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Abstract

Pekka Vihervuori, Doctor of Law, has assessed the effectiveness of the Mining Act against the targets set in the act, and the interfunctionality of the Mining Act and other key legislation on mining operations. Feedback from interest groups was collected for the report.

Observations and recommendations for legislative development are presented in the report.

No fundamental changes to the mining legislation system are proposed. The effectiveness of the legislation could be improved and enhanced with various amendments. Based on the feedback, amendments were mainly called for to improve the interoperability of the different permit systems and the related coordination. Recent legislation already provides opportunities for this, although on a voluntary basis.

Provisions of the Mining Act on the general obligations of the permit holder should be amended to allow more detailed conditions to be set during the permit consideration process. This could involve more extensive and consistent application of conditions aimed at preventing and reducing harms. The regulatory framework regarding permit inspection needs to be harmonised. If the land use planning referred to in the Land Use and Building Act would be done at the municipal level, this would emphasise municipal self-government. Provisions of the Mining Act regarding notifications should be amended. The system of collaterals in mining operations needs a more thorough examination. The assignment given did not require recommendations on compensations under the Mining Act, or any other channelling of benefits. It is essential for all parties involved that the supervision of the Mining Act and environmental acts is proportionate, professional, efficient and timely.

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Tiivistelmä

OTT Pekka Vihervuori on arvioinut kaivoslain toimivuutta suhteessa laissa asetettuihin tavoitteisiin sekä kaivoslain ja kaivostoimintaan kohdistuvan muun keskeisen lainsäädännön välisen suhteen toimivuutta. Selvitystä varten on kerätty sidosryhmäpalautetta.

Raportissa esitetään selvityshenkilön havainnot ja suosituksia lainsäädännön kehittämiseksi.

Perustavanlaatuisia muutoksia kaivoslain järjestelmään ei esitetä. Lainsäädännön toiminnallisuutta voidaan parantaa ja lisätä erilaisin säännöstarkistuksin. Palautteen nojalla merkittävimmät tarkistamistoiveet liittyvät kaivostoimintaa koskevien lupajärjestelmien keskinäiseen suhteeseen ja yhteensovittamiseen. Tällainen mahdollisuus on jo tuoreella lainsäädännöllä avattu, vaikkakin vapaaehtoisuuden pohjalta.

Kaivoslain säännöksiä luvanhaltijan yleisistä velvollisuuksista ja niiden täsmentymisestä lupaharkinnassa tulisi kehittää etenkin erilaisia haittoja estävin ja vähentävin lupamääräyksin nykyistä kattavammin ja johdonmukaisemmin. Lupien tarkistamisia koskeva sääntelykokonaisuus on syytä yhtenäistää. Maankäyttö- ja rakennuslain mukaisen kuntatasoisen kaavan vaatimus korostaisi kunnan itsehallintoa. Kaivoslain sääntelyä tiedoksiantamisesta tulisi korjata. Kaivostoiminnan vakuusjärjestelmä kaipaa laajempaa tarkastelua. Toimeksiannossa ei edellytetty suosituksia kaivoslain mukaisista korvauksista tai muunlaisesta etujen kanavoinnista. Kaikkien osapuolten kannalta on olennaista, että kaivoslain ja ympäristölakien valvonta tapahtuu oikeasuhtaisesti, asiantuntevasti, tehokkaasti ja oikea-aikaisesti.

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Juris doktor Pekka Vihervuori har utvärderat hur gruvlagen fungerar i relation till de i lagen uppsatta målen samt hur förhållandet mellan gruvlagen och annan central lagstiftning om gruvdrift fungerar. För utredningen inhämtades respons från intressentgrupper.

I rapporten presenteras utredningspersonens iakttagelser och rekommendationer för utveckling av lagstiftningen.

I rapporten föreslås inga grundläggande ändringar av systemet enligt gruvlagen. Lagstiftningens funktionalitet kan förbättras och ökas genom olika slags revideringar av bestämmelserna. Av den insamlade responsen kan man dra den slutsatsen att de viktigaste önskemålen om revidering hänför sig till det ömsesidiga förhållandet mellan olika tillståndssystem och samordningen av dessa. En sådan möjlighet har redan öppnats, om än på frivillig basis, genom färsk lagstiftning.

Gruvlagens bestämmelser om tillståndshavarens allmänna skyldigheter och preciseringen av dessa vid tillståndsprövningen bör utvecklas, på ett mer täckande och systematiskt sätt än nuförtiden, särskilt genom sådana tillståndsvillkor som förebygger och minskar olika slags olägenheter. Bestämmelserna om kontroll av tillstånden bör förenhetligas. Ett krav angående en plan på kommunnivå i enlighet med markanvändnings- och bygglagen skulle framhäva det kommunala självstyret. Gruvlagens bestämmelser om delgivning bör revideras. Systemet med säkerheter inom gruvdriften är i behov av en mer omfattande översyn. I uppdraget förutsattes inte några rekommendationer om ersättningar enligt gruvlagen eller annan sorts kanalisering av förmåner. Det väsentliga ur alla parters synvinkel är att tillsynen över efterlevnaden av gruvlagen och miljölagstiftningen är proportionerlig, sakkunnig och effektiv och att den sker i rätt tid.

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ABSTRACT

Background to and implementation of the assessment

On 1 March 2019, the Ministry of Economic Affairs and Employment and the Ministry of the Environment jointly appointed a rapporteur to survey and assess the effectiveness of the Mining Act in terms of the objectives specified in the Act as well as the interrelations between the Mining Act and other key legislation on mining operations. Pekka Vihervuori, LL.D., was appointed as the rapporteur.

Feedback from stakeholders was collected through an extensive survey and through a hearing, organised on 2 April 2019, targeting key operators. Several stakeholders also supplied comments on their own initiative. Moreover, the otakantaa.fi website provided a platform for open comments until the end of May 2019. The rapporteur acquainted himself with all the feedback received.

In accordance with the assignment, the key findings of the work were submitted to the government negotiators in a report on interim conclusions published on 26 April 2019. In the report, the rapporteur summed up the observations made up to that point and presented preliminary proposals for the improvement of legislation. The proposals have been further specified and expanded in this final report, which also includes a few completely new proposals.

Needs for change and starting point for proposals

The feedback indicated potential conflicts of interest regarding mining operations as well as divergent interests of different parties. However, hardly any fundamental changes to the premises of present regulation were suggested. For example, no feasible alternatives were proposed to the claim procedure or the reservation and priority regulations governing the relations between mining companies, which lay

the foundation for the present system. The rapporteur does not propose fundamental changes to the framework of the Mining Act. Nevertheless, various amendments to provisions could help improve and increase the effectiveness of different segments of regulation. Mutual trust and legitimacy can also be enhanced through targeted revisions that immediately improve the position of one party alone. According to the feedback, any review of effectiveness and its improvement should primarily focus on the interoperation and coordination of different permit schemes.

According to a previous statement obtained by the Ministry of Economic Affairs and Employment, the applicable Mining Act does not conflict with CETA (the Comprehensive Economic and Trade Agreement). No specific statement of this kind has been obtained regarding the Environmental Protection Act or the Nature Conservation Act. According to the statement, any legislative act constituting a potential violation of CETA would very likely also breach the Finnish Constitution. While refraining from commenting on this opinion, the rapporteur does believe it is necessary to take into account provisions related to CETA or any new investment protection agreements when assessing the needs for legislative amendments and the content of such amendments.

The scope of application of permit schemes and the coordination of permits

As regards the coordination or integration of permits for mining operations, it should be kept in mind that future legislation will include the possibility to coordinate (substantively) separate permit procedures, even if on a voluntary basis. On 5 March 2019, Parliament approved the amended government proposal HE 269/2018 vp, which encompasses the act on the coordination of certain environmental permit procedures (“coordination act”) and related amendments to eleven other acts, including the Mining Act. Serious consideration should be given to adopting the procedure specified in the coordination act as the main rule governing the relationship between mining permits and environmental permits. Consent is not a requirement for the said procedure. Another option would be to directly opt for a deeper integration of permits. It seems rational, and perhaps even necessary, to jointly prepare applications for mining permits and environmental permits in cases involving coordination. However, this might delay the initiation of permit processing compared to present mining permits. To prevent the negative impacts of the priority scheme specified in the Mining Act, a separate reservation mechanism could be included in the Mining Act in order to protect priority.

The substance of permit decisions

The provisions of the Mining Act should be developed regarding the general obligations of permit holders and the specification of such obligations during the permit consideration process, especially through more comprehensive and consistent permit regulations aimed at preventing and reducing damages.

The wording of section 48, subsection 2 of the Mining Act, which lays down provisions on the unconditional effects-based obstacle to granting a mining permit, should be revised in line with the Water Act – at least to reflect the expression "living or economic conditions" used in the Water Act. Furthermore, a regulatory framework based on the comparison of interests, similar to that in the Water Act, might also be suitable in the Mining Act alongside the provisions on unconditional obstacles. However, the feedback received does not offer a clear model for such a framework, nor does the rapporteur propose one. The conditions for exploration permits could be revised, for example, by issuing provisions according to which considerable nuisance to another line of business, such as tourism, would, in principle, constitute an obstacle to an exploration permit.

To eliminate gaps between the scope of different acts, the substantive provisions of the Mining Act could be expanded with express provisions on permit regulations aimed at reducing landscape-related nuisance (e.g. with the help of wooded zones), eliminating or reducing immissions and other forms of neighbourhood nuisance, as well as protecting the conditions for other lines of business, such as tourism.

There are good grounds for supplementing the Mining Act with more detailed provisions on decision-making regarding the restoration of mining areas, which would take landscape perspectives into account alongside questions related to the safety of the area. Landscaping and restoration questions are closely related to the environmental permit and waste management plan for extractive waste, the mining permit, as well as the active rehabilitation of the mine and the decision to close it. Therefore, the related provisions should form a substantively and procedurally coordinated, effective system in all cases. Specific provisions on the closing and follow-up to the closure of the mine to ensure that it does not constitute a risk to health, the environment or general safety, should be included in an appropriate section of the Mining Act.

Changes and revisions during operations

As regards mining operations, the regulative framework for permit revisions should be harmonised, without putting long-term operations at risk. This could be done by including in the Mining Act express provisions on partial closure, by clarifying the review of the waste management plan for extractive waste as part of the environmental permit and by reinstituting in the Environmental Protection Act the possibility of carrying out periodic revisions of the permit regulations of new environmental permits valid until further notice. This possibility was removed from the Act in 2015. As a regulatory element improving predictability, the latter measure would also serve as a precautionary measure for non-discriminatory decision-making required by investment protection agreements.

Land use planning and the role of municipalities

A move to require the municipality's consent for an exploration permit would, as such, be a straightforward solution that would also emphasise the autonomy of municipalities. From the perspective of mining, however, the result would be difficult to predict, and it could not replace the effect of legally binding plans, since such plans create legitimate expectations for various parties regarding land use.

A plan specified in the Land Use and Building Act is a prerequisite for a mining permit. However, such a plan can be replaced with another type of land-use report, although this provision has given rise to ambiguous interpretations. This structural incoherence regarding mining permits calls for amendment. An obvious solution would be to eliminate the provision regarding other types of reports, possibly excepting situations that are less significant to land use, such as minor auxiliary areas. Consequently, the requirement for a plan would place greater emphasis on the autonomy of municipalities, while ensuring that municipal decision-making regarding plans would be legally controlled, compared to, for example, a mere requirement for consent. Moreover, a regional land use plan does not reflect the autonomy of the municipality in which the planned mine is to be located. There are good grounds, therefore, to exclude regional land use plans from the available alternatives in this context. Good regional land use planning can, of course, improve the conditions of municipal land use planning.

The relationship between the Mining Act and land use planning norms requires, in all cases, that the planned reform of the Land Use and Building Act preserve a legally binding planning instrument at the municipal level. This also applies to the relationship

between the Environmental Protection Act and the provisions regulating land use plans. Land use planning is, most likely, an adequate way of taking national security into account in land use, as referred to in amendment 467/2019 of the Land Use and Building Act.

The possibility of controlling mining operations by employing new types of agreements concluded between the municipality and the mining operator has also been brought up in public. While good cooperation is obviously necessary in many respects, it is difficult to conceive of such agreements assuming the role of legislative norms. Depending on the location of the mine, the impacts of mining may often be felt outside the source municipality, and especially the impact on waterways can stretch far and wide. Questions concerning participation systems, appeals, legal remedies, the legal nature and validity of the agreement, the resolution of interpretative disputes, the monitoring of adherence to the provisions of the agreement, and the relationship between the agreement and standard processes would be patently difficult to regulate, even through legislative provisions, as regards agreements of the proposed type.

For example, if land use planning is employed to prioritise conditions for tourism over mining operations, this calls for a new approach to land use outside the areas specifically designated for tourism and accommodation services. In fact, a revision of land use planning legislation may be necessary for this purpose.

Improving the opportunities for participation

In contrast to, for example, the Environmental Protection Act and the Water Act, the Mining Act does not always require general notifications to be supplemented with separate notifications to the landowner, neighbours or other directly affected parties regarding exploration and mining permit applications and corresponding permit decisions. This defect, which weakens the opportunities to participate and erodes legal protection, should be remedied. As regards electronic notifications and the public notice procedure, the Mining Act should be revised in line with the Environmental Protection Act and the Water Act.

To ensure equal status to reindeer herding cooperatives with regard to the permit procedure, the scope of application of provisions concerning reindeer husbandry and the involvement of reindeer herding cooperatives should be expanded to encompass the entire reindeer herding area, not only the more limited special reindeer herding

area. However, in view of the provisions of the Reindeer Husbandry Act, the provisions on obstacles to the granting of mining permits due to considerable harm caused to reindeer herding need not be applied in other parts of the reindeer herding area.

Tasks of the proceedings establishing a mining area

Consideration should be given to the possibility to determine the scope of the mining area in connection with the proceedings for establishing a mining area, as specified in the Mining Act.

The validity of reservations and reduction of the period of uncertainty

The reservation, exploration and permit scheme specified in the Mining Act inevitably causes landowners and owners of water bodies, as well as outside entrepreneurs, long-term uncertainty regarding the possible uses of the area, even though reservations, as such, do not have legal effects regarding land use or other aspects related to the owner. This is also true in cases where active exploration is not carried out despite the reservation. This period of uncertainty may last uninterrupted for as long as 17 years, from the submission of the reservation notification to the expiry of the last extension to the exploration permit. To somewhat balance the situation between different parties, the landowner's consent could be included in the Mining Act as an additional condition for extensions to exploration permits. In cases of fragmented land ownership, it would be unwarranted to grant one or a few owners the right to prevent the extension from being granted. Therefore, the condition for an extension could be based on the consent of a qualified majority, for example two thirds, of landowners determined on the basis of the area owned.

The feedback received by the rapporteur also included a proposed change, according to which the party applying for a reservation would be required to present a plan for exploration and related funding. In the rapporteur's opinion, the effects and practical implementation of such a change merit an assessment.

Collateral aspects

From a practical viewpoint, the system of collateral for mining operations is, to a certain degree, impractical in that it contains two different types of collateral for the termination and aftercare stage – one specified in section 108 of the Mining Act and the other in section 59 of the Environmental Protection Act – even though their scopes of application differ both in principle and in practice. It may be necessary to create a coordinated method for their "cross use", which is tied to specific conditions and does not put the purpose of either at risk. For this to be purposeful, the scope of the collateral of both acts must first be ensured. Irrespective of this, the joint processing of mining permits and environmental permits would make it easier to set consistent collateral requirements, even if it did not eliminate the problem described. The general inadequacy of collateral was brought up especially in feedback from the authorities. According to the rationale of the Mining Act, the collateral specified in the Environmental Protection Act is mainly intended to cover the costs from the closure of tailings dams, waste rock areas and other waste management areas, while the collateral linked to the mining permit is designed to cover the measures needed for the termination and aftercare of mining operations (excluding nuclear waste management). Apparently, the purpose of collateral specified in the Mining Act, which encompasses more than just immediate safety concerns, is not achieved at present. The situation must be rectified.

The collateral system apparently calls for a broader examination. However, such an examination can be conducted more effectively once certain other reports and projects have made adequate progress.

Requirements on permit holders

The Mining Act, which is based on the claim procedure, is very advantageous to efficient exploration and mining activities. On the other hand, it comes with a major responsibility, which must also extend to parties to whom rights may be assigned. More specific provisions should be issued on the requirements that the recipient of rights must meet in order to prevent the assignment of rights to parties of doubtful competence and financial conditions. Cases of assignment might warrant a specific requirement concerning the assignee's solvency, perhaps more specifically stating that solvency may not essentially be based on the financial value of the assigned permit and the related rights of use. It is also important to ensure that administrative rulings on the fulfilment of requirements can be submitted for a court examination by either party.

Dam safety

The status of the Dam Safety Act in relation to permit legislation applied alongside the Mining Act, as well as to the permit and monitoring procedures specified in the legislation, must be clarified. This may require several acts to be supplemented.

The use of mining areas after the termination of operations

The mining permit should include at least a general obligation to assess and establish potential future uses of the mining area, and the question should be re-examined in later reviews of the mining permit.

Seabed minerals

Seabed mining differs significantly from terrestrial mining. The relationship between different acts and the scope of their application should be clarified in this respect. This report includes separate discussions about waters within the outer boundaries of villages, public bodies of water that belong to the state, as well as the exclusive economic zone outside the Finnish territorial waters. In that context, the status of seabed mineral deposits in legislation is also discussed regarding all three areas.

Uranium and thorium

The permit procedure and regulations on competence related to uranium and thorium should be rationalised so that regular mining permits and their details are no longer handled in government plenary sessions, for which the Supreme Court is the only appellate court. A new jurisdictional system must be set up for this purpose. One of the facts to take into account is that the licence consideration carried out by the government, as defined in the Nuclear Energy Act, includes a strong element of expediency consideration, in contrast to the judicial discretion involved in the mining permit procedure.

However, the mining applicant's express objective of producing uranium or thorium is clearly not in line with the basic goal of regulation and gives room for artificial arrangements. Irrespective of the purpose of operations, mining may generate materials which under the Nuclear Energy Act are considered to be either nuclear material or nuclear waste. The need for a special licence for mining and enrichment operations generating the kind of material or waste referred to in the Nuclear Energy Act should be evaluated on the basis of objective information about the specific

deposit and mining and enrichment operations, irrespective of the purpose of operations. In terms of jurisdiction, one option would be for the government's licence decision to be a resolution by nature. The requirements and permit regulations specified in the Nuclear Energy Act and the Mining Act would be handled in a regular mining permit procedure, applying special provisions where appropriate, after the government resolution had gained legal force. The relationship between the Mining Act and the Nuclear Energy Act and the relationship between these two acts and the Radiation Act must be complemented and clarified in other respects, as well.

Types of compensation specified in the Mining Act

The rapporteur's assignment did not specifically call for proposals on the compensations specified in chapter 9 of the Mining Act nor on other ways of channelling benefits. These are largely dependent on political choices, similar to the taxation of mining operations and mining property. Nevertheless, the market-based determination of, for example, the excavation fee can be further specified in legislation. On the other hand, none of the recommendations presented in this report preclude amendments related to the compensations mentioned above or to new types of compensations. Some of the ideas included in the feedback, such as the adoption of a new mining tax revenue or a kind of royalty scheme for basic research in geology or for eliminating environmental nuisance from old mining areas, could warrant further investigation.

Supervision

It is essential for all parties that the supervision of compliance with the Mining Act and environmental legislation is carried out in a proportionate, professional, effective and timely manner. Supervision must follow a risk-based approach and be consistently applied in similar situations in different parts of the country. According to the reports submitted to the rapporteur, there has been a steady – at times, uncontrolled – decrease in the resources of environmental supervision and the diversity of expertise available at the centres for economic development, transport and the environment. The trend has continued for several years. In practice, supervision is largely based on self-monitoring carried out by the mining operators. Periodic inspections focused on, for example, the appropriate organisation of waste management, are no longer carried out, even though individual cases of negligence, including serious ones, have been revealed. Serious attention should be given to this situation without delay.

Exceptional situations

To bridge the gap between different acts, it would be necessary to supplement section 112 of the Mining Act (“the operator shall pay particular attention to the structural and technical safety of the mine and to the prevention of dangerous situations and accidents in the mine, alongside the limitation of detrimental consequences caused by them”) with a provision similar to that of section 15 of the Environmental Protection Act and expressly mention other exceptional situations apart from accidents as well as consequences detrimental to health and the environment.

Regulation regarding the supply of geodata

The scope of regulation regarding the obligation to submit geodata should be re-considered, especially regarding flight operations.

Earlier proposals

A number of government bills included in the phase II legislative package of the regional government reform (HE 14/2018 vp), which was dropped in 2019, should be ignored for the reasons mentioned in this report.

Contents

1 Background to and implementation of the assessment

The Mining Act (621/2011) entered into force on 1 June 2011. No permits have been granted for new mines since the Act entered into force. Instead, existing mining operations are based on the former Mining Act (503/1965), as specified in the transitional provisions of the new act. The authorities have mainly applied the new Mining Act for exploration, gold panning and the ongoing supervision of existing mines as well as for handling expansion applications concerning previously established mines. The Finnish Safety and Chemicals Agency Tukes, which serves as the mining authority, monitors compliance with the Mining Act, approves reservation notifications and handles exploration permits, mining permits, mine expansion permits, permits to postpone the expiry of mining permits, gold panning permits and permit extensions. It also issues provisions based on the Act. To date, only a few individual decisions on mining permits have been made under the new Mining Act. No new mines have begun operating based on a permit granted under the new Act.

