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Report on the functioning of the reservation mechanism under the Mining Act



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Klaus Metsä-Simola, Heikki Majamaa, Rabbe Sittnikow and Milla Männistö

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Report on the functioning of the reservation mechanism under the Mining Act

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Abstract

The mining legislation currently in force in Finland is based on a claim system where, regardless of the ownership of the property, the right to exploit a deposit containing mining minerals belongs to the party who found the deposit.

The key aim of the claim system is to promote the position of those who find mining minerals regardless of the ownership of properties and create incentives to exploration and mining operations.

In the report, the law firm Hannes Snellman assesses the role of the regulation of reservations in the Mining Act (621/2011) currently in force for exploration and the mining sector. The report also assesses the impact of the regulation of reservations on the rights of landowners, local economic activities and land use in the area, and the realisation of the rights of the Sámi people in the Sámi homeland, and the impacts of the reservation mechanism concerning the reservation rights, social aspects and the environment. Feedback from stakeholders was collected for the report. In addition, the report discusses various options to develop the regulation of reservation in the Mining Act, or to abolish the reservation mechanism altogether.

From the perspective of exploration and mining operations, the reservation notification under the Mining Act has been considered an appropriate procedure for clarifying the order of priority between operators engaged in exploration before the actual exploration permit phase. The entry of the priority included in the reservation mechanism into the register kept by the mining authority is also important when the parties engaged in exploration apply for funding for the prospecting work. From the perspective of landowners, business operators and other stakeholders in the area concerned in the reservation, the reservation mechanism in the Mining Act is considered to cause uncertainty with respect to the future use and management of areas concerned in the reservation. If the aim is to develop the reservation mechanism by retaining the reservation as a separate notification procedure, possible ways to amend the Mining Act could be the specification of the surface area to be covered by the reservations, duration of the reservations, and scope of the rights concerning participation and administrative or judicial reviews. If the option of abolishing the reservation mechanism altogether from the regulation of reservations is considered but the aim is to retain the elements of the mechanism that encourage exploration, this could be done by including the reservation mechanism in the exploration permit procedure under the Mining Act.

Keywords enterprises, means of livelihood, reservation, companies, economic activities, Mining Act, exploration, regulation, mines

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Selvitys kaivoslain mukaisen varausmekanismin toimivuudesta

Työ- ja elinkeinoministeriön julkaisu 2022:28	Teema	Yritykset
Julkaisija	Työ- ja elinkeinoministeriö	
Tekijä/t	Klaus Metsä-Simola, Heikki Majamaa, Rabbe Sittnikow ja Milla Männistö	
Kieli	englanti	Sivumäärä 59

Tiivistelmä

Suomen voimassa oleva kaivoslainsäädäntö perustuu valtausjärjestelmään, jossa oikeus kaivosmineraaleja sisältävän esiintymän hyödyntämiseen on kiinteistön omistuksesta riippumatta esiintymän löytäjällä.

Valtausjärjestelmän keskeisenä tavoitteena on edistää kiinteistöjen omistusoikeudesta riippumatonta kaivosmineraalien löytäjän asemaa ja luoda kannustimia malminetsintään ja kaivostoimintaan.

Asianajotoimisto Hannes Snellman Oy on arvioinut selvityksessä voimassa olevaan kaivoslakiin (621/2011) sisältyvän varaussäätelyn merkitystä malminetsinnälle ja kaivostoimialalle. Selvityksessä on arvioitu myös varaussäätelyn vaikutuksia maanomistajien oikeuksiin, paikallisten elinkeinojen harjoittamiseen ja alueen maankäyttöön, saamelaisten oikeuksien toteutumiseen saamelaisten kotiseutualueella sekä varausmekanismin varallisuus oikeudellisia, sosiaalisia ja ympäristöllisiä vaikutuksia. Selvitystä varten on kerätty sidosryhmäpalautetta. Selvityksessä on käsitelty lisäksi eri vaihtoehtoja kaivoslakiin sisältyvän varaussäätelyn kehittämiseksi taikka varausmekanismin poistamiseksi kokonaan.

Malminetsinnan ja kaivostoiminnan näkökulmasta kaivoslain mukainen varausilmoitus on koettu toimivana menettelyä selventää malminetsintää harjoittavien toimijoiden välistä etuoikeusjärjestystä ennen varsinaista malminetsintälupavaihetta. Varausmekanismiin liittyvällä etuoikeuden kirjaamisella kaivosviranomaisen ylläpitämään rekisteriin on myös vaikutusta, kun malminetsintää harjoittavat tahot hakevat rahoitusta malminetsintätöiden suorittamiseksi. Varausalueen maanomistajien, elinkeinonharjoittajien ja muiden sidosryhmien näkökulmasta kaivoslaissa tarkoitetun varausmekanismin on koettu aiheuttavan epävarmuutta varauksen kohteena olevien alueiden tulevista käyttö- ja hallintamahdollisuuksista. Jos varausmekanismia pyritään kehittämään säilyttämällä varaus omana ilmoitusmenettelynä, kaivoslain kehittämiskohteina on mahdollista harkita varauksen kohteena olevien alueiden laajuuden määrittämistä, varauksen kestoa sekä osallistumis- ja valitusoikeuksien laajuutta. Jos varausta koskevien säännösten osalta harkitaan varausmekanismin poistamista kokonaan, mutta tavoitteena on kuitenkin säilyttää varausmekanismiin liittyvät malminetsintään kannustavat elementit, vaihtoehtona olisi mahdollista harkita varausmekanismin siirtämistä osaksi kaivoslain mukaista malminetsintälupamenettelyä.

Asiasanat yritykset, elinkeinot, varaus, kaivoslaki, malminetsintä, sääntely, kaivokset

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Utredning av hur förbehållsmekanismen i enlighet med gruvlagen fungerar

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Referat

Den gällande gruvlagstiftningen i Finland bygger på ett inmutningssystem där rätten att använda en fyndighet som innehåller gruvmineraler innehåses av den som hittar fyndigheten oberoende av vem som äger den fasta tillgången.

Det viktigaste målet med inmutningssystemet är att främja ställningen för den som hittar gruvmineraler oberoende av äganderätten för den fasta tillgången och skapa incitament för att leta malm och bedriva gruvdrift.

Advokatbyrån Hannes Snellman Oy har i en utredning gjort en bedömning av vilken betydelse bestämmelserna om förbehåll i den gällande gruvlagen (621/2011) har för malmletning och för gruvbranschen. I utredningen har det också gjorts en bedömning av hur bestämmelserna om förbehåll påverkar markägarnas rättigheter, det lokala näringsidkandet och markanvändningen i ett område, tillgodoseendet av samernas rättigheter i samernas hembygdsområde samt vilka förmögenhetsrättsliga, sociala och miljömässiga konsekvenser bestämmelserna har. För utredningen inhämtades synpunkter från intressentgrupper. I utredningen har det dessutom behandlats olika alternativ för att utveckla bestämmelserna om förbehåll eller för att ta bort förbehållsmekanismen helt.

Vad gäller malmletning och gruvdrift har förbehållsanmälan i enlighet med gruvlagen upplevts som ett fungerande förfarande för att före den egentliga malmletningstillståndsfasen klargöra den inbördes företrädesordningen bland de aktörer som bedriver malmletning. Noteringen av företräde i samband med förbehållsmekanismen i det register som gruvmyndigheten upprätthåller har också betydelse när aktörer som bedriver malmletning ansöker om finansiering till malmletning. Markägarna som äger förbehållsområdet, näringsidkarna och andra intressentgrupper har upplevt att förbehållsmekanismen i gruvlagen skapar osäkerhet kring de framtida möjligheterna att använda och ha besittningsrätt till de områden som är föremål för förbehåll. Om syftet är att förbehållsmekanismen ska utvecklas genom att förbehåll bevaras som eget anmälningsförfarande, är det möjligt att som utvecklingsobjekt i gruvlagen överväga ett fastställande av storleken på de områden som är föremål för förbehåll, hur länge förbehållen varar samt omfattningen av rätten att delta och anföra besvär. Om man vad gäller bestämmelserna om förbehåll överväger att ta bort förbehållsmekanismen helt men trots det har för avsikt att behålla de element i förbehållsmekanismen som uppmuntrar till malmletning är det ett möjligt alternativ att överväga att göra förbehållsmekanismen till en del av förfarandet för malmletningstillstånd.

Nyckelord företag, näringsgrenar, förbehåll, näringar, gruvlagen, malmletning, reglering, gruvor

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1 Introduction

1.1 Background to the report

In the strategic theme “*Carbon neutral Finland that protects biodiversity*” of Prime Minister Sanna Marin’s Government Programme, improving the environmental protection of mines has been set as one of the objectives. According to the Government Programme, to achieve this objective, amendments to the current Mining Act (621/2011) will be prepared with the purpose of improving the environmental protection of mines, ensuring the operating conditions of mines, and improving local acceptability and opportunities to influence.

Responsibility for preparing the content of the proposal to amend the Mining Act rests with the Ministry of Economic Affairs and Employment, which set up a legislative drafting project on 15 October 2019. In addition, on 13 February 2020, the Ministry of Economic Affairs and Employment appointed a working group representing the mining sector’s key stakeholders to support the reform of the Mining Act. The working group’s term currently ends on 31 December 2021. With regard to the timetable, the goal of the drafting project is to prepare a government proposal on the reform of the Mining Act, with the intention of submitting the proposal to Parliament in autumn 2021.

According to the Government Programme entries on the reform of the Mining Act, the preparation of amendments to the Act must take into consideration the right of municipalities to decide through land use planning whether it is possible to carry out mining activities in the municipality, improving the position and right to information of property owners and landowners in the area affected by mines, paying due regard to the rights of indigenous peoples in significant mining projects, taking into account the environmental impacts of planned mines at the earliest stage possible, and exploring permit processes and practices, particularly from a nature conservation perspective. In addition to this, in connection with the reform of the Mining Act, the parliamentary communication of 16 October 2020 on the “Mining Act Now” citizens’ initiative and five parliamentary statements on the reform of mining legislation and the organisation of mining operations must be taken into account. In its communication of 16 October 2020, Parliament approved the proposal contained in the report of the Parliamentary Finance Committee (TaVM 7/2020) to reject the citizens’ initiative, but at the same time required that the Government must, when preparing the reform of the Mining Act, take into account aspects raised in the Finance Committee’s statement and the implementation of the Government Programme.

It is significant with regard to the background to this report that the Government Programme entries or the parliamentary statements guiding the amendment of the Mining Act do not require the implementation of a comprehensive reform of the Mining Act. Instead, the objective of the legislative drafting project has been defined as implementing identified needs for change by revising, where necessary, the content of existing mining legislation. From this point of departure, it follows that the drafting project on the reform of the Mining Act is not intended to change the fundamental solutions of existing mining regulations.

1.2 Report background and implementation

One of the key starting points of current mining legislation is the regulation of exploration and mining on the basis of the claim procedure. In the claim procedure, the ownership of minerals does not belong to the State or the landowner; in a decision under the claim procedure, the party that discovers a deposit containing minerals has the right to exploit the deposit, regardless of property ownership. The essential purpose of the claim procedure is therefore to promote, regardless of property ownership, the position of the party that discovers mining minerals and consequently also to create incentives for exploration and mining.

In the approach adopted in the current Mining Act, the claim procedure is outlined in section 32 of the Act, according to which the order of priority, as referred to in section 32, of the parties engaged in the operations is observed in the planning of exploration and mining. According to the said order of priority, the party first applying for a permit in accordance with the provisions laid down in the Mining Act shall have priority for an exploration permit and a mining permit. It is also essential with regard to the exploration phase that a person or entity meeting the eligibility conditions provided for in the Mining Act may for the purpose of preparing an application for an exploration permit, reserve an area for themselves by submitting a notification to the mining authority about the matter (reservation notification) in the manner referred to in section 32 of the Act. The regulation of reservations referred to in the Mining Act is therefore centrally related to the fact that a reservation notification under the Mining Act gives the reserving party, vis-à-vis other parties engaged in exploration activity, priority for a maximum of two years to apply for an exploration permit and thereby priority to apply for an actual mining permit and ultimately to exploit minerals.

It is essential with regard to the starting points for this report that, in connection with the drafting project established by the Ministry of Economic Affairs and Employment for the amendment of the Mining Act, it has been recognised that the regulation of reservations included in the current Mining Act has generated debate on the functioning

of the regulation of reservations. In order to have available up-to-date information on the functioning of the regulation of reservations to support legislative preparation, the Ministry of Employment and the Economy decided in spring 2021 to commission a report on the functioning of the reservation mechanism. Via public tendering process, the law firm Hannes Snellman (hereinafter “Hannes Snellman” or “we”) was selected to produce the report.

In this report on the functioning of the regulation of reservations, we examine the significance for exploration and mining of the reservation mechanism included in the current Mining Act. The report also assesses the impact of the regulation of reservations on the rights of landowners, local economic activities and land use in the area, and the realisation of the rights of the Sámi people in the Sámi homeland, and the impacts of the reservation mechanism concerning social aspects, the economy and the environment. In the report, we also address various options for developing the regulation of reservations or eliminating the reservation mechanism altogether. In the report, we also outline how issues related exploration have been resolved in Sweden’s mining legislation. However, due to remit restrictions, actual mining operations and related broader perspectives concerning environmental protection and sustainable use of natural resources are not covered by our report.

For the preparation of the report, we have familiarised ourselves with current mining legislation and its preliminary work in the form of written material. We have also reviewed earlier mining acts and related exploration and reservation regulations, and through this we have sought in the report to provide background information on the regulation of reservations included in the current Mining Act. We have also examined perspectives on exploration and the regulation of reservations presented in the legal literature and in previous reports.

