**Exploration and exploitation of mineral resources in waters under Italian sovereignty or jurisdiction and in the possible EEZ**

1. **Maritime areas under Italian sovereignty and jurisdiction**
	1. **The relevant international legal framework: the UNCLOS regime**

The United Nations Convention on the Law of the Sea (UNCLOS) confers coastal States different rights, freedoms, and duties in relation to the area of sea concerned. Before exploring the specific issue assigned to our research unit and related to the exploration and exploitation of mineral resources in waters under Italian sovereignty and jurisdiction, it seems important to briefly analyse, for this specific purpose, the legal regime provided by UNCLOS for the *territorial sea*, the *exclusive economic zone* (EEZ) and the *continental shelf*.

Over the territorial sea (whose maximum extension is that of 12 nautical miles from the baseline) the coastal State exercises its sovereignty, which extends to the airspace over it aswell as to its bed and subsoil and which must be exercised in accordance with UNCLOS and with other rules of international law (UNCLOS Art. 2).

In the context of the territorial sea, it is possible to note a split between the regulation of the seabed and the subsoil on the one hand, and that of the space above it, i.e. the water column, on the other hand. In this sense, while the seabed and the subsoil fall under the full sovereignty of the coastal State, in the corresponding water column applies a limitation of the national sovereignty concerning the innocent passage which can be exercised by foreign ships (UNCLOS Arts. 17-26).

EEZ is an area adjacent to the territorial sea and with a maximum extension of 200 nautical miles from the baseline. In this area, the coastal State exercises a limited series of sovereign rights generally related to the economic exploitation of the natural resources. Such rights include the right to exploration, exploitation, control, conservation, and management of natural resources, biological or non-biological, which are found in the waters above the seabed, on the seabed and in the relevant subsoil, and to conduct other activities connected, such as the production of energy derived from water, currents and winds. In the EEZ the coastal State is also recognized as having jurisdiction over the installation and use of artificial islands, systems and structures; the marine scientific research; the protection and preservation of the marine environment (UNCLOS Art. 56, para. 1).

Differently, in the continental shelf, the coastal States exercises sovereign rights only in relation to the exploration and exploitation of the natural resources within it. These rights are *exclusive* in the sense that if the coastal State does not explore the continental shelf or exploit its resources, no one else may undertake such activities without its express consent (UNCLOS Art. 77(1) and (2)). The aforementioned *natural resources* consist of the mineral and other non-living resources of the seabed and subsoil as well as living organisms belonging to sedentary species, i.e. organisms which, at the adult stage, are immobile on or under the seabed or are incapable of moving except by being in continuous physical contact with the seabed or its subsoil.

UNCLOS Article 78 specifies that the rights of the coastal State over the continental shelf shall not affect the legal regime of the waters and airspace above it and their exercise shall not impede navigation or produce any unjustifiable interference with it or with other rights and freedoms granted by the Convention to other States.

UNCLOS establishes that the coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes (Art. 81) and in relation to the construction and regulation of artificial islands, installations and structures the legal regime is the same of that of the EEZ (Arts 60 and 80).

In brief, the powers vested in coastal States over their continental shelves only relate to the exploitation of specific resources and to connected activities.

In sum, for what concerned the seabed mining, according the UNCLOS, the coastal State exercises its jurisdiction over the territorial sea, the EEZ (if proclaimed) and the continental shelf with different grades of liberties and duties.

The specific regulation of seabed mining within the scope of national sovereignty is thus devolved to domestic legislation, which must respect the general rules established by the UNCLOS.

In this context, it is appropriate to consider the environmental protection standards set by the Convention, which may involve the activities of exploration and exploitation of marine mineral resources in areas under national sovereignty.

In terms of UNCLOS Art. 192 , signatory States have a general obligation to protect and preserve the marine environment within and outside their jurisdiction. Article 194(1) obliges States Parties to take all measures necessary “*to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities*”. States are also required to take all measures necessary to ensure activities within their jurisdiction or control do not cause damage by pollution to other States and their environment (Art. 194(2)). This duty may be relevant in the case of seabed mining, where the impacts of the activities concerned may extend to the EEZ of neighbouring States, with particular regard to the impact on fishery resources and migratory fish stocks.

Another significant obligation to this respect is that enshrined in Art. 194(3)(c), which provides that States Parties should put in place measures to minimise, to the fullest possible extent, “*pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil*”. These should, in particular, include measures to ensure the safety of these operations, to prevent any possible damages, and to regulate the design, construction, and operativity of such installations or devices. These measures must also “*protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life*” (Art. 194(5)).