Owing to the long transitional period, case law resulting from the application of the new Mining Act is sparse, as yet, with the exception of a few situations related to the transitional provisions, collateral and gold panning. However, mining is also regulated by other legislation, for example by the Environmental Protection Act and the Water Act. Mining operations, the beneficiation of ore and minerals and mechanical gold mining not subject to declaration all require an environmental permit under the Environmental Protection Act.

On 1 March 2019, the Ministry of Economic Affairs and Employment and the Ministry of the Environment jointly appointed a rapporteur to survey and assess the effectiveness of the Mining Act in terms of the objectives specified in the Act as well as the interrelations between the Mining Act and other key legislation on mining operations. Pekka Vihervuori, LL.D., was appointed as the rapporteur. The work

resulted in an analysis of the effectiveness and application of legislation as well as proposals for further actions.

As specified in the assignment, this report discusses the effectiveness of the supervisory schemes, such as the reservation scheme, specified in the Mining Act, as well as of the advance control (exploration permit, mining permit, priority schemes) and post-control of exploration and mines, the effectiveness of participation systems (parties suffering inconvenience and the role of municipalities), the efficacy and adequacy of the collateral scheme, as well as the relationship between procedures specified in the Mining Act and the provisions regarding mining operations issued in other acts, such as the Environmental Protection Act, the Land Use and Building Act, the Land Extraction Act, the Act on the Environmental Impact Assessment Procedure, the Water Act, the Nature Conservation Act, the Dam Safety Act, the Bankruptcy Act, the Antiquities Act and the Act on the Sámi Parliament.

Feedback from stakeholders was collected through an extensive survey and through a hearing, organised on 2 April 2019, targeting key operators. Several stakeholders also supplied comments on their own initiative. Moreover, the otakantaa.fi website provided a platform for open comments until the end of May 2019. The rapporteur also had access to Professor Ismo Pölönen's (University of Eastern Finland) assessment of the main strengths and weaknesses of the Mining Act and related legal solutions, carried out in the context of the CORE project funded by the Strategic Research Council, operating at the Academy of Finland, prior to the publication of the assessment. The rapporteur was supplied with a great deal of material related to mining and legislation by, for example, the Ministry of Economic Affairs and Employment, the Ministry of the Environment and the Finnish Safety and Chemicals Agency.

A list of the providers of stakeholder feedback and an overview of their statements are appended to this report. The rapporteur has also read the comments submitted on the otakantaa.fi website.

On the one hand, the feedback indicates satisfaction with the present situation, but on the other hand, it also contains proposals for various amendments to the Mining Act or other legislation regarding mining operations. The proposals do not follow the same line of thought, but instead are contradictory or divergent in many respects. Based on all the material available, the rapporteur has strived to emphasise the most obvious needs for change, especially those essential for effectiveness.

In accordance with the assignment, the key findings of the work were submitted to the government negotiators in a report on interim conclusions published on 26 April 2019. In the report, the rapporteur summed up the observations made up to that point and presented preliminary proposals for the improvement of legislation. The proposals have been further specified and expanded in this final report, which also includes a few completely new proposals. *From here on, the actual proposals are indicated in italics and the key proposals are summarised at the end of each topic.*

The rapporteur wishes to thank all those who have provided various types of feedback and material or participated in the work in other ways. A special thanks for cooperation goes to the liaisons at the ministries: Riikka Aaltonen, Senior Adviser, Mineral Policy, and Tuula Manelius, Senior Ministerial Adviser, from the Ministry of Economic Affairs and Employment, and Riitta Rönn, Director of Legislative Affairs, from the Ministry of the Environment, as well as Terho Liikamaa, Head of Unit, the Finnish Safety and Chemicals Agency, who compiled data for the report. Cooperation with Professor Ismo Pölönen, University of Eastern Finland, has been of great benefit to the rapporteur's work.

2 The basic scheme and needs for change

The Mining Act lays down provisions on the exploration and exploitation of minerals in bedrock and of two different rock types. For the purposes of the Act, mine means an opencast mine or an underground quarry. Practically all modern mines are opencast mines. In addition to mining operations, the Mining Act issues provisions on the panning for gold deposited in the soil on state-owned land.

Mining carries great economic significance in itself and through its indirect impacts. Mining projects involve various financial risks and uncertainties at the different project stages. Only a minor share of exploration projects lead to the actual establishment of mines. These, on the other hand, may prove to be highly profitable. In Finland, the overall annual expenses from exploration have ranged from EUR 34.5 million to EUR 86.6 million in the past decade. Taking into account the multiplicative impacts, bedrock mineral deposits offer great potential for economic activities in new sectors, as well. On the other hand, mining typically generates challenges to the environment and land use. To a certain degree, this also applies to the exploration stage, which, based on the impacts and location, is divided into two types: exploration that is open to all without the need for an official permit or the landowner's consent and exploration that is subject to a permit.

The benefits that Finnish society and business gain from mining open to Finnish and foreign operators depends on the individual case and is only partly influenced by the provisions of the Mining Act.

Mining regulation typically involves conflicting interests of different parties: what is a strength and advantage to one party may be a weakness and disadvantage to another party. It is typical of mining-related permit schemes that permits are not denied on weak grounds. The permit regulations specified in the decisions are of key significance to the legal protection of different parties and to the environment, often carrying a long-term impact. This means that timely and appropriately targeted participation rights play a key role, as does the scheduling of necessary surveys. This also applies to relevant supervision.

Through the reservation and priority scheme, the Mining Act also regulates the competitive relations between parties engaging in exploration and mining. Other acts regarding mining do not have this purpose. The same applies to the exploration scheme in the Mining Act, which is a manifestation of the claim procedure. This is another important feature of the Mining Act, promoting mining operations irrespective of the ownership of the area.

For the purpose of international comparison, Finnish legislation can be assessed from various perspectives, even though the differences in conditions, the economy, general legislation and the legal and administrative framework complicate comparisons. In its 2018 survey of mining investments and their attractiveness, the Fraser Institute considered Finland to be the most attractive country in Europe. In a global comparison (which also included states and territories in the USA, Canada and Australia), no European country made it into the top ten, but Finland, as the number one in Europe, was ranked 17th.

When assessing the need to amend mining-related legislation, it must be kept in mind that projects and situations may differ greatly in practice, even though the same basic set of norms applies to all of them. For example, great variation can be found among metal mineral mines, while gemstone and soapstone mines have a character of their own. There are also big differences in size. A mining project may be located in an uninhabited area or, within the restrictions of the Mining Act, in the vicinity of built-up areas. Legislation must provide for the diversity of cases in which it will be applied, including situations that have not yet occurred in practice.

3 Numerical information on the scope of present mining operations

The impact of mining can be examined and described in many different ways and from many different perspectives. For example, the significance of mining and its different fields can be viewed in terms of the national economy, regional economy or local economy, business economics and growth potential. Various types of survey results are available for this purpose. Another way to assess the impact is to describe the number of decisions made concerning different project stages. As regards the external impacts of mining, other business, land use and environmental aspects, the location, quality and scope of operations are of key importance.

From the perspective of land use and the environment, the overall impact of operations can be examined using information about permits and areas related to exploration and mining projects at different stages. The following up-to-date information on projects initiated under both the old and the new mining act has been compiled at the Finnish Safety and Chemicals Agency for the purpose of this report.

Reservations

- Size of the reservation area: approved reservation notifications – 26,600 km2, pending reservation notifications – 1,810 km2
- Valid (approved) reservation notifications: 103, granted to 36 holders
- Approximately 600 reservation notifications approved under the new Mining Act

Exploration

- Total area covered by exploration permits: 1,173 km2 for permits in force and 3,620 km2 for permits in the application stage
- The total area of claim rights granted under the old mining act and the transitional provisions of the new Mining Act equals 238 km2 (in 2020, the last permits granted in compliance with the claim procedure (2015) will be converted into exploration permits, if an extension to them is sought and approved).
- A total of 269 exploration permits are in force for 38 permit holders.
- A total of 416 exploration permits have been granted under the new Mining Act.

Mining

Mining concessions (old act)

- Mining concessions in terms of applications: approximately 72 km2, 1 application (the Talvivaara extension, usage area as a whole)
- Mining concessions for which a mining concession regulation has been granted but for which an appeal process is pending or the proceedings to establish a mining area have not been completed: appr. 110 km2; Sokli extension (59 km2), Koivu (10 km2), Hannukainen (30 km2), Kevitsa extension (4 km2) – all these are usage areas; the “spirit” of the new Mining Act has been applied in that the tailings dams and waste rock disposal sites are allocated to the usage area instead of the auxiliary area.
- Mining concessions in force: approximately 257 km2, including a considerable portion of auxiliary areas, because under the old mining act, tailings dams and waste rock disposal sites were allocated to auxiliary areas in specific mining concessions.

Mining permits (new act)

- Mining permits in terms of applications: appr. 14 km2, including new permit applications, extension applications, as well as applications for mining concessions returned for processing by the court (3 applications), which are to be handled as mining permit applications.
- Mining permits in force: a total of 14 km2, but in some cases the

proceedings to establish a mining area have not been completed, including Kittilä 4 km2 (extension permit), Keliber/Syväjärvi 2 km2 (new permit, not in operation).

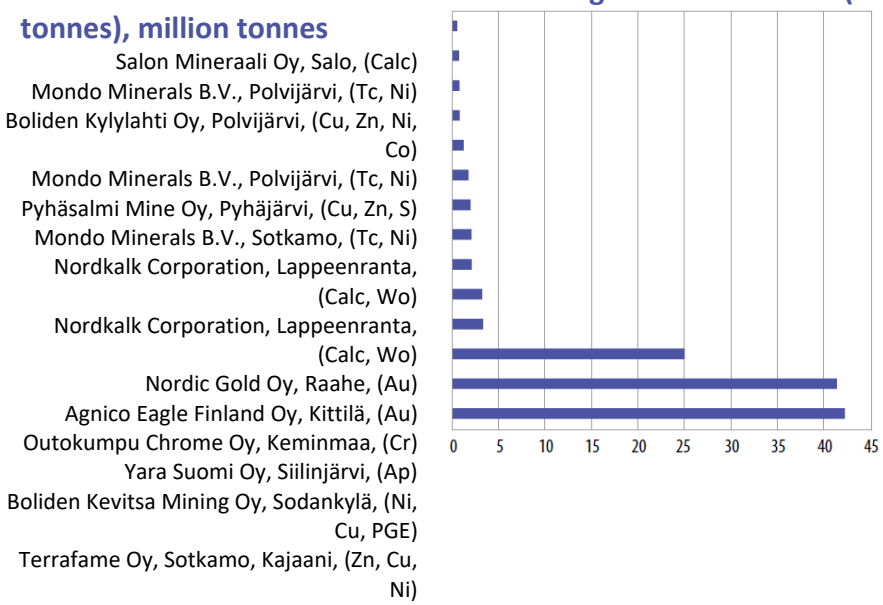
- In addition, the usage area and auxiliary areas of the old Siilinjärvi mining concession have been converted into a mining area (33 km2) by a decision made by the Finnish Safety and Chemicals Agency in 2013; the proceedings to establish a mining area have not yet been completed.

Gold panning

- Area encompassed by gold panning permits: approximately 11 km2 for permits granted and approximately 4 km2 for permit applications pending under the new act
- In addition, approximately 4.3 km2 of gold panning concessions granted under the old act
- At present, 258 gold panning permits and 28 concessions are in force. Excavation in mining concessions will end on 30 June 2020, and the closure of the concessions will begin. Of the 28 mining concessions, 26 are located in the Lemmenjoki National Park.
- Area encompassed by permits granting the right for mechanical gold panning under the new act: approximately 1.5 km2 (of 11 km2); mechanical gold panning is carried out in 38 of the 258 permit areas. In mining concessions, mechanical gold panning is allowed on an area of 3 km2, of which 2 km2 is located in Lemmenjoki.
- A total of 550 gold panning permits have been granted under the new Mining Act.

In quantitative terms, the 14 biggest mines excavate 98% of the overall volume indicated by the 46 Finnish mines reporting excavation work.

Total excavation volume of Finland's 14 largest mines in 2018 (>0.5 million tonnes), million tonnes



Source: 8 April 2019 Terho Liikamaa, Finnish Safety and Chemicals Agency

Regional state administrative agencies have issued environmental permit decisions regarding mines under the Environmental Protection Act (environmental permits proper and other decisions related to environmental permits) as follows:

Year	Qty
2011	15
2012	13
2013	20
2014	28
2015	12
2016	17
2017	12
2018	13

4 The starting point for proposals on legislative revision

As regards individual provisions, parties engaging in exploration or mining, landowners, other businesses or municipal land-use policymakers often have different ideas about the alternative that is most advantageous from their perspective, be it the one presently in force or something else. In practice, this often results in compromises that strive to accommodate diverging viewpoints. This tension can also be seen in the feedback submitted to the rapporteur. However, hardly any fundamental changes to the premises of present regulation were suggested. *For example, no feasible alternatives were proposed to the claim procedure or the reservation and priority regulations governing the relations between mining companies, which lay the foundation for the present system. The rapporteur does not propose changes to the basic framework of the Mining Act.*

However, it has been proposed, understandably for that matter, that exploration – at least if carried out on a scope calling for an exploration permit – should from the outset be contingent on the landowner's consent. Such a change would, however, be practically equivalent to abolishing the claim procedure. The present basic framework does not prevent, for example, fiscal amendments to the framework, revisions to the sharing of financial benefits or the strengthening of the landowner's position.

From a constitutional perspective, the present Mining Act is based on the Constitutional Law Committee statement PeVL 32/2010. In view of the protection of property, the constitutional background to the framework specified in the Mining Act is aptly summarised in literature: "The constitutional assessment of the claim procedure and the excavation fee emphasises the special nature of mining regulation,

developed over the years, which employs the excavation fee to balance the unequal relationship, based on the claim procedure, between the landowner and the holder of a mining right." (Kumpula 2012, p. 197, referring to Länsineva 2006, p. 144 (translated from the Finnish original)). Other fundamental rights, such as those regarding the environment or the freedom to conduct business, imply other kinds of questions.

Assessments of the needs and opportunities for amendments must also take into account the potentially restrictive impact of CETA (the Comprehensive Economic and Trade Agreement between Canada, the EU and EU Member States) and any other future investment protection agreements, as well as the need to anticipate different types of situations. When ratifying CETA, which in terms of Community law is a mixed agreement, the Finnish Parliament stated in its response on 16 May 2018 (EV 41/2018 vp – HE 149/2017 vp) that it required that the Government immediately initiate an assessment of the revision of the Mining Act and present the required proposals for amendments to Parliament for approval so that any necessary changes could be made during the (then current) parliamentary term. The Ministry of Economic Affairs and Employment obtained a statement from Borenius Attorneys Ltd, dated 28 August 2018, examining whether CETA resulted in obvious needs for amendment of the Mining Act and whether the ratified CETA agreement would restrict future development of the Mining Act, either directly or indirectly. According to the statement, the applicable Mining Act does not conflict with CETA. No specific statement of this kind has been obtained regarding the Environmental Protection Act or the Nature Conservation Act. As regards any restrictive impact that CETA may have on the Finnish Mining Act, the statement declares that any legislative act constituting a potential violation of CETA would very likely also breach the Finnish Constitution.

The rapporteur refrains from commenting on these opinions about a set of flexible legal norms that come under a great deal of pressure from fundamental rights pulling in different directions. However, the rapporteur believes it is necessary to take into account provisions related to CETA or any new investment protection agreements when assessing the needs for legislative amendments and the content of such amendments.

In the feedback, many parts of the Mining Act, including their application in individual cases, were criticised from different perspectives. However, in most cases no court decisions, much less decisions of the court of final appeal, have yet been issued. Many of the points brought up may rightly call for amendment, but the rapporteur believes that the assessment of at least some of the proposed amendments should

be postponed to a time when more case law on different situations is available. At the present preliminary assessment phase, this also seems to apply to the legal significance of nature conservation regulation and other legislation mentioned in section 3 of the Mining Act.

Nevertheless, various amendments to provisions could help improve and increase the effectiveness of different regulatory segments. Mutual trust and legitimacy can also be enhanced through targeted revisions that immediately improve the position of one party alone. According to the feedback, any review of effectiveness and its improvement should primarily focus on the interoperation and coordination of different permit schemes. This is also very challenging from the perspective of regulatory and administrative frameworks.

5 The scope of application of permit schemes and the coordination of permits

Before mining operations can be launched in practice, a number of decisions usually need to be made by the authorities based on a case-by-case analysis of various aspects related to the environment, landowners' rights and other lines of business. The most important of these decisions concern the mining permit and redemption permit for a mining area, provided for in the Mining Act, as well as the environmental permit regulated by the Environmental Protection Act. The provisions on environmental impact assessments, land use and nature conservation, as well as the procedures and solutions based on them, also play an important role. Solutions based on the Nuclear Energy Act may also be of key importance in individual projects.

According to section 3, subsection 1 and Annex 1 (129/2019) of the Act on the Environmental Impact Assessment Procedure (252/2017), projects that always call for an environmental impact assessment include the excavation, on-site enrichment and processing of mining minerals if the area of the mine exceeds 25 hectares or the total annual volume of the mineral aggregate removed is at least 550,000 tonnes; the extraction of rock, gravel or sand, if the area of extraction exceeds 25 hectares or the annual amount extracted is at least 200,000 solid cubic metres; asbestos excavation or plants processing and converting asbestos or products containing asbestos, as well as the extraction, recovery, enrichment and processing of uranium or thorium, excluding small-scale processing in laboratories or experimental enrichment plants. Furthermore, according to section 3, subsection 2 of the Act on the Environmental Impact Assessment Procedure, the environmental impact assessment procedure is also applied to individual projects or to changes to a

completed project, the quality and scope of which, also taking into account the joint impact of different projects, are likely to have environmental impacts comparable to those referred to in subsection 1.

The division of tasks between the Mining Act and other legislation regarding mining, which represents one of the fundamental choices in present legislation, as well as that between the mining permit and permits granted under environmental legislation, came up in different ways in the feedback. The Mining Act also includes environmental and land-use elements, even though environmental provisions per se, including the relevant permit procedures, are found in other legislation, for example in the Environmental Protection Act as regards the prevention of environmental pollution. This causes both the authorities and the operators a degree of uncertainty and overlaps in activities, as well as difficult choices and other inconveniences related to the scheduling of different permits. However, no obvious alternative to the present structure has been identified, and alternative systems also involve problems.

One way to bring clarity to the system would be to remove all environmental elements form the Mining Act so that it would only contain elements regarding industrial law, redemption and safety, especially the priority scheme. Such a solution, similar to the old mining act, would, however, require the scope of application of another act – in practice, the Environmental Protection Act and its permit scheme – to be extended considerably from its basic scope of application in mining-related questions. Especially the exploration scheme necessarily involves significant features related to land use and the quality and degree of the impact of activities. The Mining Act would inevitably continue to include an element similar to the mining permit, which would unite mining operations yet be of a formal nature in terms of substance. The rapporteur does not consider this alternative to be realistic.

A total merger of the acts does not seem realistic either. The main permit regarding the environment, that is, the environmental permit granted under the Environmental Protection Act, cannot be included in a special act, in this case, the Mining Act, for many different reasons. On the other hand, the provisions of the Mining Act cannot easily be integrated into the Environmental Protection Act due to the different starting point of the acts – at least not in the short term. Nevertheless, there is an obvious need to harmonise and coordinate the permit procedures as well as to eliminate overlaps and gaps in them.

The question about separate or integrated permits is closely related to the structure of government authorities and the authorities responsible for different permits. In the case of the Mining Act, this means the Finnish Safety and Chemicals Agency in its role as the mining authority, and in the case of the Environmental Protection Act (and the Water Act), the government environmental permit authorities, and more specifically, expressly defined regional state administrative agencies. In the Finnish Safety and Chemicals Agency, permit decisions are made by the authorities, based on a presentation made by a public official. In the regional state administrative agencies, cases governed by the Environmental Protection Act and the Water Act are decided in a collegial composition of more than one member or in a composition of a single decision-maker, as specified in the act on the handling of environmental protection and water matters in the regional state administrative agencies (898/2009). Preparation and decision-making require adequate legal, technological and natural science expertise, determined on the basis of the case at hand.

Appeals against decisions made by a regional state administrative agency or the Finnish Safety and Chemicals Agency are lodged with an administrative court. Nationwide, all appeals against decisions made under the Environmental Protection Act and the Water Act are, however, lodged exclusively with the Administrative Court of Vaasa. The Supreme Administrative Court is the court of last resort. Nowadays, a leave to appeal is required under both acts. Based on statistics about appeals, only a minor part of all decisions made under the Mining Act (both old and new) are appealed against, but especially in the case of highly significant decisions, appeals may be lodged by several parties. Under the Mining Act, the Environmental Protection Act and the Water Act, a decision made by the permit authorities may be enforced under certain conditions, irrespective of a pending appeal.

The transfer of the permit duties of either agency – the Finnish Safety and Chemicals Agency or the regional state administrative agency – as such to the other agency would involve questions regarding new functions and administrative structures that would need to be separately investigated if such a transfer were seriously considered. An integration of this kind should not erode the requirements for multidisciplinary expertise. A possible reform of the structure of authorities may change the situation in one way or another. It is worth noting that the establishment of a national supervisory authority (“LUOVA”) in connection with county government administration, for which preparations were far under way, was cancelled when the phase II legislative package of the regional government reform (HE 14/2018 vp) was dropped.