In addition to written material, we have held in connection with the preparation of the report bilateral discussions on the themes of the report with various stakeholders involved in mineral exploration. The discussions took place from March to May 2021 and the individuals who participated in them have experience of, among other things, exploration and mining, the activities of the Sámi Parliament, advocacy on behalf of non-mining economic activities, the activities of landowners and municipalities, and advocacy for nature conservation and environmental protection. In addition, we have discussed the functioning of the reservation mechanism with the Ministry of the Environment and the Finnish Safety and Chemicals Agency (Tukes). The purpose of these discussions has been to hear the views of stakeholders on the reservation mechanism contained in the Mining Act, its functioning and possible development needs. Each of the lawyers responsible for preparing this report, Klaus Metsä-Simola, Rabbe Sittnikow and Heikki Majamaa, have more than ten years’ experience of applying the current Mining Act and its predecessor

from perspectives related to exploration and mining administrative law cases, mining transactions and mining finance, and the expertise based on this experience made an important contribution to the preparation of the report.¹

¹ Milla Männistö, Master of Laws, has also participated at Hannes Snellman in the preparation of the report.

2 Key provisions on the reservation mechanism

2.1 Aspects related to exploration and reservation included in earlier mining legislation

According to views expressed in the legal literature, the oldest known provisions in the field of mining legislation concerning Sweden–Finland date back to the 15th century. There were also rules and privileges on mines in force earlier than this, but there is uncertainty in the legal literature as to the validity of these provisions. However, with regard to known mining laws previously in force, the legal literature states that under the mining provisions in force in the 15th century, the right to exploit mining minerals could belong to either the landowner or the Crown, depending on the nature of the land. Thereafter, regulations developed so that in the 16th and 17th centuries the Crown began to make stronger demands for its right to command the exploitation of mining minerals as a royal prerogative. However, in order for mining that generates income for the State to be considered rewarding also with regard to landowners and exploration, regulations at that time already included elements by which the landowner and the party that discovered the deposit were given shares in the mine.

The transition to a claim procedure corresponding to the Mining Act currently in force in Finland can be considered to have taken place in 1723, when a decree issued in that year granted the Mining College (*Bergskollegium*) the right to hand over deposits for exploitation to those who had the desire and ability to manage them properly. According to the legal literature, the decree of 1723 meant in practice that the State waived, at least in part, its right to exploit mineral deposits itself in favour of the party that discovered the deposit and the landowner. The purpose of the amended regulations was therefore to create incentives for exploration and mining. Thereafter, the regulatory solutions adopted in 1723 remained in many respects fundamentally unchanged in the mining legislation reforms of 1857, 1883, 1932 and 1943.

The Mining Act of 1965, which preceded the current Mining Act, largely kept in force the elements of the claim procedure contained in the earlier mining legislation. However, in the relationship between the party that discovers a deposit and the landowner, the Mining Act of 1965 included a significant change in principle, as the earlier right of the landowner to participate in the exploitation of a deposit discovered by another was removed from the Act. The justification for the change was that, since the exercise of the landowner's

right to participate in the mine also required the landowner's participation in the costs of exploring and exploiting the deposit, the landowners had, in practice, not exercised their right to participate. As a result, the Mining Act of 1965 introduced a system in which the landowner no longer had the right to participate in the mine, but the holder of the mining right had to pay a reasonable excavation fee each calendar year for the minerals mined and extracted from the area of the mining concession.

The regulatory history of mining legislation briefly described above also clearly illustrates the basic solutions by which it has been considered possible to arrange the right to exploit a deposit containing mining minerals. In this respect, it is well established that the right to exploit a deposit may belong to the landowner, the State or the party that discovers the deposit. From the standpoint of concept definitions, it can be stated that if the right to exploit mining minerals is based on a permit issued by the State, the mining right system in question represents the so-called concession procedure. If the right to exploit a deposit belongs instead to the party who discovered the deposit, the claim procedure is involved.

It should also be noted that the procedures adopted in different countries at different times have been based not only on different geological principles but also on the views formed as a result of historical development in each state on the division between the State and private individuals of rights to exploit natural resources. In practice, it is also typical that procedures related to the exploitation of materials in the soil and mineral deposits may have been based on several alternatives or a combination of them so that, for example, different ownership and exploitation rights may have been adopted in the same country for the exploitation of different mining minerals.

As we have stated above, Finland's current Mining Act is based on the claim procedure, which reflects the status of the party that discovered the deposit and is intended to promote exploration and create conditions for the pursuit of mining activity. As there is no intention to change this principle in connection with the pending reform of the Mining Act, in this report we will discuss the reservation mechanism contained in the Mining Act and its possible development options only from the perspective of a Mining Act based on the claim procedure.

2.2 Content of reservation notification and tasks according to the current Mining Act

As in previous mining acts, underlying the provisions of the current Mining Act, which entered into force in 2011, is the key principle related to exploration and mining that mining minerals form in the bedrock rare deposits that require from the operator special

expertise and sufficient financial resources at the very early stage of exploration in order to locate them and ascertain the feasibility of their exploitation.

Despite expertise, technical development and financial resources, it remains as before indisputable that, during the exploration phase, locating and investigating deposits involves considerable financial risks for the operator or the finance providers of the party conducting exploration and a high probability that the exploration will not result in the discovery of a deposit feasible for exploitation. For operators to have a sufficient incentive to carry out exploration and related investigations, the basic solutions of the current Mining Act include the prior right in accordance with the claim procedure of the party that discovers a potential deposit to exploit the deposit regardless of property ownership.

The basic provision of the reservation mechanism that is the subject of this report is contained in section 32 of the current Mining Act, which provides for the order of priority in relation to rights under the Mining Act. According to this provision, the party first applying for a permit in accordance with the provisions laid down in section 34 of the Mining Act shall have priority for an exploration permit and a mining permit. Section 32 of the Mining Act further states that the applicant may reserve for themselves an area for the preparation of an exploration permit application by notifying the mining authority (*reservation notification*).

As no other purpose for reservation is provided for in section 32 of the Mining Act or elsewhere in the Act than to grant priority to prepare an application for an exploration permit, the legal effects of reservation are limited under the Mining Act solely to priority to apply for an exploration permit for the area referred to in the reservation notification. Making a reservation notification does not confer on the party making the reservation a right of use or other rights to the area subject to the reservation, and prospecting carried out by the party making the reservation must take place during the reservation period in compliance with other exploration phase provisions included in the Mining Act. The reservation notification therefore differs substantially in this respect from the prospecting work provided for in sections 7 and 8 of the Mining Act and the exploration permit referred to in section 10 of the Mining Act, the provisions of which explicitly specify the content of a restricted right of use to an area owned or held by another party.

The aforementioned aspects show that making a reservation notification or approving a notification is not legally a matter of granting rights of use under the Mining Act; a reservation notification is, in respect of its legal nature, a notification procedure implementing the business law objectives of the Mining Act and complementing provisions on prospecting work and exploration permit under the Mining Act. Regarding the significance of the reservation, it is worth noting that, according to preparatory work for the current Mining Act, the approach adopted for the different phases and regulation

of exploration is based on a principle according to which the provisions on prospecting work, the reservation procedure and the exploration permit referred to in the Mining Act complement each other. Although the matter is not highlighted in the sections of the Mining Act concerning the regulation of reservations, the provisions on the exploration phase form a coherent entity and an understanding of that entity must also be taken into account in the interpretation of the current Mining Act.

A direct connection between the regulation of reservations and the exploration permit phase referred to in the Mining Act is also apparent from the wording of section 32 of the Mining Act, according to which an applicant may reserve for themselves an area for the purpose of preparing an application for an exploration permit by submitting notification to the mining authority about the matter. In this respect, it is also worth noting that the preparatory works of the current Mining Act provide estimates according to which extending the period of validity of a reservation up to a maximum of two years² will create better opportunities for the party making the reservation to prepare a high-quality application for an areally appropriate unit. When the regulation of reservations operates in accordance with the objectives set for it, the regulation of reservations has been estimated, also in the preparatory work for the Mining Act, to reduce the need to apply for exploration permits and to limit the size of exploration areas. Allowing sufficient time for the preparation of exploration permit applications has also been estimated to prevent the submission of incompletely prepared applications and therefore also reduce the need for supplementary requests from the mining authority.

2.3 Performance of exploration phase work

The sole legal purpose of the reservation mechanism provided for in the Mining Act is, as described above, to determine the order of priority of parties engaged in exploration in a situation where several parties may be interested in exploring the same area. The purpose of the reservation notification is therefore not to influence matters relating to the use of the reservation area. On the other hand, regulations concerning the latter factors are included in, for example, chapter 2 of the Mining Act, which provides for exploration work on land owned or held by another party and for exploration activities subject to a permit.

The basis of section 7 of the Mining Act is that, in order to discover mining minerals, everyone has the right to make geological measurements and observations and take

² The validity of reservation notifications and requirements for their content may have been different in previous mining acts. For example, in the Mining Act of 1965, the period of validity of a reservation notification was a maximum of one year and in the earlier Mining Acts of 1932 and 1943 it was 60 days.

minor samples even on another's land provided that this does not cause any damage or more than a minor convenience or disturbance (*prospecting work*). Section 7 of the Mining Act therefore directly confers on the party conducting mineral exploration slightly more extensive rights than the otherwise prevailing everyman's rights to use land belonging to another for purposes serving prospecting work without the consent of the holder of rights. If the activities cause, as referred to in the provision, damage or more than a minor convenience or disturbance, it is not, however, possible to base the right to perform prospecting work on the prospecting work referred to in section 7 of the Mining Act. In that case, the performance of prospecting work requires either an exploration permit issued by the mining authority or an agreement on exploration with the relevant holder of rights.

If the prospecting work referred to in section 7 of the Mining Act includes sample taking, the party responsible for the prospecting work shall notify the owner or holder of property in the area subject to the prospecting work of the samples taking in accordance with the Mining Act. From the standpoint of the regulation of reservations, it can be stated that making a reservation notification is not a prerequisite for carrying out the prospecting work referred to in section 7 of the Mining Act but, in practice, parties engaged in exploration allocate exploration resources to areas according to the reservations they make.

Section 7 of the Mining Act also contains an eight-item list of areas on which prospecting work must not, in principle, be carried out on the ground. The areas referred to in section 7 include areas designated for special use on which it is not deemed appropriate to allow movement for prospecting work. Similarly, section 9 of the Mining Act lists a number of public areas, traffic areas or their exclusion areas, based on decisions of authorities or separate legislation, on which exploration is not, in principle, permitted. In this respect, however, it should be noted that prospecting may be carried out in areas prohibited in section 7 of the Mining Act with the consent of the competent authority or institution or of the relevant holder of rights, with the exception of areas connected with funerary services and their exclusion areas.

If exploration cannot be carried out as prospecting work in accordance with section 7 or the property owner has not given their consent to prospecting work, exploration is subject to a permit granted by the mining authority (*exploration permit*) pursuant to section 9 of the Mining Act. In any case, in relation to the impact of exploration, an exploration permit is necessary in a situation where the exploration could cause harm to people's health or public safety, damage to other industrial or commercial activity or any deterioration in landscape or nature conservation values. Similarly, an exploration permit must be obtained if exploration is targeted at locating and investigating a deposit containing uranium or thorium.

Pursuant to section 10 of the Mining Act, by virtue of an exploration permit, the permit holder has the right, on their own land and land owned by another landowner, in the area referred to in the permit (*exploration area*), to study the structures and composition of geological formations and to conduct other studies in order to prepare for mining activity and other exploration in order to locate a deposit and to investigate its quality, extent, and feasibility for exploitation, as provided for in more detail in the exploration permit. Under section 11 of the Mining Act, the holder of an exploration permit shall limit exploration and other use of the exploration area to activities necessary for the purposes of exploration.

In connection with the preparation of the current Mining Act, attention was drawn to the fact that the background to the 1965 Mining Act was largely industrial and commercial, even though the significance of aspects related to the environment, land use and use of natural resources had long been growing. In order to more clearly define the relationship between the scope of application of the Mining Act and other environmental legislation, section 3 of the current Mining Act stipulates that, when resolving a permit or other matter under the Mining Act and otherwise acting according to the Act, a number of other environmental acts and the requirements imposed by them shall be applied in addition to the Mining Act. In other words, the regulations laid down in the Mining Act do not supersede the obligation to comply with other legislation or to apply for permits based on it. As a result, a party engaged in exploration must be aware of the areas of application between the Mining Act and other mining legislation and ensure that their activities have all the necessary regulatory approvals and that prospecting work complies with other environmental legislation in addition to the Mining Act.

With regard to determining the areas of application of the Mining Act and other environmental legislation, we further state that for prospecting work belonging to everyman's rights referred to in section 7 of the Mining Act, the operator must ensure that the prospecting work complies with, among other things, the requirements of the Nature Conservation Act (1096/1996) and activity-related requirements imposed on the basis of it in various nature conservation areas and protected biotopes, and regarding species protection and Natura regulations. Insofar as an exploration permit is sought for activities, the aforementioned requirements of the Nature Conservation Act may also be taken into account in the content of the permit decision.

2.4 Making and deciding a reservation notification

In order for a party making a reservation notification to receive the priority referred to in section 32 of the Mining Act, a reservation notification under section 44 of the Act must be submitted to the Finnish Safety and Chemicals Agency (*Tukes*), which acts as

the mining authority. The notification must provide a necessary and reliable account of the party making the reservation, the area to which the reservation applies (*reservation area*), and a compilation of the exploration plan and other activities in preparation for the exploration permit application and the schedule thereof. In addition, sections 13 and 14 of the Government Decree on Mining (391/2012) provide more detailed provisions on the information that must be submitted to the mining authority in the reservation notification.

