention". In: The fit of Law 27/2006, of 18 July, regulating the rights of access to information, public participation and access to justice in environmental matters in the constitutional system of allocation of competences. Chapter IV. (Coord. Oliveras I Jan N. and Romon Martin L.), Editorial Atelier Legal Books, Barcelona, 2008, p. 182.

[54] In this regard, judgment of Judgment No. 298/1999 of 26 March of the High Court of Justice of Castile and León or Judgment No. 368/1999 of 9 June of the Tribunal Superior de Justicia de Madrid, which, although referring to Law 38/1995, are perfectly extrapolated to the current Law 27/2006, pp. 17-21.

[55] Thus, if the environmental procedure is not necessary, the obligation of active publicity in the Transparency Portal is for

Both the Catalan Law 12/1981 and the LOM of Galicia do not regulate singularities in the administrative processing of public participation in relation to the provisions of Royal Decree 975/2009, of June 12. It is only in the Galician rule that, in order to facilitate understanding for the purpose of the public information process, the request for mining rights will be accompanied by a non-technical summary of all the documents specified in that article.

Similar to Article 6.1 of Royal Decree 975/2009 of 12 June in the LOM of the Balearic Islands, it is established that, if a mining right is applied for, a period of public information must be opened not less than thirty days. Such a forecast does not apply in the cases governed by Law 11/2006 of 14 September on impact assessments and strategic environmental assessments, since the public information[56] period has already been carried out.

The competent mining body must forward a copy of the file to the other administrations concerned so that they can rule on matters within its competence within a maximum period of one month. Once the required reports have been issued or, where appropriate, the relevant period has elapsed without being issued, the persons concerned must be given a hearing to make the claims or provide the information and documents they consider relevant within a maximum period of thirty days[57].

3.3 Uniqueness in the Authorization of the Restoration Plan

A different aspect, with regard to the request for reports of article 5.1 second paragraph of Royal Decree 975/2009 of 12 June, is given in Catalan Law 12/1981, which facilitates municipal participation, by means of the report to be issued by the Town halls affected on the exploitation project and the Restoration programme (Art 6.1)[58]. Add to this the momentum of the content of its final provisions, which provide for local ordinances to be adapted to the regulatory rules, which, in the development of Catalan Law 12/1981, for the safeguarding of measures to protect the environment environment in areas where extractive activities are carried out.

In the case of activities under sections A) and B) of the Mines Law, the Territorial Industry Services must issue a report on the economic assessment of the activity in advance. In view of the restoration programme, and in accordance with the report of the Territorial Industry Services, concerning the activities of sections A) and B), or with regard to activities of Sections C) and D), the Directorate-General for Territorial Policy will issue a report on the adequacy of the proposed environmental protection actions[59]. The report of the Directorate-General for Territorial Policy, which is binding, should specify the conditions for the

the competent delegation in mines, which carries out the public information process of the restoration plan. When the environmental procedure is necessary, the competent environmental delegation carries out the public information process and publishes on the Transparency Portal the documents that comply with environmental regulations are subject to information research or mineral resource use project, restoration plan and environmental impact study. For example, in Andalusia, in case that it requires environmental impact assessment process, the Territorial Delegation of Provincial Environment opens a joint public information period on the administrative procedure for the authorization of the plan and on the administrative procedure of Unified Environmental Authorization in accordance with Articles 6.3 of Royal Decree 975/2009, of June 12, Article 31.3 of Law 7/2007, of July 9, on Integrated Quality Management Environment of Andalusia, pursuant to the competence conferred by Article 7 of Decree 356/2010, of 3 August, regulating the unified environmental authorisation, Article 83 of Law 39/2015 of 1 October on the Common Administrative Procedure of the Public Administrations, and article 13.1.e) of Law 1/2014, of June 24, on Public Transparency of Andalusia.

[56] Article 28 Public information.

[57] Article 30. Hearing procedure.

[58] In this regard, it is not provided for in the 1973 Mines Act of 21 July or its 1978 Regulation, nor was it regulated in DR 2994/1982 of 15 October or in subsequent autonomous regulations, except in Decree 98/1994 of 26 April, on environmental protection rules applicable to extractive activities in the Community of Aragon.

[59] Article 9. Approval of the Comprehensive Restoration Plan, Decree 82/2005, of April 22, of the Consell de la Generalitat, on Environmental Management of Mining in Forest Spaces of the Valencian Community. In the same vein, Article 8 of Order Number 14/2011 of 31 March of the Ministry of Industry, Trade and Innovation establishing the competent bodies for the exercise of certain functions in the field of mining rights.

preservation of the environment, restoration programmes, and the necessary restoration bond.

