



MINLEX - Estonia Country Report

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1. ESTONIA

1.1. Summary of findings

The Estonian non-energy minerals extractive sector is a small one if compared to the mining of oil shale, where Estonia is a world leader. Mainly construction minerals are extracted. All bedrock mineral resources belong to the state. Additionally all mineral resources in public waterbodies and on state land belong to the state. Landowners own non bedrock mineral resources found on their land, i.e. only the quaternary sediments (e.g. sand, gravel and peat).

The primary legal basis of mineral extraction activities is the Earth's Crust Act (<https://www.riigiteataja.ee/en/eli/507012019007/consolide>). **The main responsible authority for mining permitting is Environmental Board.** The Ministry is advised (in a non-binding way) by the Commission of Mineral Resources on issues of exploration and exploitation of mineral resources, validation of mineral reserves, among other topics. Supervision and monitoring is conducted by the Environmental Inspectorate. According to Earth's Crust Act, holders of an exploration or extraction permit have to ensure that the plans for mining are prepared and the mining operations are conducted under the conditions set by the exploration or extraction permit. **It takes on average 8 months to obtain an extraction permit if no EIA proceedings are initiated and auctioning is not necessary** (if an EIA is deemed necessary between 12 and 18 additional months are necessary), **and the duration depends on many factors, including the opinion of the local government.**

In general, the permitting procedures for geological investigation and exploration are neither excessively expensive nor burdensome to the applicants. **In some cases, permitting procedures may take considerable amounts of time because of the consents required from other co-authorities.** If these voice concerns about the planned geological investigation and/or survey, finding compromises may result in longer proceedings. However, this is not always the case. **Lack of (qualified) staff in some authorities involved as well as prioritising tasks may also cause delays.**

Permit procedures to obtain the permit for extraction are not too expensive, but can take a considerable amount of time to complete. Some of the reasons are hard to tackle and are caused by the complexity of the issue at hand (e.g. duration of environmental studies or public consultation needed for decision-making). At the same time, **some delays are also caused by low priority given to permit proceedings by the permitting authorities and the insufficiency of resources allocated.** This is solved by setting clear deadlines for completing the procedures in new Earth's Crust Act. With regard to the permitting success rates, they are high for exploration and extraction permits (86 % and 89 % respectively in the period 2014-2016).

1.2. General introduction

The Estonian non-energy minerals extractive sector is a small one if compared to the mining of oil shale where Estonia is a world leader. Mainly construction minerals are extracted. In Estonia all bedrock mineral resources belong to the state. Additionally all mineral resources in public waterbodies and on state land belong to the state.

According to the Earth's Crust Act, § 11 **Ownership of mineral resources and earth's crust:**

- (1) The following belong to the state:
 - 1) bedrock mineral resources;
 - 2) mineral resources in public water bodies.

(2) The natural body of bedrock, sediments, liquid or gas which is not registered belongs to the state and immovable property ownership does not extend thereto, unless the purpose of use of the immovable requires this.

(3) Bedrock means a rock created in a preglacial period which is opening on the ground or buried under Quaternary cover.

(4) The mineral resources belonging to the state specified in subsection (1) of this section are not in commerce in their natural form.

(5) If a permit is required in order to remove mineral resources in state ownership from the natural state, the extracted mineral matter generated upon mining on the basis of the permit belongs to the holder of the permit.

(6) If a permit is required in order to remove mineral resources in state ownership from the natural state, the extracted mineral matter generated upon mining without the permit belongs to the state.

In contrast, the private landowner owns non-bedrock minerals, i.e. only the quaternary sediments (sand, gravel and peat).

1.3. Legislation governing mineral exploration and extraction

The primary legal basis of mineral extraction activities is the Earth's Crust Act.

Table 1: Estonia. Legislation relevant to exploration and extraction permitting.

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
mining, minerals management, technical safety, concession	EE-L1	Earth's Crust Act	https://www.riigiteataja.ee/en/eli/507012019007/consolide	Y	Y	Y	Y	Y	Y	Y	Y	Maximum annual extraction rates exist for oil shale and peat.
		General Part of the Environmental Code Act	https://www.riigiteataja.ee/en/eli/528062018002/consolide	Y	Y	N	Y	N	Y	Y	Y	
	EE-L3	Regulation of the minister of environment: how to conduct geological surveys	https://www.riigiteataja.ee/akt/119122018028	N	N	Y	N	N	Y	Y	Y	
	EE-L4	Regulation of the Minister of Environment for restoring the land after geological surveys	https://www.riigiteataja.ee/akt/108042017005	Y	Y	Y	Y	Y	Y	Y	Y	What needs to be done to restore the land after geological surveys.
environment	EE-L5	Environmental Charges Act	https://www.riigiteataja.ee/en/eli/5	N	N	N	Y	N	Y	Y	Y	Sets the environmental fees.