Pursuant to section 55 of the Mining Act, the mining authority shall approve a reservation if the reservation notification meets the preconditions laid down in section 44 of the Mining Act and there is no impediment, as specified the Act, to the approval of the reservation. With regard to the aforementioned impediments, section 44 of the Mining Act stipulates that a reservation notification may not concern an area that forms part of an exploration area, mining area or gold panning area. In addition, under section 44 of the Mining Act, the reservation notification may not concern an area that has previously been a reservation area until one year has passed since the expiry or cancellation of that reservation decision.

Pursuant to section 55 of the Mining Act, however, the mining authority must reject the reservation if, due to the extent of the reservation area or for other reasons, there are serious grounds to suspect that the party making the reservation does not meet the preconditions or has evidently no intention to apply for an exploration permit. The preparatory work for the current Mining Act refers, in this respect, to the purpose of the regulation of reservations as being a period of preparation for an exploration permit application. Therefore, according to the preparatory work for the Mining Act, the mining authority would have the option when considering its approval of a reservation to take into account other reservation notifications and exploration permit applications made by the same party making the reservation or areas subject to exploration permits already granted to the party making the reservation. On this basis, the mining authority would have the option to assess whether the party making the reservation has an actual opportunity and intention to prepare an exploration permit application for the area subject to the reservation notification, taking into account other prospecting work undertaken elsewhere by the party making the reservation.

As the rejection of a reservation notification requires serious grounds pursuant to section 55 of the Mining Act, the threshold for the mining authority to decide to reject a reservation is set high under the current Mining Act. In this regard, it should also be taken into account that section 55 of the Mining Act does not set out whether the mining authority may impose in its reservation decision conditions related to the extent of the reservation area, for example, when the purpose of imposing conditions is to avoid rejecting the reservation in its entirety. It is also worth noting that the regulation of

reservations under the current Mining Act also allows reservations to be made for areas for which it is not possible for the mining authority to grant an exploration permit. However, as the reservation notification only concerns priority to an application for an exploration permit, this fact, which in itself seems peculiar, is irrelevant from a legal standpoint.

Pursuant to section 32 of the Mining Act, priority based on a reservation notification is valid once the reservation notification has been submitted in the manner laid down in section 44 and there is no impediment, as specified in the Act, to the approval of the reservation. Although the wording of the Mining Act sets as a condition for the entry into force of priority that a reservation notification has been submitted in the manner laid down in section 44 of the Mining Act and that there is no impediment, as specified in the Act, to approval, the time of commencement of priority is based, in principle, on the time of submission of the reservation notification, not the time of the decision made by the mining authority as a result of the reservation notification.

However, the timing of the mining authority's decision is relevant because, pursuant to section 76 of the Mining Act, the mining authority's reservation decision is valid for a maximum of 24 months from the time the reservation notification is made. With regard to the length of the validity period, section 76 of the Mining Act stipulates that the mining authority, when considering the validity period of a reservation decision, shall pay particular attention to the time required to prepare an exploration plan and other preparatory measures related to the exploration permit application. A reservation decision shall expire at the end of the period specified in the decision of the mining authority, or if the party making the reservation notification submits a notification to the mining authority to cancel the reservation. Furthermore, pursuant to section 76 of the Mining Act, a reservation decision shall expire completely or partly when an exploration permit has been applied for on the basis of the priority bestowed by the decision.

With regard to communication related to reservation decisions, the Mining Act stipulates that the mining authority shall notify the decision on a reservation notification by public notice and the mining authority shall communicate the reservation decision to the party making the reservation notification. The mining authority shall publicise the decision in at least one newspaper in general circulation within the reservation area referred to in the decision and, if necessary, in a newspaper that can be assumed to be the best source of information on the matter for the owners and holders of properties within the area. The mining authority shall ensure that the municipalities within whose territories the reservation area is located publish information without delay on the decision as a municipal announcement in the manner provided for in section 108 of the Local Government Act.

If a party is dissatisfied with a decision made by the mining authority as a result of a reservation notification then, pursuant to section 162 of the Mining Act, any appeal against the decision shall be filed in the manner prescribed in the Administrative Judicial Procedure Act (808/2019). However, with regard to appeal, section 165 of the Mining Act contains special provisions on who has the right of appeal in matters concerning a decision on an exploration permit, a mining permit or a gold panning permit. As the right of appeal against a mining authority's reservation decision is not specifically defined in section 165 of the Mining Act, the general provisions specified in section 7 of the Administrative Procedure Act apply to the right of appeal. According to said provisions, a judicial review of an administrative decision by way of appeal may be requested by a party whom a decision concerns, or whose right, obligation or interest is directly affected by the decision, and by a party whose right of appeal is separately provided by law.³

3 In case law (KHO 2013:179), the right of appeal related to reservation decisions has been interpreted narrowly, applying the principle that a reservation decision only gives priority to apply for an exploration permit. Accordingly, making an acceptable reservation notification and the reservation decision have no other legal effects. In addition, the case law has held that a reservation decision has not had a direct effect on, for example, the legal status of reindeer herders, land use planning in the reservation area, water management, holiday accommodation in the area, recreational use or natural values.

3 Significance of current reservation mechanism for different parties

According to the current Mining Act, the reservation mechanism is intended to regulate the order of priority between operators under the Act and to give the party making the reservation an opportunity to prepare an actual exploration application in a careful manner that meets the requirements of the Act. For this reason, the *legal effects* of a reservation decision are deemed to extend only to the priority granted to the party making the reservation to apply for an exploration permit for the reserved area during the period of validity of the reservation notification. The legal effects of reservation have not traditionally been considered to extend beyond the parties engaged in exploration and mining, such as landowners, residents of the area, business operators or other users of the reservation area, because reservation does not, under the Mining Act, establish for the party making the reservation any land use or other rights to the reserved land areas.

Statements made in connection with the reform of the Mining Act have revealed, however, that a reservation may be considered to have *social or actual impacts* on a number of parties outside the rights conferred by the Mining Act. One key impact of this nature is the uncertainty experienced by various parties about the future use of the area as a result of a reservation being made. It is often perceived that a reservation will result in the commencement of mining in the area in the near future, although statistically only rarely do reservations result in the commencement of actual mining, and the typical time between exploration surveys and the start up of mining itself is more like decades than years. Nevertheless, it is precisely this long period of uncertainty from the reservation to the possible commencement of actual mining that has also emerged in the views expressed by various parties.

In assessing the significance of the reservation mechanism, it is also necessary to consider that the scope of the rights conferred by a reservation under the Mining Act is not always clear to those parties interpreting matters related to the reservation mechanism. Accordingly, also in this context, it is necessary to take into account that a reservation is an integral part of the Mining Act procedure as a whole and of the chain of permits leading to possible mining activities, in which case it is not justified to think of the perceived social or actual impacts of a reservation as a completely separate procedure from the regulatory framework.

In assessing the impact and significance of the reservation mechanism, it is necessary to bear in mind that the various parties often do not oppose in principle the existence of the reservation mechanism itself, but the future mining activity that may commence in the area as a result of it and, in part, the exploration that precedes it. The feeling of insecurity experienced by various parties may also be increased by concern about environmental pollution, negative attitudes towards mining or fears that a familiar local environment will change in way in which residents or users of the area feel they cannot adequately influence. Nowadays, opposition to mining and the chain of steps leading to mining has arisen increasingly earlier and, already at the reservation phase, projects opposing mining activity such as the “Ei kaivoksia Suomen käsivarteen” (No mines in Northwest Finland), “Saimaa ilman kaivoksia” (Saimaa without mines) and “Pro Heinävesi” movements have been activated in various parts of Finland.⁴

Public discussion of factors related to exploration and mining at the reservation phase is understandable because, even though the actual legal effects of reservation under the Mining Act are limited to the priority of the party making the reservation vis-à-vis other parties planning exploration and mining, making a reservation notification under the Mining Act may launch a potentially long and uncertainty-generating chain via exploration to possible mining activity starting at the location.

In terms of the importance of the regulation of reservations, it can also be stated that, according to reservation statistics, the number of reservations and the surface areas covered by them vary from year to year. For the preparation of this report, we have received data from the Geological Survey of Finland (*GTK*) and Tukes that show that during the period 1999–2020, the annual number of reservations has fluctuated between 14 and 265 reservations per year. The largest number of reservations (265) was in 2006, and between 2010 and 2020 the annual number of reservations was 34–160. According to the data available to us, the total surface area of reservations has fluctuated very sharply from year to year, so that during the period 1999–2020 the total surface area of the reservations has been between 23,856 and 3,071,800 hectares per year. For reservations, the year representing the largest total surface area was 2012 (3,071,800 hectares) and during 2010–2020 the total surface area of reservations has been between 116,518 and 3,071,800 hectares per year. There is also a large fluctuation in the average surface area of individual reservations, as in the period 1999–2020 the surface area of individual reservations has been on average between 1,704 and 38,129 hectares per year. During the period

4 Leino, Johanna, Miettinen, Eija: Malminetsintä, hyväksyttävyyys ja osallistumismahdollisuudet – tapauksena Heinäveden malminetsintäkonflikti, 2020 p. 273–274. https://www.edilex.fi/ymparistopolitiikka_ja_oikeus/21809.pdf, reference date 6 April 2021.

2010–2020, the average surface area of individual reservations was between 3,427 and 38,129 hectares, with the average surface area of individual reservations being highest in 2015.⁵

In the following subsections, we have sought to examine the functioning of the reservation mechanism from the perspective of various parties. In summary, however, in connection with the report, we have formed the view that, despite the perceived effects, the prevailing interest from the perspective of various parties remains that mineral exploration will continue in Finland and Finland's mineral ore reserves will be comprehensively mapped and exploited in mining operations.

3.1 Exploration and mining industry

From an exploration perspective, the actual legal effects of a reservation under the current Mining Act impact both the party making the reservation notification and the position of other parties conducting exploration that are interested in the same area as the maker of the notification. Making a reservation notification then gives the party making the reservation a maximum of two years' priority in preparing an exploration application, but at the same time the party making the reservation also has an opportunity to promote and target prospecting work within the reservation area. From the perspective of the exploration and mining industry, the reservation mechanism is an important instrument for establishing a clear order of priority and thereby allocating resources for engaging in prospecting work and possible exploration. In practice, the entry in public registers of a reservation notification and decision associated with the reservation mechanism increases the predictability of legal relationships related to exploration and thus also has a positive impact on obtaining the funding required for exploration activities.

As stated above, the basic principle of the current Mining Act is that the Act is based on the claim procedure, the purpose of which is to encourage exploration independent of property ownership. The reservation mechanism is currently an essential part of this claim procedure, and making a reservation notification, furthermore, also increases other explorers' and stakeholders' knowledge of the interest of the party making the reservation in the mineral potential of a particular area. When the reservation mechanism operates in the manner provided for in the Mining Act, it also reduces the number of actual exploration permit applications and reduces the extent of the areas subject to mineral exploration applications. In addition, the reservation mechanism under the current

⁵ More detailed annual tables on the number of reservations and areas are provided in Appendix 2 of this report.

Mining Act contributes to lightening the administrative burden for both public authorities and companies engaged in exploration, as the first phase in the system is a notification procedure similar to the reservation mechanism, compared with an exploration permit procedure requiring more preparation. Compared with an exploration permit, the current reservation notification can therefore also be considered as a remarkably light and effective way of safeguarding the applicant's priority to investigate the suitability and potential of reservation areas for an actual exploration application phase. In this way, the reservation mechanism contained in the Mining Act also creates conditions for the participation of smaller operators in exploration work.

However, despite its advantages in the exploration phase, the reservation mechanism has not been considered to be entirely unproblematic from the exploration and mining industry's perspective. In particular, situations where rather imprecise reservations for extensive areas have been made in areas sensitive in terms of land use or, for example, used for recreation or holiday housing, may have been viewed as undesirable also within the mining industry. Situations of the latter type have tended to increase the reputational damage experienced by the mining industry, bringing with it increased opposition towards reservations and thereby also creating tensions within the industry. In such cases, it may also be considered that extensive reservations and makers of reservation notifications that remain passive may, in fact, prevent other operators from exploring and developing the area, also taking into account the fact that, in accordance with section 44 of the Mining Act, no new reservation may be made in the same area until one year after the previous reservation has expired. From the perspective of exploration and mining, the above-mentioned views may also have been influenced by the combination of the current mining legislation and the related application of the law. The rejection of a reservation notification requires serious grounds pursuant to section 55 of the current Mining Act, and therefore, in the mining authority's decision-making practice, a high threshold has been set for a decision to reject a reservation.

In connection with the preparation of the report, a particular issue related to reservation has arisen in that the regulation of reservations provided by the Mining Act has been prepared from economic standpoints related to the location and exploitation of a deposit. As a result, the current regulation of reservation and exploration has not been considered to be sufficiently applicable to the activities of research institutes and universities, where the interest in exploration data is mainly related to geological data collection and research activity.

From the perspective of exploration, it may be concluded, in summary, that the reservation notification under the current Mining Act has been perceived as being an important and efficient procedure for clarifying order of priority between operators before the submission of an actual exploration application to the mining authority. The

reservation and the legal status it brings play a key role when companies engaged in exploration plan the areal allocation of prospecting work and actual exploration subject to a permit and the preparation of a high-quality exploration application. The entry of the priority included in the reservation mechanism in the register maintained by the mining authority and the legal effects associated with the reservation mechanism also play an important role when companies engaged in exploration seek funding to carry out prospecting work. The aforementioned property-law dimensions and role of the reservation mechanism in the financing of exploration are discussed in more detail in chapter 4 of this report.