The legal obligation of States Parties in respect of seabed mining and the protection of the marine environment has also been specified and outlined by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea[[1]](#footnote-1).

Specifically, it was determined that domestic legislation governing seabed mining should be no less “effective than international standards, regulations and procedures.” From this statement, it can be inferred that the domestic legislation, although related to seabed mining in areas of national jurisdiction and not in the Area, may not be less effective than the regulations established in the International Seabed Authority's Mining Code, which to date is still being drafted. The Seabed Disputes Chamber has also expressly ruled on the point as follows: “States have a direct obligation under international law to ensure that seabed mining activities are regulated in accordance with the precautionary approach, employing best environmental practices and conducting prior environmental impact assessment.” In other words, “an effective state response to these obligations ultimately requires an appropriate national legislative framework” to regulate seabed mining.

As a result, it will be necessary to verify, first, that the domestic legal framework envisaged by Italy is in line with these principles and the general framework prescribed by UNCLOS. Secondly, it also seems interesting to check the process of drafting the International Seabed Authority's Mining Code in order to see what environmental standards will be imposed, with which domestic regulations will also have to comply.

On the other hand, it will also be necessary to assess the compliance of Italian domestic legislation to the environmental obligations imposed by the European Union concerning seabed mining, which will be discussed in the following paragraphs.

* 1. **The relevant national legislation to date**

The first relevant domestic legislation regarding the exploration and exploitation of marine mineral resources is represented by Law No. 613/1967, which dictated a (new) regulation for "research" and "cultivation" of hydrocarbons to be carried out in seabed and subsoil subject to jurisdiction and sovereignty of the Italian State, i.e. within the territorial sea and/or within the continental shelf.

Through the aforementioned Law, a distinction of legal regulation on mining activities were realized depending on the location of the mining deposits, “onshore” (Law No. 6/1957) or, vice versa, “offshore” (Law No. 613/1967),[[2]](#footnote-2) which persisted until the unification of the two regulations (for land and sea) implemented by Law No. 922/1991.

Following European Directive 94/22/EC, specifically dedicated to the “[...] conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons,” which was functional to reach competitiveness in the sector through the removal of all forms of discrimination between operators in the access to and subsequent exercise of mining activities, Legislative Decree No. 625 of November 25, 1996,[[3]](#footnote-3) and subsequent modifications, transposing the aforementioned directive and amending the previous regulations, was then adopted at the domestic level.

The internal legal framework regarding the issuance of offshore mining titles provides for a clear separation of the 3 mining macro-activities that are part of the “upstream mining” chain (“prospecting,” “exploration,” and “cultivation”). These expressly defined activities, precisely in light of their structural diversity, are treated separately and thus characterized by separate authorizing and licensing mining titles, each of which has its own specific legal regime.

As for the maritime areas that may be affected by mining titles, within the limits of the continental shelf, Law No. 9/1991, with a view to the protection of the maritime ecosystem, had provided, both an express legislative prohibition to carry out hydrocarbon prospecting, exploration and cultivation activities “[...] in the waters of the Gulf of Naples, the Gulf of Salerno and the Egadi Islands, without prejudice to existing permits, authorizations and concessions” (cf. Art. 4), as well as the suspension of “[...] exploration permits in areas declared a national park or marine reserve” (cf. Art. 6, para. 13).

A further reduction of the marine areas subject to mining titles was implemented by Legislative Decree No. 128/2010,[[4]](#footnote-4) which established a ban concerning any legally protected marine and/or coastal area under any title. In addition, it was established that the interdictory constraint of protection against any mining activity is not imitated to the boundary perimeter of the marine protected area only but also involves an additional marine area, the so-called “protection frame.”

Following the establishment of the no-take zone, under which mining titles involving these areas were extended with reductions and/or completely revoked, in the period between 2015 and 2020 there was a significant overall decrease in the marine belts affected by mining titles.

The aforementioned Legislative Decree No. 128/2010 also provides that, outside the areas subject to the highest environmental protection (prohibition areas), all hydrocarbon prospecting, exploration and cultivation activities, which may affect the marine environment, shall be subject to an environmental impact assessment procedure (so-called V.I.A. ) following the procedures outlined in Articles 21 ff. of Legislative Decree 152/2006 (the so-called Consolidated Environmental Act) with extensive involvement of local autonomies potentially affected by the impact of the requested activities (in this case, the local authorities located within a 12-mile radius of the marine and coastal areas affected by the interventions).