In the present situation, it should be kept in mind that future legislation will include the possibility to coordinate (substantively) separate permit procedures, even if on a voluntary basis. On 5 March 2019, Parliament approved the amended government proposal HE 269/2018 vp, which encompasses the act on the coordination of certain environmental permit procedures ("coordination act") and related amendments to eleven other acts, including the Mining Act. The parliamentary reply (EV 278/2018 vp) was issued on 5 March 2019, but the exact date on which the legislation will enter into force is as yet unknown. The bills were passed as proposed in the report of the Environment Committee (YmVM 22/2018).

Under the new coordination act, if the implementation of a project calls for an environmental permit specified in the Environmental Protection Act, a permit specified int the Water Act or a permit for the extraction of resources specified in the Land Extraction Act, the processing of the permit application may be coordinated, at the applicant's request, with subsequent permit applications. These include 1) derogations specified in the Nature Conservation Act, 2) a building permit, action permit, permit to demolish a building and permit for landscape work specified in the Land Use and Building Act, 3) an exploration permit, mining permit and gold panning permit specified in the Mining Act, and 4) a permit for the wide-scale industrial handling of hazardous chemicals and a permit to manufacture and store explosives specified in the act on the safe handling of hazardous chemicals and explosives. The authorities retain their competence in permit matters, but the coordinating authority is in charge of the coordination of procedures and, to a certain extent, of communication. The regional state administrative agency serves as the coordinating authority if the case involves a permit under the Water Act or a permit which the regional state administrative agency decides on under the Environmental Protection Act In other cases, the municipal environmental protection authorities serve as the coordinating authority. When adequate reports on the permit matters have been obtained, the coordinating authority and other permit authorities determine a target date for issuing the decision, as specified in the coordination act. The permit authorities issue their decisions simultaneously. Under the coordination act, the authorities must also cooperate, as required, to ensure the compatibility of permits.

This does not affect the substantive competence of different authorities to issue permit regulations, as specified in legislation, nor does it eliminate gaps in substantive regulation. However, it may prevent the occurrence of incompatible or conflicting permit regulations in different decisions and enable the scheduling of

other permits to be taken into account, contributing to the clarity and coherence of permits. The date of the decision is determined by the permit that requires the longest processing time. This means that matters pending final coordination but otherwise ready for decision before this date cannot be issued until the determined date. It remains to be seen how the voluntary coordination procedure works in practice and whether it produces the expected results in the form of, for example, shorter overall processing times.

It is also possible that one of the permits included in the coordination procedure is denied or granted in a more restricted form, while another permit is granted in accordance with the application. This is a consequence of substantive regulation and judicial discretion, and no degree of procedural coordination can prevent it.

At present, the applicability of the coordination act is always subject to the permit applicant's – that is, the operator's – request. It is difficult to predict how common the voluntary, joint processing of the mining permit and the environmental permit may become. It may be influenced by various factors, such as differences in planning required by different acts and the level of detail required for the applications. *Serious consideration should be given to adopting the procedure specified in the coordination act as the main rule governing the relationship between mining permits and environmental permits, at least initially. Consent is not a requirement for the said procedure. Another option would be to directly opt for a deeper integration of permits.*

In cases involving coordination, it seems rational, and perhaps necessary, to jointly prepare the applications for a mining permit and environmental permit. This, in turn, may lead to it taking longer for the application to become effective and extend the overall processing of the project compared to the application for a mining permit alone. *To prevent the negative impacts of the priority scheme specified in the Mining Act, a separate reservation mechanism could be included in the Mining Act, which would enable permits to be sought in the coordinated procedure before the expiry of the exploration permit.* A possible need for capital required to launch mining operations may also be of practical significance, since it may push the applicant to already pursue ownership arrangements when seeking a permit for mining operations. Assessments of the asset value and expectations created by the mining permit must take into account the uncertainty regarding the conditions for an environmental permit to be granted and the content of the permit.

In coordination cases, the right to appeal is determined by the provisions of the relevant permit legislation. In this context, it is essential to ensure that legality control, as regards the right to appeal, is comprehensive and well-balanced in courts of all instances and corresponds to the substantive content of regulation. *The right to appeal against decisions endangering environmental aspects should not be subjected to the kind of restrictions envisioned in connection with the plans for a new national supervisory authority ("LUOVA") in the phase II legislative package of the regional government reform (HE 14/2018 vp) (e.g. provision 210 of the bill), which was dropped in the spring.*

Apart from the aspects discussed here, no substantial grounds for revising the basic scope of application of the Mining Act were indicated in the feedback. This applies to, for example, the scope of application of the Mining Act and the Land Extraction Act determined by the geological quality of land resources. The scope of application of both acts fully excludes the other act, meaning that the Land Extraction Act does not apply to the extraction of land resources based on the Mining Act. Provisions on this are issued in section 2, paragraph 1 of the Land Extraction Act (where the reference to the old mining act should be changed to refer to the Mining Act currently in force). Owing to the restriction in section 17 of the Mining Act, the Mining Act applies to all mining minerals as well as the organic and inorganic surface material, surplus rock and tailings generated as by-products of mining, and other resources in the rock and soil of the mining area, where these are needed for mining operations. In all other contexts, such land resources come under the scope of application of the Land Extraction Act. This strict rule inevitably means that the legal relationship and rights of use between the mining operator and landowner differ considerably depending on the act applied (e.g. marble, soapstone and rocks used for monuments and gravestones). There are also important differences in the weight given to environmental and landscape aspects in the two acts as well as in the duration of permit periods. These can be evened out, at least to a certain extent.

As regards seabed minerals, the scope of application of the Mining Act, the Land Extraction Act, the Water Act and a few other relevant acts differs from that described above. Aspects related to these questions are discussed in greater detail in chapter 18.

During the exploration stage, especially in Northern Finland, operations may require many more official decisions apart from the exploration permit specified in the Mining Act. These may include, for example, decisions made under the Nature

Conservation Act and the act on off-road traffic, which come under the competence of different authorities. Their temporal or other coordination is not possible under the provisions currently in force. The appeals processes under the different acts may also take place at different times, even though the enforcement of decisions may be possible irrespective of a pending appeal. This means that especially in a nature conservation area the effective period for exploration may end up being shorter in practice than that provided for in the Mining Act. Different situations also involve conflicts of interest, and no simple alternative for a structural solution is easily available.

Serious consideration should be given to adopting the procedure specified in the coordination act as the main rule governing the relationship between mining permits and environmental permits, at least initially. Consent is not a requirement for the said procedure. Another option would be to directly opt for a deeper integration of permits.

It seems rational, and perhaps even necessary, to jointly prepare applications for mining permits and environmental permits in cases involving coordination. However, this might delay the initiation of permit processing compared to present mining permits. To prevent the negative impacts of the priority scheme specified in the Mining Act, a separate reservation mechanism could be included in the Mining Act in order to protect priority.

6 Gold panning permits

The rapporteur's assignment primarily encompassed bedrock mining operations, and gold panning permits were not specifically mentioned in it, in contrast to the other permits subject to advance control specified in the Mining Act.

In view of the basic scheme of the applicable Mining Act, the gold panning permits for state-owned land, with their special functional and economic bases, form a section of their own in the Act. In contrast to mining, gold panning focuses on the soil, not the bedrock. The relevant regulation focuses more heavily on land use and nature than the Mining Act. It also involves considerable tension regarding the relationship between mechanical excavation and nature conservation, reindeer herding and fishing. *In theory, this regulation could be placed outside the Mining Act, which would simplify the Mining Act, but it is not easy to find a suitable alternative.* The most viable options *might include the legislation regarding nature conservation and that governing Metsähallitus, which controls the areas in question. The Water Act, the Environmental Protection Act and general statutes on nature conservation are regularly applied, as is.*

According to some of the feedback, the present regulation in the Mining Act regarding gold panning permits does not place adequate attention on the cumulative effects of individual projects on natural sources of livelihood and the environment. However, the scope of this interim report cannot accommodate proposals on possible amendments to legislation in this respect. It should be noted that cumulative effects in the Sámi homeland, as specified in the Act on the Sámi Parliament, are mentioned in section 50 of the Mining Act. Relevant reviews can, however, be developed and made a systematic and open element of the permit procedure described in the Mining Act. Should the cumulative effects for a particular application reach the level specified in section 3, subsection 2 of the Act on the Environmental

Impact Assessment Procedure, an environmental impact assessment would be required even under the present act.

In relation to gold panning, the feedback also brought up questions related to the overlapping application of different acts (the Mining Act, Environmental Protection Act and Water Act) and the scope of competence of different authorities The 27 mining concessions granted for gold panning under the former mining act, where operations have continued under the transitional provisions of the present Mining Act, will be closed, and mechanical gold mining in the Lemmenjoki region will terminate after a nine-year transition period on 1 July 2020.

In terms of applicable legislation, the Supreme Administrative Court's decision KHO 2014:111 is worth mentioning in this connection:

> The permit consideration regarding gold panning permits for the Sámi homeland, referred to in section 50 of the Mining Act, was to be based on a survey carried out in compliance with section 38 of the Mining Act. As the permit authority, the Finnish Safety and Chemicals Agency was responsible for ensuring, for its part, that the appropriate conditions existed for the cooperative procedure specified in section 38 of the Mining Act. Among other things, this meant supplying the Sámi Parliament with adequate material for assessing the impacts of the operations for which the permit was sought from the perspective of the Sámi culture. The permit applicant was entitled to a decision by the Finnish Safety and Chemicals Agency without undue delay. The parties mentioned in section 38, subsection 1 of the Mining Act, including the Sámi Parliament, could not prevent decision-making on the permit application by remaining passive. Since the parties mentioned in the provision remained passive, the responsibility for the required survey fell on the Finnish Safety and Chemicals Agency. The Finnish Safety and Chemicals Agency was, in any case, required to determine the impact that the operations for which the permit was sought had on the rights of the Sámi as an indigenous people, as specified in section 38, subsection 1 of the Mining Act, irrespective of whether the Sámi Parliament participated in the cooperative procedure. Moreover, in view of sections 44 and 45 of the Administrative Procedure Act, the Finnish Safety and Chemicals Agency was required to indicate the significance of the survey referred to in section 38, subsection 1 of the Mining Act to the permit consideration referred to in section 50 of the Mining Act.

As a rule, mechanical gold mining calls for an environmental permit specified in the Environmental Protection Act, irrespective of the provisions of the Mining Act. Following amendment 1166/2018 to the Environmental Protection Act, as of 1 February 2019, mechanical gold mining no longer requires an environmental permit but is now subject to declaration, provided that the annual excavated volume remains under 500 m_3, including topsoil, and the work does not exceed 50 days a year nor do the operations require a permit or licence under the Water Act. The requirement for a permit under the Water Act is based on the impacts on water bodies and is determined on a case-by-case basis. The regional state administrative agency is the permit authority for both permits. In other words, it is conceivable that the coordination discussed under chapter 5 could be extended to the gold panning permit, even though the scope and special features of the projects did not correspond to that intended when creating the coordination procedure. In any case, the projects that were made subject to declaration as of 1 February 2019 follow a procedure of their own from the perspective of the Environmental Protection Act.

As the future status and scope of mechanical mining is unclear overall, the rapporteur refrains from making concrete proposals regarding this aspect.

7 The substance of permit decisions

The overall consideration of environmental impacts from mining is limited, in part, under present legislation. On the one hand, this is because the content of required permits and especially the level of impact allowed by the environmental permit and the required measures to reduce nuisance may not be known when the decision on the mining permit is made. On the other hand, compared to the Land Extraction Act regulating the extraction of gravel and mineral aggregates, decision-making under the Mining Act does not leave much room for considerations regarding the impact on the landscape or nuisance caused to other lines of business. This is also true at the level of permit regulations, even though permit regulations, such as those specified in the Mining Act, can be set to avoid or restrict basically every type of nuisance. Under the Mining Act, environmental impact refers to the direct and indirect impacts of activities on people's health, living conditions and wellbeing, as well as on the soil, waters, air, climate, vegetation, biota, diversity of nature, community structure, buildings, landscape, townscape and cultural heritage. However, many of these are not specifically and concretely expressed in the provisions on permit consideration and permit regulations. Impacts on the landscape are included in those that must be taken into account under the Mining Act, and as regards the exploration stage, the Act specifically prohibits damage to the landscape and requires the area to be restored to as natural a state as possible as an aftercare measure. Fixed relics enjoy statutory protection under the Antiquities Act, also in mining projects, but valuable cultural environments and other cultural landscapes do not have such protection outside the Mining Act.

However, the impacts on landscape and impacts on nature, for which no special protection exists, are not significant in terms of the environmental permit, which, as part of the Environmental Protection Act, focuses on the prevention of emissions and pollution, with a few exceptions.

These exceptions, which extend the normal scope of regulation of the Environmental

Protection Act, include waste management and, consequently, regulations on waste management plans for extractive waste, as required by EU law. Landscape-related regulations have been issued, for example, in the Supreme Administrative' Courts decision KHO 12.3.2019 851 concerning the waste management plan for extractive waste.

Permits under the Mining Act are granted based on judicial discretion, although the legislation contains a great number of flexible norms. Based on the feedback, there is no need to make changes to this fundamental basis.

The Mining Act contains general provisions on the permit holder's obligation to prevent or reduce harm to public and private interests (sections 6, 11 and 18). These provisions concern, among other things, business and impacts on the landscape and nature. However, they are not directly linked to provisions on the permit authorities' discretion regarding the conditions for granting permits and the setting of permit regulations for exploration permits or mining permits, which is problematic for interpretation. *The internal coherence of legislation should be increased through the use of references and other measures. Section 18 containing provisions on the mining permit could be supplemented with clauses on the prevention and minimising of environmental impacts from mining operations. Section 120 of the Mining Act also touches on this topic* (see also chapter 17 for a discussion on this question).

Noise, odour, vibration and dust as issues related to pollution come under the scope of the Environmental Protection Act and are handled in connection with environmental permits. In practice, however, a buffer zone or other similar arrangement to reduce the adverse impacts from mining is linked to other area questions and functional arrangements of mines. It would be more sensible to make decisions on such matters in connection with the mining permit. In some cases, regulations of this kind may create the necessary conditions for an environmental permit, which otherwise could not be granted, at least not in the form applied for, due to section 49, paragraph 5 of the Environmental Protection Act. The context of a permit regulation may also involve needs related to the conservation of nature or a cultural landscape.

Based on this discussion, the provisions of the Mining Act should be developed regarding the general obligations of permit holders and the specification of such obligations during the permit consideration process, especially through permit regulations aimed at preventing and reducing different types of damage.

An effects-based denial of a full mining permit is only possible based on the detrimental impacts specified in section 48, subsection 2 of the Mining Act. This provision has been modelled on the Water Act and its unconditional obstacle to the granting of permits. In contrast to the Mining Act, in the Water Act (chapter 3, section 4, subsection 2 of the present Act), the provision merely supplements other permit consideration in extreme situations. Under the Water Act, a permit "may not be granted if the water resources management project jeopardises public health or safety, causes considerable detrimental changes in the natural state of the environment or the aquatic environment and its functions, or causes considerable deterioration in the local living or economic conditions". Under the Mining Act, in turn, a permit may "not be granted if the mining activity causes danger to public safety, causes highly significant detrimental environmental impacts, or substantially weakens the living conditions and industrial conditions of the locality, and the said danger or impacts cannot be remedied through permit regulations".

The differences in wording raise the threshold of the unconditional obstacle in the Mining Act in some cases higher than in the Water Act (e.g. "substantially weakens the living conditions and industrial conditions of the locality", compared to the wording in the Water Act: "considerable deterioration in the local living or economic conditions"). In practice, this restraining provision of the Water Act (including the previous water act, in this case) has created an impediment to only one project (the Vuotos reservoir). Permits for water resources management projects have been denied far more frequently under other provisions regarding permit consideration. An environmental permit specified in the Environmental Protection Act can be denied on various grounds (section 49 of the Environmental Protection Act), which may easily lead to a situation in which a mining permit must be granted, but the conditions specified in the Environmental Protection Act are not met, meaning that the project cannot be carried out despite the operator having secured a mining permit. The granting of a mining permit or even the legal validity of the permit cannot, on its own, secure protected expectations regarding the practising of operations. Moreover, operations may be prevented and restricted despite a granted and legally valid environmental permit if, for any reason, they may cause groundwater pollution, which is prohibited unconditionally in section 17 of the Environmental Protection Act.

Ultimately, section 48, subsection 2 of the Mining Act will be interpreted by the courts. It is difficult to predict what kinds of practical situations might arise in the future. *The rapporteur proposes that the wording specifying the threshold for the unconditional impediment should be revised to reflect the Water Act – at least the expression "living or economic conditions".*

However, the significance of such a change may be smaller than expected, since a major part of detrimental impacts and their permitted level is determined in procedures under other legislation, especially in the environmental permit procedure under the Environmental Protection Act This highlights the importance of coordination, discussed in chapter 5, but even the coordinated procedure essentially involves the independent application of individual substantial acts.

Under the Water Act, the focus of permit consideration lies elsewhere, in a comparison of interests, which is applied irrespective of unconditional impediments and encompasses all public and private interests. The Mining Act does not include such a comparison, which further emphasises the significance of unconditional impediments. No effects-based analysis involving mining operations and other lines of business, such as tourism or wind power production, is conducted outside the examination of unconditional impediments in connection with the mining permit procedure. However, related to project implementation, section 18, subsection 1, paragraph 2 of the Mining Act includes some elements of a comparison of interests, but without a direct equivalent in section of the Act, dealing with the setting of mining permit regulations. Apart from unconditional impediments, the scheme set up in the Mining Act largely lacks the procedure included in the Environmental Protection Act, Water Act and Land Extraction Act, according to which permit regulations must be specified if the required conditions for permits are otherwise not met. This, for one, reduces the significance of the degree of permit regulations in the Mining Act in relation to those of environmental permits or permits granted under the Water Act. Comparisons of interests are also based on judicial discretion. *A regulatory framework based on the comparison of interests, similar to that adopted in the Water Act, might be suitable in the Mining Act alongside the provisions on unconditional impediments. However, the feedback received does not offer a clear model for such a framework, nor does the rapporteur propose one.* Full integration of permits, if adopted in the future, might change this situation.

However, there may be other ways to secure and coordinate interests pulling in different directions. *For example, key areas separately assigned to tourism or wind power could, in principle, form an obstacle, specified in legislation, to mining permits (and for the sake of consistency, also for exploration permits). An easier and clearer way to achieve nearly the same impact would be through legally binding municipal plans and their appropriately specified purposes of use and plan regulations. This option and the related restrictions will be discussed in greater detail in chapter 9.*

In view of the special characteristics of exploration, it seems hardly justified to base the regulation of conditions for exploration permits on a scheme similar to the comparison of interests. However, the conditions for exploration permits could be revised, for example, by issuing provisions according to which considerable nuisance to another line of business, such as tourism, would, as a rule, constitute an obstacle to exploration permits. Land use plans would be of key importance also in this connection.

A good example of potential conflicts between the individual provisions of the Mining Act, as regards the interests of different parties and other aspects weighing in on decisions, comes from requirements set out in the Act on the Environmental Impact Assessment Procedure concerning how and at what stage of the mining project and its planning an environmental impact assessment must be conducted. (At present, the need for an environmental impact assessment basically arises whenever the mine has a surface area in excess of 25 hectares or the total annual volume of aggregate removed is at least 550,000 tonnes). Also related to this is the question about any need for a Natura assessment, as specified in the Nature Conservation Act, depending on the mine's location in relation to a Natura 2000 area. Amendments 307/2017 and 578/2019 to the Mining Act, which aimed to make permit procedures more flexible, specify that applications for exploration and mining permits can be initiated without the risk of losing priority under the Mining Act, even if the applications involve Natura assessments or environmental impact assessment documents. The amendments aptly reflect the structural differences and mutual tensions between the different regulatory objectives of the Mining Act, in this case, the priority scheme and the environmental objectives. The feedback submitted to the rapporteur included comments on (other) amendments to the priority scheme which have already been achieved with the said amendments.

Under the Act on the Environmental Impact Assessment Procedure, the assessment report and reasoned conclusions by the coordinating authority, which have been submitted to the party responsible for the project, must be submitted to the permit authority, that is, to the Finnish Safety and Chemicals Agency before a decision on the mining permit is made. This also forms the starting point for the Mining Act, as amended by acts 307/2017 and 578/2019, and the same applies to Natura assessments, if required for the project. The impact of the environmental impact assessment procedure and Natura assessment is essentially based on the results being taken into account at the appropriate stage of planning, and from this perspective, the original Mining Act would have been more consistent. In some cases, due to the

passing of time, a reasoned conclusion may no longer be considered up-to-date, which leads to the need to revise the conclusions before the permit decision, in accordance with section 27 of the Act on the Environmental Impact Assessment Procedure, as amended by government proposal HE 269/2018 vp (parliamentary reply 278/2018 vp, government proposal for acts on the coordination of certain environmental permit procedures and amendment of the Act on the Environmental Impact Assessment Procedure as well as for certain other related acts). As for the actual coordination of permits, the amended Act on the Environmental Impact Assessment Procedure and the timing of Natura reports would not have much impact since the Environmental Protection Act does not include a corresponding exception.

Perhaps the amendments of 2017 and 2019 partly reflect the fact that the provisions on permits and permit regulations in the Mining Act mean that the observations and reasoned conclusions of the environmental impact assessment rarely have a comprehensive or essential role in the authorities' consideration, since the decisions on permits and permit regulations are always based on the relevant permit legislation, not the Act on the Environmental Impact Assessment Procedure. This also means that the risk of changes to plans caused by a late-stage completion of the environmental impact assessment is ultimately small in terms of the Mining Act. Likewise, from the perspective of the Environmental Protection Act, the conclusions from the environmental impact assessment are not necessarily relevant for the consideration regarding permits and permit regulations. It is, of course, possible to take the feedback and conclusions from the environmental impact assessment into account on a voluntary basis, and this is often useful for the attainment of a social licence to operate. However, Natura assessments are more likely to require changes to be made to plans, even at later stages of the project.