3.2 Landowners⁶

From the standpoint of the landowners in the reservation area, the reservation mechanism provided for in the Mining Act has primarily been perceived as creating uncertainty regarding the future opportunities to use and manage property. As we have stated above, in public discussion, a reservation is often perceived to lead to the commencement of mining in the area, either directly in the near future or alternatively to the launch of a long planning and permit process which the property owner has no real opportunity to influence. From the landowners' perspective, there is therefore concern that any exploration and mining permit procedures that follow the reservation mechanism may result in the property owner losing control of their property, or the property and its environment may be subjected to effects that differ from its current use. Although the latter facts are not directly related to the reservation mechanism under consideration in this report, they reflect experiences associated with the reservation mechanism of the social impacts of current regulations.

In addition to the social impacts, a reservation under the Mining Act entered in a property's register information may be significant for property sales and the valuation of properties in the area. A property subject to a reservation may therefore be perceived to be less attractive than an unreserved property, for example with regard to areas intended

⁶ Property may also be subject to rental rights under which the tenant has been able to build on the property and the tenant holds the property. The status of such a tenant can be equated in several respects to a landowner.

for leisure accommodation.⁷ Similarly, the validity of a reservation may affect investments planned for the area, in which case the consideration of property-related investments may relate to, among other things, the economic activities or private economy of the area. Agricultural entrepreneurs, for example, may find themselves in a situation where continuing to operate would require large and long-term investments, but a reservation on a property may create uncertainty as to the sense in making the investments. In assessing the effects of a reservation, it should be noted, however, that the time-related uncertainty associated with an individual reservation is rather short-lived due to the two-year maximum validity of the reservation notification. With regard to the effects on private land ownership, it should also be noted that 40% of Finland's surface area consists of areas owned by entities other than private individuals.

In terms of the effects of the reservation mechanism, it should also be borne in mind that landowners are not in the same position with regard to each other, which means that landowners' views on exploration and the reservation mechanism may also differ. In areas where the value of the actual land is relatively low and which does not otherwise generate a regular income for its owner, compensation per hectare under the Mining Act based on an exploration permit may be very attractive from the landowner's perspective. Landowners' attitudes towards reservations and possible subsequent exploration may also depend on each landowner's connection to the areal extent of the reservation, in which case landowners in areas outside the reservation might consider that they will be excluded from compensation payable for potential future activities, but believe that they will, even so, be exposed to the impact of exploration or a possible mine.

In connection with the processing of the reservation notification, the current Mining Act does not impose an obligation on the party making the reservation notification to inform the landowners in the area of the making of the reservation. However, where the party making the reservation carries out sampling under section 8 of the Mining Act in the reservation area, the party in charge of the prospecting work shall, prior to commencement of sampling, submit a notification to owners and holders of property in the area where prospecting work is to take place and whose right or advantage the matter may involve. According to the Mining Act, such a notification must include the contact information of the party responsible for prospecting work, information on the

⁷ It is well established in administrative case law, however, that a reservation only confers on the party making the reservation priority for an exploration permit; the reservation decision has no other legal effects. According to case law, a reservation decision has, in this respect, no direct effects on land use planning, holiday accommodation in the area, recreational use or natural values. As a result, landowners have not been considered in case law to have a right of appeal in reservation decision matters and appellants' appeals have been dismissed.

prospecting area, and a plan regarding the sampling. The plan must include information on the equipment and methods to be used, the sampling schedule, and the targeted mining mineral. Otherwise, a reservation decision is announced afterwards in the manner provided for in the Mining Act.

When assessing the effectiveness of the regulation of the reservation mechanism, it may be taken into account that, according to the preparatory work for the current Mining Act, it is important that information about the reservation reaches the owners and holders of property in the area as well as possible. Accordingly, pursuant to section 75 of the current Mining Act, the mining authority shall publicise the reservation decision in at least one newspaper in general circulation within the impact area of the reservation area referred to in the decision and, if necessary, in a newspaper that can be assumed to be the best source of information for the owners and holders of properties included within the area. In addition, the mining authority must ensure that the municipalities within whose territories the reservation area is located publish information without delay on the decision as a municipal announcement. Reservation decisions are also published on the mining authority's website. However, in the procedure according to the current Mining Act, the starting point is, as mentioned above, that communication of reservation decisions takes place by means of ex-post measures taken by the mining authority or the municipalities.

Given that the explicit purpose of the reservation mechanism under the Mining Act is to regulate the order of priority of parties interested in exploration in a given area, objective reasons based on the claim procedure and the principles of the reservation mechanism can be presented for the regulatory system described above for communicating the reservation mechanism. A situation in which parties interested in the same area would be required in advance to announce to competing parties their intention to prepare a reservation notification bestowing priority would therefore be ill-suited to the principles of the system. While taking the latter into account, it must be acknowledged, however, that the ex-post communication by the mining authority of reservation decisions resulting from reservation notifications may be viewed as an unsatisfactory solution from the landowners' perspective in terms of transparency and the exercise of participation rights. In addition, in relation to reservations, we consider that some companies engaged in exploration currently already provide information on their own initiative and voluntarily about the reservation notifications they make before a reservation decision by the mining authority is made and, in this way, seek to reduce the social impacts associated with reservations.

3.3 Economic activities and land use

In a similar way as stated above in the case of land ownership, despite the absence of actual legal effects, the making of a reservation notification under the Mining Act declares that the party making the reservation is interested in investigating the presence of mining minerals in the reservation area. Making a reservation notification may therefore create uncertainty about the future opportunities to use the area from the standpoint of other economic activities and thus also affect willingness make investments in creating or developing conditions for economic activity.

A large proportion of the areas subject to reservations are currently located in northern Finland, where nature regarded as being pure and unspoilt is considered to be very important for the tourism industry and other recreational uses of the areas. Reservations made under the Mining Act in Saimaa and other waterway areas have also recently been shown to cause uncertainty from the standpoint of developing the tourism industry. Although a reservation does not in itself establish a right to carry out in the reservation area activities that could be considered detrimental to other economic activities, uncertainty about the future use of the area may give rise to questions from other operators or their providers of finance about how long or in what form it is possible to carry out or continue operations in the area or whether it is still worth developing operations. Economic activities and projects that require long-term investment and external financing may have to carry out additional studies at the planning phase of projects if the area planned for a project is simultaneously subject to a reservation under the Mining Act.

As a basic principle of the current Mining Act is that a reservation gives the party making the reservation the priority to investigate more specific factors related to the area during the reservation period for an exploration permit application, the regulation of reservations does not currently require the reservation notification to include a clarification of other existing or planned economic activities in the area or the planning situation in the area. This aspect, related to the initial nature of the reservation notification, means in practice that the area covered by the reservation notification and decision regularly includes areas for which it is not possible under the Mining Act to grant an exploration permit after the reservation notification. In our view, business operators in particular are well aware of the practical significance of the reservation mechanism provided by the Mining Act, the uncertainties surrounding exploration and the short-term nature of the reservation notification. If the reservation notification does not result in the submission of an exploration application to the mining authority, the period of uncertainty associated with the reservation will not exceed two years. Professional operators also often have an understanding of the fact that if a mine would be actually built in the reservation area at a later date, they will have the option of agreeing or otherwise receiving compensation

for the resulting loss or damage, as further specified in mining legislation. In our view, therefore, the significance of the impact of the reservation mechanism on other businesses should not be overemphasised.

From the standpoint of economic activities, due account should also be paid to the fact that, under section 46 of the current Mining Act, the local authority may, though the planning referred to in the Land Use and Building Act (132/1999), influence consideration of the granting an exploration permit following the reservation notification and reconcile the various land-use needs between economic activities. Under the said provision, the mining authority cannot grant an exploration permit for an area where activities in accordance with the permit would impede the implementation of a legally binding plan. An exploration permit, moreover, may not be granted for an area concerning which the local authority opposes the granting of a permit, for a reason concerning land planning or other good cause related to land use, unless there is a specific reason for granting the permit.

In our view, it is also well understood within professionally practised economic activities that, when approving a reservation notification, the mining authority does not examine or form advance views on the conditions for granting an exploration permit or a mining permit in the said area; factors associated with the said permit applications are studied separately, if necessary, at a later date. From the standpoint of economic activities, due account is therefore also taken of the fact that, in addition to the procedures provided for in mining legislation, municipal autonomy and the related planning monopoly are of key significance in creating conditions for economic activities. Therefore, within the framework of the powers provided in the Land Use and Building Act, local authorities have discretion over the reconciliation of different land use needs in their area and, in this discretion, a local authority also has the opportunity to take into account various, possibly conflicting, views related to the local authority's economic development.

3.4 Legal status of the Sámi

In connection with discussion on the reservation mechanism referred to in the Mining Act, the subject of the functioning of the regulation of reservations from the perspective of the legal status of the Sámi has also arisen. In examining the subject, the starting point is the protected status of the Sámi as an indigenous people under section 17 subsection 3 of the Finnish Constitution, on the basis of which the Sámi have the right to maintain and develop their own language and culture. The requirements of the Constitution in this respect provide, among other things, that the Sámi must be guaranteed a real opportunity to influence decision-making concerning their living environment.

Under section 38 of the Mining Act, in the Sámi homeland the permit authority shall, in cooperation with the Sámi Parliament, local reindeer herding cooperatives, the authority or institution responsible for management of the area, and the applicant, establish the impacts caused by activity in accordance with the exploration permit or mining permit on the rights of the Sami as an indigenous people to maintain and develop their own language and culture and shall consider measures required to decrease and prevent damage. Similarly, section 50 of the Mining Act stipulates that an exploration permit and a mining permit may not be granted if the activities under the permit would substantially impair conditions in the Sámi homeland for pursuing traditional Sámi livelihoods or otherwise maintaining and developing Sámi culture.

It is noteworthy, however, that the aforementioned obligations of the permit authority contained in the Mining Act to take into account the legal status of the Sámi or the obstacles to granting a permit are not applicable in connection with the mining authority's decision following a reservation notification. The provisions concerning the reservation notification have also been applied, in this respect, in accordance with the wording of the Mining Act, i.e. the mining authority has not applied the procedure referred to in section 38 of the Mining Act in connection with reservation decisions as, with regard to reservations, the issue does not involve the application for an exploration permit or a mining permit. The actions of the mining authority have been consistent in this respect, given that a reservation under the Mining Act has not been considered to have legal effects extending beyond the parties engaged in exploration.

As we have stated above, however, making a reservation notification creates uncertainty regarding the future opportunities to use and manage the area subject to the reservation, and this uncertainty can also be considered to exist in the Sámi homeland. This uncertainty can also be considered to affect the Sámi people's views on conditions for practicing traditional economic activities and the perceived fairness in general of the claim procedure under the Mining Act. In respect of the latter, conducting impact assessments in a manner that takes the special status of the Sámi as an indigenous people more extensively into account has also been considered to be essential.

In terms of the reservation mechanism, communication related to reservation decisions may also be highlighted with regard to the special status of the Sámi. The provision referred to above, of section 75 of the current Mining Act or its justifications, on the communication of a reservation does not specifically take into account the rights of the Sámi as an indigenous people, but at the same time it is stated that, with regard to owners and holders of properties, it is important that information about the reservation reaches

the owners and holders of property in the area as well as possible.⁸ As information on reservations is generally publicly available, a separate obligation to provide information directly to the Sámi Parliament, a village meeting of the Skolt people or a local reindeer herding cooperative has not been considered necessary in the current regulations. Better flow of information to the Sámi communities could, however, support their actual opportunities to influence decision-making about their habitat, as access to information on a reservation decision would give them better opportunities to prepare for an impact assessment of a possible future exploration application at the earliest possible stage.

The impacts of reservations and the concern they cause have recently come to the fore, particularly as a result of the reservation notification made by Akkerman Finland Oy in the Hietakero area of Enontekiö on 1 February 2020. The reservation area is in the Sámi homeland and the reindeer herding area, in addition to which the reservation area is a Natura 2000 area and belongs to the Marshland Protection Programme. The mining authority has accepted the reservation notification such that the reservation period for the said reservation area ends on 31 January 2022. Three parties, including the Sámi Parliament and a group of local people, have appealed the decision to the Northern Finland Administrative Court, which, by a final decision issued on 19 November 2020, has dismissed the appeals against the reservation decision due to lack of right of appeal.

The Supreme Administrative Court's yearbook decision KHO:2013:179 has also taken a position on the right of the Sámi Parliament, local reindeer herding cooperatives and reindeer owners to appeal a reservation decision located in the Sámi homeland and the reindeer herding area. In that decision, the Supreme Administrative Court held that, since the reservation decision granted in the Sámi homeland to the Geological Survey of Finland did not yet grant the right to actual exploration, the reservation did not impact reindeer herding or the right to engage in reindeer herding with regard to either reindeer herding cooperatives or individual reindeer owners. In this respect, according to the Supreme Administrative Court, the reservation decision, moreover, does not restrict the right guaranteed to the Sámi as an indigenous people to maintain and develop their culture, in which case the reservation decision has no direct effect on the right, obligation or interest of these parties. Therefore, as the right of appeal was determined on the basis of section 6 of the Administrative Judicial Procedure Act (586/1996), which preceded section 7 of the current Administrative Judicial Procedure Act (808/2019), the Supreme Administrative Court ruled that the appeals of the Sámi Parliament, reindeer herding cooperatives and reindeer owners were inadmissible due to lack of right of appeal.

