



MICA

Minerals Intelligence Capacity Analysis

DOCSHEET

Permitting/Licensing at EU level

Toward a common legislation related to permitting and licensing at the European level. An overview based on the text of the EC's tender '*Study - Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU*'.

Scope

The lack of a common legislation related to permitting and licensing at the EU level is a major problem. This led the Directorate-general for Internal Market, Industry, Entrepreneurship and SMEs of the European Commission to issue a request for tender (No° 473/PP/GRO/IMA/15/118318) for '**Study - Legal framework for mineral extraction and permitting procedures for exploration and exploitation in the EU**' (<http://ted.europa.eu/udl?uri=TED:NOTICE:039321-2016:TEXT:EN:HTML>) in 2015.

The tender specifications summarize the present situation, highlight the domains to investigate and the information to gather in order to propose a homogeneous legal framework for the extraction of minerals within the EU level. **One should remember that one of the most important issues for the exploration and mining industry is risk reduction and access to land.**

The successful consortium to the RFT (request for tender) is coordinated by MinPol of Austria and the project acronym is MINLEX. Its main objective is to identify and describe the legal framework and the permitting procedures governing mineral extraction (non-energy extractive industries) within the EU28 Member States. As part of this exercise MINLEX identified the competent authorities and relevant legislation, described the exploration and extraction permitting procedures, listed relevant court cases and determined permitting times and success rates.

► Background

Raw materials are crucial for our daily life. Within the European Union, 30 million indirect jobs depend on the supply of raw materials while mining activities directly employ more than 300,000 persons (see <https://ec.europa.eu/programmes/horizon2020/en/area/raw-materials> and <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008IE1206&from=EN>). All industrial sectors are linked to raw materials and not just the extractive ones but also the whole downstream value chain (automotive, construction, space, agrifood, ect....). Raw materials are also present for energy infrastructures (wind mills...) and also IT equipment (computers, mobile phones).

In the middle of the last decade the European Union realized it depended on imports of certain raw materials and determined that an initiative was needed to safeguard the supply of raw materials for European industry. Consequently, in 2008, the European Commission published the Raw Materials Initiative, with a revision in 2011. The initiative proposed that the European approach to the security of supply of raw materials should be based on three pillars. The second pillar "fostering sustainable supply of raw materials within the European Union" covers the supply of primary raw materials within the EU.

Fostering the supply of raw materials within Europe includes developing the legal framework for the exploration and extraction of mineral raw materials within Member States. During the last 20 years the European Commission has received several complaints regarding the lack of transparency in the permitting and licensing procedures in some areas within Europe. Additionally, there is evidence to suggest that there are, unreasonable timeframes and a multiplicity of administrative barriers which are used at times to restrict or prevent exploration for or development of mineral resources.

This led the Commission decided to analyse the 28 national mining legislations and administrative procedures.

► Scope of MINLEX

The purpose of the study is to identify and to describe the legal framework governing mineral exploration and extraction (non-energy extractive industries) in the EU 28 Member States: principal legislation governing mineral extraction at national, regional and local levels, EU legislation impacting the permitting procedures for exploration and development and the actual permitting procedures for exploration and development.

The following subjects were addressed by this study:

1 - Administration governing mineral exploration and development:

- Mapping public entities in the EU Member States with competences to issue permits and licenses for exploration and extraction or any other public entities involved in the permitting and licensing processes for exploration and development, clearly identifying the role of each of them within the process.
- Characterization of the role of the different entities at national and regional levels in the permitting and licensing procedures for exploration and development.
- Where similar entities have similar roles in the different Member States? What are the differences (if any)?

2 - Principal legislation governing mineral exploration and extraction at national, regional and local levels:

Mapping legislation governing mineral exploration and extraction in EU Member States (MS) at the relevant level and the year of enactment:

The ownership of mineral resources;

- a. The administrative procedures applicable to the management of the different categories of mineral resources (centralised vs. decentralised);
- b. The level of governance of the different types of mineral resources (national, regional, county, local), including all relevant authorities and whether their opinion is legally binding;
- c. Legal and administrative timeframes within the different permitting and licensing procedures for exploration and development, including explanation of the deadlines included in the legislation for each of the authorities involved to issue their opinion and all possible appeals. What is the minimum amount of time foreseen by each of the legislation applicable in the EU?
- d. Legal analysis of the identified national legislation to assess whether Member States have made use of the EU Internal Market legislation (e.g., Services Directive 2006/123/EC, Concessions Directive 2014/23/EU, Classical Directive 2014/24/EU, Utilities Directive 2014/25/EU). What are the amendments (if any) in the MS legislation governing mineral exploration and development as affected by transposing relevant Internal Market secondary legislation.
- e. Legal analysis of the different categories of permitting procedures included in MS legislation in order to assess whether they fall under EU Internal Market legislation (see list above).