Nevertheless, to eliminate gaps between the scope of different acts, the substantive provisions of the Mining Act could be expanded with express provisions on permit regulations aimed at reducing landscape-related nuisance (e.g. with the help of wooded zones), eliminating or reducing immissions and other forms of neighbourhood nuisance as well as protecting the conditions for other lines of business, such as tourism. Section 11 of the Land Extraction Act could be used as a model for this purpose. In the regional scheme of the Mining Act, such zones could be set up either as the outermost part (where only underground mining would be allowed) or as an auxiliary area.

Landscape-related regulations for mining operations can also be specified under the Environmental Protection Act, but due to the approach adopted in legislation, this can only be based on waste-related issues (mainly in the waste management plan for extractive waste). The placement of any supplementary landscape regulation exclusively in either the Mining Act or the Environmental Protection Act is not self-evident; the different sections should be interlinked.

The possibility of adopting "ecological compensation" in mining permit regulations should be considered, provided that a functioning, broad-based scheme is set up for them and that such a scheme does not risk becoming a means to sacrifice the natural values of the individual target areas. Ways to compensate for the forest areas that are, in practice, permanently lost around large opencast mines should also be examined.

Landscaping is mentioned as one aspect in connection with restoration related to the termination of mining operations. (In accordance with section 143 of the Mining Act, the mining operator is required to restore the mining area and the auxiliary area to the mine to a condition complying with public safety; ensure their restoration, cleaning, and landscaping; and perform the measures specified in the mining permit no later than within two years of the termination of mining activity. Ultimately, the obligations are specified in the decision to terminate mining.) *However, the Mining Act does not include more specific provisions on restoring and landscaping in connection with the termination of mining activities, and in practice, the mention of landscaping in section 143 of the Mining Act may have been considered less significant and restoration has mainly focused on safety measures. There are great differences in the scope of obligations compared to the Land Extraction Act. There are good grounds for supplementing the Mining Act with more detailed provisions on decision-making regarding the restoration of mining areas in connection with the termination of activities.* This would also have a long-term impact in terms of advance preparations for any expectations created by investment protection agreements.

In terms of both scenery and function, landscaping and restoration questions are closely linked to the environmental permit and waste management plan for extractive waste, the mining permit, as well as the winding down of the mine and, ultimately, the decision to close it down. Therefore, the relevant regulation should, in all cases, form a coordinated, functional system both substantively and procedurally. The coordination

of permit processing, as described in chapter 5, could contribute to this, as could the coordination of different permits during operations, as described in chapter 8.

Specific provisions on the closing and post-management of the mine to ensure that it does not constitute a risk to health, the environment or general safety, should be included in an appropriate section of the Mining Act, perhaps in both section 18 and section 143. This also applies to the landscaping and restoration obligations during the closing stage.

As regards the closing stage, the environmental obligations related to the decision to terminate mining activities (Finnish Safety and Chemicals Agency), as specified in section 147 of the Mining Act, and the decision to cease operations under section 94 of the Environmental Protection Act (regional state administrative agency) should form a consistent whole. These decisions should be issued together. This means that the scope of the coordinated method referred to in chapter 5, which is only applicable to permit decisions at present, should be extended to apply to closure decisions, as well.

The provisions of the Mining Act should be developed regarding the general obligations of permit holders and the specification of such obligations during the permit consideration process, especially through more comprehensive and consistent permit regulations aimed at preventing and reducing damages.

The wording of section 48, subsection 2 of the Mining Act, which lays down provisions on the unconditional effects-based obstacle to granting a mining permit, should be revised in line with the Water Act – at least to reflect the expression "living or economic conditions" used in the latter. Furthermore, a regulatory framework based on the comparison of interests, similar to that in the Water Act, might also be suitable in the Mining Act alongside the provisions on unconditional obstacles. However, the feedback received does not offer a clear model for such a framework, nor does the rapporteur propose one. The conditions for exploration permits could be revised, for example, by issuing provisions according to which considerable nuisance to another line of business, such as tourism, would, in principle, constitute an obstacle to an exploration permit.

To eliminate gaps between the scope of different acts, the substantive provisions of the Mining Act could be expanded with express provisions on permit regulations aimed at reducing landscape-related nuisance, eliminating or reducing immissions and other forms of neighbourhood nuisance as well as protecting the conditions for other lines of business, such as tourism.

There are good grounds for supplementing the Mining Act with more detailed provisions on decision-making regarding the restoration of mining areas, which would take landscape perspectives into account alongside questions related to the safety of the area. Landscaping and restoration questions are closely related to the environmental permit and waste management plan for extractive waste, the mining permit, as well as the winding down of the mine and, ultimately, the decision to close it. Therefore, the related provisions should form a substantively and procedurally coordinated, effective system in all cases. Specific provisions on the closing and post-management of the mine to ensure that it does not constitute a risk to health, the environment or general safety, should be included in an appropriate section of the Mining Act.

8 Changes and revisions during operations

Mining usually involves long-term operations, stretching over several decades, even though they are not expected or meant to be permanent. Many of the obligations of mining-permit holders relate to the closing stage of the mine. However, the form of activities often changes during mining operations based on, for example, new information on the mineral resources or shifts in the market situation. Needs for phasing, in the form of partial mine closure, have also been expressed by mining operators. Being more regulated, phasing would also benefit landowners by reducing the period of uncertainty in some parts of the mining area. Detrimental impacts, which were not taken into account in the permit, may also arise during operations. Under the Mining Act, mining permits must be revised periodically during their validity, at least every ten years.

In contrast, following amendment 423/2015 to the Environmental Protection Act, the Environmental Protection Act no longer includes the option to require periodic revisions of permit regulations for any type of operations as of 1 May 2015. On the other hand, the waste management plan for extractive waste, which forms part of the environmental permit and is included in the scheme of the Environmental Protection Act, must nevertheless be revised periodically, even though present regulation is partly unclear, for example regarding the competence of the operator and the authorities. Section 114, subsection 3 of the Environmental Protection Act, for example, appears to leave the decision on the revision (every five years) of the waste management plan (included in the environmental permit) solely to the operator, which is not consistent with the legislative approach. The rapporteur believes that decisions on the revision of the content of environmental permits, including questions related to the waste management plan for extractive waste, should always be made by the permit authority.

As regards mining operations, the regulative framework for permit revisions should be harmonised, without putting long-term operations at risk. This could be done by including in the Mining Act express provisions on partial closure and by clarifying the review of the waste management plan for extractive waste as part of the environmental permit. In this connection, the possibility of carrying out periodic revisions of the permit regulations of new environmental permits that are valid until further notice, which was removed from the Environmental Protection Act in 2015, should be reinstituted. *As a regulatory element improving predictability, the latter measure would also serve as a precautionary measure for non-discriminatory decision-making required by investment protection agreements.* In practice, the first revision procedures would not be initiated with the permit authorities until several years after the provisions taking effect, and they would only apply to new permits. Revisions regarding collateral are also discussed in chapter 14.

As regards mining operations, the regulative framework for permit revisions should be harmonised by including in the Mining Act express provisions on partial closure and by clarifying the review of the waste management plan for extractive waste as part of the environmental permit. In this connection, the possibility of carrying out periodic revisions of the permit regulations of new environmental permits that are valid until further notice, which was removed from the Environmental Protection Act in 2015, should be reinstituted.

9 Land use planning and the role of municipalities

Various aspects come into play when examining the relationship between mining and municipal land use and autonomy, as well as the landowners' position in these contexts. Firstly, under section 46 of the Mining Act, an exploration permit (or gold panning permit) may not be granted for an area where the activities for which the permit is sought would hamper the implementation of a legally binding plan (section 46, subsection 1, paragraph 6). This also applies to (other) areas where the local authority opposes the permit due to land use-related or other justified reasons, unless specific grounds exist for granting the permit (section 46, subsection 1, paragraph 7). According to the rationale of the Mining Act, specific grounds in this context primarily refers to aspects of public interest, such as national raw material supply or surveys of mineral ore resources related to regional development. *All in all, section 46, subsection 1, paragraph 7 is interpretively complex, and the final result of the appeals process is difficult to predict. This should be clarified.* A move to require the local authority's consent for an exploration permit would, as such, be a straightforward solution that would also emphasise the autonomy of municipalities. From the perspective of mining, however, the result would be difficult to predict. Moreover, such a solution could not replace the effect of legally binding plans, since such plans create legitimate expectations for various parties regarding land use.

In view of the mining permit, the importance of land use planning and the role of the municipality differ in some ways. Under section 47, subsection 4 of the Mining Act, the relationship of the mining area and its auxiliary areas to other land use must be accounted for. Under this provision, mining operations must be based on a legally binding plan specified in the Land Use and Building Act or matters must otherwise have been adequately examined, in view of the impacts of mining, with the local authority, regional council and Centre for the Economic Development,

Transport and the Environment. Provisions on the legally binding nature of land use plans are issued in the Land Use and Building Act. The subsection discussed here is interpretively unclear and structurally poorly balanced in that it leads to a legally binding plan and the mere assessment of land use impacts being alternatives to one another, even though the plan carries considerably more weight from a legal perspective and in terms of its impact. The coordination of different forms of land use is a demanding task for land use, especially in the vicinity of residential areas or other business activities.

This structural incoherence regarding mining permits calls for amendment. An obvious solution would be to eliminate the provision regarding other types of reports, possibly excepting situations that are less significant to land use, such as minor auxiliary areas. Consequently, the requirement for a plan would place greater emphasis on the autonomy of municipalities, while ensuring that municipal decision-making regarding land use plans would be legally controlled, compared to, for example, a mere requirement for consent.

According to the detailed rationale of section 47 of the Mining Act, the legally binding plan may also refer to a regional land use plan. In terms of land use, some of the existing mines are based solely on a regional land use plan. However, regional land use plans are the most general kind of all land use plans, as are their legal effects. Regional land use plans designate areas in accordance with the Land Use and Building Act only to the extent and accuracy required for national or regional goals or to coordinate land use in more than one municipality. Moreover, a regional land use plan does not reflect the autonomy of the municipality in which the planned mine is to be located. *There are good grounds, therefore, to exclude the regional land use plan from the direct application of section 47, subsection 4 of the Mining Act.* Good regional land use planning can, of course, improve the conditions of municipal land use planning.

In contrast, the joint municipal master plan specified in chapter 6 of the Land Use and Building Act is a general plan and, being legally binding, could form the basis for a mining project. The municipalities involved may delegate the drawing up and approval to the regional council, a joint municipal authority or other joint body of the local authorities. Under section 48 of the Land Use and Building Act, if reasonable grounds exist, the joint municipal master plan can also be drawn up to replace the regional land use plan, while also applying the relevant provisions on master plans, in accordance with section 49.

The relationship between the Mining Act and land use planning norms requires, in all

cases, that the planned reform of the Land Use and Building Act preserves a legally binding planning instrument at the municipal level. This also applies to the relationship between the Environmental Protection Act and the provisions regulating land use plans. Land use planning is, most likely, an adequate way of taking national security into account in land use, as referred to in amendment 467/2019 of the Land Use and Building Act.

The possibility of controlling mining operations by employing new types of agreements concluded between the municipality and mining operator has also been brought up in public. While good cooperation is obviously necessary in many respects, it is difficult to conceive of such agreements replacing legislative norms. Depending on the location of the mine, the impacts of mining may often be felt outside the source municipality, and especially the impact on waterways can stretch far and wide. *Questions concerning participation systems, appeals, legal remedies, the legal nature and validity of the agreement, the resolution of interpretative disputes, the monitoring of adherence to the provisions of the agreement, and the relationship between the agreement and standard processes would be patently difficult to regulate, even through legislative provisions, as regards agreements of the proposed type.*

The previous discussion has focused on land use plans as a prerequisite for mining operations. Whole different aspects come into play when examining the potential impact that land reservations for other operations or conservation, designations of purpose of use, other designations and plan regulations may have on mining operations. In this respect, land use plans and different areas, including their legal effects, may exhibit great mutual variation. As previously stated, under section 46, subsection 1, paragraph 6 of the Mining Act, neither an exploration permit or a gold panning permit may be granted for an area where the activities for which the permit is sought would hamper the implementation of a legally binding plan. A similar provision is not included in section 47 regarding mining permits, which, in a sense, is natural in view of the (basic) requirement for a land use plan. *Here, the gap – and conflict – between the Land Use and Building Act and the Mining Act arises in case the mining project hampers the implementation of a legally binding land use plan or the project is in direct conflict with a land use plan, such as a local detailed plan, and the requirement set out in section 47, subsection 4 is met based on joint exploration instead of a legally binding land use plan. In any case, the legal impacts of land use plans are determined in accordance with the Land Use and Building Act. This conflict could also be solved by revising section 47 of the Mining Act as described above.*

Another question is whether land use plans could include regulations such as those discussed in chapter 7, which would fully forbid mining operations in specific areas in order to, for example, protect tourism from the impact of mining operations. The end result would, of course, depend on the municipality's priorities, in addition to the legal requirements concerning the content of the plan. The content of the master plan, which usually comes into question for such purposes, is primarily determined by the provision in section 41, subsection 1 of the Land Use and Building Act, according to which the regulations of a local master plan may, among other things, concern special guidance on land use and building in a specific area and the prevention or limitation of harmful environmental impacts

In view of a recent precedent of the Supreme Administrative Court (the legally binding strategic master plan of Kuusamo), the Land Use and Building Act presently in force did not permit the local plan regulation determined by the municipal council, which specifically prohibited mining operations:

> The master plan designations for development included regulations that were expressed in unconditional terms, prohibiting mining operations in specific areas.
>
> The preconditions for mining operations were determined in permit procedures under the Mining Act and, where necessary, the Environmental Protection Act, where assessments were made, for example, on whether the land use and environmental impacts of mining were of such nature that they prohibited mining from being carried out in a specific area. In these procedures, attention was also focused on the content of the legally binding plan in force for the location of operations.
>
> In the master plan, land use, such as mining operations, was primarily guided by designating areas for different purposes of use. In addition to designated areas, the master plan could accommodate regulations issued under section 41 of the Land Use and Building Act, which were necessary for the use of the master plan area, in view of the purpose and content of the land use plan. However, a master plan or its regulation may only have legal effects based on the provisions of the Land Use and Building Act.

The regulations prohibiting mining, included in the development designations of

> the master plan, were not equivalent to the regulations preventing or limiting harmful environmental impacts specified in section 41, subsection 1 of the Land Use and Building Act, since the regulations did not directly target environmental impacts, but rather the prohibition of a specific line of business. The regulations also did not have the nature of plan regulations used for areas specified by development designations. Therefore, the plan regulations were illegal. KHO 2019:67.

For example, if land use planning is employed to prioritise conditions for tourism over mining operations, this calls for a different approach to land use outside the areas specifically designated for tourism and accommodation services than that adopted in the case decided by the Supreme Administrative Court. A revision of land use planning legislation, especially of section 41 of the Land Use and Building Act, may be necessary for this purpose. However, municipal plans are still made by the local authority, and mining operations will depend on future land use plans, as described above.

A plan specified in the Land Use and Building Act is a prerequisite for a mining permit. However, such a plan can be replaced with another type of land-use report, although this provision has given rise to ambiguous interpretations. This structural incoherence regarding mining permits calls for amendment. An obvious solution would be to eliminate the provision regarding other types of reports, possibly excepting situations that are less significant to land use, such as minor auxiliary areas. Consequently, the requirement for a plan would place greater emphasis on the autonomy of municipalities, while ensuring that municipal decision-making regarding plans would be legally controlled, compared to, for example, a mere requirement for consent. Moreover, a regional land use plan does not reflect the autonomy of the municipality in which the planned mine is to be located. There are good grounds, therefore, to exclude regional land use plans from the available alternatives in this context. Good regional land use planning can, of course, improve the conditions of municipal land use planning.

The relationship between the Mining Act and land use planning norms requires, in all cases, that the planned reform of the Land Use and Building Act preserves a legally binding planning instrument at the municipal level. This also applies to the relationship between the Environmental Protection Act and the provisions regulating land use plans. Land use planning is, most likely, an adequate way of taking national security into account in land use, as referred to in amendment 467/2019 of the Land Use and Building Act.

The possibility of controlling mining operations by employing new types of agreements concluded between the municipality and mining operator has also been brought up in public. However, such agreements would be difficult to reconcile with other decision-making and legal remedies, and the rapporteur has not included proposals on them in this report.

For example, if land use planning is employed to prioritise conditions for tourism over mining operations, this calls for a new approach to land use outside the areas specifically designated for tourism and accommodation services. In fact, a revision of land use planning legislation may be necessary for this purpose.

10 Notifications

In contrast to, for example, the Environmental Protection Act and the Water Act, the Mining Act does not always require general notifications to be supplemented with separate notifications to the landowner, neighbours or other directly affected parties regarding exploration and mining permit applications and corresponding permit decisions. *This defect, which weakens the opportunities to participate and erodes legal protection, should be remedied.*

The notification and publication procedures specified in the Mining Act should be replaced with electronic procedures, where appropriate, as was recently done in the Environmental Protection Act and the Water Act (504/2019 and 505/2019). A similar amendment is included in the coordination act, approved by Parliament, discussed in chapter 5. This means that the procedure would be followed in any case when applying the coordination procedure in connection with the Mining Act, even without an amendment.

In contrast to the Environmental Protection Act and the Water Act, the Mining Act does not always require general notifications to be supplemented with separate notifications to the landowner, neighbours or other directly affected parties regarding permit applications and corresponding decisions. This defect, which weakens the opportunities to participate and erodes legal protection, should be remedied.

The notification and publication procedures specified in the Mining Act should be replaced with electronic procedures as was recently done in the Environmental Protection Act and the Water Act.

11 The Sámi, reindeer herding and reindeer herding cooperatives

Mining operations carried out in the Sámi homeland, specified in the Act on the Sámi Parliament, are subject to special provisions, which have been issued to take into account the status of the Sámi as an indigenous people and the Sámi Parliament's opportunities to influence matters. Sections 38 and 50 of the Mining Act as well as the Sámi Parliament's status as a party concerned and its right of appeal are of key importance in this respect. The practical assessment of impacts required by section 38 of the Mining Act has been developed collaboratively by different parties. The statutory establishment of the Sámi people's rights to land and water and Finland's ratification of the International Labour Organisation's Indigenous and Tribal Peoples Convention remain open questions. In the present situation, the rapporteur does not believe it to be justified to propose legislative amendments to improve the status of the Sámi people and the protection of their traditional livelihood and culture, as regards mining.

The provisions in the Mining Act on the attention focused on reindeer herding and the involvement of reindeer herding cooperatives in the permit procedures under the Mining Act are only applicable in the northern part of the reindeer herding area, that is, in the special reindeer herding area specified in section 2, subsection 2 of the Reindeer Husbandry Act. It is difficult to identify any justified reason for these provisions not applying to the entire reindeer herding area and all the reindeer herding cooperatives. *To ensure equal status to reindeer herding cooperatives with regard to the permit procedure, the scope of application of provisions concerning reindeer husbandry and the involvement of reindeer herding cooperatives should be expanded to encompass the entire reindeer herding area, not only the more limited*

special reindeer herding area. However, in view of the provisions of section 2, subsection 2 of the Reindeer Husbandry Act (land in the area specifically intended for reindeer herding may not be used in a manner that may significantly hinder reindeer herding), the provisions in section 50 of the Mining Act regarding obstacles to the granting of mining permits due to considerable harm caused to reindeer herding need not be applied in other parts of the reindeer herding area.

In this context, attention should also be focused on Section 38 of the Mining Act, which issues provisions on permit procedures in the Sámi homeland, Skolt area and special reindeer herding area. Publication 20/2018 by the Ministry of Economic Affairs and Employment sheds further light on the question (Impact assessment required under section 38 of the Mining Act in permit procedures in the Sámi Homeland, Skolt area and special reindeer herding area). In the rapporteur's view, this regulation does not need to be amended, although it is true that the responsibilities of different parties have given rise to some uncertainty in practice (see case KHO 2014:111, discussed in chapter 6).

To ensure equal status to reindeer herding cooperatives with regard to the permit procedure, the scope of application of provisions concerning reindeer husbandry and the involvement of reindeer herding cooperatives should be expanded to encompass the entire reindeer herding area, not only the more limited special reindeer herding area.

12 Redemption permit for a mining area and proceedings establishing a mining area

The government may grant a redemption permit for a mining area, that is, the right to use an area belonging to another party as a mining area while the mining permit is in force. The redemption permit is closely linked to the mining permit, even though it is, from a legal perspective, a separate solution with its own legal effects. The redemption permit for a mining area specifies the property that the permit applies to, the content of the rights of use and the compensation under the Act on the Redemption of Immoveable Property and Special Rights The mining area (and the auxiliary area) may only be used for the purpose for which the usage or other right has been granted. In practice, however, the landowner's ability to use the mining area is usually equivalent to the loss of control of property and the total exclusion of the right of use and possession, which often lasts for decades. Similar to the constitutional provision on the protection of property, the existence of a public need is the key requirement for the granting of a redemption permit for a mining area. As regards private applicants, this requirement is often difficult to interpret, but the Mining Act contains an express provision (section 49) stating that the requirement of public need is assessed particularly on the basis of the impact of the mining project on the local and regional economy and employment and the social need for raw material supply. The threshold of public need in mining has not yet been specified in the case law of the Supreme Administrative Court. No obvious needs for amendment can be identified in this respect. The same applies to the regulation on the proceedings

establishing a mining area in connection with the execution of redemption. Moreover, based on section 105 of the Mining Act, various compensations for environmental damage may be handled, in addition to redemption compensations, during the proceedings establishing a mining area.