8 HE 273/2009, p. 121.

3.5 Effects on environmental and nature protection

As the reservation mechanism is intended to regulate the order of priority between operators under the Mining Act, and the reservation mechanism entitles the party making the reservation to carry out in the area prospecting work only slightly more extensive than everyman's rights, the reservation in itself cannot, in principle, be considered to have direct environmental effects. With regard to environmental and nature protection, in connection with the preparation of the Mining Act it has, moreover, been raised that the regulation of reservations contained in the current Mining Act also allows reservations to be made in areas under the Nature Conservation Act and for which it is not necessarily possible to grant an exploration or a mining permit after the reservation phase. In this respect, the current regulation of reservations has been shown to create uncertainty for the maintenance of nature conservation values.

However, with regard to the above, it is necessary to take into account the division of duties currently prevailing between the Mining Act and other environmental legislation, on the basis of which activity under the Mining Act must also comply, with already in prospecting work carried out during the reservation period, the requirements set, for example, by the Nature Conservation Act or other environmental legislation. With regard to environmental effects, due consideration must also be given to ensure that, in the exploration application phase and the mining application phase that may follow the reservation phase, the environmental effects of exploration and mining operations are separately investigated and resolved in accordance with the applicable environmental and nature conservation provisions as the more detailed content of planned activities becomes clear and an impact assessment of the activities becomes possible.

4 Property-law dimensions of the reservation mechanism

The rights under the Mining Act to exploit mining minerals differ in a significant way from the general principles of property law, which include, among other things, the freedom to choose to enter into a contract, the freedom to choose the content of a contract and the owner's absolute control over their property. The right to carry out prospecting work and the right to exploit mining minerals found as well as organic and inorganic surface materials generated as a by-product of mining activities against compensation specified in the Mining Act without the consent or other positive contribution of the landowner solely by means of a permit granted by an authority therefore differ significantly from these principles.

Although the deviations from the principles of property law contained in the current Mining Act are not very common in the Finnish legal system, the deviations made in the Mining Act can nevertheless be considered to be logical. Section 1 of this report describes the main economic policy criteria related to the mineral exploration and mining rights system by which Finland has adopted a claim procedure as a result of conscious decisions of the legislator, under which the right to exploit a deposit containing mining minerals may belong to the party that discovered the deposit, regardless of property ownership.

From a property law perspective, permits under the Mining Act can be said to be property value rights that, for their period of their validity, supersede the right of others to exploit discoveries located in the areas covered by the permits. In that case, it is fundamentally necessary to bear in mind that a property value right is not the same as an economically valuable right. It is considered to be typical of property rights that they have exchange value and that the exchange value is ordinarily the greater, the economically more valuable the object is. Creation of an exchange value in property law also requires that the object to which the right relates must be transferable to another owner.

According to section 73 of the current Mining Act, an exploration permit and a mining permit may be transferred to another party, provided that the transferee meets the same requirements as are required of the permit holder under the Mining Act. In the Mining Act procedure, it therefore must be considered clear that an exploration permit and a mining permit confer property value rights on the permit holder, even though the circle of permit

transferees is, in principle, limited and the mining authority may exercise discretion over the eligibility of transferees.

With regard to reservations, however, the Mining Act does not contain any mention of the transferability of reservations and, according to the preparatory work for the Mining Act, a reservation decision has not been considered to a transferable right. This fundamental non-transferability of a reservation can be seen as a restriction that impairs the property-law status of the priority conferred by the reservation and thereby the possibility to use the reservation, for example, to finance exploration activities or for the reservation to be an objective of exchange. According to the preparatory work for the current Mining Act, the non-transferability of the reservation decision is justified by the fact that a reservation is intended for the preparation of an exploration permit application, and no thorough investigation or study of factors related to the subject of the reservation is connected with the processing of the reservation notification; the mining authority's reservation decision is based mainly on information provided by the party making the reservation. According to the preparation work for the Act, the purpose of the non-transferability of a reservation has also been to prevent speculation by means of reservations, and other abuses of the claim procedure under the Mining Act.

Despite their fundamental non-transferability, reservations can actually be transferred from one operator to another, however. This may happen, for example, in a situation where an exploration company establishes for each exploration project/area a separate subsidiary whose shares it can, in principle, transfer to another operator at any stage of the exploration work. Irrespective of their non-transferability, reservations under the Mining Act may also be considered to have property value for their holders. Although a reservation does not in itself entitle the party making the reservation to carry out atypical prospecting activities in the area, the mere submission of a reservation notification gives the party making the reservation priority over other mining operators in making an exploration application. Obtaining priority creates for the party making the reservation the preconditions to invest in preliminary investigations in the area without fear that a competing operator may submit an exploration application before them.

The non-transferability of a reservation may, in practice, become problematic from the standpoint of exploration in projects where a promising area has been explored gradually, expanding the area. This may give rise to a project consisting of a mining permit already granted, an area adjacent to a mining site for which an exploration permit has been granted and an area bordering this area to which a reservation applies. Such an area could even be said to have developed according to the ideal type situation under the Mining Act; the activity has been expanded, encouraged by the identified discoveries, without initially taking an inappropriately large area as the subject of prospecting work. As, in a business sense, all these parts of the area form, however, a single economic entity, it

must be considered to some extent unsatisfactory that only the mining permit and the exploration permit are, as separate property value rights, directly transferable.

The reservation period grants the party making the reservation the peace of mind not only to prepare an exploration permit application but also to find funding for future exploration work. In this case, the ineligibility of a reservation for use as a pledge prevents it from being used as collateral with regard to access to debt financing. In our view, this has no great significance, in practice, as debt financing on market terms for an individual project usually requires sufficient cash flow to service the debt already during the loan period, which typically does not exceed five years. Therefore, mining projects in the exploration phase do not normally receive independent debt financing; the funding of prospecting work must come from the project owner's own financing.

However, from the perspective of parties who invest in mineral exploration, the reservation decision is, in principle, likely to create conditions for a more detailed examination of a promising site to support the preparation of an exploration permit application. It is possible that exploration work overall could be reduced without the security provided by a reservation, as investors would have to consider the risk posed by competing prospectors. It must also be considered possible that the quality of mineral exploration applications submitted to the mining authority might deteriorate if an applicant seeking a permit endeavours to obtain a permit both as soon as possible and with as little preparatory work as possible in order to achieve a more extensive exploration right.

A consequence of reducing the number of smaller operators might be that prospecting work would be concentrated in larger operators and interest in mineral exploration would decrease. This would not promote the objectives of the current Mining Act with regard to exploration for mining minerals and safeguarding operating conditions for mining activity. A reservation notification can in itself be considered to be an announcement to competing operators that one operator is interested in the designated area. If the prospecting work of this operator does not proceed to the actual exploration permit stage, the area considered to be of interest by the operator will be returned after a relatively short period for competing operators to study if they so wish. In this sense, the fixed-term reservation works in the same way as other rights conferred by the Mining Act; a prospector must be active or the right to prospect may be transferred to another. As a right that can be registered, a reservation promotes the transparency and reliability of legal relationships in the field of mineral exploration and mining.

5 System adopted in Sweden for resolving priority issues

In Sweden, provisions on mineral exploration, mining and related permits, such as mineral exploration permits, are mainly to be found in the Sweden's Minerals Act (*minerallagen*) and Environmental Code (*miljöbalken*). The Mining Inspectorate (*Bergsstaten*), the competent authority in Sweden, is primarily responsible for supervising mining and mineral exploration activities under the Minerals Act.

As in Finland, investigations for the purposes of mineral prospecting comparable to everyman's rights of an area and rocks located in an area is permitted without a separate permit, plan or the landowner's consent. Likewise, moving in the area and taking measurements is permitted, provided that these do not damage the area, or the measures taken do not violate the rights of the landowner.

Sweden does not have a notification-based reservation procedure similar to the Finland's scheme, rather the right to explore for deposits is obtained by applying directly for an exploration permit. An exploration permit gives the permit holder the exclusive right in relation to the landowner and other holders of property in the area to map the ground of the exploration area to determine potential mineral deposits as well as their extent and composition. An exploration permit also gives the permit holder priority in applying for a mining permit to exploit potential deposits. However, the permit holder is not entitled by virtue of the exploration permit alone to initiate actual exploration activities in the area; to initiate exploration activities, the permit holder is also required to provide a valid work plan and collateral for possible damage and rights violations. A work plan is often prepared shortly after the exploration permit is granted.

The work plan to be prepared must include, among other things, information about the holder of the exploration permit, a description of the planned exploration activities and their timetable, an assessment of the impact of the activities on private or public interests, information about any operating permits granted and a map of the exploration area. The work plan must be submitted to the landowners in the area as well as to other parties whose rights may be affected by the exploration activities, such as Sámi villages within the area affected by exploration activities and parties to the various right of use agreements within area affected. The amount of the collateral to be provided before the initiation of

the exploration activities must also be disclosed in the work plan, enabling the parties within the area affected by the exploration activities to assess whether the collateral is adequate against possible damage and rights violations. The permit holder itself determines the amount of proposed collateral on the basis of the type of compensable damage it considers may result from the activities. In this context, it should also be noted that in Sweden, landowners are not entitled to compensation for exploration activities in an exploration area; they are only entitled to compensation for possible damage and rights violations.

Parties within the area affected by exploration activities may lodge objections to the work plan with the permit holder within three weeks of the submission of the work plan. If no objections are lodged, the work plan enters into effect as it stands. If there are objections to the work plan, the permit holder may ask the Mining Inspectorate to assess the work plan, after which the Mining Inspectorate decides on the entry into effect of the work plan. Exploration activities in the area may be carried out only in accordance with the work plan. If the work plan is not adhered to, landowners and other interested parties can appeal directly about the activities to the Land and Environmental Court (*mark- och miljödomstol*). The Mining Inspectorate monitors the activities of companies and may also intervene on its own initiative through various regulations as well as impose punitive penalties if regulations are not complied with. Failure to adhere to the work plan may, in the most serious cases, result in cancellation of the permit, fines or imprisonment.

Both the operator and the interested parties can appeal against the Mining Inspectorate's decisions in cases related to the exploration permit to the local administrative court (*förvaltningsdomstol*) and in cases relating to the work plan and damage compensation to the local land and environmental court (*mark- och miljödomstol*). In Sweden, environmental conservation associations or municipalities do not yet have a separate right to oppose mineral exploration at the exploration permit stage. Environmental conservation associations have the right to oppose a project only later in the mining permit process, when the operator applies for environmental permits under the Environmental Code. Municipalities, on the other hand, have the right to appeal against any mining permit decision made by the Mining Inspectorate at a later date.

Sweden's Minerals Act does not set a minimum or maximum size for mineral exploration areas. However, an exploration area must be a defined area that cannot be unreasonably large nor larger than what the permit holder is able to explore in an appropriate manner. An exploration permit is valid, in principle, for three years. Thereafter, the validity can be extended in three segments: (i) by three years if appropriate surveys have been carried out or if the permit holder has reasonable grounds for not having carried out surveys and provides evidence that the area will be explored within the period set out in the period extension application, ii) for an additional four years if surveys have been delayed

for specific reasons, and iii) for an additional five years if the permit holder provides exceptional reasons for the extension of the permit, such as significant exploration has been carried out in the area and further surveys would likely to result in a mining permit application. Thus, Sweden's Minerals Act allows an exploration permit to be valid for a maximum of 15 years.

Mineral exploration is prohibited in Sweden in national parks and areas that an authority has proposed be designated as national parks. Mineral exploration may be carried out in a Natura 2000 area only with a separate additional permit under the Environmental Code. If the exploration area is located, for example, 200 metres from a residential building, church or educational institution, 30 metres from a public road, railway or airport, in a cemetery or in a special unspoilt mountain area, a separate permit is required from the country administrative board (*länsstyrelsen*).

A holder of an exploration permit must pay the State a permit application fee of SEK 500 per 2,000 hectares plus an exploration fee. The total exploration fee is SEK 20 per hectare over a three-year period, divided into annual and increasing instalments. If the mineral exploration permit is extended once or more often in the manner mentioned above, the permit holder is charged additional hectare-based fees that increase annually. Fees are paid in advance for each of the above-mentioned periods of validity at the beginning of the each segment. The final fee is determined at the end of the validity of each segment, or when the operator terminates exploration, on the basis of how long and how large an area the operator has actually explored. If the advance payments exceed the amount of the finally determined fee, the excess prepaid portion is returned to the permit holder.

6 Development options for the current reservation mechanism

As stated in the introductory section 1.1, no requirement to change the basic solutions of existing mining regulations has been proposed in the legislative drafting project for the reform of the Mining Act; the objective is to implement identified needs for change by revising the content of existing mining legislation where necessary. In sections 2, 3.4 and 4, the reservation procedure is presented as part of the mineral exploration entity of the Mining Act and of the chain of permits leading to potential operations. The actual effects of the reservation procedure have therefore not been considered in this report as a completely separate procedure.

In the course of our analysis, with the exception of issues related to the transferability of a reservation, no obvious development needs have emerged for expanding the use of the reservation mechanism with regard to ensuring the operating conditions for mines. Therefore, with regard to the objectives of the Government Programme for the reform of mining legislation, in this section we will explore options to develop the reservation mechanism such that local acceptability of reservations under the Mining Act and opportunities to influence would be better taken into account.

Although the legal effects of reservation under the Mining Act extend only to the priority given to the party making the reservation vis-à-vis other operators to prepare an exploration permit application, it is clear that the exercise of mining rights under the Mining Act gives rise already at the reservation stage to social and actual impacts, which are discussed in sections 3.1–3.3. With regard to these impacts, it seems clear that the extent of the areas reserved and the duration of the reservation are significant in terms of the extent and nature of the perceived impacts. Moreover, from the standpoint of developing the mining industry, the reservation mechanism may be perceived as problematic if large reservations actually prevent other parties conducting exploration from carrying out prospecting work in the area or otherwise impair conditions for economic activities. In addition, the lack of rights of participation and appeal for parties affected by a reservation, such as landowners and the Sámi, has been considered to be problematic by various parties.