3 – Legislation covering exploration permitting procedures:

Identification of all the permitting procedures governing mineral exploration in EU Member States (MS) at the relevant level (e.g., national, regional, local) and the year of enactment:

- a. Summary of all the different permitting procedures for exploration in all Member States at the relevant government level;
- b. Identification of any differences for the different types of mineral deposits;
- c. Description of the permitting procedures (e.g., if it is based in public tenders, expression of interest or both) for the different types of mineral deposits;
- d. Number and identification of public authorities involved in the process, an analysis of their role and whether their input is binding;
- e. Legal analysis of the different permitting procedures to assess whether in practice they may fall under the EU Internal Market legislation (see list above). For those cases which may fall outside EU secondary legislation what are the reasons and their compatibility with the relevant articles of the TFEU related to the Internal Market freedoms.

f. Timeframes for the issue of the different permitting for exploration, specifying the differences applicable to different mineral resources, if any. What are the deadlines included in the procedures for each of the authorities involved to issue their determination including all possible appeals mechanisms? What is the minimum amount of time foreseen by each of the permitting procedures applicable in the EU to be added on top of those timeframes foreseen in the legislation (see point 2c)? Comparison with the average length of time to get the permit under each of the identified permitting procedures.

g. Geographic areas covered by the permit;

h. Rights and duties of the licensee;

i. Legal nature of the rights;

j. Description and analysis of any link between the exploration permit and a future license for development;

k. Granted rights in view of a future development license (if any);

l. Average length to get a permit (specifying differences for different mineral resources, if any),

m. Tax regime.

4 – Licensing procedures for development:

Identification of all the permitting procedures governing mineral development in EU Member States (MS) at the relevant level (e.g., national, regional, local) and the year of enactment:

a. Summary of all the different permitting procedures for development in all Member States at the relevant level;

b. Identification of the differences for the different types of mineral deposits (if any);

c. Description of the permitting procedures (e.g., if it is based in public tenders, expression of interest or both) for the different types of mineral resources;

d. Number and identification of public entities involved in the process. Their role. Is their input binding?

e. Legal analysis of the different permitting procedures. Do they fall under the EU Internal Market legislation (see list above)? For those cases which may fall outside EU secondary legislation the analysis, what are the reasons? Are they compatible with the relevant articles of the TFEU related to the Internal Market freedoms?

f. Timeframes within the different permitting and licensing procedures for development, specifying the differences applicable to different mineral resources, if any. What are the deadlines included in the procedures for each of the authorities involved to issue their opinion including all possible appeals mechanisms? What is the minimum amount of time foreseen by each of the permitting procedures applicable in the EU to be added on top of those timeframes foreseen in the legislation (see point 2.c)? Comparison with the average length of time to get the permit under each of the identified permitting and licensing procedures.

- g. Geographic areas covered by the permit;
- h. Rights and duties of the licensee;
- i. Legal nature of the rights;
- j. Description and analysis of the future license for development;
- k. Number and identification of public entities involved in the process;
- l. Tax regime.

5 – Court cases on permitting procedures for exploration and development:

- Survey (from 1995 until December 2015) of court cases at national, regional and EU level from the extractive companies and NGOs related to permitting procedures both for exploration and for development, in particular the ones raising issues of non-compliance with the Treaty on the Functioning of the European Union (TFEU) and the EU legislation on Internal Market and Environmental matters.
- Summary of selected case-studies of complaints and court cases in English which can be of particular relevance at the EU level.

6 – EU legislation impacting the permits and licenses for exploration and development

- Identification of all the EU legislation affecting the permits and licenses for exploration and for development (other than the Internal Market legislation), in particular the environmental legislation (including Environmental Impact Assessment).
- Analysis of the impact this EU legislation has on national procedures applicable to extractive permits and in the decisions taken by the competent national authorities.
- Summary of the average time to get an exploration permit and to get an development licence for all possible different permits and licences in all Member States (see points 2.c, 3.f and 4.f), and identification of the period which derives directly from mining legislation and the period which derives from the identified EU legislation.

