

Mining operations taxed lightly in Finland

Analysis

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As part of the Green European Foundation's 'Metals for a green and digital Europe' transnational project, we are spotlighting the needs of the EU to examine and adjust its supply and use of metals.

While the energy from the sun and wind is nearly infinite, the resources we need to capture this energy are not. Solar panels, wind turbines, batteries and power cables all contain metals, which are not always sourced sustainably. With both the energy transition and the digital transition high on the EU agenda, it is crucial we start looking at how to green our metals.

The initiative for reforming the Finnish Mining Act started with Finnish Parliament's ratification of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) in 2018. The proposal on the reform, originally intended to be submitted to Parliament in December 2020, has now been postponed by a year as the Ministry chose to include an instrument for the comparison of interests in the reform just as the working group was about to finish its work. Juho Heikkilä, student of Economics and Environmental Economics, explains the background of the reform, examines the content of the draft and offers suggestions for its improvement.

1. CETA impacts the need for reform

This year, the Ministry of Economic Affairs and Employment of Finland has been preparing a proposal for a new Mining Act. The initiative for reforming the Act started with Parliament's ratification of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) in 2018. The agreement included investment protection, meaning that international corporations may sue a contracting state if they consider their financial interests to have been infringed. Changes in environmental legislation may be considered to be sufficient grounds for citing infringement.

As about 50% of multinationally operating mining companies [have](#) their headquarters in Canada, the implications of the CETA play a vital role. In fact, Parliament ratified the CETA with the prerequisite that the evaluation for reforming the Mining Act is launched [immediately](#).

The road from Parliament's decision to the reform of the Mining Act has not been easy. The Ministry of Economic Affairs and Employment commissioned Borenus Attorneys to analyse the need for the Mining Act reform. In his [decision](#), submitted on 12 December 2019, the Chancellor of Justice considered the procedure to be problematic and described it as "apt to cause outsiders to suspect the neutrality of official activities".

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The factors causing suspicion included the fact that the clientele of Borenus Attorneys included several mining companies and that the company [reported](#) lobbying for the previous Mining Act to Parliament in cooperation with FinnMin (Finnish Mining Association).

The communications of the Ministry of Economic Affairs and Employment were also lacking. The commissioned analysis was not published or announced on the Ministry's website. Even Members of Parliament had to specifically request the analysis. The document is supposed to be public and authorities are required to comply with the obligation to provide information as stipulated in the Finnish Act on the Openness of Government Activities.

2. Finland gains an indirect benefit from the mining industry

Determining the ownership of ore resources is one of the most fundamental parts of mining legislation. There are three principles for this. According to the first, so-called concession principle, ore resources are owned by the state. According to the second principle, the ownership of ore resources is connected to land ownership, whereas the third follows the claiming system used in Finland.

In the claiming system, ore resources are initially owned by no one. The party who first claims the deposit becomes the owner of the ore resources. This “finders keepers” principle is quite rare on the global scale. In the Anglosphere, countries generally follow the principle that any ore resources belong to the state. While the claiming principle might bring to mind the history of the US, it has actually been waived by all the states except [Texas](#). The principle may be considered a value judgement as today's Finland is more appealing to the mining industry, possibly at the expense of future appeal.

For clarity, we probably need to address some of the basic terminology. *Prospecting* refers to surveying and small-scale sampling. At this point, the prospector can apply for a *reservation*, in other words a privilege to apply for an exploration permit. *Exploration* uses larger-scale means, such as exploratory excavation and deep boring that can be carried out under an exploration permit. The *mining permit* applied for after this entitles the prospector to carry out mining operations.

Finland has made a conscious value judgement in the way in which Finnish society benefits from the mining industry. The industry provides jobs and mining companies pay corporation tax, but we do not have an actual “mining tax”. Prospectors in Finland pay a small excavation fee to the landowners, amounting to 0.15% of the value of the excavated ore. In addition, the annual [exploration fee](#) paid to the landowners amounts to EUR 20–50 per hectare. In terms of compensation to landowners, Finland forms an international [exception](#), together with Sweden and the US. In combination with the claiming system, this can be considered to be a generous arrangement for the mining industry.

3. Objectives and activities of the working group

The primary objective of the proposed reform, in line with the programme of Sanna Marin's Government (composition), is to improve environmental protection in the mining industry. The proposed reform also includes sections designed to improve local acceptability. The proposal for the new Mining Act does not include major changes in terms of principles, but the comparison of interests included in the middle of the process clarifies the emphasis of various values when deciding on permits related to mining operations.

The comparison of interests examines the benefits and disadvantages produced by mining operations. According to the comparison, a permit can be granted for a mining project if the benefits of the mine considerably exceed the losses resulting from it. The current Mining Act already includes references to such policies, which means that the inclusion of the comparison in the Act will clarify the current situation. How various levels of benefits and disadvantages can be made comparable in such a framework and which authority should be given the right to carry out the comparison of interests remains to be seen.

The work on the Mining Act reform began in February 2020 with the establishment of the working group. Stakeholders inside and outside the working group, such as nature conservation organisations, the Central Union of Agricultural Producers and Forest Owners, the Sámi Parliament and various local civic movements, have [expressed their reservations](#) about the Mining Act reform.