6.1 Limiting the surface area of reservations

The current Mining Act does not directly limit the surface area of reservations. According to the Mining Act, however, the mining authority must reject a reservation if there are serious grounds to suspect that, due to the extent of the reservation area or for other reasons, the party making the reservation does not meet the prerequisites or has evidently no intention to apply for an exploration permit. In addition, according to the preparatory work for the Act, if the reservation area is of exceptional extent, the mining authority should, in order to safeguard the public and private interest, impose a significantly shorter period of validity for the reservation decision than the maximum validity of two years.

Our analysis has shown, however, that various parties have considered that a reservation mechanism that is unlimited in terms of surface area facilitates the making of unrealistically large reservation notifications and that the two-year validity period for reservations increases opportunities to justify the need for large areas. If the goal is to limit the surface area of reservations to reduce the social impacts, on the one hand, and increase opportunities to exploit mining minerals, on the other hand, then the matter, in our view, needs to be approached via two different questions. The first question is whether it would make sense to impose an area limitation on reservations in general, and the second question is whether it would make sense to specifically limit those areas that cannot be subject to a reservation.

6.1.1 Limiting the surface area of reservations in general

Known and potential mineral deposits attract ore prospectors. Often, large reservation areas are justified by the fact that the same reservation covers several potential deposits located relatively close to each other, for one or more parts of which an exploration permit application will eventually be submitted on the basis of more detailed studies. In such a situation, the reservation area may include even large areas in which the party making the reservation may not have a particular interest.

Large reservation areas, moreover, may not necessarily serve the performance of a high-quality exploration survey, because the reservation is only valid for a limited time. Demarcation is difficult in this respect at the reservation decision stage, however, as the extent of an effective exploration area is linked to the resources that the party making the reservation has the opportunity to allocate to the reservation area during the validity of the decision. A mechanical approach to limiting the surface areas of individual reservation areas in general through a statutory provision could lead to inappropriate prospecting areas, as the nature and extent of deposits vary. Limitation could, in practice, also lead to several reservations being made side by side instead of one large area. If the surface

area of reservation areas were limited on a company-by-company basis, this could result in developments in which individual project companies would be founded for separate reservation areas to handle the prospecting work of the area of interest. The most effective way to reduce the absolute amount of reserved surface area could be to create incentives for parties making reservations to limit the area of the reservations themselves. One such way that has been publicly discussed is to increase the processing fee for the party making the reservation or to changing it to a surface area basis.

Under the current Mining Act, except for a processing fee, no separate compensation or fees are paid for a reservation. The basic fee for processing a reservation decision is EUR 1,250 for reservations of less than 100 square kilometres and EUR 2,300 for reservations of more than or equal to 100 square kilometres.⁹ The current processing fee does not therefore provide any incentive to limit the surface area of reservations, particularly in the case of very large reservations. A more progressive scaling of the processing fee or the introduction of a surface area-based reservation fee would likely be effective in limiting the number of hectares of individual reservations, as the party making the reservation would have to consider the cost-benefit ratio more carefully than at present when making a reservation notification. However, increasing the reservation fee includes the risk of immediately increasing costs in prospecting work, which, taken to the extreme, could result in losing the benefits of the reservation mechanism provided by the current Mining Act. On the other hand, costs would not necessarily rise in proportion to the fee if operators have the opportunity to concentrate their prospecting work more effectively on smaller areas and ensure at the reservation stage that the reservation area does not contain areas for which an exploration permit could not be obtained under the Mining Act or for which the party making the reservation has no intention of preparing an exploration permit application.

If the fee charged for a reservation or the criteria for the fee were changed, there is also the question of to whom the funds collected from the changed reservation fee would be paid. Under the current Mining Act, the holder of an exploration permit must pay a per-hectare exploration fee to the owners of properties within the exploration area, and the holder of a mining permit must pay, among other things, an excavation fee to the owners of properties within the mining area. The aforementioned fees can be considered to be payable to the owner of the property as compensation for the use of their property and for the exploitation of the mining minerals on it. The amount of compensation will therefore increase, in principle, the more extensively mining activities are conducted on a

⁹ <https://tukes.fi/documents/5470659/6373226/Maksutaulukko+01012019/0e87ca82-1def-33c2-b2ba-39340af99130/Maksutaulukko+01012019.pdf>, p.11, reference date 6 April 2021.

property and the more the use of the area prevents the property from being used in some other way. In the commencement phase of actual mining activity, compensation may also include redemption compensation payable to landowners and other rightholders.

Carrying out prospecting work in an area subject to a reservation decision does not, however, prevent the use of the property by its owner, nor does the party carrying out the prospecting work receive, at this stage, any financial benefit from the work they do. Moreover, minor samples taken during the course of prospecting work or the carrying out of the work do not cause the landowner any financial loss in excess of the obligations which the landowner is otherwise already obliged to honour under everyman's rights. The reservation mechanism would not therefore appear to give rise to a systematic right for the landowner to receive compensation. In practice, it must also be noted that reservation areas may spread over a large number of properties, in which case determining the recipients of the reservation compensation and calculating the compensation per landowner could prove to be cumbersome for the party making the reservation and the mining authority, particularly in more extensive reservation areas.

The statutory task of the Geological Survey of Finland under the Ministry of Economic Affairs and Employment is to create and maintain an internationally high level of scientific knowledge and expertise in the field of geology and to produce innovations for the needs of society and business. To this end, the Geological Survey keeps available to the public extensive research and sample material on geological surveys in the territory of Finland. In practice, this material is used both in prospecting work and in the preparation of exploration permit applications. It would therefore be natural to view the allocation to the State of area-based payments for reservations as indirect compensation from parties conducting prospecting for the opportunity to utilise this material.

It would also be possible to allocate payments to the municipality in whose territory a reservation is made. In addition to the fact that the municipality must make a public announcement on the reservation decision, the social impacts of the reservation notification may result in other costs to the municipality in the reservation area, such as guidance and information for local residents enquiring about issues. These service needs are difficult to measure, however, and may not necessarily be commensurate in quality or scope in all reservations. If municipalities were to be selected as the recipients of compensation, the course of action when a reserved area spreads over the territory of several municipalities would also, in practice, have to be decided.

Increasing the processing fee associated with reservations or basing it on surface area are not the only ways to create incentives for those engaged in prospecting work to reduce the surface area of reservations. It is conceivable that the extent of a reserved area could also be linked to other obligations that increase progressively on the basis of surface

area. These could relate, for example, to providing information about projects, so that the more extensive the reservation area and the more long-lasting the reservation, the wider the obligations imposed on the operator to provide information after the reservation notification has been made. On the other hand, the burdens imposed on prospecting work should not become too onerous for smaller operators and reservation areas. In this, due consideration may also be given to the fact that, in our view, some companies engaged in mineral exploration currently already communicate quite transparently about their reservations, without any mandatory obligations being imposed in mining legislation.

6.1.2 Specifically limiting the surface areas of reservations

In addition to general surface area limitations, it should be noted that the current Mining Act imposes specific requirements for exploration areas and mining areas as well specific limitations for areas where it is not possible to carry out the measures referred to in the Mining Act. However, in the current Mining Act, areas eligible for reservation are not subject to limitations at all. The idea has been that, with regard to the purpose of the reservation mechanism, it is in principle irrelevant what type of areas belong to an area subject to reservation.

The aforementioned practice has contributed to maintaining the reservation mechanism as a light procedure, as a reservation area could be specified geometrically on a map without excluding any areas from it. Area limitations under the Mining Act have only been taken into account in connection with the preparation of an exploration permit application. On the other hand, from the perspective of parties less frequently involved in mining legislation, the solution has easily led to erroneous conclusions about the importance of the reservation mechanism that have increased the social impacts associated with the reservation mechanism. As such, it is consistent with regard to the approach adopted in the Mining Act that reservation areas differ significantly in size from the smaller areas for which an exploration permit is ultimately applied for. However, given the objective for reservations set out in the Mining Act to act as a preparatory stage for an exploration permit application, it would also be consistent in the Mining Act and in mining authority decisions to state that the party making the reservation must, in connection with the preparation of an exploration permit, exclude from the reservation those areas for which an exploration permit cannot be granted. An area limitation could then reduce a perceived lack of clarity among landowners and other users of the area.

In connection with the reform of the Mining Act, there has been discussion that the reservation area should not cover areas referred to in section 7 subsection 2 or section 9 subsection 4 of the Mining Act, i.e. areas in which prospecting work should not be

carried out, and areas where the consent of the appropriate rightholder is required for prospecting to be carried out. In that case, the mining authority should contribute to ensuring that the above-mentioned areas are excluded from the reservation area at the latest in the decision following the reservation notification. This solution would, however, lead to an increase in the administrative burden and costs for both the party making the reservation and particularly the mining authority, as the reservation area would have to be specified quite precisely for extensive areas and studied by the mining authority. In practice, this could lead to an increase in the fee charged for reservations and longer processing times for reservation decisions. In addition, the areas (or their dimensions) in the said provisions of sections 7 and 9 of the Mining Act are always open to interpretation to some extent, in which case more extensive scrutiny should also be given to the status of ex post legal protection, i.e. the right of appeal.

It is also conceivable that a reservation area could continue to be specified geometrically on a map without excluding various sites from it. In terms of the regulatory objective, it is therefore not necessary to oblige the authority to investigate at the reservation stage which sites are located in the area subject to the reservation and thus to increase the administrative burden on the authority. The social acceptability of a reservation could be enhanced merely by clarifying the wording of the law that, despite a positive reservation decision, a reservation would be ineffective in areas within the reservation area where, under the Mining Act, prospecting work could not be conducted or for which an exploration permit could not be granted by law. On the other hand, such a provision could contribute to creating ambiguity as to the current state of legal relationships with regard to properties.

As stated in the previous section, if a fee determined on the basis of surface area were to be charged for a reservation, this would create an incentive for the party making the reservation to exclude these areas from the scope of the reservation from the outset. At the same time, however, it can be said that the task may prove to be difficult in practice. Therefore, a model in which the party making the reservation would clarify in their reservation notification the sites to be excluded, and how these will be taken into account in the prospecting work, could also be feasible. In our view, the requirement for a more precise delineation of the reservation area is also not, in practice, impossible to implement, as we believe that many parties engaged in mineral exploration are already excluding, in accordance with their current voluntary practices, areas identified as land-use sensitive, such as waterways and their shore areas.

6.2 Shortening the period of validity of the reservation decision

Shortening the period of validity of a reservation from the maximum two years under the Mining Act to a shorter period has been publicly proposed as another development option for the reservation mechanism. In this respect, however, it is noteworthy that when the current Mining Act was enacted, the validity of a reservation was consciously extended to a maximum of two years, instead of the former maximum of one year. According to the preparatory work for the current Mining Act, extending the validity of a reservation was considered to reduce the need for an exploration permit and limit the size of exploration areas. Companies engaged in exploration were accordingly judged to be in a better position to explore an area under the provisions of the Mining Act related to prospecting work or by reaching an agreement on the issue with owner of the property concerned.

The two-year period of validity under the current Mining Act for a reservation is the maximum period. According to the preparatory work for the Act, the mining authority should consider on a case-by-case basis the period of validity of a reservation decision, particularly taking into account (i) the time required to prepare an exploration plan and other preparatory measures for an exploration permit application; ii) whether the party making the reservation intends to carry out prospecting work in the reservation area, and iii) among other things, limiting and reducing harm and inconvenience arising to public or private interests, in which case, for example, other uses of the area or other intended uses would be relevant.

According to current practice, the mining authority has, as a rule, granted reservations for the maximum period of two years, with the exception of reservation areas of more than 1,500 square kilometres, for which the mining authority generally grants reservations for a period of one year. In this respect, it should also be noted that the validity of reservations is currently governed in part by a provision in section 14 of the Decree on Mining Activities by which a reservation notification must state if the party making the notification is applying for a period shorter than 24 months for the validity of the reservation. As regards the exploration phase, the starting point of the Mining Act is therefore that a reservation can be made for two years, after which an exploration permit can be valid for a maximum of fifteen years. To the latter periods will be added the processing times for permit applications, which means that it is possible that a landowner may be unaware of a possible commencement of mining on their land for a total of more than seventeen years at a time.

In connection with the preparation of the amendment to the Mining Act, it has been proposed that the maximum 24-month validity period of a reservation decision under

the current regulations be restored to the previous 12 months, but so that the reservation decision could be valid for 24 months on special grounds. A similar limitation has also been raised in Doctor of Laws Pekka Vihervuori's report (*Pekka Vihervuori: Assessment of the effectiveness of legislation on mining operations*), according to which the one-year time limit for a reservation could be considered to bring an improvement, particularly to the position of the landowner.

There are arguments for and against the appropriateness of shortening the validity of the reservation. As presented above, in the section 2.2 of this report the validity period of reservations has varied in Finnish mining legislation since the 20th century from 60 days to the present 24 months. It can therefore be considered a basic principle that if one of the main purposes of the reservation mechanism, as currently established, is to allow the party making the reservation an opportunity to prepare a high-quality exploration permit application, limiting the validity of the reservation may be considered to have an adverse effect on achieving this objective. A shortening of the validity period may also be reflected in an increase in the number of exploration permit applications, in addition to which, as described above, there is a risk that the applications prepared will be of lower quality. This could lead to an increase in the administrative workload and the need for further investigations of the mining authority and other authorities during the exploration permit phase, which in turn could lengthen processing times for cases pending in the mining authority.