Another domestic regulation pertaining to the exploration and exploitation of marine mineral resources in areas under national jurisdiction, which is particularly relevant to environmental matters, is the Legislative Decree No. 145 of August 18, 2015,[[5]](#footnote-5) which transposes European Directive 2013/30/EU (so called “Offshore Directive”), which established precise rules for the entire cycle of exploration, drilling and production activities at sea, starting from the initial project until the decommissioning of the facilities, with a special focus on safety and prevention of pollution and serious environmental accidents.

With the aforementioned Legislative Decree 145/2015, the Italian competent authority for offshore safety was established in the form of a collegial body, called the “Committee for the Safety of Operations at Sea,” with regulatory, supervisory and control powers in order to prevent serious accidents in upstream activities at sea and to limit their possible consequences.

Therefore, it will be appropriate to investigate the regulation, composition, internal organization, and scheduling of the activities of this body, as well as to verify its current effective operativity, from its establishment to the present.

Another relevant regulation is the Ministerial Decree of 7 December 2016,[[6]](#footnote-6) which updated the domestic legal framework governing the administrative procedures for the issuance and exercise of licences for the prospecting, exploration and exploitation of liquid and gaseous hydrocarbons, formalizing the separation between the regulatory functions, relating to the safety of the oil and gas sector, and the functions relating to the issuance of licences for energy-mineral resources.

In implementation of European Directive 2014/52/EU, amending Directive 2011/92/EU on the assessment of the environmental impact of certain public and private projects, Legislative Decree No. 104 of 16 June 2017[[7]](#footnote-7) was also adopted, which intervened on the regulation of environmental impact assessment procedures for projects relating to upstream mining activities.

The largest part of the EU’s domestic oil and gas in Mediterranean sea is produced in by Italy and Croatia; Italy is the most active Member State for all installations in the EU waters in Mediterranean (25%), followed by Croatia.

With regard to the issue of the decommissioning of exhausted Oil&Gas platforms, although there is currently no systematic and homogeneous regulatory framework of the matter with reference to Italian legislation, the most recent indications can be found in the aforementioned Legislative Decree No. 145 of 18 August 2015 (Article 2, para. 1, letter g) and in Article 25, para. 6 of Legislative Decree No. 145 of 18 August 2015 (Article 2, para. 1, letter g) as well as in Article 25, para. 6 of Legislative Decree No. 104 of 16 June 2017 (‘Environmental Impact Assessment’), which establish that the Ministry of Economic Development, in agreement with the Ministry of the Environment and the Ministry of Culture, shall adopt national guidelines for the decommissioning of offshore platforms in order to ensure the quality and completeness of the assessment of their environmental impact.

These guidelines have been adopted with Ministerial Decree 15 February 2019 and provide for two alternative ways of decommissioning: 1) removal of the platform; 2) reuse for different purposes. The Guidelines apply to production platforms, compression platforms, transit platforms and related infrastructures serving mining facilities within the framework of mining concessions for the production of hydrocarbon deposits located in the territorial sea and the continental shelf.

It will therefore be appropriate to verify and monitor the actual implementation of these guidelines as well as their compatibility with the international and European legal framework on the decommissioning of platforms.

Lastly, it is worth mentioning the adoption of the Decree of the Minister of Ecological Transition of 28.12.2021, approving the Plan for the Sustainable Energy Transition of Eligible Areas (PiTESAI), adopted in order to identify a defined framework of reference of the areas where hydrocarbon prospection, exploration and production activities are permitted on the national territory, aimed at enhancing their environmental, social and economic sustainability. The PiTESAI must take into account all the characteristics of the territory, from a social, industrial, urban and morphological point of view, with particular reference to the hydrogeological structure and current planning. With regard to marine areas, the PiTESAI must consider the possible effects on the marine ecosystem, as well as take into account the analysis of sea routes, the fishiness of the areas and the possible interference on the coasts. The PiTESAI must also indicate when and how to decommission installations that have ceased their activities.

With particular reference to offshore activities, it should finally be noted that in compliance with the PiTESAI, only 5% of the entire marine area under Italian jurisdiction may still be considered 'suitable' for new hydrocarbon prospection, exploration and production activities, but only for gas. Given the decarbonization objectives for 2050 and the European objective of expanding the sea area covered by the network of marine protected areas to at least 30%, the PiTESAI has decided to exclude for the future the opening to upstream activities of new marine areas that have not been open to hydrocarbon exploration and production to date, and to revoke the licences for those areas for which no new instances have been submitted in the last 30 years, thus adopting a criterion of 're-perimeter' of the current marine areas.

