

An announcement that membership talks opened would give a strong boost to the campaign of Zoran Zaev's Social Democratic Union of Macedonia (SDSM) just a fortnight before the election. The SDSM-led government has centred its mandate around Western-oriented reforms, winning the valuable support of the U.S. and EU member states in 2016. Yet despite SDSM's positive international profile and vocally proclaimed openness to foreign investors, its track record in terms of providing legal certainty has proved chequered. The parliament of North Macedonia approved the Public Prosecutor's Office (PPO) Law, then voted to hold early elections as planned on April 12, and dissolved accordingly. The PPO Law was the final formal condition for the launch of EU accession talks with the country, expected to be announced at the EU summit on March 25-27.

Planned mining law amendments - more safeguards or arbitrariness?

On February 15, amid the political noise in parliament, there were several legislative items on the agenda in addition to the PPO Law. They included draft amendments to the Law on Mineral Resources, which would enable the government to unilaterally terminate mining concessions if the safety and health of the local population, as well as public interest, are at risk.

Under the amendments proposed by the SDSM-led coalition, the concession can also be terminated if the concessionaire exploits less than 30% of the planned amount of mineral resources in the course of one year, or if the concessionaire fails to notify the economy ministry of changes in the ownership of its majority owner, the economy ministry explained in a statement.

"The main aim of this government is to work in the interest of improving the quality of life of the citizens and to make decisions that will meet the demands not only of the citizens but also the business community," economy minister Kresnik Bektesi said in the statement.

Although the SDSM claims the draft amendments aim to protect the interest of the state and the health of the people, their vague wording leaves the government considerable discretion for arbitrary decisions, centralises decision-making and bypasses mayors, leaving the permitting process vulnerable to potential politically-motivated abuse, critics say.

Furthermore, they were drafted without consulting all stakeholders, including existing concessionaires, who could have contributed on issues such as the practicalities of moving concessions after investing significant time and money in a project, and the difficulties in finding a comparable replacement.

"Most of the provisions of the proposed legislative amendments are unclear and imprecise, leaving room for subjective and arbitrary actions on the part of state bodies, creating legal

insecurity for the companies operating in this sector," the president of the Macedonian Mining Association, Nikolajco Nikolov, said in a statement issued by the Economic Chamber of Macedonia.

Before it moves forth with the amendments, the government should hold a public debate with representatives of the business community, the economy ministry, the non-governmental sector, the scientific community and other stakeholders, he added.

In addition, the amendments would starve the sector of investment, Nikolov told local media. International concessionaires share his view.

"The proposed amendments are concerning. They were published without any consultation with the industry or stakeholders, and are unclear in how they will be applied and how concerns about health and safety will be assessed. They provide a route for unilateral termination of contracts and arbitrary decision-making that not only go against what the EU are looking for in terms of legal certainty and anti-corruption efforts but will scare away potential investors," Patrick Forward, chief operating officer at Canada's Euromax Resources, told SeeNews.

The Canadian company's core copper-gold development project is the Ilovica-Shtuka project in the Ograzhden mountain in North Macedonia. The investment will be worth 343 million euro, according to Euromax press releases.

In December 2019, however, the government of North Macedonia decided to unilaterally end the concession agreement with Euromax Resources on the basis of delays in the filing of the relevant permits. Euromax responded that the decision was politically motivated and threatened to seek international arbitration.

See you in court

Euromax is not the only foreign investor in Macedonia's mining sector whose relations with the government have been less than easy.

According to data from the United Nations Conference on Trade and Development (UNCTAD), a permanent intergovernmental body within the United Nations Secretariat dealing with trade, investment, and development issues, of the seven arbitration cases that have been filed since the adoption of the Law on International Commercial Arbitration in 2006, three concern the alleged arbitrary conduct of SDSM in the mining sector since 2017. In all cases, foreign investors were impacted, with India's Binani Group alleging that its lead and zinc concession in Dobrevo and Toranica had been arbitrarily expropriated and reassigned, while Ukrainian-British company Copper Investments claims that its Kazandol copper, gold and silver concession was cancelled without legal basis.

Meanwhile, Benny Steinmetz's Cunico Resources claimed that the government had interfered in the sale of its Kavadarci ferro-nickel mine, effectively resulting in the bankruptcy of the operating company. The concessions had all been awarded by the previous VMRO-DPMNE government.

No other Western Balkan state has a comparable number of arbitrations impacting one sector, nor in such rapid succession, according to the same database.

Win for environmentalists

Local environmental organisations, however, see the proposed amendments to the mining legislation as a step in the right direction.

In recent years, the population in the agricultural regions has become aware of the risks that mines pose and is increasingly opposed to the opening of mines that would threaten the environment and affect agricultural production, Vasil Anastasovski from the Association for Protection of Nature of Macedonia, told SeeNews.

"Instead of leaving the population in the agricultural regions to fight alone against the industry's potential harm on the environment, it would be good if that could be regulated by the law on mineral resources," Anastasovski told SeeNews.

SDSM leader Zoran Zaev has said in a speech given while he was prime minister that the mining sector is a "cornerstone" of the economy. The question is whether the government can balance environmental concerns with other local needs, providing both appropriate protection and much-needed jobs like much of the rest of Europe.

Snap decisions before the snap elections

Whether the planned amendments will be put on the backburner, or back on the table, depends very much on the outcome of the April 12 elections.

Due to timing, SDSM was ultimately unable to pass the law. Nonetheless, it was high on its agenda and despite the complexity of the issue, the law was to be passed via a shortened legislative procedure. If SDSM wins the elections, the amendment could make a return. In the event of its passage, the scope for unilateral action shaped by political considerations will increase, its critics fear.

Mineral concessions may become a source of patronage as a result, providing incentives for corruption and creating uncertainty in a sector which accounts for some 1.5% of the country's GDP, according to official statistics.

In 2018, the flow of foreign direct investment (FDI) into North Macedonia totalled 624.5 million euro. In the first half of 2019, however, it plummeted to 55.6 million euro, compared

to 312.8 million euro in the same period of 2018, central bank data showed.

Opinion polls give a slight lead to SDSM leader Zoran Zaev.

According to a poll conducted by the Macedonian Centre for International Cooperation (MCMS) and the Institute for Democracy Societas Civilis in December, if the elections were held back then, SDSM would get 22.1% support, while VMRO-DPMNE would get 20.4% of the votes.

Zaev would make a better prime minister than Hristijan Mickoski, leader of VMRO-DPMNE, according to the results of a poll conducted by polling agency Rejting of 1,080 people in January 18-29. When asked which party-led government could better solve the country's main issues, 30% answered in favour of an SDSM-led cabinet, while 26% of the surveyed people supported a government led by VMRO-DPMNE. Moreover, 42% of those polled think that an SDSM-led government can secure a quicker EU accession, while 22% believe VMRO-DPMNE can do that.

An invitation to open EU accession talks would further widen the gap between Zaev and Mickoski but it would also require a stronger commitment on Zaev's part to a predictable and competitive free market where foreign investors are indeed welcome.

Source: seenews.com