7 – Success rates of exploration and development licences and permits

- Estimation of the success rate of exploration permits and development licenses in each Member State, comparing the number of applications with the number of permits and licences for exploration and development issued, explaining the reasons for the different performances, for all possible different permits and licenses in all Member States.
- Analysis of case studies at national or regional level where the success rate is high and where it is low, using a SWOT or similar tool in order to identify causes. Ideally, this should be completed with interviews addressed to the Member State authorities at the relevant level and to the companies directly involved in the applications.

Contexts of use, application fields

-> contexts (e.g., environmental, economic, social assessment)
 -> which types of stakeholder questions are concerned?
 -> link to published studies that implement the method

Anyone intending to undertake activities such as prospecting, exploration and mining must have a license or a permit.

Mining titles vary from one country to another according to the Mining Code, nevertheless there are similarities from one country to another concerning 'Reconnaissance Licences', 'Prospecting Permits', 'Operating Permits' and 'Mining Concession'. Not all countries have all these permits or licences. For diamonds, there is a website explaining each of the different permits for diamond producing (or exploration) countries (<http://www.info-diamond.com/rough/mining-titles.html>) which may be applicable for other commodities:

Reconnaissance Licences:

Rights Conferred: a reconnaissance license confers its holder the right to search for one or several minerals in all zones not covered by another mining title.

Allocation: variable; National direction of Mines, or by the Ministry of Mines, etc.

Validity, Renewal: often 3 months renewable one or more time.

Prospecting Permits:

Rights Conferred: prospecting permits confer on their holders the exclusive right to prospect for minerals for which the permit is issued.

Area and Form: variable according to countries, it can be up to 500 km² for industrial prospecting permits and around 15 km² for semi-industrial permits.

Allocation: variable; National direction of Mines, or by the Ministry of Mines, etc.

Validity: often 3 years for industrial permits and 2 years for semi-industrial permits.

Renewal: generally renewable 1 to 2 times for reduced timeframes.

Programme of Work: a programme of work is defined and the minimum financial commitment that the company has to make for each each year at the time of issue of the permit.

Disposal of Products: holders of prospecting permits may have the right to dispose of any products extracted in the course of the prospecting.

Operating Permits:

Rights Conferred: an operating permit confers its holder the exclusive right to search, prospect, develop and freely dispose of the mineral substances for which it is issued, within the limits of its perimeter and without limitations of depth.

Area and Form: the area for which operating permits are issued is defined in the permit. It is limited to the deposits as designated in the application.

Allocation: variable; National direction of Mines, or by the Ministry of Mines, etc...

Validity: often 10 years for industrial permits and 5 years for semi-industrial permits.

Renewal: generally renewable 1 to 2 times for lower durations.

Disposal of Products: holders of operating permits have the right to dispose freely of all products extracted.

Mining Concession:

Rights Conferred: concession confers its holders the exclusive right to carry out all kinds of prospecting and development of deposits of minerals substances for which the concession is granted, within the limits of its perimeter, and without limits of depth.

Area and Form: the area for which concession permits are issued is defined in the permit. It is limited to the deposits as designated in the application.

Allocation: variable; National direction of Mines, or by the Ministry of Mines, etc...

Validity: generally 25 years.

Renewal: generally renewable 1 to 2 times for lower durations.

Disposal of Products: holders of concession have the right to dispose freely of all products extracted.

Note: these are general descriptions and may vary from one country to another. Note also that operating permits are often issued for the duration it takes to extract the full resource.

Input parameters

-> which parameters are needed to run the method

► Not applicable

Type(s) of related input data or knowledge needed and their possible source(s)

-> which types of data are needed to run the method, from which sources could they come...
-> could be qualitative data or quantitative data, and also tacit knowledge, hybrid, etc.