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
			21032019001/con solide									
	EE-L6	Regulation of government: limits for using peat	https://www.riigit.eataja.ee/akt/128122016003	Y	N	N	Y	N	N	Y	N	How much peat can be mined in different regions.
	EE-L7	Environmental Impact Assessment and Environmental Management System Act	https://www.riigit.eataja.ee/en/eli/509012019005/con solide	Y	Y	Y	Y	Y	Y	Y	Y	Sets the rules how environmental assessments are carried out.
	EE-L8	Atmospheric Air Protection Act	https://www.riigit.eataja.ee/en/eli/522032019010/con solide	N	N	N	Y	N	Y	N	N	How to get permits for air emissions from mining.
nature conservation, forestry	EE-L9	Regulation of minister of environment: list of former exhausted peat deposits (mires) and peat deposits suitable for mining	https://www.riigit.eataja.ee/akt/129122016064	Y	N	N	Y	Y	Y	N	N	List of sites where peat extraction can be considered.
	EE-L10	Sustainable Development Act	https://www.riigit.eataja.ee/en/eli/5	N	N	N	Y	N	N	N	Y	General guidelines for using mineral resources.

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
			20122016001/consolide									
	EE-L11	Nature conservation Act	https://www.riiigit.eataja.ee/en/eli/515112018002/consolide	N	N	Y	Y	Y	Y	Y	Y	
water management	EE-L12	Water Act	https://www.riiigit.eataja.ee/en/eli/526022019001/consolide	Y	Y	Y	Y	Y	Y	Y	Y	Regulates usage and protection of ground and surface water.
land use planning, spatial development, soil management	EE-L13	Planning Act	https://www.riiigit.eataja.ee/en/eli/5271122018001/consolide	N	N	N	Y	Y	Y	Y	Y	How to start and manage local, regional and national planning processes.

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
transportation, construction, catastrophe protection, police, military	EE-L14	Building Code	https://www.riigit.eataja.ee/en/eli/506022019002/consolide	N	N	N	N	N	N	N	Y	Requirements for construction
culture heritage	EE-L15	General Part of the Environmental Code Act	https://www.riigit.eataja.ee/en/eli/528062018002/consolide	N	N	N	N	N	N	N	Y	Cultural heritage must be preserved.
	EE-L16	Heritage conservation act	https://www.riigit.eataja.ee/akt/113032019062?leiaKehtiv	N	N	N	N	N	N	N	Y	Cultural heritage must be preserved.
public administration, court procedures	EE-L18	Environmental Liability Act	https://www.riigit.eataja.ee/en/eli/522122016007/consolide	N	N	N	N	Y	N	N	Y	Principles of evaluating harm to environment. Polluter pays principle.
	EE-L19	General Part of the Environmental Code Act	https://www.riigit.eataja.ee/en/eli/528062018002/consolide	Y	Y	Y	Y	Y	Y	Y	Y	A permit is needed for mining and cultural heritage needs to be protected.

Legislative sector	Code	English title	Web link	Permitting provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	EE-L20	Environmental Register Act	https://www.riigiteataja.ee/en/eli/514032019001/consolide	N	N	N	Y	N	N	N	Y	Which resources are counted as mineral resources.
	EE-L21	State Assets act	https://www.riigiteataja.ee/en/eli/512072018001/consolide	N	N	N	Y	N	N	N	Y	Principles how someone can use state assets (mineral resources).
	EE-L22	The Constitution of the Republic of Estonia	https://www.riigiteataja.ee/en/eli/521052015001/consolide	N	N	N	Y	N	N	N	Y	Natural resources need to be managed sustainably.

1.4. Authorities governing mineral exploration and extraction

The main responsible authority for mining permitting is Environmental Board. The Ministry is advised by the Commission on Mineral Resources on issues of exploration and extraction of mineral resources, validation of mineral reserves, among other topics. The supervision and controlling is conducted by the Environmental Inspectorate, dependant on the Ministry of Environment. According to Earth's Crust Act holders of (an exploration or) extraction permit have to ensure that the plans for mining are prepared and the mining operations are conducted with the conditions set by the (exploration or) extraction permit.