The mining area is determined on the basis of the mining permit, but the redemption permit for a mining area does not necessarily cover the entire area, since the mining operator may acquire parts of the mining area or rights of use to the area through agreements concluded with the landowner, which are governed by private law. In this case, the outer boundary of the mining area is not determined in a cadastral procedure (unless the outer boundary also forms the boundary of the real estate), nor is a cadastral procedure initiated to confirm the correspondence between the areas to which a right of use has been granted and the mining area specified in the mining permit. On the other hand, there is no absolute deadline for acquiring rights through agreements (section 68, subsections 4 and 5 of the Mining Act). This does not, however, prevent the determination of boundaries. *Consideration should be given to the possibility to determine the scope of the mining area in connection with the proceedings for establishing a mining area.*

Some rights of use that are more restricted than the rights pertaining to the mining area proper may be granted in connection with the mining permit based on a decision by the Finnish Safety and Chemicals Agency. Agreements on such rights between the mining operators and the participants' associations that own land in the joint property units specified in the act on joint property would not benefit if the amendment to the act on joint property, included in the phase II legislative package of the regional government reform (HE 14/2018 vp; bill 85), which weakened the access of participants' associations to information on decision-making structures and increased the ambiguity of possessory relations regarding land areas and bodies of water (cf., e.g. KHO 2017:198), were adopted. *The amendment should therefore not be adopted.*

Consideration should be given to the possibility to determine the scope of the mining area in connection with the proceedings for establishing a mining area.

13 The validity of reservations and reduction of the period of uncertainty

The reservation, exploration and permit scheme specified in the Mining Act inevitably causes landowners and owners of water bodies, as well as outside entrepreneurs, long-term uncertainty regarding the possible uses of the area, even though reservations, as such, do not have legal effects regarding land use or other aspects related to the owner. This is also true in cases where active exploration is not carried out despite the reservation. This period of uncertainty may last uninterrupted for as long as 17 years, from the submission of the reservation notification to the expiry of the last extension to the exploration permit. One of the factors likely to boost active exploration in the early years is the annual exploration fee which the exploration permit holder pays to the owners of real estate that come under the scope of the exploration area. Under section 99 of the Mining Act, this compensation increases over the years from the initial 20 euros per hectare to 50 euros per hectare.

To somewhat balance the situation between different parties, the landowner's consent could be included in the Mining Act as an additional condition for extensions to exploration permits. This would mean that exploration based on the claim procedure and independent of the landowner's consent could continue for, say, 7 years, after which the applicant would have to apply for a mining permit or conclude an agreement with the landowner to continue exploration, in addition to meeting the other conditions for an extension specified in the Mining Act. This would encourage active exploration at the initial stage, among other things, because continued exploration might prove to be difficult in an area where ownership is fragmented and

only partial agreements on an extension are reached. Compared to present legislation, such an amendment would encourage targeted exploration in the reservation areas and, as a result, reduce the size of the reservation areas.

However, the partition of real estate may differ greatly in different permit areas, ranging from areas owned by a single party (for example, by Metsähallitus) to areas whose ownership is highly fragmented and spread among several parties. In the latter case, the rapporteur finds that it would be unwarranted to grant one or a few owners the right to prevent the extension from being granted. Therefore, the condition for an extension could be based on the consent of a qualified majority, for example two thirds, of landowners, determined on the basis of the area owned.

The feedback received by the rapporteur also included a proposed change, according to which the party applying for a reservation would be required to present a plan for exploration and related funding. In the rapporteur's opinion, the effects and practical implementation of such a change merit an assessment.

The reservation, exploration and permit scheme specified in the Mining Act inevitably causes landowners, owners of water bodies as well as outside entrepreneurs long-term uncertainty regarding the possible uses of the area, even though reservations, as such, do not have legal effects regarding land use or other aspects related to the owner. To somewhat balance the situation between different parties, the landowner's consent could be included in the Mining Act as an additional condition for extensions to exploration permits. In cases of fragmented land ownership, it would be unwarranted to grant one or a few owners the right to prevent the extension from being granted. Therefore, the condition for an extension could be based on the consent of a qualified majority, for example two thirds, of landowners determined on the basis of the area owned.

14 Collateral aspects

The Mining Act contains provisions on different types of collateral. Under section 107 of the Act, the holder of the exploration permit and the gold panning permit must deposit collateral for the purpose of offsetting potential damage and inconvenience and performing aftercare measures, unless this is deemed unnecessary in view of the quality and extent of operations, the special characteristics of the operating area, permit regulations issued for the operations, and the applicant's solvency. Collateral must be deposited for each individual exploration permit and exploration area (decision by the Supreme Administrative Court, KHO 2018:46). The rapporteur does not consider changes to this approach to be justified for the purpose of securing a functioning collateral system and various uses of collateral, although a system based on amounts might be more advantageous for the party conducting exploration. This also applies to gold panning permits.

Section 108 of the Mining Act issues provisions on collateral that the mining permit holder must deposit for the termination and aftercare measures of mining operations. The need for collateral deposited by the mining permit holder is not a matter of discretion (KHO 2017:177). As regards the collateral required under the Mining Act, the collateral for the mining permit only covers termination and aftercare measures, while the collateral for exploration also covers compensation for damage and inconvenience apart in addition to aftercare measures.

In its role as the permit authority, the Finnish Safety and Chemicals Agency, determines the quality and amount of collateral for the permit in question. The amount of collateral must be revised, if necessary, when the permit is revised or its period of validity is extended. The collateral must be deposited with the Finnish Safety and Chemicals Agency, which oversees the interests of the recipient of compensation, as regards the provision of security and, if necessary, acts on matters related to the liquidation of collateral and the distribution of assets. The collateral can be used to cover the costs necessary to fulfil the obligations

specified in the Mining Act or in the relevant permit. The Finnish Safety and Chemicals Agency must release the collateral once the permit holder has fulfilled their obligations. Collateral can also be released in part. The assignment of the permit to another party does not lead to the collateral being released. When approving the permit assignment, the mining authority must evaluate whether the quality or quantity of collateral should be revised and make the necessary alterations to the relevant permit regulations.

The Environmental Protection Act also contains provisions on collateral that may apply to mining operations. Under section of the Act, operators engaged in waste treatment must provide collateral to ensure appropriate waste management, monitoring and control, and actions needed during the termination of operations or after their termination. Under section 60 of the Environmental Protection Act, the collateral must be sufficient for managing the actions referred to in section 59, taking into account the extent and nature of the operations, and the regulations issued for the operations. The collateral for the extractive waste site must also cover the costs of restoring to a satisfactory state a land area that is located within the area of impact of the waste site and defined in more detail in the waste management plan. The environmental permit must specify that the operator's collateral for a landfill, an extractive waste site and other long-term operations accrues over time to correspond, as well as possible, to the costs of ceasing operations and the aftercare, at the time of assessment. Further provisions on the collateral required by the Environmental Protection Act, as regards extractive waste, are issued by government decree (190/2013, as amended). The Environmental Protection Act also contains provisions on certain collateral to cover compensation for damages. As regards the phased permit procedure, the Environmental Protection Act issues provisions on a specific security for damage compensation related to compensation for water pollution (sections 125–127) as well as to the initiation of activities subject to a permit regardless of an appeal (section 199). Similar provisions on security for damage compensation are also issued in the Water Act and the Land Extraction Act.

The setting of collateral for mining operations and the amount of collateral are linked to the relevant mining permit, environmental permit or extractive waste management plan and the related obligations. The collateral specified in different provisions have their own purposes of use. Under the basic scheme, the operator carries sole responsibility for the project throughout the project's life cycle without there being need to use the collateral due to insolvency, the disappearance of the operator or any other reason, and the collateral is, in time, returned to the operator.

Attitudes to collateral are typically controversial: when the collateral is provided, it may be experienced as a burden on the mining operator, but when it needs to be used, it may prove to be too small or difficult to convert into cash. Aftercare collateral may only cover the measures specified for the aftercare obligations, either in the permit or directly in legislation (e.g. section 110 of the Mining Act).

According to the data on mining-related collateral, compiled for the rapporteur by the Finnish Safety and Chemicals Agency and by environmental administration, there is great project-specific variation in the amount of collateral determined under the two acts. This is understandable, taking into account the differences in size, quality and impact of different projects. As a general observation based on the same data, the amount of security lodged for waste treatment under the Environmental Protection Act is usually considerably higher, and often of a different magnitude, than the mining collateral for the same project. There is reason to wonder whether such a consistent difference all down the line can be justified based on the permit obligations. In many cases, the collateral required under the Mining Act has been determined so as to only cover the minimum measures needed to fence in the mining area and prevent the entry of outsiders. The general inadequacy of collateral was brought up especially in feedback from the authorities. If the amount of collateral for termination and aftercare measures under section 108 of the Mining Act is set for too narrow a use, for example solely for fencing and other immediate security measures, even the original targets and requirements of the Mining Act cannot be met. According to the rationale of section 108 of the Mining Act, the collateral specified in the Environmental Protection Act is mainly intended to cover the costs from the closure of tailings dams, waste rock areas and other waste management areas, while the collateral linked to the mining permit is designed to cover the measures needed for the termination and aftercare of mining operations (excluding nuclear waste management, which is regulated separately). When specifying the quantity of collateral related to the mining permit, the permit authority must, according to the rationale for section 108 of the Mining Act, place special attention on the costs resulting from fulfilling the obligations specified in sections 143, 144 and 150 of the Act. *The goal and purpose of the Mining Act was to provide for collateral that accounted for more than immediate safety concerns, but apparently the objectives are not achieved in all cases. The situation should be rectified.*

If sections 18 and 143 of the Mining Act are supplemented as proposed in chapter 7, this would also reflect on section 108 and the amount of collateral.

From a practical viewpoint, the overall system is, to a certain degree, impractical in that it contains two different types of collateral for the public-law obligations related to the termination and aftercare stages – one specified in section 108 of the Mining Act and the other in section 59 of the Environmental Protection Act – even though their scopes of application differ both in principle and in practice. It may be necessary to create a coordinated method for their "cross use", which is tied to specific conditions and does not put the purpose of either at risk. For this to be purposeful, the scope of the collateral of both acts must first be ensured. The joint processing of mining permits and environmental permits would make it easier to set consistent collateral requirements, even if it did not eliminate the problem of two different types of collateral. Nevertheless, the overall system would benefit from section 108 of the Mining Act being supplemented with a provision specifying that the collateral referred to must cover all the necessary measures related to the termination and aftercare of the mine and its waste site which collateral that has been previously assigned under another act does not cover.

Under the Mining Act, the quantity and quality of the collateral must be assessed when revising the regulations of mining permits (section 62), altering permits (section 69) and approving the assignment of permits (section 73). This emphasises the revision of fixed-term permits, discussed in chapter 8. This is not the case for waste collateral in environmental permits. The only requirement in environmental permits in this respect is that the operator's collateral for a landfill, an extractive waste site and other long-term operations must accrue over time to correspond, as well as possible, to the costs of ceasing operations and the aftercare, at the time of assessment. The fulfilment of these requirements is not subject to any actual authority assessment. For the sake of consistency, the up-to-dateness of the collateral should be assessed in connection with the permit revision referred to in chapter 8.

The collateral system apparently calls for a broader examination as well. However, it would be more fruitful to examine this question after the assessment of waste collateral under way at the Ministry of the Environment has been completed and the projects mentioned later in this chapter have made progress. In view of the long time span of mining operations and their often international nature, special attention should be focused on the collateral keeping its value, on the scope of cover (on the significance of value added tax, see the Supreme Administrative Court's decision

2017:24) as well as liquidity and the related differences between financial instruments (for example, the use of other acceptable security, such as suretyship insurance or investment with capital protection, alongside bank deposits and bank guarantees, which was discussed in the Supreme Administrative Court's decision KHO 2010:80). The differences found in the qualitative basic requirements under different acts (for example, section 61, subsection 1 of the Environmental Protection Act, the equivalent of which is not found in the Mining Act) should be eliminated.

The development of a secondary compensation system for environmental damage may influence regulation regarding collateral in cases where the purpose of collateral, for example collateral for exploration permits, is (also) to ensure that the injured parties receive compensation for environmental damage. In actual mining operations, most of the potential uses for a secondary compensation system involve situations in which no collateral is in place under the Mining Act and usually not under the Environmental Protection Act.

Under the Environmental Damage Insurance Act (81/1998), compensation is paid for environmental damage referred to in the Act on Compensation for Environmental Damage (737/1994), which has been caused in Finland by operations in Finland, and for costs arising from the prevention of such damage and from restoring environment so damaged, provided that: 1) it has not been possible to collect such compensation in full from the party liable to compensate for the damage under the Act on Compensation for Environmental Damage and no compensation can be collected under the liable party's liability insurance; or 2) it has not been possible to identify the liable party. Under the government decree on environmental damage insurance (47/2015), a statutory environmental damage insurance must be taken out, among others, by a private-law organisation that engages in activities that are subject to an environmental permit under the Environmental Protection Act and for which the permit application is decided by the state environment permit authority, that is, by the regional state administrative agency. In other words, mining and mineral processing operations come under the scope of the insurance obligation specified in Act 81/1998.

The Government's joint survey and research project on the financing of compensation for environmental damage in cases of insolvency was launched in early 2019. The project, which is by nature a background survey, will result in an

international comparison of different ways of organising secondary financing facilities. It will also provide conclusions on the best practices for developing the national system. Despite its title, the project also focuses on environmental responsibility governed by public law, including aftercare responsibilities, in addition to compensation for environmental damage.

After the funding decision, the project has adopted a new title *("Toissijaisen ympäristövahinkovastuun rahoitusmallien vertailu"*) to reflect its focus on the comparison of financing models for secondary environmental liability.

Future development will also be influenced by the government proposal for an act amending the Bankruptcy Act and certain related acts (HE 221/2018 vp), and more specifically its proposal to include in the Bankruptcy Act provisions on the status of environmental responsibilities governed by public law in case of bankruptcy. However, Parliament did not approve the proposed provisions due to the constitutional aspects indicated in the statement by the Constitutional Law Committee As expressed by the Legal Affairs Committee, the parliamentary reply (EV 311/2018 vp HE 221/2018 vp) states: "Parliament expects Government to prepare provisions on the environmental responsibilities of bankruptcy estates, which take equally into account the creditors' right to receive payment and aspects of the fundamental right to the environment."

Had it been adopted, the government proposal would have resulted in many of the key obligations of operators being covered solely by collateral, if any, in case of bankruptcy. This would have been a risk to responsibilities that had not been taken into account in the collateral provisions, such as adherence to the obligations specified in the mining and environmental permit in cases of unexpected interruption to operations. The impact of bankruptcy on collateral needs will not be clarified until a new government proposal is introduced. However, it is not likely that a new proposal, requiring demanding drafting of legislation, can be introduced quickly. In its statement (PeVL 69/2018 vp), the Constitutional Law Committee found that extensive further work was required to ensure the constitutionality of the proposal. This includes conducting detailed analyses and appropriate impact assessments to review and regulate the relationship between bankruptcy procedures and obligations specified in both EU regulation and national substantive environmental legislation, from both a substantive and procedural perspective.

When seeking new solutions, attention can also be focused on the approach to financial provisions adopted in the Nuclear Energy Act. Under the Nuclear Energy Act, a National Nuclear Waste Management Fund that is independent of the State budget is set up for this purpose. Under section 36 of the Nuclear Energy Act, the licensee under a waste management obligation fulfils the financial provision obligation by paying for each calendar year the charges referred to in the Act into the National Nuclear Waste Management Fund and by furnishing the State with the securities laid down in the Act as a precaution against insolvency. The goal and purpose of the Mining Act was to provide for collateral that accounted for more than immediate safety concerns, but apparently the objectives are not achieved in all cases. The situation should be rectified.

From a practical viewpoint, the overall system is, to a certain degree, impractical in that it contains two different types of collateral for the public-law obligations related to the termination and aftercare stages – one specified in the Mining Act and the other in the Environmental Protection Act – even though their scopes of application differ both in principle and in practice. It may be necessary to create a coordinated method for their "cross use", which is tied to specific conditions and does not put the purpose of either at risk. For this to be purposeful, the scope of the collateral of both acts must first be ensured.

The collateral system apparently calls for a broader examination. However, such an examination can be conducted more effectively once certain other reports and projects have made adequate progress.

15 Requirements on permit holders

Under section 73 of the Mining Act, the exploration permit, mining permit and gold panning permit may be assigned to another party. The assignee must fulfil the requirements corresponding to those applicable to the permit holder under the Mining Act. A redemption permit for a mining area may also be assigned. Under specific conditions, an environmental can also be assigned. The Finnish Safety and Chemicals Agency makes a decision on the assignment application based on judicial discretion. When approving the permit assignment, it must evaluate whether the quality or quantity of collateral should be revised, make the necessary alterations to the relevant permit regulations and specify the data on which the alterations take effect.

The Mining Act, which is based on the claim procedure, is very advantageous to efficient exploration and mining activities. On the other hand, it comes with a major responsibility, which must also extend to parties to whom rights may be assigned. More specific provisions should be issued on the requirements that the recipient of rights must meet in order to prevent the assignment of rights to parties of doubtful competence and financial conditions, for example in situations where the mining permit holder strives to free themselves from unprofitable projects and the obligations placed on permit holders. It should be noted that under section 106 of the Mining Act, the assignment of a permit does not absolve the permit holder from liability for compensation insofar as damage or inconvenience has been caused prior to approval of the assignment by the Finnish Safety and Chemicals Agency. Section 73, subsection 1 of the Mining Act presumably refers to at least section 31 and section 48, subsection 1 of the Mining Act. The provision issued in section 34, subsection 1 of the Mining Act, according to which the application for a mining permit must include a report on the applicant's meeting the prerequisites for carrying out operations commensurate with the permit sought, does not have an equivalent in sections 47 and 48 of the Act specifying the prerequisites for and impediments to granting a mining permit. *This points to a need to supplement these basic provisions. Cases of assignment might warrant a specific requirement concerning the assignee's*

solvency, perhaps more specifically stating that solvency may not essentially be based on the financial value of the assigned permit and the related rights of use. It is also important to ensure that administrative rulings on the fulfilment of requirements can be submitted for a court examination by either party. The present provisions on right to appeal included in the Mining Act seem to hinder this (see the Supreme Administrative Court's decision KHO 2017:181).

Extending the validity of the mining permit under section 63 of the Mining Act requires, among other things, that the permit holder has adhered to the obligations specified in the Mining Act as well as the permit regulations. *In a system of norms distributed across different statutes, essential requirements for mining operations are also set in statutes other than the Mining Act, such as the Environmental Protection Act. For the sake of consistency, a breach of relevant provisions issued in other acts or of regulations specified under other acts should also be taken into account when assessing the conditions for extending a mining-related permit.* The same should also apply to gold panning permits. To ensure consistency, a similar approach could be adopted for the cancellation of permits, specified in section 70 of the Mining Act. However, this is influenced by the provisions issued in the Environmental Protection Act regarding the cancellation of permits, which set the threshold higher.

The Mining Act, which is based on the claim procedure, is very advantageous to efficient exploration and mining activities. On the other hand, it comes with a major responsibility, which must also extend to parties to whom rights may be assigned. More specific provisions should be issued on the requirements that the recipient of rights must meet in order to prevent the assignment of rights to parties of doubtful competence and financial conditions. Cases of assignment might warrant a specific requirement concerning the assignee's solvency, perhaps more specifically stating that solvency may not essentially be based on the financial value of the assigned permit and the related rights of use. It is also important to ensure that administrative rulings on the fulfilment of requirements can be submitted for a court examination by either party.

16 Dam safety

In contrast to the former dam safety act, the Dam Safety Act currently in force (494/2009) also applies to (terrestrial) mining dams. Regulation regarding mining safety is still based on the Mining Act. Terrestrial mining dams come under the scope of control of the regional environmental authorities which exercise the role of dam safety authority (the centres for economic development, transport and the environment of Häme and Kainuu, government decree 906/2012). The Dam Safety Act does not include a permit procedure for dam construction. Instead, under section 3, subsection 6 of the Dam Safety Act, the provisions of the Act must be taken into account when making an official decision on the construction and use of a dam under the Water Act, Environmental Protection Act and Land Use and Building Act. According to the rationale of the Dam Safety Act, provisions on the control of dams, as regards dam safety, should be issued in other acts, mainly in the Water Act and, in the case of waste dams, in the Environmental Protection Act. The permit procedures under these acts would then take dam safety requirements into account based on the relevant statements. The permit procedure under the Environmental Protection Act is also influenced by the provisions of the Waste Act and the government decree on extractive waste (190/2013). Under section 3, subsections 1 and 2 of the Dam Safety Act, the relevant provisions of the Water Act, the Environmental Protection Act and the Waste Act are applied alongside the Dam Safety Act. The provisions of the Mining Act are applied in questions involving the safety of mines. The application of the permit procedure specified in the Environmental Protection Act is required in the procedural provisions of the government decree on extractive waste.