It is precisely in line with the PiTESAI, for example, that the Plan for the Maritime Space of the Adriatic Area (adopted on the basis of Legislative Decree, no. 201/2016, transposing Directive 2014/89/EU; the so-called Maritime Spatial Planning Directive) specifies, for platforms falling within the territorial sea, the possibility of maintaining exploitation until the technical and/or economic cultivability of the deposit ceases, reducing conflicts and increasing synergies with other sectors of the sea economy.

For offshore areas, the Plan envisages a similar approach. In the suitable areas envisaged by PITESAI, there is the possibility, in any case discouraged, of submitting research and concession applications and continuing research activities already begun, but only as regards the gas resource.

Regarding the decommissioning of platforms, the Adriatic Plan also promotes the reconversion of these infrastructures for other uses, such as supporting the production, transformation and storage of renewable energy, the creation of 'biological protection' areas and/or sites of interest for tourism and underwater fishing, aquaculture and marine research.

A further objective of the research unit will therefore be to investigate future Maritime Spatial Management Plans, with particular attention to the provisions dedicated to seabed mining activities, assess their compatibility with the relevant national, European and international regulatory framework and monitor their actual implementation.

In conclusion, to date, the national legal framework relating to the exploration and exploitation of marine mineral resources in areas under national jurisdiction appears to be broad and constantly evolving, also in the light of the progressive updating with respect to the relevant European legislation.

The research unit's objective will therefore be to monitor the domestic legal developments in the field and assess their concrete implementation.

**2. Focus on EEZ regime and Italian institution of an EEZ**

The institution of the EEZ, provided for in general international law and codified by UNCLOS (Arts. 55-75) has assumed a fundamental role in the law of the sea and continues to be much discussed in doctrine as well as the protagonist of several international disputes. Aspects that will have to be preliminarily analysed by the research unit.

 Very briefly, the EEZ was created as a compromise solution to the requests of some developing states, especially in Latin America, to extend their powers of exploitation of marine resources to an area adjacent to their coasts but wider than the territorial sea, limited to 12 nautical miles from the baseline. The EEZ in fact allows the coastal state to maintain a series of exclusive prerogatives of an essentially economic nature in an area, to be defined, but which cannot in any case exceed 200 nautical miles.

In particular, in the EEZ, as mentioned above, the coastal State holds sovereign rights for the purpose of exploration, exploitation, conservation and management of the biological and non-biological natural marine resources of the water column, the space above it, the seabed and its subsoil, as well as any other activity directed to the exploration and use of the area for economic purposes. It is clear that the exploration and exploitation of marine mineral resources falls squarely within the scope of these powers.

In the EEZ, the coastal state also has jurisdiction over: (i) installation and use of artificial islands, installations and structures; (ii) marine scientific research; and (iii) protection and preservation of the marine environment.

The EEZ is an institution originally designed for oceanic spaces and not for enclosed or semi-enclosed seas. It is no coincidence, in fact, that in the Mediterranean, a notoriously difficult sea in terms of the possibilities of delimiting state marine spaces, there has been a long period of abstention on the part of states with respect to the establishment of their own EEZs, which opted instead, at first, for the proclamation of so-called minoris generis zones, i.e. zones that attribute to the coastal state a limited set of powers with respect to those proper to the EEZ, such as, alternatively, 'exclusive fishing zones', 'ecological protection zones' or 'mixed zones'. Recently, however, this practice is changing across Mediterranean States, which are progressively transforming their reduced zones into exclusive economic zones through the enactment of specific internal legislative acts. As is well known, in fact, while the MT and the CP are so-called automatic maritime zones, in the sense that the relative exclusive powers are granted to all coastal states regardless of their will and behaviour, the EEZ, in order to be established, requires an express proclamation, as indispensable act of a coastal state for the establishment of its rights and powers within it.

Within this framework, Italy has long espoused a policy of not claiming the EEZ (proclaiming only an 'ecological protection zone' (EPZ) with Decree No. 209/2011) and of reluctance towards the extension of its 'economic' jurisdiction in the Mediterranean, due to mainly fishing and military interests.

This policy was abandoned relatively recently, when Law No 91 of 14 July 2021 authorised 'the establishment of exclusive economic zones from the outer limits of the Italian territorial sea'.

The law also stipulates that the EEZ must be established by 'decree of the President of the Republic, after deliberation by the Council of Ministers, on the proposal of the Minister of Foreign Affairs and International Cooperation, to be notified to the States whose territory is contiguous to or overlooks Italian territory'. A decree that, to date, although authorised, has not yet been issued; hence it can be said that the Italian EEZ is an institution that is currently in the making but not yet in place.