Table 2: Estonia. Relevant authorities in exploration and extraction permitting.

	Code	Name of entity	English name of entity	Address / web access	Role in permitting	Relevant to			Statute or relevant piece of legislation	Remarks
						exploration	extraction	post extraction		
First instance permitting (local, regional, central, national)	EE-E1	Keskkonnaamet	Environmental Board	Narva mnt 7a, 15172 Tallinn / http://www.keskkonnaamet.ee/	one-stop shop for issuing all permits required, oversees EIA, conservation authority	x	x	x	EE-L1 et al	Environmental Board is responsible for all permits needed for exploration/mining. It issues all water use and air pollution as well as waste permits needed. Oversees EIA procedures where it is the permit authority. Oversees closure and remediation works.
	EE-E3	Maavarade Komisjon	Commission of Mineral Resources	Narva mnt 7a, 15172 Tallinn / http://www.envir.ee/et/eesti-maavarade-komisjon	consults permit decisions	x	x	x	EE-L1	Commission has a consultative role in exploration/ extraction permits' as well as remediation projects' procedures
	EE-E4	Kohalikud omavalitsused	Local municipalities (79 as of april 2019)	-	consent required for all exploration/mining permits	x	x		EE-L1	
	EE-E5	Kohalikud omavalitsused	Local municipalities	-	needs to change land-use objectives to allow mining		x		EE-L16	According to the case-law of Supreme Court of Estonia, mining may not be started with before the land-use objective has been changed, if the land was previously not designated for mining in land-use plans.

	Code	Name of entity	English name of entity	Address / web access	Role in permitting	Relevant to			Statute or relevant piece of legislation	Remarks
						exploration	extraction	post extraction		
	EE-E6	Vabariigi Valitsus	Government of the Republic	Stenbocki maja, Rahukohtu 3, 15161 Tallinn / https://valitsus.ee/et	can allow exploration/mining in case the local municipality objects to it	x	x		EE-L1	If the local municipality does not give its consent, the permit authority can ask the Government of the Republic to overrule this.
	EE-E7	Kultuuriminister	Minister of Culture	Suur-Karja 23, 15076 Tallinn / http://www.kul.ee/et	consent required if exploration/mining may affect cultural heritage	x	x		EE-L1	consent required for both exploration and mining in heritage conservation areas and on immovable monuments or their protected zones
	EE-E8	Kaitseminister	Minister of Defence	Sakala 1, 15094 Tallinn / http://www.kmin.ee/et	consent required if exploration/mining may affect sites of national security	x	x		EE-L1	Consent required for both exploration and mining within the territory of an object with a national defence purpose or if mining may impede functioning of an object with a national defence purpose
	EE-E9	Siseminister	Minister of the Interior	Pikk 61, 15065 Tallinn / https://www.siseministeerium.ee/et	consent required if exploration/mining may affect border guarding or cemeteries	x	x		EE-L1	Consent required for both exploration and mining in places where this may disturb border peace or impede the guarding of the state border, and also in cemeteries
	EE-E10	Majandus- ja taristuminister	Minister of Economic Affairs and Infrastructure	Harju 11, 15072 Tallinn / https://www.mkm.ee/et	consent required if exploration/mining is for metal raw materials or oil shale	x	x		EE-L1	
Second instance permitting	EE-E11	Keskkonnamet	Environmental Board	Narva mnt 7a, 15172 Tallinn / http://www.keskkonnaamet.ee/	carries out administrative review of its negative permit decisions	x	x		EE-L25	Developer can require administrative review in case of negative decisions made by Environmental Board from the same authority. This does not affect the