In the rapporteur's opinion, the question about the permit act applicable to mining dams and waste dams of mines, which specifies the procedure for assessing dam safety and setting permit regulations, is unclearly and inadequately organised in legislation. Although, according to the Annex to the Environmental Protection Act, mining operations are activities subject to an environmental permit, environmental permits are primarily emission permits, and nowhere has it been clearly specified that internal or

external dams in mining areas come under the scope of projects subject to a permit under the Environmental Protection Act. This holds true irrespective of whether or not the liquid dammed up causes risk of pollution. As an overall area arrangement, the extractive waste management plan included in the environmental permit forms a permit system that is broader in scope than an emission permit, and waste dams are part of this system. If a dam that is part of mining operations requires a permit under the Water Act due to it targeting and affecting a body of water, this permit requirement does not depend on a permit required under the Environmental Protection Act. The act applied to the permit also has an impact on monitoring, because under section 30 of the Dam Safety Act, the administrative enforcement measures specified in the Dam Safety Act are applicable provided that no other act has been breached. In this respect, the permit procedures of the Environmental Protection Act and the Water Act are very different. There is a risk of the monitoring of leakage risks in the base of the reservoir and the boundary banks being split due to the impact of different acts and authorities.

Consequently, the relationship between the Dam Safety Act and permit acts should be clarified in legislation. This may require several acts to be supplemented.

The status of the Dam Safety Act in relation to permit legislation applied alongside the Mining Act, as well as to the permit and monitoring procedures specified in the legislation, must be clarified. This may require several acts to be supplemented.

17 The use of mining areas after the termination of operations

Legislation does not contain special provisions for new ways of using mining areas after the termination of mining operations. When deciding on the content of the mining permit, it would, in principle, be possible to proactively secure, at least to a certain degree, the conditions for the future use of the area. Owing to the length of the time span and the uncertainty surrounding the duration of operations and the future needs of use, predictions are difficult to make at the permit phase. They might become easier during later permit revisions (see chapter 8). However, to ensure legal certainty and predictability, the future obligations, or at least the broad outline of them, should be known to the recipient of the mining permit at the permit phase. Under section 120 of the Mining Act, regarding preparations for the termination of mining activity, the mining operator must, when planning and constructing the mine and operating it, ensure that mining can be terminated and the mine closed safely. These forecasting obligations do not stretch further than this under the act presently in force. *At least a general obligation to assess and establish potential future uses of the mining area should be added to section 120 of the Mining Act, and the question should be re-examined in later reviews of the mining permit.*

The developing circular economy appears to be creating new purposes of use as well as economic interest for certain types of former mining areas. In view of this, land use planning procedures should also be developed open-mindedly. On the other hand, restoring former woodlands by reforesting them after the termination of mining operations to create carbon sinks might be a justified option, especially if significant areas of forests are excavated for mining purposes in the future. In view of technological and economic aspects, this may not be a realistic option on a large scale, in the absence of any forest soils or other loose soils.

Under section 148, subsection 3 of the Mining Act, the decision to terminate mining activity must specify the impact area of the mine in which, for reasons of public safety or prevention of detrimental environmental impact, restrictions on land use may be necessary. This must be taken into account as a factor limiting future land use. An entry on the impact area is made in the land information system. When handling permit applications regarding construction or other projects in the impact area of the mine, the competent authority must request a statement from the Finnish Safety and Chemicals Agency, if required.

Section 149 of the Mining Act lays specifies a fundamental point of departure. According to it, once the decision to terminate mining activity has become legally valid, the mining operator's right of use and right of possession to the mining area is terminated alongside the right of use and other rights to the auxiliary area of the mine. The areas involved are also returned, free of charge, into the possession of the real estate owner, although a transitional period has been specified for buildings and other constructions (section 144). This means that especially large former mining areas are most likely fragmented in terms of ownership, even though the areas may of little economic value to the owners due to the lack of ways to use the areas. Ownership can be rearranged into meaningful units through the employment of voluntary assignments governed by private law. Moreover, land use planning under the Land Use and Building Act may create the conditions for municipalities to redeem the areas.

The mining permit should include at least a general obligation to assess and establish potential future uses of the mining area, and the question should be re-examined in later reviews of the mining permit.

18 Seabed minerals

Despite the general applicability of the Mining Act, the norms applicable to the utilisation of seabed minerals are unclear in many respects. Moreover, any other applicable norms depend on whether the question concerns waters of villages, public waters or the exclusive economic zone of Finland.

Firstly, according to the prevailing state of the law regarding minerals in sea sand, the Land Extraction Act does not apply to the extraction of resources (from the seabed) in water areas for which, under the Water Act, a permit from the regional state administrative agency is required (section 2, subsection 3 of the Land Extraction Act, which still refers to the former water act 264/1961, but means the Water Act presently in force). Under the Water Act, the need for a permit is determined on a case-by-case basis based on the detrimental consequences of the individual project (for example to the fishing industry) and whether they exceed the threshold for permits under the Water Act. Otherwise, a permit from the municipal authorities is required, as specified in the Land Extraction Act. The Mining Act is not mentioned in this context, which in view of the valid Mining Act is consistent in that it only issues provisions on mining activities targeting resources in the bedrock (excluding the surface area referred to in section 19). Prior to 1965, the former mining act also applied to, for example, iron deposits found elsewhere than in the bedrock. The purpose of this was to provide the opportunity to engage in the traditional extraction of lake ore, which no longer takes place.

This means that the Mining Act that is presently in force applies to the seabed of Finnish territorial waters (and inland waters) only as regards the bedrock. It remains unclear how the system laid out in the Mining Act and its different subsections would function in maritime areas, where mining projects differ considerably from mining on land. The provisions issued in the Water Act are applicable as such.

As a result of chemical and biological processes over a long period of time, considerable amounts of mineral depositions, nodules, have formed along the seabed. These contain especially iron and manganese, but also other minerals. The depositions may cover vast areas of the seabed. The permit scheme under the Water Act, also applies, on an effects basis, to measures targeting mineral depositions (as does, most likely, the Land Extraction Act as a secondary norm, since depositions are probably considered to be soil material under the Land Extraction Act and its broad concept of soil). As is the case in the extraction of sea sand through suction dredging, this inevitably extends to cover all biotic and abiotic material on top of the sand layer, including mineral depositions. Limited information is available on deposition fields and the impacts and risks of their wide-scale utilisation to the maritime environment. In contrast to the extraction of sea sand, pumping water that contains seabed material back into the water column may lead to the fine material spreading over a wide area of the water column. The quality and biota of the seabed may also change permanently. Commercial methods of utilisation are presumably not yet in use in Finland or its surroundings. Research on mineral depositions is currently under way in a project funded by the Strategic Research Council, which operates at the Academy of Finland.

The economic interests related to depositions may call for the development of regulation regarding utilisation. However, the impacts of extraction on the maritime ecosystems and nature as well as on the fishing industry would be significant and apparently difficult to predict. Research related to these issues is currently under way. Map data on the occurrence of mineral depositions in the Finnish maritime area (and exclusive economic zone) may become publicly available in the near future. Taking into account that the extraction of innocuous samples from the bottom of water bodies has been considered to be an everyman's right, there appears to be no need for the Mining Act to regulate exploration regarding depositions.

Moreover, no effects-based need, at least, can be identified for extending mining permit regulations to depositions alongside the permit scheme of the Water Act. Extending mining permit regulation to underwater activities of this kind seems like excessive regulation, which would not generate added value, seeing as the scheme of the Water Act offers full control of impacts on waters. It is also unclear how the priority provisions of the applicable Mining Act could be applied to depositions without the full mining permit scheme. The same lack of need applies to mining safety

regulation, since the activities are not likely to differ much from the suction dredging of sea sand in this respect. It would also seem peculiar to apply mining permit regulation in territorial waters, where most of the areas affected belong to the state as public waters.

An assessment needs to be carried out to determine whether the Mining Act or parts of it might have a necessary and suitable scope of application alongside other legislation, such as the Water Act, as regards sediment minerals, or whether all new regulation should be drafted to create suitable conditions for operations and specify the necessary requirements for them.

On the other hand, the scope of application of the Mining Act also calls for a general clarification as regards mining operations proper and the seabed of territorial waters and the exclusive economic zone. I will next examine *a.* private territorial waters, that is, waters inside the outer boundaries of villages, *b.* the outer part of territorial waters, that is, public waters belonging to the state, and *c.* Finland's exclusive economic zone outside the territorial waters, in international waters.

a. Viewed from the coastline, the innermost water areas, or those part of villages, often belong to the participants' associations of the joint property, but some are private water areas that belong to a real estate or form a real estate on their own. *As regards mineral sediments* (should such be found in private water areas), according to the prevailing state of the law, the exploitation of sediments, like that of (other) land resources, is under the control of the water area's owner, and there is no option for claim or redemption. An external operator must obtain grounds for extraction, governed by private law, by concluding an agreement with the owner of the area. In the same vein, no grounds exist for priority regulation similar to that adopted in the Mining Act, since there is no claim element. The public availability of deposit information, which will presumably be extensively available before long, and the expected minor differences in risk-taking, which eliminates the rewarding aspect of the priority scheme, lead to the same conclusion.

For these reasons, the rapporteur does not consider it justified to modify the definition of mining activity under the Mining Act nor to expand the scope of application of the Mining Act so that it would cover mineral sediments on the seabed in addition to minerals in the bedrock. Since the traditional claim regulation found in mining law does not exist in this context, such an expansion of regulation would also create constitutional limitations and obstacles related to the protection of property

of the owners of the areas affected that were considerably larger than those dealt with at the time the Mining Act was drafted.

On the other hand, an absolute requirement of the owner's consent could lead to impractical project packages in cases of fragmented property division. This might support the inclusion of a restricted element of redemption. It could also be linked to the permit scheme of the Water Act, which in any case plays a key role regarding mineral sediments.

As concerns the joint property of participants' associations, the recommendation not to adopt the proposed amendment to the act on joint property (bill 85 in the phase II legislative package of the regional government reform, which was dropped) can be reiterated in this context.

Apparently, the main issue really revolves around the fulfilment of environmental requirements in the new operational context. The overall impact could be considerable, especially in the Gulf of Finland. The conditions related to the aquatic environment and resources as well as the fishing industry should be comprehensively determined in all areas (a, b and c) through a well-organised, extensive scheme of surveys, impact assessments and feasibility studies, which could also include an element of planning.

In this connection, attention should be focused on two existing planning schemes. These include the marine strategy specified in the Act on the Organisation of River Basin Management and the Marine Strategy (1299/2004) and the maritime spatial planning specified in chapter 8 a (as added by Act 482/2016) of the Land Use and Building Act, which is intended to coordinate different forms of use. However, neither of these, at least on its own, seems to fully meet the discussed need for surveys and planning. Moreover, the relationship between these two schemes is unclear (and the same applies to the relationship between the latter and the land use planning, encompassing water areas, specified in the Land Use and Building Act, which overlaps with the provisions of chapter 8 a in terms of content). Only the first of these schemes includes a specific system for legal protection, notification of decisions and appeals. The lack of such a system can be considered a fundamental defect of the rather disconnected regulation added to the Land Use and Building Act in 2016. In the rapporteur's opinion, this unsuccessful regulation further increases the uncertainty of legal impacts related to maritime spatial planning.

Owing to the lack of a mechanism for legal protection, the regulation is likely to remain insignificant, also regarding the exploitation of the seabed.

The Mining Act contains a few provisions that should somehow be extended to cover the activities referred to here. One of these is the obligation to submit information about discovered and extracted minerals to the mining authorities (see also chapter 23).

As regards *actual mining operations*, lighter and more targeted regulation on the mining permit and mining safety permit is probably called for in private water areas. In most cases, much of the content of the mining permit and the related permit regulations could be handled through permits for water resources management specified in the Water Act. Compensation for the right of use and for damage to, for example, the fishing industry could be handled through the permit scheme of the Water Act, without amendments to the system. This would pretty much eliminate any need for mine establishment proceedings. However, exploration regulation, the priority scheme and compensation under chapter 9 of the Mining Act are justified in water areas equally as well as they are on land. The mining safety requirements, in turn, are very different in maritime mining compared to mining on land. Apparently more attention should be focused on the needs to protect waterborne transport and routes under various circumstances in the Mining Act.

Since the permit scheme of the Water Act may be more central to mining in water areas than the possibly applicable permit scheme specified in the Environmental Protection Act, any coordination of permits (chapter 5 above) should focus on permits for water resources management rather than the environmental permit. The state regional administrative agency is the permit authority in both cases.

b. Under the act on public water areas (204/1966), public water areas are governed and managed by Metsähallitus, unless otherwise provided by law or government decision. Under section 6 of the act, no one is allowed, without the consent of the authority governing the area, to build in a public water area, to begin permanently using any part of such an area or to extract stones, sand, gravel or other resources from the bottom, unless the measure is one to which the party executing it is entitled under the Water Act, the Mining Act or a provision issued in other legislation or under a decision or order issued by the authorities pursuant to such a provision. Section 5 of the act contains a reference to the act on the right to transfer state-owned land and rights that generate revenue (687/1978). This act

has been replaced by the Act on the Right to Transfer State Real Estate Assets (973/2002). Moreover, under section 5 of the act 687/1978, any separate provisions on the government's right to transfer state-owned mineral findings into another party's possession, as well as land areas needed for their exploitation, also applies to public water areas and mineral findings in them. This is a reference to the act on the government's right to transfer state-owned mineral findings into another party's possession as well as land areas needed for their exploitation (174/1940). The act is still in force, even though it is not available in the Finlex system. It has most likely not been applied for decades. Nevertheless, the provisions of the act restrict the right of transfer to state-controlled companies, with the exception of some minor entities.

Owing to these special characteristics of the ownership and control of public water areas, the redemption of mining areas, in particular, is ill suited to these areas, if applicable at all. The case would be quite peculiar from the perspective of redemption law, since it would involve redeeming state-owned property for a private party based on public need. In legal practice related to land use planning, the court has in some cases stated that state-owned land may also be redeemed, but in these cases the redeeming party has been a municipality exercising the power to plan land use, not a private party (KHO 2007:84). No case law exists on redemption under the Mining Act.

Therefore, mining area redemption is presumably not possible in public water areas, and such a form of redemption is, in any case, unsuitable in view of the scheme of act 204/1966 as well as the relationship between the government's permit competence and the competence of Metsähallitus, which governs the areas. If the mining redemption is not applied, the required rights of use for mining must be obtained as referred to in act 204/1966. The fact that the applicant cannot be sure of obtaining such rights is not a problem in the scheme laid out in the Mining Act, since it is equally possible that a redemption permit for a mining area will not be granted. This is the case even if a mining permit has already been granted. It is also possible that the applicant does not meet the conditions for other permits required for mining or that provisions on nature conservation pose an obstacle to operations.

As regards other aspects related to mining in public water areas, the rapporteur refers to the discussion under point a. Since the question involves state-owned property, the

legal protection of ownership does not prevent the compensation regulation specified in chapter 9 of the Mining Act to be replaced with provisions on another kind of system better suited to state-owned land or, perhaps, a solely agreement-based system.

Furthermore, the observations on mineral sediments discussed under point a are largely applicable also to public water areas. Act 204/1966 would seem to largely apply to the securing of the right of use from the owner, in practice, from Metsähallitus. *Owing to the special features and risks involved, special regulation may be needed to distance these new kinds of agreements from the financial performance of Metsähallitus.* The requirements and restrictions following from, for example, the Water Act and the Environmental Protection Act, which are independent of state ownership, are still valid.

In particular, operations in water areas are prevented by provisions on nature reserves (especially section 13 of the Nature Conservation Act, which concerns national parks and nature reserves and prohibits the extraction of sand and stone materials and minerals, and any action that damages the soil or bedrock; as regards geological surveys and prospecting, section 15 of the same Act provides for a derogation). This applies to both mining operations and the exploitation of mineral depositions.

The provisions of the Territorial Surveillance Act (755/2000) must be taken into consideration in all operations carried out in territorial waters. Exploration of the formation, structure or composition of the sea bottom or seabed subsoil through geological or geophysical surveys is not allowed without permission in Finnish territorial waters, nor is systematic measurement and recording of the topography of the sea bottom. Furthermore, measurement of magnetic fields, radiation or electrical conductivity or any comparable exploration of the soil or bedrock from an aircraft flying at a height of under 150 metres may not be conducted in Finnish territory without permission. The exploration of certain areas from an aircraft is prohibited without permission, and special restrictions apply to restricted areas marked on Finnish sea charts. *The rapporteur has not identified reasonable grounds for integrating such permits serving national security with other permits related to mining operations.*

c. One essential difference to other land and water areas arises from the fact that Finland's exclusive economic zone outside the territorial waters is not a target of

ownership, and there are basically no outside private right-holders. The right to research, exploit, preserve and manage living and non-living resources, as well as to engage in other operations which aim at the economic exploitation and exploration of the zone, is held by the Finnish state.

Thus, the legal protection of ownership does not form a key starting point for regulation, in contrast to the Mining Act. Under section 5 of the act on the exclusive economic zone of Finland (1958/2004), the Water Act is applied to the extraction of land resources and the Mining Act to the exploration and exploitation of deposits of mining minerals in the exclusive economic zone, without specific restrictions of specifications.

Under section 6 of the act, the government may – irrespective of the exploration and permit regulation of the Mining Act – grant permission, upon application, for the exploitation of natural resources in the seabed and its subsoil in the exclusive economic zone as well as for surveys aiming at such exploitation or for other operations carried out in the exclusive economic zone and focused on the economic exploitation of the zone. In this context, natural resources means, among other things, mining minerals, mineral aggregates and other non-living deposits in the seabed and its subsoil. Permission may be granted for a fixed term or until further notice. The decision must specify conditions necessary in view of safety or for securing the rights of the state under the act. The decision can be revised if the operations do not comply with the conditions specified in the decision. Operations may also be interrupted on these grounds. The decision on interrupting operations is made by the Ministry of Economic Affairs and Employment. The decision may also be cancelled if the conditions specified in the decision are materially breached. The supervisory authority must notify the Ministry of Economic Affairs and Employment without delay of any breach observed.

In conclusion, the substantive scope of application of the Mining Act and the relationship between the Act and the government's authority in the exclusive economic zone is unclear as regards mining operations proper. Provisions on operations are also issued in, for example, the Water Act and the Environmental Protection Act.

Overall, the prevailing state of the law and especially the scope of application of different provisions in the Mining Act are very unclear as regards mining in the

exclusive economic zone. The redemption permit for a mining area is legally excluded, and on even stronger grounds than in public water areas. This also applies to the mining area redemption proceedings and to the compensation provided for in chapter 9 of the Mining Act, since the Finnish cadastral system does not extend to the exclusive economic zone. *As is the case for public water areas, the parts of the Mining Act that apply to the exclusive economic zone should be clearly defined in legislation, and the necessary amendments should be made.*

As for mineral depositions, exploitation could be based on permission from the government, as specified in the act on the exclusive economic zone of Finland and in other respects on a regulative approach outlined in points a and b.

Another question regarding (proper) seabed mining in terms of points a–c is the fact that the excavation of the seabed inevitably affects any mineral depositions on the surface of the seabed, as well. Since a right to exploit these cannot be granted under the Mining Act, the legal relationship between the mining permit applicant and the owner of the area – and thus of its depositions, should be provided for in this respect. A more detailed proposal regarding this issue cannot be made in this context.

Seabed mining differs significantly from terrestrial mining. The relationship between different acts and the scope of their application must be clarified in this respect. This report includes separate discussions about waters within the outer boundaries of villages, public water areas that belong to the state, as well as the exclusive economic zone outside the Finnish territorial waters. In the same context, the status of seabed mineral depositions in legislation and in relation to the Mining Act is also discussed regarding all three areas.

19 Uranium and thorium

The Nuclear Energy Act is applied to mining and enrichment operations aimed at producing uranium or thorium. The Government grants the licences to construct, operate and decommission a nuclear facility, as well as for mining and enrichment operations aimed at producing uranium or thorium For a licence to be granted, the municipality where the planned mining site or enrichment facility is to be located must give its support to the licence. As regards mining permits, the relationship between the Mining Act and the Nuclear Energy Act has been settled in section 43 of the Mining Act and section 23 of the Nuclear Energy Act so that the mining permit application for the production of uranium or thorium, as well as the permit application under the Nuclear Energy Act for the same activities, are processed together and decided with a single decision. Under section 23 of the Nuclear Energy Act, the government processes the permit application specified in the Nuclear Energy Act and the mining permit application specified in the Mining Act jointly and issues a single decision for both of them, following the provisions issued in the Nuclear Energy Act and chapters 5 and 6 of the Mining Act. The provisions issued in sections 56–58 of the Mining Act are applied to the permit decision. If the permit application specified in the Nuclear Energy Act concerns a mining project for which a mining permit referred to in the Mining Act has been granted, the provisions on the permit procedure issued in sections 38–40 and section 42 of the Mining Act and the provisions on the permit decision issued in sections 56–58 are applied in addition to the Nuclear Energy Act. If, however, the Mining Act is not applied to the operations, the procedure specified in section 13 of the Nuclear Energy Act is followed throughout.

On the whole, the regulation means that not only the application specified in the Nuclear Energy Act but also regular mining permit applications for the same operations are handled in their entirety and concerning all parties in a government plenary session, which inevitably also handles the various procedures following the granting of the permit, not only those concerning nuclear material.

This can hardly be considered to be appropriate. Under the applicable Administrative Judicial Procedure Act and the act on legal proceedings in administrative courts passed by Parliament (HE 29/2018 vp), the government's competence means that the Supreme Administrative Court would be the only appellate court for mining permit cases. *Both jurisdictional systems work contrary to the general development targets regarding administration and the court system, and they should be eliminated.*

A new jurisdictional system must be set up for this purpose. One of the facts to take into account is that the licence consideration carried out by the government, as defined in the Nuclear Energy Act, includes a strong element of expediency consideration, in contrast to the judicial discretion involved in the mining permit procedure.