The same authorisation Law also provides, with regard to the spatial delimitation of the Italian EEZ, that it may extend up to the limit resulting from bilateral agreements to be entered into with the States concerned, subject to the authorisation procedure for ratification under Article 80 of the Italian Constitution. To date, only two bilateral agreement have been concluded with Greece[[8]](#footnote-8) and Croatia,[[9]](#footnote-9) which have simply consolidated as delimitation for the EEZ the demarcation line already established for the reciprocal continental shelves; a line that has therefore become an *all-purposes line*, i.e. valid for all marine spaces subject to bilateral economic interests.

The research unit's objective is therefore to monitor the progressive 'construction' process of the Italian EEZ, both in terms of the stipulation of bilateral delimitation agreements with the States concerned and in terms of the issuance of the relevant domestic law of institution, in order to verify how legislative interventions to establish the EEZ may affect the domestic regulation related to exploration and exploitation activities of marine mineral resources in areas under national jurisdiction, precisely in view of the powers and duties that the coastal State exercises in the EEZ.

Accennare dei principali problem di delimitazione con Algeria, Malata, Tunisia, Libia

It should be noted that, with regard to the surveillance of the future outer limit of the EEZ, the combined provisions of Article 2(c) of the Law No. 979 of 1982 and Article 115 of the Legislative Decree No. 66 of 2010, in a far-sighted manner, already assign to the Navy the ownership of the "surveillance service of maritime and economic activities, including fishing activities, subject to national jurisdiction in areas beyond the outer limit of the territorial sea", including the future EEZ, when it will be formally established.

**3. Exploration and exploitation of marine mineral resources under EU legislation**

According to Articles 11 and 191 to 193 TFEU, the EU has the competence to act in all areas of environmental policy, such as air and water pollution, waste management and climate change. Its scope of action is limited by the principle of subsidiarity and the requirement of unanimity in the Council in matters of taxation, spatial planning, land use, quantitative management of water resources, choice of energy sources and the structure of energy supply.

In particular, Article 191 TFEU establishes the objectives of preserving, protecting and improving the quality of the environment and the prudent and rational use of natural resources. The same provision also establishes the obligation for Member States to support all UE actions through a high level of protection based on the precautionary principle and the principles of preventive action, of correction, as a priority at source, of damages caused to the environment, and the “polluter pays” principle.

According to Article 192 TFEU (1), the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide on the action to be taken by the Union in order to achieve the objectives set out in Article 191 TFEU.

It was on this legal basis that the Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC was adopted.

“The objective of this Directive is to reduce as far as possible the occurrence of major accidents relating to offshore oil and gas operations and to limit their consequences, thus increasing the protection of the marine environment and coastal economies against pollution, establishing minimum conditions for safe offshore exploration and exploitation of oil and gas and limiting possible disruptions to Union indigenous energy production, and to improve the response mechanisms in case of an accident.”[[10]](#footnote-10)

A key point of the directive is the protection of the marine environment, an objective set out in the marine strategy framework directive - Directive 2008/56/EC, which establishes a framework for action in the field of marine environmental policy.

The Directive 2013/30/EU, as already mentioned, was transposed into domestic law by Legislative Decree 145/2015, which was followed by the formal establishment of the 'Committee for the Safety of Offshore Operations', as the competent state authority for the supervision and control of offshore oil and gas operations.

Another European legislative act relevant in the field of seabed mining in the area of national jurisdiction is Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning.

The directive requires EU Member States to elaborate maritime spatial plans no later than 31 March 2021, which should offer recognition of existing human activities in their marine waters and identify their most effective future spatial development. Through these plans, as already mentioned, the use related to the extraction and exploitation of mineral resources will also be redefined.

Finally, a number of European Commission studies relevant to the topic being studied by the research unit should be considered, such as, for example, the "Study on the offshore grid potential in the Mediterranean Region” (2022), and the “Study on Decommissioning of offshore oil and gas installations: a technical, legal and political analysis” (2021).

**4. THE OFFSHORE SECTOR FOR OIL AND GAS in Italy**

Italian waters are divided into 8 'marine areas' identified by alphabetical letters. The search for liquid hydrocarbons/gases in the Italian sea can only be carried out in certain 'marine areas' designated by the Parliament.

In order to protect the coasts and the environment, restrictions have been introduced on the areas where mining activities can be carried out (Ministerial Decree of 9 August 2013).

Focalizzare l’attenzione sulla Zona C in area che si sovrappone a rivendicazioni di Malta.

… Guarda il document Il Mare che ti avevo dato, del ministero sviluppo economico (ed. 2020).



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