The majority of the criticism has been directed at the insufficiency of the proposed reform. For example, the merely draft [proposes](#) a right of appeal for the Sámi Parliament when the mine reservation is located in the Sámi homeland. The Sámi are not gaining any real decision-making power over mining issues in their homeland.

While the issues concerning the rights of the Sámi exceed far beyond mining operations, guaranteeing the rights of the Sámi as native people in their homeland ultimately calls for decision-making power instead of a mere right of appeal.



Appeals about land use planning approved at a municipal level to enable mining operations are not enough to secure the Sámi's right to their homeland. Even the comparison of interests carries the risk that financial benefits are considered to be a more important factor.

The Central Union of Agricultural Producers and Forest Owners, in turn, is dissatisfied with the small compensations to landowners and what the Union feels is excessively [liberal granting](#) of reservations. As the claiming principle is likely to remain in force, any improvements to the status of

the landowners must be through increases in the excavation and/or exploration fee.

On 22 October, Minister of Economic Affairs Mika Lintilä announced that the Mining Act reform [will be delayed](#) considerably from its original schedule. According to the original plan, the proposal for the new Mining Act would have been submitted to Parliament in December 2020. Lintilä reported the inclusion of the comparison of interests as one of the reasons for the delay. According to the new timetable, the proposal will be submitted to Parliament in late 2021 or early 2022.

4. The Mining Act and the environment

Some of the conservation areas in Finland are located in areas that are of interest to prospectors. Most of the existing conservation areas in Finland are included in the Natura 2000 network of the EU. Exploration is allowed under certain preconditions in the area of the Natura 2000 network, as well as in other conservation areas. It must be noted that the permit processes are slightly more lenient in the Natura 2000 areas. To put it in extremely simplified terms, the granting of an exploration and mining permit is possible if the operations do not considerably impair the natural values of the area. Should the operations considerably impair the natural values, the mining permit can be granted on the basis of public interest upon a Government decision.

In terms of environmental protection, the changes to the collateral arrangements of mining operations proposed in the draft are a step in the right direction. The measures covered by collaterals in the event of the operator's insolvency are defined more clearly in the draft. However, successful implementation depends on more detailed provisions on calculat-

ing the collaterals as issued by the Government. The permit authorities, in turn, will be responsible for [increasing the collaterals](#) if the extent of the mining operations is changed after granting the permit. Moreover, the collaterals referred to in the Mining Act only cover costs resulting from the termination of the mine. The compensation procedures for other environmental damages are currently discussed in the [TOVA legislative project](#) of the Ministry of the Environment.

As it is, initiating mining operations in a conservation area is very unlikely, as the considerable impairment of the natural values would seem inevitable, whereupon the authorities would not grant the permit. However, reservations are made in and out of conservation areas perhaps a little too frequently, which causes constant uncertainty. This shortcoming could be corrected by categorically excluding conservation areas from potential mining activities. Any real damage to the mining industry would likely remain small, as there are no mining activities in conservation areas at the moment.

5. Tax revenues leave much to be desired

The amount of the aforementioned excavation fee can be put into perspective by noting that in [Australia](#), for example, the compensations set by state governments amount to about 2.5–10% of the value of the excavated ore. This type of royalty would probably be viable in Finland as well. At the moment of writing this article, the VATT Institute for Economic Research, the Finnish Environment Institute and KPMG Oy are working on a [study](#) on the impact of various types of tax, among other things. The study is supposed to be completed in April 2021 and may influence the Mining Act reform.

Finland is estimated to be the [second](#) most attractive location for mining companies in the world, after Western Australia. Finland's assets include a stable political environment, a trained workforce, high-quality infrastructure and an extensive, readily available corpus of geological data.

The corpus decreases the costs of the mining industry, as producing a corpus as extensive as the one available would cost [approximately](#) EUR 1.3 billion.

Moreover, the total Finnish tax rate of mining companies operating in Finland is exceptionally [low](#). The corporation taxes and royalties paid by profitable mining companies engaged in significant metallic mineral mining operations in Finland between 2015 and 2017, for example, amounted to about 4.3% of their combined business result. The International Council on Mining and Metals (ICMM) has [estimated](#) that, globally, the total tax rate for their member companies amounted to 39% between 2013 and 2019. The realised low corporation tax rate of the Finnish mining industry is based on completely legal tax planning.



Therefore, it does not seem likely that implementing a reasonable mining tax in addition to the measures proposed above would dramatically weaken the operational prerequisites of the mining industry in Finland. On the contrary, the mining tax would ensure that Finland would be better compensated for its unique natural resources and increase the local acceptability of mining operations alongside the other

measures. The need for extraction-industry products and the mining industry will not go away, which is why a responsibly operating mining industry not only benefits Finland, but also reflects a global sense of responsibility.

Learn more:

A guide: Exploration in conservation areas, the Sámi homeland and reindeer management areas (Ministry of Economic Affairs and Employment, publication in Finnish)

Assessment Of The Effectiveness Of Legislation On Mining (Ministry of Economic Affairs and Employment, publication in Finnish with an abstract in English)

Assessment Of Potential Amendment Needs Concerning The Mining Act As A Result Of The Ceta (Borenus, publication in Finnish)

Draft on the Government proposal to Parliament on amendments to the Mining Act (Ministry of Economic Affairs and Employment, publication in Finnish)



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