However, the mining applicant's express objective of producing uranium or thorium is clearly not in line with the basic goal of regulation and gives room for artificial arrangements. Irrespective of the purpose of operations, mining may generate materials which under the Nuclear Energy Act are considered to be either nuclear material or nuclear waste. The need for a special licence for mining and enrichment operations generating the kind of material or waste referred to in the Nuclear Energy Act should be evaluated on the basis of objective information about the specific deposit and mining and enrichment operations, irrespective of the purpose of operations. This would be consistent, if only because under section 9 of the Mining Act, an exploration permit is required irrespective of the purpose of exploration, if the objective is to locate and survey a uranium or thorium deposit.

Objective criteria for the classification of operations, at least the basics, should be specified in legislation. Information about quantity and dangerousness could form the basis for this. It is important to keep in mind in this context that a single site may house mining and enrichment operations (=> comes under the scope of the Mining Act), only mining operations (=> comes under the scope of the Mining Act), or only enrichment operations (=> does not come under the scope of the Mining Act). As regards mining operations, the criteria could include the area, annual excavation and grade of the quarry and as regards enrichment operations, the processed volume of uranium or thorium ore as well as the volume and concentration of the supplied material and the radioactive product resulting from the enrichment process. As a result, the mining and enrichment of uranium and thorium would be divided into three categories based on the application of the criteria. For example:

1) Operations in the bottom category would not come under the scope of application of the Nuclear Energy Act.

2) Operations in the middle category would come under the scope of application of the Nuclear Energy Act, as well as certain supplementary requirements of the Nuclear Energy Act. Compliance with these would be monitored by the Radiation and Nuclear Safety Authority. The requirements might also involve the obligation to notify the Radiation and Nuclear Safety Authority or, depending on the situation, might call for the permission of the Radiation and Nuclear Safety Authority.

3) Operations placed in the most dangerous category would naturally come under the scope of application of the Nuclear Energy Act. In addition to the requirements of the Nuclear Energy Act applied to the middle category, these operations would also require approval by the Government, discussed later. This category would include, by default, situations in which the applicant indicates the production of uranium or thorium to be the purpose of operations.

In terms of jurisdiction, one option would be for the government's licence decision to be an either-or kind of administrative decision, which would simply pave the way for the further processing of the mining permit. In other respects, the requirements and permit regulations specified in the Nuclear Energy Act and the Mining Act would be handled in a regular mining permit procedure, applying special provisions where appropriate, after the government resolution had gained legal force. In this model, the government's decision would, however, take place at a time when no detailed information about the mining and enrichment operations is yet available, so the criteria described above could not be applied in practice.

To eliminate this problem, the model could be turned around in a temporal sense.

Mining permit cases would be handled and decided under the Mining Act, irrespective of whether the case involved the production of uranium or thorium. The mining permit application would require an affirmative, final decision before the government would accept the project for permit processing under the Nuclear Energy Act, if such processing would be required based on the criteria set. Mining operations could not

be launched until the government had issued its decision. The government's decision could be either an appealable administrative decision or a government resolution, based on the overall interest of society and the need to ensure safety. The decision could also involve parliamentary processing, especially if the need for a permit under the Nuclear Energy Act would be restricted to category 3 outlined above and naturally in situations in which the applicant indicated that the purpose of operations was to produce uranium or thorium. In this model, an environmental impact assessment procedure would be required during the mining permit procedure, and impacts related to radioactivity would in any case have to be determined as specifically as possible at that stage. The permission from the target municipality required under the applicable Nuclear Energy Act would also be required for the government's permission.

If the exceeding of threshold values for uranium or thorium became an issue after the mine or enrichment facility had already been operating for some time, operations could not be expanded until the appropriate approvals under the Nuclear Energy Act had been secured (from the government or the Radiation and Nuclear Safety Authority, depending on the category).

Provisions on mining and enrichment operations are also issued in the Radiation Act (859/2018). Under section 1 of the Radiation Act, the purpose of the Act is to protect health from damage caused by radiation as well as to prevent and reduce environmental and other nuisance caused by radiation. Under section 2, subsection 1, the Act is applied to radiation activities, the prevailing exposure situation and radiological emergency. Under section 145 of chapter 18 of the Radiation Act, dealing with natural radiation, the party responsible for operations must notify, before the launch of operations, the Radiation and Nuclear Safety Authority about: 1) mining operations referred to in the Mining Act; 2) excavation work and other work in underground passageways or tunnels, where the total annual workload of an employee exceeds 100 hours; and 3) the processing, use, storage and exploitation of materials and waste containing natural radioactive materials, if the activity concentration of uranium-238, thorium-232 or their breakdown product is over one becquerel per gram. The key information about the operations and their organisation, as regards radiation safety, must be reported.

Based on the information submitted to the rapporteur, the relationship between the Mining Act and the Nuclear Energy must be complemented and clarified in other respects, as well. As regards material and waste resulting from mining and enrichment

operations, which are classified as nuclear material and waste under the Nuclear Energy Act, the government may have supervisory and regulatory obligations arising from international law. Any need for supplementary regulation under the Nuclear Energy Act should be assessed, on the one hand, from the perspective of the active mine and enrichment facility and, on the other hand, from the perspective of the safe disposal of radioactive waste resulting from mining and enrichment as well as the safe closure of the mining area and enrichment facility. An assessment should also be made of the applicability of the definitions in the Nuclear Energy Act (nuclear material, nuclear waste etc.) in view of mining and enrichment operations. The need for supplementary regulation should be assessed especially in relation to the Radiation Act. The transport and export of uranium, uranium ore or other mining material, as well as other regulation indirectly related to mining operations, cannot be included in the present survey of the Mining Act and other legislation and instead must be left to the general development and clarification of the Nuclear Energy Act.

The permit procedure and regulations on competence related to uranium and thorium should be rationalised so that regular mining permits and their details are no longer handled in government plenary sessions, for which the Supreme Court is the only appellate court. A new jurisdictional system must be set up for this purpose. One of the facts to take into account is that the licence consideration carried out by the government, as defined in the Nuclear Energy Act, includes a strong element of expediency consideration, in contrast to the judicial discretion involved in the mining permit procedure.

However, the mining applicant's express objective of producing uranium or thorium is clearly not in line with the basic goal of regulation and gives room for artificial arrangements. Irrespective of the purpose of operations, mining may generate materials which under the Nuclear Energy Act are considered to be either nuclear material or nuclear waste. The need for a special licence for mining and enrichment operations generating the kind of material or waste referred to in the Nuclear Energy Act should be evaluated on the basis of objective information about the specific deposit and mining and enrichment operations, irrespective of the purpose of operations. Different risk categories would be created for this purpose. Decisions on the conditions and permit regulations under both the Nuclear Energy Act and the Mining Act would first be made in a regular mining permit procedure by the Finnish Safety and Chemicals Agency. The government's approval or permission, as specified in the Nuclear Energy Act, which would take the form of a government resolution, would not be applied for until an affirmative mining permit decision had gained legal effect, if the category of operations called for such permission.

The relationship between the Mining Act and the Nuclear Energy Act and the relationship between these two acts and the Radiation Act call for supplementation and clarification, and solutions have been proposed for these.

20 Compensation for exploration, excavation, by-products and gold panning

The rapporteur's assignment did not specifically call for proposals on the compensations specified in chapter 9 of the Mining Act nor on other ways of channelling benefits. These are largely dependent on political choices, similar to the taxation of mining operations and mining property. Nevertheless, the market-based determination of, for example, the excavation fee can be further specified in legislation. On the other hand, none of the recommendations presented in this report preclude amendments related to the compensations mentioned above or to new types of compensations. Some of the ideas included in the feedback, such as the adoption of a new mining tax revenue or a royalty scheme for basic research in geology or for eliminating environmental nuisance from old mining areas, could warrant further investigation.

21 Supervision

It is essential for all parties that the supervision of compliance with the Mining Act and environmental legislation is carried out in a proportionate, professional, effective and timely manner. Supervision must follow a risk-based approach and be consistently applied in similar situations in different parts of the country. According to the reports submitted to the rapporteur, there has been a steady – at times, uncontrolled – decrease in the resources of environmental supervision and the diversity of expertise available at the centres for economic development, transport and the environment, which serve as the state supervisory authority. The trend has continued for several years. In practice, supervision is largely based on self-monitoring carried out by the mining operators. Periodic inspections focused on, for example, the appropriate organisation of waste management, are no longer carried out, even though individual cases of negligence, including serious ones, have been revealed. *Serious attention should be given to this situation without delay.*

In practice, a single mining project often involves supervision under different acts, and the distribution of work is not always clear. Cooperation between authorities is central. The key project for licensing and supervision, coordinated by the Ministry of Economic Affairs and Employment, forms a solid foundation for this in terms of digital services (final report on mining operations and supervision during operations ("Kaivostoiminta, toiminnan aikainen valvonta"), 14 February 2018).

Serious attention should be given to supervision and its resources without delay.

22 Administrative enforcement and sudden accidents

Administrative enforcement measures can be employed under the Mining Act, the Environmental Protection Act and the Water Act to remedy a violation or omission found in exploration, mining or gold panning activities and to restore compliance with the law. Matters regarding administrative enforcement may be initiated by the competent authority (the Finnish Safety and Chemicals Agency in matters related to the Mining Act; the state supervisory authority, that is, the Centre for Economic Development, Transport and the Environment in matters related to the Environmental Protection Act; and the state permit authority, that is, the regional state administrative agency in matters related to the Water Act and projects referred to in the Water and the Environmental Protection Act) or by a third party (the party suffering inconvenience, another authority, organisation). No major need for amendment has been identified in the regulation on administrative enforcement. The definition and scope of parties entitled to initiate matters is quite consistent in all the acts (section 159 of the Mining Act, section 186 of the Environmental Protection Act and chapter 14, section 14 of the Water Act) and clearly adequate in view of the fundamental right to the environment specified in the Constitution.

However, for regulation to work well, effective and professional supervision is required. In the event of non-compliance with the Environmental Protection Act or provisions issued under it, the supervisory authority must request, considering the nature of the matter, that conduct in violation of the provisions shall cease and take action to initiate the administrative enforcement proceedings. The supervisory authority must ensure that the request and the prohibition or order issued in the administrative enforcement proceedings are complied with. These provisions in section 179 of the Environmental Protection Act do not have an equivalent in the Mining Act. For the sake of consistency, corresponding provisions specifying the

authorities' obligation should be included in the Mining Act, especially since the word "may" in the introductory clause of section 156 of the Mining Act might give the impression that authority reactions depend on free discretion.

If a violation or omission referred to in the Environmental Protection Act results in considerable pollution of a water body or in damage to protected species and natural habitats referred to in section 5 a of the Nature Conservation Act, the Centre for Economic Development, Transport and the Environment must, in addition to regular administrative enforcement measures, order the operator to adopt remedial measures, as specified in the Act on the Remediation of Certain Environmental Damages (383/2009). If the considerable pollution of a water body or damage to protected species and natural habitats is the result of an accident or other unexpected event, the Centre for Economic Development, Transport and the Environment must order the operator who caused the damage to adopt remedial measures, as specified in the Act on the Remediation of Certain Environmental Damages. The operator must, without delay, notify the Centre for Economic Development, Transport and the Environment of considerable pollution of a water body or damage to protected species and natural habitats, as well as of an immediate threat of these. These provisions are based on the directive of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage. In cases of damage, a regular reporting obligation to the Commission is in place. According to the information submitted to the rapporteur, this liability regulation has been applied in three different cases involving damage from mining operations. *No need for amendment has been identified in the liability regulation as such, although practical procedures may need to be developed.* Under section 171 of the Mining Act, an accident, dangerous situation or incident must be reported without delay to the Finnish Safety and Chemicals Agency.

In this connection, attention should also be paid to the preparedness obligation specified in section 15 of the Environmental Protection Act (1166/2018). Under it, operators engaged in activities subject to a permit must take measures in advance to prevent accidents and other exceptional events and to limit their adverse impacts on health and the environment. For the purpose of preparation, the operator to whom the environmental permit has been granted by the regional state administrative agency must draw up a preparedness plan based on risk assessment, secure the necessary devices and other equipment, draw up instructions, test the devices and equipment, and provide training in measures to be taken in case of accidents and other exceptional circumstances. The content, scope and level of detail of the plan are determined according to the nature of the operations. However, a

preparedness plan does not need to be drawn up if the supervisory authority deems that the operations and their impacts and risks do not require such a plan. A plan is also not required insofar as a corresponding plan has been drawn up under certain other acts, such as the Mining Act. The provisions on mining safety issued in part IV of the Mining Act appear to be adequate in this respect. *However, to bridge the gap between different acts, it would be necessary to complement at least section 112 of the Mining Act as regards the operator's basic obligation ("the operator shall pay particular attention to the structural and technical safety of the mine and to the prevention of dangerous situations and accidents in the mine, alongside the limitation of detrimental consequences caused by them") with a provision similar to that of section 15 of the Environmental Protection Act and expressly mention other exceptional situations apart from accidents as well as consequences detrimental to health and the environment.*

Under section 112, subsection 2 of the Environmental Protection Act, further provisions on specific waste facilities for extractive waste are given by government decree based on the risks posed by the facility and the origin and nature of the extractive waste deposited at the facility and the duration of the deposit. Further provisions on assessing the risk of a major accident posed by the waste facility are also given by government decree. Under section 115 of the Environmental Protection Act, a policy document must be drawn up for any waste facility for extractive waste that poses a risk of major accident, and a safety management system and internal emergency plan must be adopted. Under the same section, the operator must inform any persons and corporations who may be affected by a major accident occurring at the waste facility for extractive waste of the safety measures intended to counter the risk of such an accident. Information on safety measures must be updated at a minimum of three-year intervals and details must be provided on any major changes made. *These minimum requirements for extractive waste and those based on the EU directive on the management of waste from extractive industry are regulated separately from mining safety. However, the connection between the arrangements under these provisions and the overall safety of mines, including the Mining Act (e.g. sections 112–114, the Environmental Protection Act and the Dam Safety Act, should be boosted.*

To bridge the gap between different acts, it would be necessary to supplement section 112 of the Mining Act with a provision similar to that of section 15 of the Environmental Protection Act and expressly mention other exceptional situations apart from accidents as well as consequences detrimental to health and the environment.

23 Revision of the operational scope of application of the Mining Act regarding geodata

From a historical perspective, the provisions of the Mining Act have been drafted on the basis of concrete regulatory needs. Exploration regulation, for example, coordinates the interests of the party engaging in exploration and the interests of property owners and others affected by land use. In practice, then, regulation mainly focuses on operations on the ground, even though mineral resources can also be surveyed from the air. It is hardly justified to regulate these operations as such more extensively than is done in the Aviation Act and the Territorial Surveillance Act. Any need for further regulation seems to focus on the collection of geodata from operators based on national interests.

The exploration permit holder must annually submit a report to the mining authority of the exploration activities carried out and on their results (section 14 of the Mining Act). As an aftercare measure, the exploration holder must, within six months of the expiration or cancellation of the permit, submit to the Finnish Safety and Chemicals Agency an exploration work report, the dataset pertaining to the exploration, and a representative set of core samples (section 15 of the Mining Act). The notification of mine-closure measures must include an account of the measures performed, the geological documentation concerning the mine and the mining area, and a mine map corresponding to the time of termination (section 145 of the Mining Act). In these cases, the obligations also seem to cover material collected through airborne surveys. The dataset to be submitted is further specified in the government decree on mining operations. The datasets are submitted to the Finnish Safety and Chemicals Agency, and their final destination is the Geological Survey of Finland, which in its role as the

national geodata centre is responsible for the storage of geodata and supplies the datasets of final reports to parties that need them.

The Government's analysis, assessment and research activities are presently involved in an examination of the value of Finnish national geodata. The objective is to determine the added value that national geodata can offer society as well as the mining industry from both a quantitative and qualitative perspective. The examination also focuses on the present and potential cost savings from the exploitation of geodata (e.g. infrastructure projects), the impact on the number of new investments (e.g. exploration/mining) and the significance to scientific activities as well as the impact and economic value of the dataset.

Airborne geophysical surveys form a key element of geodata and encompass several extensive areas. Airborne measurements require permission from the aviation authority. *Many important mining countries have included in their legislation provisions on the full submission of airborne geophysical survey material to the state. A similar approach might be justified in Finland,* even if the obligation in this case would be more comprehensive than that for exploration on the ground. In addition to activities based on an exploration permit, geodata is also accumulated through exploration activities (often conducted during the reservation stage), which under section 7 of the Mining Act are not subject to an exploration permit.

Under section 119 of the Mining Act, the mining operator must prepare a map covering the mine and mining area (mine map) and keep it up to date. A copy of the mine map must be submitted to the mining authority upon request and when mining operations are terminated. The mine map must contain itemised information on the measures undertaken in the mine and on other mining activity in the mining area, so that aspects of mining safety, land use in the area, and exploitation of the deposit, and other measures associated with these, can be determined. Further provisions on the mine map may be given by government decree. One such decree is the government decree on mining safety (1571/2011). Under section 11 of the decree, a mine map must, among other things, contain a description of the exploitation of the deposit and information about the options available for exploiting the remaining mining minerals, in addition to as comprehensive information as possible regarding the geological description of the rock types found in deep drilling and the content of mining minerals as well as of any geophysical map and other research data on mining mineral deposits. The placement of these provisions catering to geodata in a decree on safety (instead of

in a decree on mining operations) is not the most coherent option available.

Over their life cycle, mines produce extremely important geodata, in addition to which old mines and their surroundings are potential targets for exploration, as raw material prices continue to rise. The regulations regarding submission of mining-related datasets date back to the previous millennium. According to the information submitted to the rapporteur, Finland has poor experiences from the 1980s, when mines were closed down in an uncontrolled manner and large sets of extremely valuable data were lost. These datasets would have been needed in the planning of new mines from the early 2000s onward. All the regulations regarding the submission of mining material should be updated, and instead of using the old archive format, the digital process being designed in the Geological Survey of Finland's project on geodata flows should be adopted to ensure future access to the datasets.

Since the reform involves questions related to the rights and obligations of different parties as well as to the public access to information, the main points of the reform should be provided for in legislation. In this context, provisions could also be issued on the operational extension to the norms, especially regarding data collected through airborne measurements. A decision should also be made on whether geodata accumulated through statutory means should also encompass seabed mineral depositions regardless of whether their exploitation is regulated in the Mining Act or outside it (see chapter 18).

A separate question that must be solved in this connection regards the need to issue provisions on the obligation to submit geodata if, in a situation involving state-owned land, the state authority in the role of the property owner has given consent, as specified in section 9, subsection 1 of the Mining Act, for the kind of exploration that, in the absence of consent, would require an exploration permit. In practice, such a situation would mainly involve Metsähallitus, and the provision, if any, could specify that the party conducting exploration is under the same obligation to submit geodata as the exploration permit holder under section 14 of the Mining Act. In the case of a state authority, aspects related to the freedom of contract would not pose problems. According to the information submitted to the rapporteur, Metsähallitus does not, at present, give exploration-related consent in the role of the property owner, but instead transfers matters to the Finnish Safety and Chemicals Agency and the exploration permit procedure under the Mining Act, which eliminates any gap in the

availability of geodata. Moreover, consent of the property owner is not sought if an exploration permit is required to secure priority. These aspects are likely to affect the assessment of regulatory needs, which is why the rapporteur refrains from making proposals on this question.

The scope of regulation under the Mining Act regarding the obligation to submit geodata should be re-considered, especially regarding flight operations.

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Appendix 1: Letter of appointment

Työ- ja elinkeinoministeriö
Arbets- och näringsministeriet Ministry of Economic Affairs and Employment

Decision 1/2
1 March 2019 TEM/354/13.01.01/2019

APPOINTMENT OF RAPPORTEUR

Assessment of the effectiveness of legislation on mining operations
Joint report of the Ministry of Economic Affairs and Employment and the Ministry of the Environment

Background

The Mining Act (621/2011) entered into force on 1 June 2011. No permits have been granted for new operating mines since the Act entered into force over seven years ago. Instead, existing mining permits are based on the former Mining Act (503/1965).

As part of this set of reports, the Ministry of Economic Affairs and Employment, having consulted with the Ministry of the Environment, has decided to appoint a rapporteur to determine the effectiveness of legislation on mining operations.

Rapporteur

Pekka Vihervuori, LL.D., is appointed as the rapporteur.

Tasks

The rapporteur's tasks include analysing and assessing

- the effectiveness of the Mining Act in terms of the objectives specified in the Act as well as
- the interrelations between the Mining Act and other key legislation on mining operations.

The work will result in an analysis of the effectiveness and application of legislation as well as proposals for further actions.
Attention will be focused on

- the effectiveness of the supervisory schemes, such as the reservation scheme, specified in the Mining Act, as well as of the advance control (exploration permit, mining permit, priority schemes) and post-control of exploration and mines
- the effectiveness of participation systems (the parties suffering inconvenience and the role of municipalities)
- the efficacy and adequacy of the collateral scheme
- the relationship between procedures specified in the Mining Act and the provisions regarding mining operations issued in other acts, such as the Environmental Protection Act, the Land Use and Building Act, the Land Extraction Act, the Act on the Environmental Impact Assessment Procedure, the Water Act, the Nature Conservation Act, the Dam Safety Act, the Bankruptcy Act, the Antiquities Act and the Act on the Sámi Parliament.

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- the summary of stakeholder feedback - feedback has been collected through a digital platform, and a few key issues have already been singled out based on public discussion
- key assessments of the effectiveness of the Mining Act and conclusions
- development proposals

Schedule

Written feedback from stakeholders and citizens by 18 March 2019.

Meanwhile, a compilation will be made of the main problems brought up in public – work on these can already begin.

Compilation and analysis of feedback by 29 March 2019.

Key stakeholders will be heard in the course of the work.

The key observations of the report will be made accessible to the government negotiators by 15 April 2019.

Final report, including recommended measures, 15 June 2019.