	Code	Name of entity	English name of entity	Address / web access	Role in permitting	Relevant to			Statute or relevant piece of legislation	Remarks
						exploration	extraction	post extraction		
										right to challenge the decision in courts.
Court jurisdiction	EE-E12	Tartu Halduskohus	Tartu Administrative Court	Kalevi 1, 51010 Tartu/ http://www.kohus.ee/et/halduskohtud/tartu-halduskohus	court of 1st instance	x	x	x	EE-L24	Court of 1st instance for challenging all administrative decisions, responsible for south and east of Estonia
	EE-E13	Tallinna Halduskohus	Tallinn Administrative Court	Pärnu mnt 7, 15084 Tallinn / http://www.kohus.ee/et/halduskohtud/tallinna-halduskohus	court of 1st instance	x	x	x	EE-L24	Court of 1st instance for challenging all administrative decisions, responsible for north and west of Estonia
	EE-E14	Tartu Ringkonnakohtus	Tartu Circuit Court	Kalevi 1, 50050 Tartu / http://www.kohus.ee/et/ringkonnakohtud/tartu-ringkonnakohtus	court of 2nd instance	x	x	x	EE-L24	Court of 2nd instance for challenging decisions made by Tartu Administrative Court

	Code	Name of entity	English name of entity	Address / web access	Role in permitting	Relevant to			Statute or relevant piece of legislation	Remarks
						exploration	extraction	post extraction		
	EE-E15	Tallinna Ringkonnakohtus	Tallinn Circuit Court	Pärnu mnt 7, 15084 Tallinn / http://www.kohus.ee/et/ringkonnakohtud/tallinna-ringkonnakohtus	court of 2nd instance	x	x	x	EE-L24	Court of 2nd instance for challenging decisions made by Tallinn Administrative Court
	EE-E16	Riigikohus	Supreme Court	Lossi 17, 50093 Tartu / http://www.riigikohus.ee/	highest court (3rd instance)	x	x	x	EE-L24	Supreme Court, decides on appeals on district courts' decisions. NB: the Supreme Court has wide margin of discretion on whether to review a case at all.

1.5. Licensing procedures for geological investigation and exploration

Summary of all the different permitting procedures for exploration

Exploration can take two forms according to the Estonian laws and different permits are therefore required to undertake them. A more general geological study is called “geological investigation (*üldgeoloogiline uurimistöö*)”, the more detailed study of mineral resources and reserves “geological exploration (*geoloogiline uuring*)”. Geological exploration must be carried out, if the objective is that mineral reserves will be recorded on the list of mineral deposits of Environmental Register and deposit will be made available for mining. Similar requirements apply to both applications for the permit as well as permitting procedures. Issuer of the permits is the Environmental Board (*Keskkonnaamet*).

Description of the permitting procedures

Permitting procedures begins with submitting an application for a permit, which describes the planned activity and its most important aspects (e.g. size and location of the area studied). After formal checks of the application, the authority (issuer of permit) will publish a notice concerning the initiation of proceedings in the official publication *Ametlikud Teadaanded* and begins the drafting of the decision and consultations. The Commission of Mineral Resources (an advisory body) and the local government are always consulted as regards the geological investigation and exploration permit applications (for details, see below). If the local government refuses to approve the permit, an approval from the Government of the Republic is needed to issue the permit.

If the geological investigation or exploration itself is likely to result in significant environmental impacts, an environmental impact assessment (EIA) will be carried out.

Open proceedings will be carried out, meaning that there will be a public notice and the permit application as well as draft decision will be published for comments for at least 2 weeks.

If several applications are submitted for the same area and all permits cannot be issued, an auction may be organised to decide who will receive the permit. Although there are detailed procedural rules for this, auctioning has rarely taken place in practice.

In case no grounds for refusal of the permit (e.g. administrator of state assets has not given its approval or the applicant has been punished for breaking mining waste management rules) are found in the course of the proceedings, the permit will be issued. The permit will include conditions for carrying out the geological investigation or exploration, e.g. period of validity of the permit, area studied, number and depth of boreholes etc.

Non-compliance with the permit conditions may result in amendment or even revocation of the permit.

Public entities involved in the process

The Commission of Mineral Resources (an advisory body) and the local governments must always be consulted before issuing the permits for geological investigation and exploration. The Commissions’ opinions are not legally binding. The local governments’ refusal to approve the permit is “semi-binding”, i.e. permits may not be issued without an overruling consent of the Government of the Republic (issuer of the permit is entitled to decide on a

case-by-case basis whether to ask for the overruling consent or refuse the permit on its own).

In some cases, additional, legally binding consents of ministers is needed i.e.:

- the consent of the minister responsible (currently minister of defence), within the territory of an object with a national defence purpose or in the special zone surrounding the object;
- the consent of the minister responsible (currently minister of interior affairs), in places where the geological investigation or geological exploration may disturb border peace or impede the guarding of the state border, and also in cemeteries;
- the consent of the minister responsible (currently minister of culture), in heritage conservation areas and on immovable monuments or their protected zones;
- the consent of the minister responsible (currently minister of economic affairs and infrastructure), when applying for a permit for geological investigation for prospecting metal raw material or oil shale or when applying for an exploration permit for exploring metal raw material or oil shale.