The issue of a permit necessitates the collection of a significant amount of data, which are gathered prior to the application for the permit (Table 1):

Phase	Data / knowledge produced or needed	Type of license / permit
Exploration – Regional reconnaissance	Regional geology, remote sensing (including regional geophysics, regional geochemistry, regional heavy mineral sampling)	Reconnaissance license
Exploration – Detailed reconnaissance	Detailed geology, geophysics, geochemistry, and heavy mineral sampling	
Exploration – Subsurface exploration	Excavation, drilling (auger, percussion, core)	
Exploration – Resource assessment	Drilling assessment (percussion, core), geological interpretation, ore beneficiation tests, approximate resource assessment	
Exploration – Ore deposit evaluation	Systematic core drilling, adit or mine mapping, , geostatistical estimates, trial tests	
Pre-feasibility and feasibility	<ul style="list-style-type: none"> • Technical feasibility: geostatistics, pilot plant, grade-tonnage relationship, block modelling • Economic feasibility, financial evaluation, bankable report • . Social feasibility (social licence to operate) • Environmental studies (EIS) • Mine closure planning and associated costs 	

Planning and design	Takes into account mine closure issues, and integrates economic, environmental and social elements into the decision-making process	
Construction	-	
Operations (progressive rehabilitation)	-	
Decommissioning and closure	-	

Table 1: Relationships between the phase of development of a project (from exploration to exploitation), the data to be acquired during this phase and necessary for preparing the next phase(s) and getting the permit, and the type of licence/permit needed to undertake activities. Source BRGM.

Model used (if any, geological mathematical, heuristic...)

-> e.g., geological model for mapping
 -> e.g., mathematical model such as mass balancing, matrix inversion, can be stepwise such as agent -based models, dynamic including time or quasidynamic specifying time series...
 -> can also be a scenario

Key phases leading to the awarding of an operating permit such as the feasibility studies and the planning and design phase (and later the mine development) take into account the 'deposit model' based on the classification of the deposit (the deposit group and the deposit type), which generally integrates both ore formation processes and the geological setting – see the related DocSheet '**Mineral Deposit groups & types**'. Certain types of ore deposits present characteristics which can help to define a deposit model (see e.g., Cox and Singer, 1992) facilitating their exploration and development.

System and/or parameters considered

-> **the system can be described by its boundaries**. These can refer to a geographic location, like a country, or a city, the time period involved, products, materials, processes etc. involved, like flows and stocks of copper, or the cradle-to-grave chain of a cell phone, or the car fleet, or the construction sector, or the whole economy...
 -> **parameters** could possibly refer to geographic co-ordinates, scale, commodities considered, genesis of ore deposits and others...

► Not applicable

Time / Space / Resolution /Accuracy / Plausibility...

-> to which spatio-temporal domain it applies, with which resolution and/or accuracy (e.g., near future, EU 28, 1 year, country/regional/local level...)
-> for foresight methods can also be plausibility, legitimacy and credibility...

► Not applicable

Indicators / Outputs / Units

-> this refers to what the method is actually meant for. Units are an important part but that is most of the time not sufficient to express the meaning. For example, **the indicators used in LCA express the cradle-to-grave environmental impacts of a product or service.** This can be expressed in kg CO₂-equivalent. But also in €. Or in millipoints. Or in m²year land use.
-> for foresight methods the outputs are products or processes

► Not applicable

Treatment of uncertainty, verification, validation

-> evaluation of the uncertainty related to this method, how it can be calculated/estimated

► Not applicable

Main publications / references

-> e.g. , ILCD handbook on LCA, standards (e.g. , ISO)
-> can include reference to websites/pages
-> references to be entered with their DOI

Cox D.P. and Singer D.A. (1992). Mineral deposit Models. U.S. Geological Survey Bulletin 1693. 379 pp.
<https://pubs.usgs.gov/bul/1693/report.pdf>

Info Diamond – Diamond and Jewelry. <http://www.info-diamond.com/rough/mining-titles.html>. Last accessed on July 11th, 2017.

Related methods

-> List of comparable methods, their particularities...
-> link to one or several other existing fact sheet(s)

DocSheet '**Mineral deposit groups & types**'

Some examples of operational tools (CAUTION, this list is not exhaustive)

-> e.g., software... Only give a listing and a reference (publication, website/page...)
-> **should be provided only if ALL main actors are properly cited**

► Not applicable

Key relevant contacts

-> list of relevant **types** of organisations that could provide further expertise and help with the methods described above.

► Not applicable

Glossary of acronyms /abbreviations used

-> Definition

MS	Member State of the European Union
RFT	Request for tender
TFEU	Treaty on the Functioning of the European Union