On the other hand, a shorter reservation period may reduce the duration of the uncertainty experienced by landowners and other relevant third parties, put pressure on the party making the reservation to prepare an exploration permit application efficiently, and release the reservation area more quickly to be reserved by a more likely operator if the party making the reservation is not active in their exploration activities. If a surface area-based fee were to be levied for a reservation, the party making the reservation could also be incentivised to surrender the reserved areas, or parts thereof, before the end of the actual reservation period if the prospecting work carried out by them does not prove to be promising.

In addition to examining the validity period of a reservation, particular attention must also be paid to the wording of the law to be enacted and its clarity, if the mining authority is given discretion with regard to extending the validity period of a reservation on special grounds or using some similar expression. In that case, it would be important for the predictable and consistent application of the law that the Mining Act specifies in sufficient detail what these grounds are. Uncertainty or transparency about the criteria are likely to increase the social impacts related to reservations, but also uncertainty from the perspective of the parties engaged in prospecting work and preparing the reservation notification.

When considering the maximum length of the reservation period, plans to shorten the validity of exploration permits from their current duration should also be taken into account in terms of the permit procedure as a whole. If the maximum duration of an exploration permit were to be reduced from the current fifteen years, it would be necessary to assess whether, in the shorter period of time, exploration measures of sufficient quality and comprehensiveness to apply for an actual mining permit could be carried out. In our view, the reform of the Mining Act and its individual parts must ensure that individual time limits do not, deviating from the entries in the Government Programme, unnecessarily impair conditions for carrying out mining activities.

In our view, however, the significance of the validity of a reservation in terms of the legal status of an individual landowner or user of an area should not be overemphasised. In a claim-based procedure, the expiry of a reservation of an individual operator does not preclude prospecting work by others in the same area or the confirmation of a reservation following the one-year waiting period. It is therefore possible that, in geologically favourable areas, a situation may arise, in practice, where the same area remains an object of interest for prospecting work for long periods. In terms of the position of the owner of such an area it seems important, of course, that for them the reservation period would remain short between the possible exploration phases. If the legal effects of the reservation mechanism are changed, however, we believe that the changes should take into account the fact that, with regard to the validity of reservation, an impression does not arise that an expired reservation would prevent prospecting work or applications for a new reservation in the area.

6.3 Authority decision-making on reservations

As stated above, a basic principle according to section 55 of the current Mining Act is that the mining authority must approve a reservation if the reservation notification meets the preconditions laid down in the Mining Act and there is no obstacle provided in the Act to the approval of the reservation. The mining authority, however, must reject a reservation if there are serious grounds to suspect that, due to the extent of the reservation area or for other reasons, the party making the reservation does not meet the prerequisites or has evidently no intention to apply for an exploration permit. This threshold for rejecting a reservation is set high in the current Mining Act and it is also clear from the practice of the Mining Authority that decisions to reject reservations are rarely made.

In addition to the surface area of reservations and the duration of reservation decisions, in the reform of the Mining Act it is possible to consider whether the preconditions set for the mining authority's approval of reservation decisions are sufficiently clearly and precisely formulated in the mining legislation. As the mining authority's decision-making

is based on legal discretion, the statements presented in the Mining Act and in preparatory work for the Act that guides its implementation are of key significance in the formation of reservation practices. In this respect, reservation decisions based on very flexible criteria, combined with rather general requirements for the content of reservation notifications, may result in the making of reservation notifications for extensive areas, as if for the sake of certainty.

According to the current Mining Act, the party making the reservation must provide in its notification a necessary and reliable account of (i) the party making the reservation, (ii) the area to which the reservation of priority applies, and (iii) the preparation of an exploration plan and other measures in preparation for an exploration application, and the schedule for them. The information presented in the reservation notification and the restrictions under the Mining Act are therefore relevant when the mining authority makes a decision on approving a reservation notification.

In connection with the preparation of the Mining Act, there has been discussion on expanding the specification of conditions for approval of a reservation notification and increasing the qualitative requirements for a reservation notification. By redefining these matters in the Mining Act, it may be possible to influence the social impacts of the reservation mechanism, but the changes may, however, involve problematic issues that need to be taken into account when developing the reservation mechanism. Firstly, increasing the administrative burden of the mining authority and companies engaged in exploration, when the idea is to regard the reservation mechanism as a reasonably light notification procedure, may be viewed as a solution that is difficult to justify. Secondly, in order to avoid scope for interpretation of the legislation in connection with the setting of criteria for the approval of possible new reservations, it would be a good to provide a clear set of criteria for qualitative requirements, for example in the preparatory work for the Mining Act. The more qualitative requirements are added to the legislation, the more opportunities are created for ambiguities and possible divergent interpretations from the perspective of the operator, the authority and other stakeholders.

6.4 Fulfilment of participation rights and right of appeal

With regard to communication related to reservation decisions, section 75 of the Mining Act stipulates that the mining authority shall notify the decision on a reservation notification by public notice. The mining authority shall communicate the reservation decision to the party making the reservation notification and also ensure that the decision is otherwise communicated in accordance with the Mining Act. This ex-post communication of matters related to the reservation mechanism has been perceived, from the perspective of landowners and others within the area affected by mineral exploration,

to deviate from other environmental legislation, in which a basic principle is to provide opportunities to influence in order to facilitate participation in decision-making affecting stakeholders at the earliest possible stage. As we have stated above, due to the priority conferred by a reservation notification, the party making the reservation has, in practice, no opportunity to give advance notice of the plans related to the reservation. When preparing the Mining Act, however, it would be possible to consider whether the mining authority should communicate about the reservation notifications it receives before the reservation decision is issued, even through no actual consultation procedures would be included in the processing of the reservation notification.

The reservation decision made by the mining authority following a reservation notification contains an appealable substantive decision, the right of appeal related which is currently determined on the basis of section 7 of the Administrative Judicial Procedure Act, which entered into force at the beginning of 2020. According to said provisions, a judicial review of an administrative decision by way of appeal may be requested by a party whom the decision concerns or whose right, obligation or interest is directly affected by the decision and by a party whose right of appeal is separately provided by law. An authority may also request a judicial review by appeal if this is necessary because of a public interest overseen by the authority.

As stated above, a Supreme Administrative Court's yearbook decision (KHO:2013:179) has been given with regard to reservation decisions, stating that the Sámi Parliament, local reindeer herding cooperatives and reindeer owners have no right to appeal a decision given as a result of a reservation notification, because a reservation alone is not deemed to directly affect their rights or interests.

With regard to the right of appeal related to the reservation mechanism, case law also states that, in the reservation notification, the party making the reservation may reserve for itself an area for the preparation of an exploration permit application and that the reservation notification only confers priority for an exploration permit. On the other hand, according to case law, a reservation has no other legal effects and a reservation decision does not address the appellants. Due to the aforementioned principles, case law has held that a reservation decision does not have a direct effect on land use planning, water management, holiday accommodation in the area, recreational use or natural values. A reservation decision, moreover, has also not been considered to have such an effect on the performance of the statutory tasks of municipalities, town or cities that the municipalities in a reservation area would have the right to appeal against reservation decisions.

In connection with the reform of the Mining Act, one issue raised in relation to the reservation mechanism is the narrow interpretation of the right of appeal concerning reservation notifications. As we have shown above, despite the limited scope of the direct

legal effects of reservations, reservations have been perceived as having real impacts on many parties. If the review takes into account the fundamental right to the environment set out in section 20 of the Constitution and the related obligation for public authorities to endeavour to guarantee for everyone the right to influence decisions concerning their own living environment, the lack of participation rights in the Mining Act's provisions on reservations can be considered an exceptional solution. At the same time, however, it must be borne in mind that the reservation mechanism is a short-term notification procedure which, during the period of validity of the reservation, has no direct legal effects outside the parties engaged in mineral prospecting. Taking into account that, after the reservation phase, the processing of exploration and mining permits involves extensive participation and assessment procedures related to both mining and other environmental legislation, in our view there are justified reasons, related to the purpose of reservations, for the content choices of the Mining Act's participation right provisions on the reservation mechanism and for limiting the right of appeal.

In connection with the preparation of the Mining Act, the scope of right of appeal may also be examined from the perspective of the new Administrative Judicial Procedure Act, which entered into force at the beginning of 2020, and the justifications presented in its preparatory work. According to section 7 of the Administrative Judicial Procedure Act, a basic principle is that a judicial review of an administrative decision by way of appeal may be requested by a party whom the decision concerns or whose right, obligation or interest is directly affected by the decision and by a party whose right of appeal is separately provided by law. According to the preparatory work for the Administrative Judicial Procedure Act, the purpose of the provision on a party's right of appeal is to guarantee for everyone the right to be heard in a court of law in a case pertaining to their rights and obligations in the manner referred to in section 21 of the Finnish Constitution and Article 6 (1) of the European Convention on Human Rights.

In addition, a further principle of the Administrative Judicial Procedure Act is that the substantive parties to an administrative decision have a right of appeal based on their standing as parties. According to preparatory work for the Act, such parties are those on whom an administrative decision imposes an obligation, restriction or prohibition or whose right or interest has been denied in whole or in part. A material party is also one whose interest, right or obligation is directly affected by an administrative decision, even if the decision has not been formally addressed to them. The provision on the right of appeal of a party requires direct effects of a decision, as defined in section 6 of the Administrative Judicial Procedure Act previously in force, and in such a way that the right of appeal could not be derived solely from the indirect effects of a decision.

Taking into account the aforementioned views on the definition of the right of appeal in the Administrative Judicial Procedure Act and the purpose of the reservation mechanism

set out in the current Mining Act, we consider the current narrow definition of the right of appeal for reservation decisions to be justified. In our view, in the preparation of the Mining Act and in developing provisions related to reservation and the Mining Act as a whole, attention should be paid to the fact that, in the current Mining Act, a reservation is intended to be a notification of up to two years' duration prior to an exploration permit application. If a wider appeal would be facilitated against reservation decisions, it is possible that administrative court proceedings concerning a reservation would still be pending in the court of appeal at the time when the validity of the reservation notification expires. In the preparation of provisions on the right of appeal, it should therefore be decided whether the party making the reservation is obliged to apply for an exploration permit on the basis of a reservation with no legal force or whether a possible appeal against a reservation decision will extend the validity of the reservation. In our view, it is also possible that extending the right of appeal against a reservation would place an unnecessary burden on the administrative courts, as the likelihood of success of appeals against reservation decisions would, in our view, be quite uncertain, at least under the current provisions of the Mining Act related to reservations.

6.5 Clarifying the structure of the Mining Act

With regard to the current regulation of the reservation mechanism, it can be stated on a general level that the knowledge of parties not engaged in exploration and mining about the content of the rights, obligations and permit procedures provided for in the Mining Act is often limited. As also explained above, the legal provisions concerning the reservation mechanism and related matters are located in a decentralised manner within the current Mining Act, following the other approaches adopted in the Mining Act. Thus, overall, the regulations under the Mining Act may seem unclear and difficult to interpret. As reservations are part of the entire value chain of exploration and mining activities (prospecting work, landowner consent, reservation notification, mineral exploration permit, mining permit, mining area redemption permit, other environmental legislation), a clear and consistent presentation of the legislation is highly important when different parties comment on the effectiveness of the legislation. Insofar as legislation is unclearly formulated, the risk of unintentional misunderstanding also increases.

In view of the above, in the reform of the Mining Act it would be possible to consider whether the structure of the Mining Act could be clarified in the context of the Mining Act project. As the objective of the Mining Act is a partial reform aimed at the identified reform needs, we believe that the scope for broader structural reforms is limited in this respect. In addition to legislative reforms, it could be possible to answer the most common questions about reservations or identified areas of misunderstanding by preparing a guide or publication on reservations and the exploration phase.

With regard to the terminology used in the Mining Act, consideration might also be given to whether the current term “reservation” is considered to generate unnecessarily negative images and whether it could be replaced by a term that better describes the priority in question. An example of such a term could be “survey priority” (*selvitysetuoikeus*) or some corresponding term that would be less likely to create an image of the establishment of active rights of use for the party concerned to a particular area on the basis of a reservation notification. The introduction of a replacement term could help to distinguish the reformed reservation mechanism from reservation under the current Mining Act. Achieving the objectives set of the reform would then also require the legal effects under the current reservation and their justifications to be changed in line with the new provisions.

7 Alternative ways to resolve the priority issue

In Finland, the claim procedure followed in mineral exploration and mining has developed into its current form as a result of long historical development. The reservation mechanism related to the exploration phase is an integral part of that said claim procedure, and the basic solutions of the current Mining Act are based on the order of priority, contained in the procedure, between parties engaged in exploration. In the context of the ongoing partial reform of the Mining Act, it would be challenging, in our view, to change the reservation mechanism without requiring at least a fundamental analysis of the rest of the current Mining Act in force and the approaches adopted. According to statements made in connection with the preparation of the reform of the Mining Act, the removal of the reservation included in the basic solutions of the Mining Act would also be a significant change to regulation under the current Mining Act.

In our view, there remains a clear need, related to exploration and the promotion of mining activity, for the priority conferred by the current reservation mechanism. Moreover, the reservation mechanism cannot be completely eliminated without ensuring that the key aims of the reservation notification will met by another approach that secures the regulatory objectives.

In the possible elimination of the reservation mechanism, one alternative would be to consider whether the current reservation mechanism could be transferred to be part of the exploration permit procedure under the current Mining Act, while retaining the elements of the reservation mechanism that are perceived to work. The principle, in that case, would be that the priority conferred by the current reservation notification would be obtained by directly applying for an exploration permit, so that priority would be determined in accordance with the regulations in force on the basis of the time of submission of the exploration permit application. It would then be possible through the wording of the provisions to create a situation in which the clarifications required in connection with the first application for an exploration permit could be more general in nature, and thereafter the requirement level of applications would increase over time as exploration carried out in the area proceeds. Similarly, it would be possible to include in the provisions a lower level of compensation for the landowner during the initial prospecting work than the current level of compensation for an exploration permit.