Timeframes

After application for a permit has been submitted to the issuer of permit and the latter sends it to the local government, the latter has 2 months to give its approval or refuse. Public consultation (which can run parallel) will last for at least 2 weeks. Issuer of permit will send the application to the Commission of Mineral Resources which has 2 months to give its opinion.

All other steps must be taken as soon as possible, without unreasonable delays (this is a general principle of administrative proceedings). The issue of a permit for geological investigation or an exploration permit shall be decided within one year after receipt of a due application. The issuer of permits may extend the term if there appear circumstances which do not allow deciding on the issue of the permit within this term.

Geographic areas covered by the permit

Geographic area covered by permit is essentially 3D, as both the surface area as well as depth of exploration are determined. The territory of the areas of geological investigation granted to one person for prospecting the same mineral resource by permits cannot be larger than 100 km².

Designation of the area is based on the application; this is reduced only if grounds for refusal are apparent for part of the area.

Rights and duties of the permit holder

The holder of the permit is entitled to carry out the exploration according to the permit and in the course of operations, to take from the earth's crust and use rock, sediments, liquid or gas indicated in the permit in an amount which is necessary for the exploration. Its duties include both following the terms of the permit as well as statutory requirements. The latter are provided in the Earth's Crust Act and Regulation No 52 of the Minister of Environment from 17.12.2018 (this contains very detailed provisions on how to carry out the geological investigations and explorations). As a general requirement, damage to environment and persons should be minimized. Permits are issued for a limited time period; the maximum period is 5 years.

Legal nature of the rights

Exploration rights under the permits are exclusive and transferable. To reregister a permit, an application to change the name of permit holder must be submitted to the permit issuing authority. Reregistration will be refused if a new holder of the permit was punished for breaching mining waste management rules.

Links between the exploration permit and a future permit for extraction

According to the Earth's Crust Act, extraction permits cannot be issued without consent of the holder of the permit for geological investigation or exploration permit covering the planned mining area during the validity of the latter permit and within one year after the end of its validity. Essentially this means that the holder of the geological investigation or exploration permit can block others from applying for a mining permit up to a year after investigation or exploration permit's term is over and can apply for mining permit during this time without competition.

Average length to get an exploration permit

On average 8 months. Length depends on many factors, including the opinion of the local government and the priority given to the application by the authorities. However, in case an EIA is carried out, then the issuing procedure will be stopped until the EIA is finalized.

Main problems or major modifications related to exploration permitting

In general, the permitting procedures in themselves are neither excessively expensive nor burdening to the applicants. In some cases, permitting procedures may take considerable amounts of time because of the consents required from other authorities. If these voice concerns over planned geological investigation and/or survey, finding compromises may result in longer proceedings. However, this is not always the case.

Insufficiency of (qualified) staff in all authorities involved as well as prioritizing tasks may also cause delays.

1.6. Permitting procedures for extraction

Summary of all the different permitting procedures for extraction

Permits for extraction of mineral resources (mining permits) are issued based on an application submitted to the competent authority. The competent authority is Environmental Board.

Description of the permitting procedures

Permitting procedures begins with submitting an application for a permit, which describes the planned activity and its most important aspects (e.g. mineral deposit concerned, annual extraction volumes, documents certifying right of land use).

After formal checks of the application, the issuing authority (issuer of permit) will publish a notice on receipt of an application for an extraction permit in the official publication *Ametlikud Teadaanded*. The notice may also be published in a national, county and local newspaper and begins the drafting of permit and consultations. The Commission of Mineral Resources (an advisory body) and the local government are always consulted in the proceedings (for details, see below). If the local government refuses to approve the permit, an approval from the Government of the Republic is needed to issue the permit.

If mining activity is likely to result in significant environmental impacts, an environmental impact assessment (EIA) will be carried out. EIA is mandatory for open-cast mining where the surface of the site exceeds 25 hectares or peat extraction where the surface of the site exceeds 150 hectares or underground mining.

Open proceedings will be carried out, meaning that there will be a public notice and the permit application as well as draft decision will be published for comments for at least 2 weeks.

