

Energy & Natural Resources - Finland

Parliament considers new Mining Act proposal

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Background

Since its enactment in 1965 the existing Mining Act has been subject to many amendments. After a decade of preparatory work by two different working groups, the legislative proposal for the new Mining Act was finally brought before Parliament on December 22 2009. According to the initial plan, the act was to become effective at the beginning of January 2011. However, the proposal is still subject to committee debate and it is unclear whether the new act will be passed before the parliamentary elections on April 17 2011. This update considers some of the proposal's key changes.

The proposed act brings the law in line with developments in other related legislation and court practice. The number of sections has more than doubled from 79 to 188, and it presents a number of notable changes, particularly from the mining industry's point of view. The proposal aims to reconcile various competing public and private interests as far as possible. While it maintains the fundamental principles of the existing act and continues to secure the preconditions for prospecting ore and mining activities, at the same time it emphasises environmental aspects, fundamental citizen rights, landowners' rights and municipalities' influencing opportunities.

Ore exploration and required permits

Under the proposed act, the right to conduct prospecting work will remain fairly flexible and be comparable with rights of public access. Provided that no more than minor damage, inconvenience or disturbance is caused, everyone will have the right to conduct geological measurements, make observations and – with prior notice to the landowner – take minor samples. More extensive prospecting will require the landowner's consent or, where no such consent has been granted, an exploration permit from the authorities.

An exploration permit will always be required if an activity could pose any risk to people's health, general safety or other industrial and commercial activity, or any deterioration of values concerning the landscape or nature protection. Uranium or thorium prospecting will always require a permit. As under the existing legislation, the exploration permit holder will have priority should it wish to apply for a mining permit. An exploration permit will be valid for a maximum of four years and will be able to be extended for a maximum of three years at a time. The total possible term of the exploration permit has been extended to 15 years. The exploration area will no longer be limited to a maximum of one square kilometre. Before applying for an exploration permit, an applicant will also be able to reserve the targeted area by submitting a reservation notification to the mining authority. Reservation is possible under the existing act as well, but the proposal has extended the maximum reservation period from one to two years.

Under the proposed act a mining permit will also be required for any mining activity and the permit will generally be valid until further notice. However, the proposal also recognises mining permits with a fixed term of at most 10 years. In the event that the operator applies for a mining permit but is unable to reach an agreement on exploitation of the exploration area with the landowner, the operator will be able to apply for a redemption permit for a mining area. The government may choose to grant the

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redemption permit if the mining project is based on public need.

Permit consideration, right of appeal and stability of granted permits

Under the proposed act, the Safety Technology Authority will replace the ministry as the mining authority and will therefore be responsible for granting permits and supervising compliance with legislation. However, the government will make decisions concerning redemption permits for a mining area and mining permits relating to production of uranium or thorium.

With regard to permit consideration, the proposed act adopts a comprehensive approach. The proposal establishes a general principle according to which sufficient clarity will have to prevail as to the effects of the activity and the possibilities for preventing and reducing damage and detrimental impact of the activity. The mining authority may incorporate limiting provisions and regulations to the permits it grants, thus limiting and reducing possible damage. Certain registered environmental associations and foundations will be able, by way of an appeal, to challenge certain mining authority decisions.

An exploration or mining permit will be able to be altered upon application by the relevant authority or a party suffering damage if the activities result in consequences prohibited by the proposed act or if the activities have detrimental effects that deviate substantially from the assessments made during permit consideration. Also, the exploration permit holder will be able to apply for an alteration of the permit.

The mining authority will be able to further decide that an exploration permit expires if the operations have been continuously interrupted for a minimum of one year for reasons which are dependent on the permit holder. The mining permit may similarly expire if the mining activities have been interrupted for a minimum of five years or if the permit holder has not, before the time limit specified in the permit, initiated mining activity or sufficient preparatory work.

The permit authority will also be able to cancel a permit in case, among other things, incorrect or incomplete information affecting the permit consideration is submitted to the authority, the permit holder no longer meets the requirements under the proposed act or there is a material violation of the obligations, restrictions, or permit regulations.

Transferability of permits

The proposed act introduces no substantial changes as regards transferability of the granted permits and the exploration and mining permits are transferable as under the existing legislation. The mining authority will be obliged to approve the assignment of a mining permit or an exploration permit if the assignee fulfils the objective requirements under the proposed act and if certain accounts have been provided to the authority. However, the privilege deriving from pre-permit reservation notification will not be transferable. The permit holder will be able effectively to pledge both the right to exploit mining minerals, which will be based on a mining permit, as well as the right to exploit the deposit under an exploration permit. In contrast to the existing act, the proposal sets more detailed procedures regarding legally effective pledges. The pledge will become effective when the mining authority receives a written notification thereof from the permit holder.

Other changes

The proposed act also introduces many changes in the amount and basis of different payments and compensations. The operator will be fully liable for any damage it causes. The permit holder will also have to pay certain annual fees to the landowners of the mining area. The updated fees will be regulated in more detail than under the existing act and include the gradually increasing exploration compensation (€20 per hectare for the first four years), the excavation fee (€50 per hectare plus 0.15% of the value of excavated mining minerals) and a by-product fee (moderate, or at maximum 10% of the by-product's sales proceeds). Claim fees paid to the state will be abolished. As a general rule, the exploration permit holder will have to deposit a collateral for the purpose of offsetting any potential damage. The mining permit holder will have to deposit a collateral for the purpose of termination and rehabilitation measures. Post-termination measures will in general be subject to detailed regulation. Among other things, the proposal establishes a general two-year period within which the mining operator will have to restore the area to a condition that complies with requirements of public safety. The operator will also have to ensure further adequate restoration, cleaning and landscaping measures. In contrast to the existing act, the proposal also includes a specific part on mining safety.

Comment

The proposed act has a significantly wider scope than the existing act, which, particularly in its original form, mainly addressed the needs of the mining industry. The

proposed act requires more from mining industry operators during the whole project cycle. The proposal has been criticised by the mining industry for various reasons including its granting of considerable discretionary powers to officials. It is feared that the comprehensive approach will promote uncertainty. Indeed, in submitting applications for different permits, more detailed information and more cogent justifications might be required in order to counterbalance possible public interests and competing private interests. Nevertheless, the reform also introduces some modifications which are to be welcomed by the mining industry. New mines have many positive effects on the Finnish economy and attracting foreign investors is one of the proposal's expressed targets.

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