In the Valencian Community Decree 82/2005, addresses the plan for the comprehensive restoration and environmental impact assessment of mining in mountains and forest lands, and includes that, at the request of the competent ministry in mining and prior to environmental impact declaration, the competent forestry body shall, within two months of its request, issue a report to the comprehensive restoration plan in order to ensure, with the planned restoration work, a possible possible further forest management of the affected area. If the report is not issued within that period, proceedings may be continued in accordance with the provisions of the law on the common administrative procedure. The competent mining council that issues a resolution to grant the corresponding mining right, once there is a favorable environmental impact statement, will also be for the authorization of the restoration plan regulated in Royal Decree 975/2009, of 12 June, as well as the comprehensive restoration plan regulated by Decree 82/2005, of the Consell, which shall be regarded as a special condition of that mining title.

In similar terms, in the Balearic Islands, and unlike paragraph 2(e) of RD 975/2009 of 12 June, environmental projects as defined by Law 11/2006 of 14 September , of environmental impact assessments and strategic environmental assessments, which the competent directorate-general for mines must issue a technical report on the suitability of the project which, together with all the documentation submitted, will be sent to the Council Mining, which may make any comments it deems appropriate.

On the other hand, the LOM of the Balearic Islands, incorporates, as in Catalonia and Galicia, the need for a municipal report on municipal competition issues. To this end, the mining body must send "a digital copy of the project submitted to the city council concerned, which shall have a period of one month from the time it has received it to issue the said report". If the report is not issued within the prescribed period, proceedings may be continued. If the report is issued out of time, but received before the grant of mining rights, the competent mining body must assess it in the resolution. The linkage of the unfavourable report if the competent body receives it before the granting of the mining rights, exceptionally, shall submit the file to the Governing Council, which may authorise the continuation of the procedure, with the conditions that it deems appropriate, which will be incorporated into the project.

The LoM of the Balearic Islands incorporates a uniqueness in relation to applications for mining rights in areas of environmental relevance[60], which will be processed with compliance with the requirements established by the European habitat regulations, and with the measures corresponding countervailing procedures, in accordance with the requirements of applicable environmental law. Once the documentation on the application for mining rights has been submitted in areas of special protection and in places of environmental relevance, the Directorate-General for Mines[61], in view of the environmental impact statement, will prepare a technical report on the suitability of the project, which, together with all the documentation relating to the assessment of the environmental body, will send to the Mining Council, which may make any comments it deems appropriate.

Moreover, Article 5.1 of Royal Decree 975/2009 of 12 June includes the mandatory report of the competent health authority, which is the autonomous one, where the implementation of the restoration plan “may pose a risk to human health”. This requirement has been unequally treated in the regulations of the various autonomous public health regulations.

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[60] Article 16. Requests for mining rights in areas of environmental relevance.

[61] Article 9. Council of the Mining of the Balearic Islands. Decree 6/2015, 20 February, regulates the composition, functions and internal regime of the Council of mining of the Balearic Islands and establishes the Standing Technical Committee.

In the case of Andalusia, the Public Health Act of 2011 refers to the mandatory and binding nature of a health impact assessment report issued by the competent Ministry of Health in relation to activities that must be subject to the instruments of environmental prevention and environmental[62], control set out in paragraphs (a), (b) and (d) of Article 16.1 of Law 7/2007, of 9 July, on Integrated Environmental Quality Management, which includes extractive activities, and that such report will be included in the environmental impact report, must be issued within a maximum period of one month[63].

In the Communities of Catalonia, Castile and León and Extremadura the criteria of their respective public health laws are similar[64]. References are made to the pre-operating health authorization procedure if the applicable sectoral regulations so provide and specify the need for regulatory regulation of its content, the criteria and requirements for its granting. In addition, the respective health laws of Catalonia, Castile and León provide that the health authority may establish, in accordance with the applicable sectoral regulations, the obligation to submit a responsible declaration or a communication prior to the start of the activity for facilities, establishments, and industries that carry out activities that may have an impact on health.

In the Balearic Islands, the Public Health Act of 2009 only indicates that the authorities may establish preventive limitations of an administrative nature in respect of those public or private activities that, directly or indirectly, may have negative health consequences. And in the case of the Valencian Community its corresponding health law is limited to delegating to a regulatory development the actions to be subject to the prior assessment of the health impact, as well as the methodology and procedure for the assessment of said impact, without such a regulation having yet been approved.

4. Conclusions

The transposition of Directive 2006/21/EC into Spanish domestic law has sought to unify and improve the mining provisions on the restoration of natural area affected by mining activities, which have been in force until then. In Royal Decree 975/2009 of 12 June, which is basic in nature, the forecasts of the articulation, which are procedural in nature, do not fully regulate an administrative procedure for the authorisation of the restoration plan. However, it leaves open the possibility that the Autonomous Communities may establish specific procedures within the framework of the basic legislation of the State, through the exercise of its powers. Moreover, the provisions of Law 39/2015 of 1 October on the Common Administrative Procedure of Public Administrations apply on an application procedure in the authorisation procedure.