If the reservation mechanism were to be combined with the exploration permit, the content of the provisions should also consider whether the same barriers to granting a permit will be applied to the first exploration permit application as to subsequent extension applications and whether the consultation of landowners should be carried out to the same extent for all exploration applications. To ensure predictability in the application of regulations and the legal protection of the parties engaged in exploration, the regulations should also be written in such a way that it is unambiguously clear to all parties which application documentation meets the requirements set for obtaining priority. Similarly, the regulations should make clear when, because of shortcomings in the application, the mining authority must reject an exploration application or decide not issue for an application the priority sought.

With regard to the possible elimination of the reservation mechanism, it is worth noting that the current Mining Act contains, in principle, several phases and mining authority approval procedures before the exploitation of mining minerals can begin. These phases may currently include the mining authority's approval of the reservation notification, the granting of an exploration permit and the granting of a mining permit. Provisions on the mining area redemption permit and redemption procedure are also relevant for the arrangement of rights of use for mining areas. In this context, it is also worth noting that although the reservation is, as a rule, the mechanism used in the preparation of an exploration permit, it is not, however, a prerequisite for applying for an exploration permit. In order to ensure that the possible elimination of the reservation mechanism would not adversely affect conditions for exploration and mining, a completely new permit procedure should not, in our view, be created in connection with the elimination of the reservation mechanism, as such a new procedure would likely contribute, at least in the early stage of the regulations, to causing uncertainty about the application of the provisions before practices became established. In our view, the new procedure would also likely increase the workload of the mining authority and companies engaged in exploration compared with the current reservation mechanism.

8 Conclusions

In Finland, the current mining legislation is essentially based on a claim procedure, in which the party that discovers a deposit containing mining minerals has the right to exploit the deposit, regardless of property ownership. The essential purpose of the claim procedure is to enhance, regardless of property ownership, the position of the party that discovers mining minerals and consequently also to create incentives for exploration and mining. The reservation mechanism referred to in section 32 of the Mining Act, which is the subject of this report, is an integral part of the said claim procedure.

The reservation mechanism included in the Mining Act is intended to regulate the order of priority between operators under the Mining Act and to give the party making the reservation an opportunity to prepare an actual exploration application in a careful manner that meets the requirements of the Mining Act. For this reason, the legal effects of a reservation decision are deemed to extend only to the priority granted to the party making the reservation to apply for an exploration permit for the reserved area during the period of validity of the reservation notification. However, statements made in connection with the reform of the Mining Act have revealed that a reservation may be considered to have social or actual impacts on a number of parties outside the rights conferred by the Mining Act. The most important such impact has been found to be the uncertainty arising from the making of a reservation that is experienced by various parties regarding the future use of the area and commonly the guarded attitude towards mineral exploration activities in the area.

Based on the preparation of this report, our view is that from the perspective of mineral exploration, the reservation notification under the current Mining Act has been considered to be an efficient and effective procedure to clarify the order of priority between operators engaged in exploration before the actual exploration permit phase. The reservation and the legal status it confers are of key significance when companies engaged in exploration plan the areal allocation of prospecting work and actual exploration subject to a permit. The entry of reservation mechanism priority in the register maintained by the mining authority also has an impact when parties engaged in exploration seek funding to carry out exploration work.

From the standpoint of the landowners in the reservation area, the reservation mechanism provided in the Mining Act has primarily been perceived as creating uncertainty regarding

the future opportunities to use and manage the properties they own. Uncertainty about the future use of an area may also have been a cause for concern for the business community operating in or around the reservation area, particularly if the said business activities have been seen as difficult to reconcile with possible future mining activities. Indeed, it is typical of the public debate on the regulation of reservations that it is often thought that a reservation will result in the commencement of mining in the area in the near future, although statistically the realisation of this possibility is very low.

If the reservation mechanism is to be developed within the current Mining Act by maintaining the reservation with its own notification procedure, the extent of the areas subject to reservations and the duration of the reservation may be considered as possible changes in legislation. In addition, consideration of extending the participation rights and rights to appeal of parties affected by a reservation, such as landowners, the business community and the Sámi, would be a potential area of development in mining legislation.

With regard to the surface area of reservations, it would be possible to consider whether a surface area limitation should be imposed on reservations in general and/or whether legislation should specifically limit those areas that cannot be subject to a reservation. From a regulatory development perspective, it should be taken into account as a basic principle that the reservation notification is currently a light and efficient notification procedure that has allowed companies engaged in exploration to study the mineral potential of the reserved area in more detail and to prepare an actual exploration application appropriately on the basis of the study of the area conducted during the allocated reservation period.

If stricter substantive requirements and clarification obligations than at present were to be imposed for the reservation notification, this would probably be reflected in the cost of preparing reservation notifications and would increase the workload of the mining authority in terms of investigating the content of notifications. In our view, imposing a general area limitation for reservations could also prove to be an ineffective way of addressing the surface areas of reservations, as it would be possible to circumvent the regulations quite easily by using several, but legally distinct, exploration companies controlled by the same party.

One effective alternative related to the surface area of reservations would possibly be to consider linking the reservation fees to the surface area of reservations, in which case the party making the reservation would be incentivised to investigate already at the reservation stage the appropriate extent of the area intended to be the subject of exploration work and limit the size of the reservation area on their own initiative. Changes made to reservation fees could, however, have a detrimental effect on operating

conditions for smaller operators, in particular, and reduce the incentive to carry out exploration work.

In our view, with regard to the social impacts of reservations, it would also be possible to consider whether, in contrast with at present, reservation notifications should be communicated before the decision of the mining authority in the case, but after the notification has been submitted. To ensure the functioning of the reservation mechanism, it would not be necessary, in our view, to include special consultation procedures in communication; the purpose of communication would be for the mining authority to inform residents and stakeholders in the area of a pending reservation notification and thus improve the social acceptability of reservation notifications.

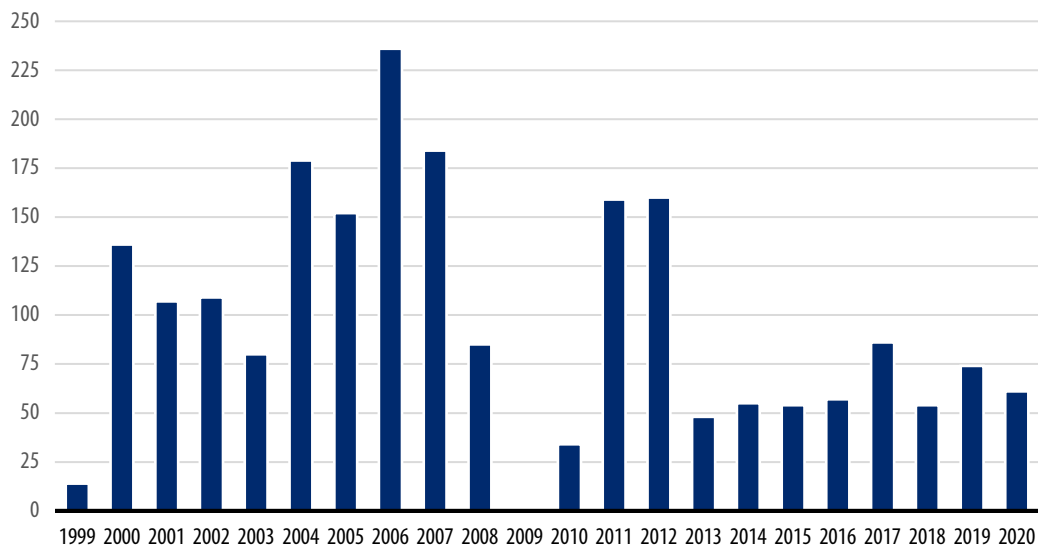
The reservation mechanism included in the current Mining Act is an integral part of the claim procedure, and the basic solutions of the Act are based on the order of priority, contained in the procedure, between parties engaged in exploration. In our view, as proposed in connection with the preparation of the Mining Act, there is a clear need related to exploration and the promotion of mining activities for the priority conferred by the current reservation mechanism, and that it is not possible for the reservation mechanism to be completely eliminated without ensuring that the key aims of the reservation notification will be met by another approach that secures the regulatory objectives. In terms of the elimination of the reservation mechanism, it would seem most natural to consider whether it would be possible to transfer the current reservation mechanism to be part of the exploration permit procedure under the current Mining Act. If the objective would be to retain the incentive elements for mineral exploration associated with the reservation mechanism, this would require, in our view, an analysis of the provisions of the Mining Act relating to the mineral exploration permit, at least in the manner we set out above in this report.

Appendix 1: List of interviewees

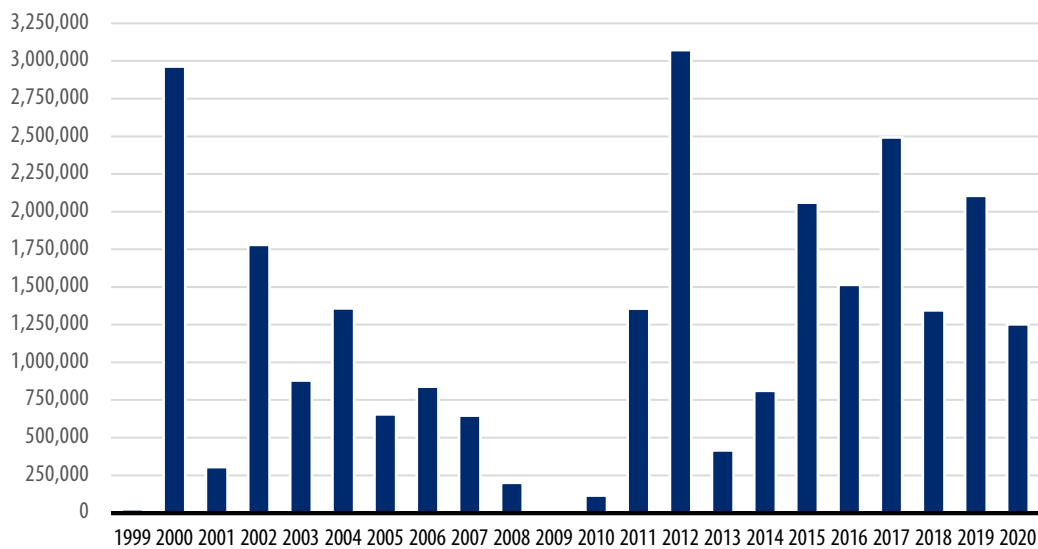
Anttonen Marja, Reindeer Herders' Association
Hämäläinen Sami, Finnish Hospitality Association MaRa
Juuso Tuomas Aslak, Varis Kalle, Kämäräinen Sarita, The Sámi Parliament of Finland
Kristeri Leena, The Central Union of Agricultural Producers and Forest Owners MTK
Mink Miisa, Saimaa Without Mines
Natunen Jari, Kattainen Matti, Finnish Association for Nature Conservation
Rönn Riitta, Koski Ulla, Kallio Pasi, Korpi Johanna, Ministry of the Environment
Rötsä Sanna, Boliden Finnex Oy
Salonen Antti, Nurmikolu Marko, Association of Finnish Local and Regional Authorities
Sanila-Aikio Tiina
Suomela Pekka, Technology Industries of Finland / Finnish Mining Association
Viikinen Maija, Liikamaa Terho, Keskitalo Ilkka, The Finnish Safety and Chemicals Agency

Appendix 2: Bar charts

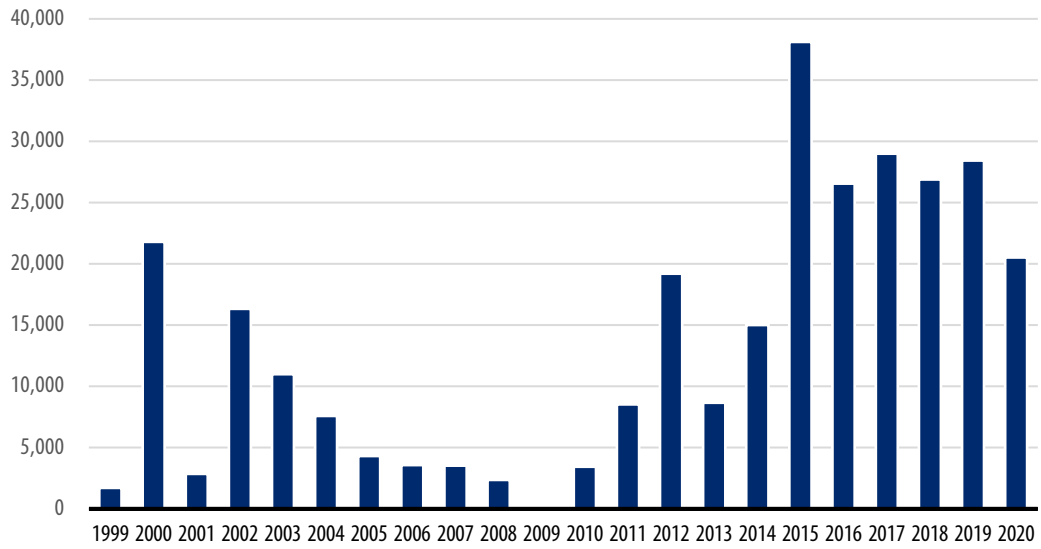
Number of reservations / year



Total surface area (ha) / year



Average surface area (ha) / year



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