The rapporteur will be supported by a staff including representatives from the Ministry of Economic Affairs and Employment, the Ministry of the Environment and other experts, if required.

Costs

The rapporteur will be paid a fee (EUR 15,000) in accordance with the assignment contract. The fee will be paid from budget item 3201012 (appropriations for 2019) Riikka Aaltonen, Senior Adviser, Mineral Policy, is the contact person at the Ministry of Economic Affairs and Employment.

Mika Lintilä
Minister of Economic Affairs

Ilona Lundström
Director General

Appendix 2 Request for comments

Työ- ja elinkeinoministeriö
Arbets- och näringsministeriet Ministry of Economic Affairs and Employment

TAKE PART IN ASSESSING THE EFFECTIVENESS OF THE MINING ACT

Assessment of the effectiveness of legislation on mining operations
Joint report of the Ministry of Economic Affairs and Employment and the Ministry of the Environment

The Mining Act (621/2011) entered into force on 1 June 2011. No permits have been granted for new mines since the Act entered into force over seven years ago. Instead, existing mining permits are based on the former Mining Act (503/1965).

The Ministry of Economic Affairs and Employment and the Ministry of the Environment will carry out an assessment to determine the effectiveness of legislation controlling the mining industry and mining operations.

Pekka Vihervuori, LL.D., has been appointed as the rapporteur.

The rapporteur's tasks include analysing and assessing

- the effectiveness of the Mining Act in terms of the objectives specified in the Act as well as
- the interrelations between the Mining Act and other key legislation on mining operations.

As part of this assessment, we now request comments and development proposals from a broad range of operators, as well as from citizens, regarding the questions listed below. The feedback will be analysed, and it will form part of the rapporteur's report, published in June.

The work will result in an analysis of the effectiveness and application of legislation as well as proposals for further actions.

Attention will be focused on

- the effectiveness of the supervisory schemes, such as the claim procedure, specified in the Mining Act, as well as of the advance control (exploration permit, mining permit, priority schemes) and post-control of exploration and mines
- the effectiveness of participation systems (the parties suffering inconvenience and the role of municipalities)
- the efficacy and adequacy of the collateral scheme
- the relationship between procedures specified in the Mining Act and the provisions regarding mining operations issued in other acts, such as the Environmental Protection Act, the Land Use and Building Act, the Land Extraction Act,

the Act on the Environmental Impact Assessment Procedure, the Water Act, the Nature Conservation Act, the Dam Safety Act, the Bankruptcy Act, the Antiquities Act and the Act on the Sámi Parliament
- the summary of stakeholder feedback - feedback has been collected through a digital platform, and a few key issues have already been singled out based on public discussion
- key assessments of the effectiveness of the Mining Act and conclusions
- development proposals

We hope you can provide feedback by 18 March 2019, but all feedback and development proposals are welcome after that as well.

Questions:

1. Do you or the party you represent have experiences or observations of the mining industry, especially of the practical application and effectiveness of the Mining Act (621/2011) regulating the industry?
In what connection have these experiences or observations emerged?

2. How would you evaluate the Mining Act and the procedures specified in it as part of the relevant legislation overall? Have you observed problems or development needs in the interrelations or task allocation between the Mining Act and other acts? How do you think legislation could be developed in this respect?

3. What kind of experiences and observation do you have? What positive or negative aspects have come up? You can divide your answer into several parts and deal with each question separately. You can also include in your answer any facts related to your experiences and observations.

4. How do you believe the Mining Act, and especially the related procedures, decision-making and status of different parties, be developed?
You can divide your answer into several parts and deal with each question separately.

5. Any other observations and proposals.

Appendix 3: Distribution of the request for comments

Agnico Eagle	Ministry of Justice
Boliden Mineral	Ministry of Education and Culture
Endomines	Outokumpu
Finance Finland	Reindeer Herders' Association
Geological Survey of Finland	Paroc
Finnish Union of Geologists	Pirkanmaa Centre for Economic Development, Transport and the Environment
National Emergency Supply Agency	North Ostrobothnia Centre for Economic Development, Transport and the Environment
Infra Contractors Association	Regional State Administrative Agency of Northern Finland
Regional State Administrative Agency of Eastern Finland	Administrative Court of Northern Finland
Juuan Dolomiittikalkki Oy	Polarstone Oy
Kainuu Centre for Economic Development, Transport and the Environment	Pro Heinävesi
Regional Council of Kainuu	Finnish Defence Forces
Finnish Mining Association	Pyhäsalmi Mine
Federation of Finnish Fisheries Associations	Defence Command
Regional Council of Central Ostrobothnia	Sámi Parliament
Finnish Natural Stone Association	Salon Mineraali Oy
Skolt Sámi Village Committee	Sibelco Nordic
Association of Finnish Local and Regional Authorities	Ministry of the Interior
Kyläyhdistys	SMA Minerals
Lapland Centre for Economic Development, Transport and the Environment	Sotkamo Silver
Gold Prospectors Association of Finnish Lapland	Finnish Association for Nature Conservation
Finnish Transport and Communications Agency	Finnish Minerals Group
Natural Resources Institute Finland	Finnish Environment Institute

Ministry of Agriculture and Forestry
The Central Union of Agricultural Producers and Forest Owners
National Land Survey of Finland
Finnish Landowners' Organization
Finnish Hospitality Association
Industrial Union
Metsähallitus
Mondo Minerals
Finnish Heritage Agency
Finnish Society for Nature and Environment
Nordkalk Corporation
Nunnalahden Uuni Oy
Federation of Finnish Enterprises
Finnish Association of Consulting Firms
Radiation and Nuclear Safety Authority
Technology Industries of Finland
Tulikivi
Finnish Safety and Chemicals Agency
Administrative Court of Vaasa
Finnish Water Utilities Association
WWF
Yara Suomi Oy
Finnish Society for Environmental Law
Finnish Association for Impact Assessment

Appendix 4: Respondents to the mining survey

National Land Survey of Finland
National Emergency Supply Agency (no statement)
Regional State Administrative Agency of Northern Finland
North Ostrobothnia Centre for Economic Development, Transport and the Environment
Sámi Parliament
Federation of Finnish Fisheries Associations
Ministry of the Interior (no statement)
Latitude 66 Cobalt Oy

Natural Resources Institute Finland
Pirkanmaa Centre for Economic Development, Transport and the Environment, environmental liability sector
Environmental Insurance Centre and Finance Finland
Suomen Kylät ry
Golder Associates Oy

Boliden Kylylahti Oy
Finnish Minerals Group
Finnish Minerals Group
Finnish Environment Institute
Mawson Resources Ltd./Mawson Oy
Finnish Safety and Chemicals Agency
Metsähallitus
Finnish Association of Consulting Firms
Finnish Association for Nature Conservation
Yara Suomi Oy

Finnish Heritage Agency
Administrative Court of Northern Finland

Gold Prospectors Association of Finnish Lapland
Veikko Vuontisjärvi

AA Sakatti Mining Oy
Technology Industries of Finland
Kaivosteollisuus ry
Ministry of Education and Culture (no comment)
Ministry of Agriculture and Forestry
Geological Survey of Finland

Defence Command

Pro Heinävesi
Association of Finnish Local and Regional Authorities
Nordkalk Corporation
Pro Kuusamo ry
Finnish Lapland Tourist Board
Reindeer Herders' Association
Regional Council of Kainuu
Finnish Union of Geologists
Finnish Hospitality Association
Pyhäjärvi (town)
Regional Council of Pohjois-Savo
Mika Flöjt

Appendix 5: Compilation of written feedback

This is a compilation of the written feedback from various parties submitted to the rapporteur. The feedback has been analysed and categorised into different groups. In addition to written feedback, comments on the effectiveness of mining legislation were also collected through the "Ota kantaa" web portal. The feedback submitted through the web portal has also been taken into account in this report, and it has been available to the rapporteur throughout the assessment.

Private citizens:

- Legislation does not take local interests into account
- Environmental supervision must be developed
- We need a tax system
- The reservation shouldn't take effect until the mining authority has made its decision, and the reservation fee should be based on the hectares
- Business subsidies should be scrapped
- Depreciations and deductions allowed by tax legislation should be revoked
- The compensation to landowners was better under the act of 1965
- The repayment of value added tax is equivalent to a business subsidy and should be revoked
- Tax planning should be prevented
- The Mining Act does not identify or promote the new use of areas where mining is no longer carried out

Central government:

- There is tension between the Mining Act and the redemption act
- The regulation on the delimitation survey as regards old, unclear boundaries
- Different authorities have different views on the scope of application of the Act

Waste facilities should not be returned to the landowners, because considerable obligations are transferred with them

- The meaning of environmental impacts should be defined more clearly in the Mining Act.
- The relationship between different acts – the Mining Act, the Environmental Protection Act, the Water Act – should be clarified: the related compensation and collateral, as well as nuisance and damage and compensation for these
- The permit regulations of exploration permits would require a plan on environmental impacts, inspected by the Centre for Economic Development, Transport and the Environment
- The conditions for environmental control should be improved, notifications under section 51, subsection 7 are not submitted
- The level of collateral is too low
- The relationship between the mining permit and the environmental permit is unclear
- No-go areas, where exploration or mining are not allowed
- The mining authority's expertise in environmental matters is inadequate
- Taxation, royalties and collateral fund
- The party suffering inconvenience is in a weak position
- The assessment of social impacts should be developed, the social licence to operate has not been operationalised
- Social and cultural sustainability and its assessment
- The cultural environment is not taken into account adequately
- Accidents and bankruptcies, cost coverage
- Repairs during operations, in other words, continual aftercare
- Ecological compensation
- Resources for supervision
- The limits of the mining authority's competence are unclearly expressed, can be found by interpreting the law
- The rights of parties suffering inconvenience who are not part of the mining area
- The role of different acts in the overall permit scheme should be clarified and communicated clearly
- The requirements for exploration permits are excessive, taking into account that the same activities can be carried out by the landowner's consent
- The rights of residents in adjacent areas during authority processes
- The centralisation of appeals in a single administrative court

- The exploitation of by-products from mining (waste) should be made possible in accordance with the procedures specified in the Mining Act
- Section 46, subsection 1, paragraph 7: when can a report replace a legally binding plan and what is the required procedure
- The mining authority has a conflicting role as the supervisor and promoter
- The mining permit could be a pure exploitation permit without any environmental elements
- Because of the difference in their timing, the permits cannot be complementary
- The binding nature of a statement by the competent nature conservation authority should be specified in permit consideration
- Public access to permit application documents, when they involve trade secrets
- The material related to applications must be electronically and publicly available
- The mining tax should focus on the value of the excavated product
- The application of derogation provisions by the authorities
- The relationship between sections 169 and 69 of the Mining Act, a legally valid permit decision should be required for permits to be changed
- Permit regulations are formulaic and do not reflect case-specific consideration
- The purpose of the Mining Act should be specified as regards antiquities and local cultural traditions
- The participation processes and their interfaces are unclear: which provisions are in which chapter
- As regards the Nature Conservation Act and the Antiquities Act, the conducting of surveys and the scope of reports are open to interpretation.
- Section 38 needs to be specified
- The legal effects of reservations should be clarified
- The authorities must ensure an adequate size of the mining area and the environmental sustainability of operations
- Information flow between the authorities must be improved
- Conditions related to land ownership may result in extra costs: the tenant may lose subsidies due to changes in land use
- Minor sample taking should be defined more clearly
- Basic research should be mentioned in legislation, does not call for special regulation
- The one-stop principle would be a good goal

- It would be a good idea to define the meaning of substantial impairment to the pursuit of business and culture or considerable hindrance to reindeer herding (in the Sámi homeland)
- The size of reservation areas should be restricted
- The relevance of waiting periods and restricted areas in mining areas should be considered
- Datasets obtained from exploration conducted by the consent of the landowner should also be submitted to the mining authority, for example in reservation areas
- The obligation to submit material should extend to all airborne geophysical datasets, not only to the part pertaining to the permit area
- The scope of the safety distance around areas used by the Defence Forces should be considered on a case-by-case basis
- A continual threat of closure and observation of environmental aspects may require mine closure to be redefined or specified

NGOs, organisations:

- Communication, it is difficult to obtain information if the party concerned does not reside in the municipality
- The functioning of the redemption permit for a mining area, how is national significance defined
- Land Use and Building Act, land use control mechanism
- Level of collateral
- The environmental impact assessment procedure should be obligatory
- A survey of the mining tax should be carried out
- Social licence to operate
- Assessment of the joint impact of gold panning
- The environmental impact assessment procedure should be completed before a permit can be sought
- The mining permit should be integrated with other permits
- Do away with authority negotiations
- The resources of the authorities must be secured
- The option of collective action
- The provisions on reindeer herding should encompass the entire reindeer herding area, the obligation to negotiate must be expanded and the regulations developed

- Compliance with the “polluter pays” principle, the measures available to the authorities if the operator is insolvent must be clarified
- Collective liability for damage
- The status of external parties suffering inconvenience
- Consideration given to the long-term environmental impacts of mining in regulation and permit consideration
- The impact of a change of operator during the validity of permits
- The impact that investment protection under CETA has on mining-related legislation
- The relationship between sections 11 and 18 of the Mining Act should be clarified
- The position of other lines of business is weak
- Harmonisation of permit procedures
- The municipality must be able to oppose exploration in its area if the municipality considers mining to be unsuited to the area
- Regulations issued to secure private and public interests under the Mining Act have not been implemented as intended in the Act
- A mining permit should always require a legally binding plan
- The municipalities’ rights in the definition of land use should be strengthened
- Pending land use planning should be included in the obstacles to granting a permit
- On what special grounds can an obstacle based on land use considerations be ignored?
- The requirement of “shall not cause essential damage to other industrial and commercial activity” found elsewhere in the Mining Act should be added to the section on obstacles to the granting of permits
- Separate real estate taxation should apply to mines (value of minerals extracted or value of annual use of mine)
- The taxable value could be defined in the same way as that of rock, gravel, clay etc.
- The threshold for public notice should be raised (content of appendices to applications)
- Legal processes should be shorter
- The opinions and visions of municipalities and regions should be better taken into consideration
- Any tax revenue should be distributed at the local level

- A mining fund could promote the position of domestic operators
- The environmental impact assessment processes must be clarified and their content and impartiality must be increased
- Continual cooperation involving the operator, municipality and other parties concerned – flow of information
- The use of new technologies to limit emissions
- The Mining Act does not acknowledge the new use of mines, only landscaping
- How is post-monitoring and control of the environment around the mining area organised?
- State subsidies to areas undergoing great changes in trade and business after the termination of mining operations
- Mining tax for direct and indirect investments resulting from mining operations
- Real estate taxation to bring tax revenue to the areas
- Coordination of different interests is still difficult or impossible
- The priority of mining projects in land use should be eliminated
- The constitutional issues, environmental rights, landowner's rights and rights of indigenous people related to mining projects
- The separateness of permit processes increases the attention given to different acts and their application in projects
- Environmental impacts must be assessed for the entire life cycle
- The authorities do not always have adequate competence
- The reasons given for permit decisions are often narrow and open to interpretation
- Execution irrespective of appeals should be a matter of consideration, not the main rule
- The timing of the submission of environmental impact assessments and Natura assessments should be reconsidered
- The mining authority's resources for environmental legislation
- The regulations required to secure public and private interests are inadequate
- The interdependence of permits must be assessed, the environmental permit and water permit should be requirements for a mining permit
- As a rule, a water permit is needed
- Reservations affect the possible uses of real estate

- Assessment from the perspective of land use planning is needed because of the diversity of projects and broad-ranging land use needs and impacts
- The option of a binding land use plan, clarification, not defined clearly
- Land use planning and the municipality's opportunities to influence
- No-go areas
- The requirements for an exploration permit need to be included in the Act, like the obstacles
- Special provisions regarding the content of plans for mines in the Land Use and Building Act
- The decision-making power of municipalities must be increased
- The relationship between the Mining Act and the Waste Act should be examined, promoting of the circular economy
- Specifications to section 8 of the decree on extractive waste to reduce the risks posed by waste areas
- Promoting the social licence to operate through legislation
- Compliance with transitional provisions and their clarification
- The statement of reasons for authority decisions are inadequate or incomplete
- The centralisation of authority operations and integration of permit procedures
- The confidence in the authorities has weakened
- Do the fundamental rights to environment come true?
- Right of veto to municipalities and regions
- Right of veto to landowners
- The impact that mines have on water bodies should be given more weight in consideration
- Compliance with permit regulations and post-monitoring
- The environmental collateral of mines and taxation emphasising environmental aspects, environmental responsibility scheme and fund – must ensure that the state of the environment is secured

Consultants, exploring and mining companies:

- The areas used by the Defence Forces should be clearly indicated
- Clarification, interpretation of Natura status
- The uncertainty of permit decisions as regards permit regulations
- Collateral is small
- Integration of permit processes, joint hearing

- The resources of the authorities
- Tonnage-based tax or royalty to the municipality, for landscaping and, in part, to Geological Survey of Finland
- Research plan and its funding in connection with the reservation
- Restoration during operations
- Joint processing, integration of permits: land use planning, environmental impact assessment, environmental surveys required in the Mining Act
- Clear documentation on the damages included in the compensation of the parties concerned
- Notification, does not reach forest owners, in particular, who live around the country
- Section 46, subsection 1, paragraph 3 – waiting period
- An exploration period of 15 years is short
- After 15 years, research data must, under the law, be submitted to the state, even if the operator wished to continue to the mining permit phase
- Differences between industrial minerals and metallic minerals should be given more attention in the Mining Act
- Depending on the case, 3D land use planning could be necessary in cases where underground mining is carried out in the vicinity of residential areas
- The impact of mining operations on the comfort of living should be taken into account in land use planning
- Specifications to statements on the requirements posed by the Water Act, the Environmental Protection Act and the Nature Conservation Act regarding mining permit decisions – restricted to the examination of unconditional obstacles to permits?
- The roles, competence and resources of the authorities, and their adequacy
- Adopt 5-year periods for exploration permits
- Permit cancellation, that is, the surrender of permits, should be made easier
- Minor sample taking should be defined more clearly
- Compensation to landowners should be more reasonable
- The Nature Conservation Act should include the option of enforcement despite an appeals process, similar to other acts
- A general notification published in newspapers and journals is problematic
- The integration of permit and appeals processes would clarify participation processes
- Processing times

- Environmental impact assessments and environmental assessments of plans and programmes should encompass the entire life cycle of mining operations
- Clarification of the roles of Metsähallitus, is now both a permit authority and a landowner
- A single national permit authority for environmental protection and nature conservation, similar to the Finnish Safety and Chemicals Agency
- Uncertainty in the competence of the authorities
- The interdependencies of different permit processes should be reviewed, coordination of permit processes of waste areas when making permit decisions
- The interfaces between different permit acts are unclear
- It should be possible to merge the collateral related to different permits
- Separate permit decisions
- Mining tax should not be extended to small-scale operations

Appendix 6: Invitation to hearing

Hearing on the assessment of the effectiveness of legislation on mining operations

Time: 2 April, 12:30–16:00

Location: Main Post Office, auditorium, Mannerheiminaukio 1 B, Helsinki

Pekka Vihervuori, LL.D., has been appointed by the Ministry of Economic Affairs and Employment and the Ministry of the Environment to assess the effectiveness of legislation controlling the mining industry and mining operations. Feedback is collected from stakeholders both through electronically sent requests and through the "Ota kantaa" online platform. Respondents may also complement their written feedback at the hearing.

To ensure that all stakeholders have the opportunity to describe their observations, we suggest that each party is represented by only one person. We hope that the matters brought up at the hearing complement the written feedback. We also ask that you not use any presentation material at the hearing and instead email written feedback to iyr@tem.fi .

Please click the following link to register for the event. The deadline for registration is 25 March.

https://response.questback.com/tem/kaivoslaki-kuuleminen

Further details about the hearing, including the time available for individual speakers, will be sent to the registrees on 27 March.

Coffee will be served.

Welcome!

The Ministry of Economic Affairs and Employment and the Ministry of the Environment

Appendix 7: Appeals to permit decisions made under the Mining Act

Appeals to permit decisions made under the Mining Act (1 July 2011 – 31 December 2018)

2011–2018	PERMITS DECIDED Qty	Appeal to the Administrative Court Qty	Rejected / dismissed Qty	Returned for reconsideration Qty	Undecided in the Administrative Court Qty	Appellant/permit holder cancelled application before resolution of appeal Qty	Undecided in the Supreme Administrative Court Qty
Claim	311	35	25	6		4	
Mining concessions + mining permits	85	24	12	8	2	2	
Reservation	565	29	26			3	
Exploration permit	396	23	11	7	2	3	
Gold panning permit	378	72	43	13	8	8	
Revision of permit regulations	187	13	11	2			
OTHER(assignment, expiry, excavation fee)	327	5	2		3		
TOTAL	**2,249**	**201**	**130**	**36**	**15**	**20**	

Appeals to permit decisions made under the Mining Act (1 July 2011 – 31 December 2018)

PERMITS DECIDED BY THE FINNISH SAFETY AND CHEMICALS AGENCY (Note: both the Mining Act 503/1965 and the Mining Act 621/2011)	PERMITS DECIDED Qty	APPEAL to the Administrative Court Qty	RETURNED to the Finnish Safety and Chemicals Agency Qty	Undecided in the Administrative Court Qty	Undecided in the Supreme Administrative Court Qty
Exploration permits (incl. reservations)	1,272	87	13	2	
Mining permits	272	37	10	2	
Gold panning permits	378	72	13	8	
Other (assignment, expiry, excavation fee)	**327**	5		**3**	
TOTAL	**2,249**	**201**	**36**	**15**	**0**

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