With regard to the request for authorization of the restoration plan, an aspect that provides a greater guarantee for the fulfilment of the obligations imposed in the authorization of the restoration plan is the inclusion of the proposal for financial guarantee or equivalent, is defined as a prerequisite and mandatory requirement for the commencement of mining activity, differentiating the extractive industry from those of waste installation. The establishment of financial

[62] Article 56.1(c) of Law 16/2011, of December 23, on Public Health of Andalusia.

[63] Article 58.2 of Law 16/2011, of December 23, on Public Health of Andalusia. “(...) Exceptionally, by reasoned decision, that period may be extended to a maximum of three months, and if the report is not issued, Article 80.3 of Law 39/2015 of 1 October of the Common Administrative Procedure of the Public Administrations." In addition, in accordance with Article 31 of Chapter II of Title III of Law 7/2007 of 9 July 2007 on Integrated Environmental Quality Management, and Article 21 of Decree 169/2014 of 9 December , establishing the procedure for the impact on health, the Territorial Delegation of Environment and Land Management in each province, pursuant to the jurisdiction conferred by Article 83 of Law 39/2015 of October 1, Common Administrative Administrations, and in Article 13.1(e) of Law 1/2014, 24 June, on Public Transparency of Andalusia, agree to the opening of a period of public information.

[64] Law 18/2009, of October 22, public health of Catalonia, article 61, Law 10/2010, of September 27, on Public Health and Food Safety of Castile and León, articles 42 and 43, and Law 7/2011 of March 23 , of Public Health of Extremadura, article 49.2.

guarantees to ensure the restoration of the affected land appears both as a prerequisite and mandatory requirement for the commencement of mining activity, as well as for the revision of the pre-existing authorisation.

About public participation, the regulation has missed the opportunity to establish guidelines that encourage the competent authority to inform the public concerned of the content and motivation for the authorisation. The consequence is a certain limitation of a right in relation to public participation. On the other hand, duplication of processes and documents is avoided, when the realization of the research project or the use of mineral resources requires an environmental impact assessment process. The results of the consultations held should be considered when adopting the appropriate resolution on the restoration plan.

Regarding the authorisation of the restoration plan by the mining authority, an environmental report is a prerequisite in order to be able to authorise it, require extensions or make changes. This elevates environmental oversight to a document with an environmental protection nature. In addition, it includes another advance, and is that a report by the competent health authority is mandatory, where the implementation of the restoration plan may pose a risk to human health.

The mining nature of the restoration plan is remarked, when the articles regulating it is issued, under exclusive competence based on the mining and energy regime. Thus, the restoration plan is a mining and environmental instrument.

If the operating entity meets all the relevant requirements of Royal Decree 975/2009 of 12 June, the authorisation of the restoration plan shall be made in conjunction with the granting of the research permit, authorization or grant of exploitation, which includes the waste management plan and, in particular, the start of activity or construction of mining waste facilities**.**

The review of the restoration plan by the operating entity brings together two possibilities, one mandatory, the five-year review of compliance with the content of the restoration plan and, where appropriate, the modification if there have been substantial changes in the approved restoration plan, which obliges, in this case, a request for authorization of the restoration plan and a prior report of the environmental authority, with the possibility, if necessary, of a new environmental impact assessment process.

In most of the autonomous communities only Royal Decree 975/2009 of 12 June for the authorisation of the restoration plan applies, and the additional rule is Law 39/2015, of October 1, and Law 22/2011 of July 28, waste and contaminated soils. In those autonomys with its own regulatory rule of restoration, this applies in everything that does not object to the provisions of Royal Decree 975/2009, of June 12.

As regards the application, the main differentiating elements are essentially based on the establishment of the phased financial guarantee in relation to the restoration phases, and the criteria for setting the amount are broader than the Royal Decree 975/2009 of 12 June. A unique criterion of duplication **of** restoration plans is regulated in the Community of Valencia.

The regulation of public participation has been expanded through the right to public information and good governance. Only the Galician standard indicates, with the aim of facilitating understanding for the purposeof the public information process, that the request for mining rights will be accompanied by a non-technical summary of all the documents specified in its articulation. Other differences between the regional and state laws are in the authorization of the restoration plan, where at some regional levels municipal participation is facilitated, through the report to be issued by the municipalities affected on the exploitation project and the Restoration programme.

The mandatory mandatory report of the competent health authority, where the implementation of the restoration plan may pose a risk to human health, in most of the autonomous Communities the criteria of

their respective public health laws are similar in making references to the pre-operating health authorisation procedure if the applicable sectoral legislation so provides, and specifies the need for regulatory regulation of its content, the criteria and requirements for its content Granting.

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