

Environmental permitting process and the implementation of the EU Water Frame directive

Project leader

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Partners

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Project duration

2023-12-01 – 2024-09-30



Goals of the project

Two different research focus areas, which partly correspond

- 1) *Environmental permitting process in Sweden*, especially the system with courts as the first instance concerning mines and other large operations. The project aims to answer the questions why this order once was decided, why it hasn't been evaluated since the Environmental code came into force, how it relates to the orders in other countries and hopefully some points concerning the consequences of the court-system in Sweden. Answering these questions the project can contribute to wise and well-founded decisions in the future.
- 2) *The Water Frame directive* (and other EU regulations) and how it is implemented in Sweden. The project aims to evaluate the efficiency of the directive and its implementation in relation to the goals of the directive. The environmental, societal, and economic consequences are to be investigated. Also, this part of the project is covered by international comparisons.



Results so far

Environmental court system in Sweden

The research considering the reasons for the establishment shows that there wasn't arguments of efficiency or quality that led to the present court-system but mainly arguments concerning parts of the process with elements of civil rights that could not be handled by regular authorities. This rises the questions even more strongly why no evaluation of the consequences has been made so far, 25 years after it came into force.

The research also shows that the Swedish system is unique internationally, which is another reason to have it reviewed. The "mark och miljödomstolen" as the first position for a permit is unique because that court is a judge between different opinions, not a instance for best practice.

To evaluate the consequences of the Swedish court system has some severe challenges and the project is now trying to find ways to do this in a scientifically acceptable way.

Sweden	Common situation internationally
Ownership of the “concession minerals” is not defined in Swedish law.	The applicable law (usually the mining law, or similar) clearly provides for either ownership being either vested with the highest authority (e.g. President) on behalf of the people of the nation, to be used in the best interest of the people; or private ownership (e.g. non-federal land in the US).
In Sweden, environmental courts manage the environmental permitting process and issue permit.	Environmental permitting is an administrative processes managed by governmental agencies, and environmental permits issued by the appropriate governmental authority (e.g. EPA, Ministry of Environment, etc.).
In addition to the above, environmental courts in Sweden also fill a more “normal” role at violations or appeals.	Environmental courts internationally are becoming more common, but usually only have a role in adjudicating in cases in environmental offences, crimes and and/or appeals.
Mineral exploration work plan sent for review to affected people and relevant authorities (municipality and county administration boards) with a three month referral period.	No referral associated with exploration works in some jurisdictions.
Two significant EIA processes, associated with the mineral concession application and the environmental permitting process respectively.	Only one significant EIA being required, as part of the environmental permitting process.
TOR/scoping for EIA done by company and taken through referral process.	TOR/scoping normally done by company in collaboration with relevant authority (same authority that issues environmental permit), while also taken through referral process.
Social and economic impacts not considered in Swedish EIA (although practice is changing to increasingly include such issues).	Social impact commonly considered as integral part of the EIA (i.e. ESIA).
In the Swedish mineral concession application process, Governmental consultations (Bergsstaten) with the Sami may occur where relevant (as provided for by the new law on consultations with samí representatives; 2022:66, but not yet tested)	Countries where government led consultations with indigenous groups being required as part of the mining permit application process and practice in this regard being well established.
No royalty on minerals (instead a set formula for compensating landowners through a “mineral fee”)	Royalty on minerals is common and sometimes attached with distribution scheme across different level of government and affected communities.

Results so far

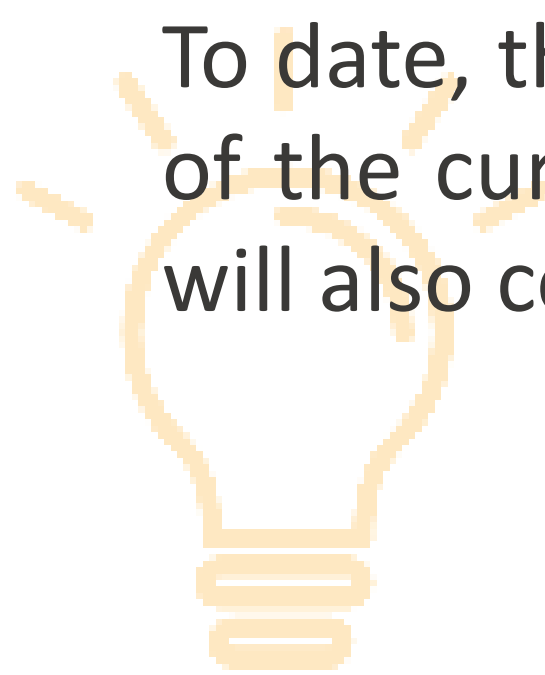
EU Water Frame Directive and its implementation in Sweden

The working title of the planned final report from this WP is *Legal conditions for mining operations. A jurisprudential study on the role of water rights in the possibilities of obtaining permits for mining activities.*

The purpose of the initial legal investigation has been to determine the applicable water law in different time-periods, in order to, in the second step, enable a comparison between the previous water laws (i.e. before the WFD) impact on the mining industry's opportunities to obtain (environmental) permits. A relevant question here is for example which adjustments have been made to comply with the requirements of the Directive?

In the light of the results of the study any need for legal reforms will be discussed.

To date, the historical legal analysis, i.e. for the time before the WFD came into force, is complete. Of the analysis of the currently applicable law, including the WFD, approximately 30 percent remains. However, this latter part will also contain an in-depth analysis of the permit history of Boliden's Hötjärnsmagasin.



Upcoming activities and next step

- Can the research in this project contribute to the on-going government investigation concerning the environmental permitting process?
- Also a better understanding of the application of the water directive.
- Next step after this project, can the results lead to considering possibilities for reforms that may lead to a more secure, efficient and innovation friendly permitting process for mining projects, and an efficient and adequate application of the water directive in mining related cases.
- At least 2 Workshops with different target groups is to be held, project reports and articles are to be finalized. Target groups are as in the project described as decision-makers, stakeholders and opposite interests.



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