If several applications are submitted for the same area and all permits cannot be issued, an auction may be organised to decide who will receive the permit. Although there are detailed procedures for this, auctioning has rarely taken place in practice.

In case of no grounds for a refusal of the permit (e.g. applicant does not have the right to use privately-owned land, mining is prohibited for nature conservation reasons, mining area cannot be restored with reasonable expenses etc.) are found in the course of the proceedings, the permit will be issued. The permit will include main conditions for carrying out mining activities, e.g. period of validity of the permit, size of mining claim (*mäeeraldis* – area where the resources will be extracted from), maximum permitted rate of extraction of mineral resources etc. Non-compliance with the permit conditions may result in amendment or even revocation of the permit.

Public entities involved in the process

The Commission of Mineral Resources (an advisory body) and the local governments must always be consulted before issuing mining permits. Commissions' opinions are not legally binding. Local governments' refusal to approve the permit is "semi-binding", i.e. permits may not be issued without an overruling consent of the Government of the Republic (issuer of the permit is entitled to decide on a case-by-case basis whether to ask for the overruling consent or refuse the permit).

In some cases, additional, legally binding consents of ministers is needed i.e.:

- The minister responsible (currently minister of defence) if the permit is applied for within the territory of objects with a national defence purpose or if extraction may damage objects with a national defence purpose or cause disturbances in the operation thereof;
- the minister responsible (currently minister of interior affairs) if extraction may disturb border peace or impede the guarding of the state border, and also if mineral resources are planned to be extracted in cemeteries;
- the minister responsible (currently minister of culture) if the extraction permit is applied for in heritage conservation areas and on immovable monuments or their protected zones;
- the minister responsible (currently minister of economic affairs and infrastructure) if the extraction permit is applied for the extraction of metal raw material or oil shale.

Timeframes

After application for a permit has been submitted to the issuer of permit and the latter sends it to the local government, the latter has 2 months to give its approval or refuse. Public consultation (which can run parallel) will last for at least 2 weeks. Issuer of permit will send the application to the Commission of Mineral Resources within which then has 2 months to give its opinion.

The issue of an extraction permit shall be decided within one year after receipt of a due application. The issuer of extraction permits may extend the term if there appear circumstances which do not allow deciding on the issue of a permit within this term.

All other steps must be taken as soon as possible, without unreasonable delays (this is a general principle of administrative proceedings).

Geographic areas covered by the permit

In the permit, the geographic area is only determined in 2D (area in hectares). The designation of the area is based on the application for permit. However, there is one important restriction to the freedom to choose the area in the Earth's Crust Act. Namely, parts of the mineral deposit where, due to the quantity or condition of mineral reserves, their use is not economically justified any more, should not be left out of the mining claim designated in the permit. As an exception to this, parts of deposits may be left out of the mining claim to ensure safe working environment, preservation of property and prevention or reduction of excessive environmental hazards.

Rights and duties of the permit holder

The holder of a mining permit has the right to extract mineral resources according to the permit. This right also covers the right to prepare the area, prepare the excavated raw materials for further processing and carry out further geological exploration within the boundaries of the mining claim without an additional permit.

On the other hand, the holder of an extraction permit must follow the rules provided in the permit as well as statutory provisions regarding extraction of mineral resources. Latter are found in the Earth's Crust Act and regulations issued based on it.

Earth's Crust Act contains general requirements to extraction (e.g. minimizing damage to environment and persons, submission of reports, payment of mining tax) as well as rules on restoration of land after mining. There are also technical safety requirements applicable to mining activities (e.g. obligation to prepare technical project documentation for the mining, employ and assign a competent specialist responsible for the mining operation etc.).

Permits are issued for a limited time. The maximum period of validity is 30 years for mining dolostone, phosphate rock, crystalline building stone, limestone, metal raw material, oil shale, clay or peat deposit and a sand deposit of national importance. The maximum period is 15 years in a lacustrine lime, lake mud, gravel or sea mud deposit and a sand. If it appears during the permitting that these terms are too short for exhausting the deposit, the permit can be issued for a period that is 5 year longer than normally. Period of validity may also be extended (by 30, 10 or 5 years, depending on the type of deposit).

Legal nature of the rights

Mining rights under the permits are exclusive and transferable to another person whose area of activity according to the commercial registry is mining. To reregister a permit, an application to change the name of permit holder must be submitted to the permit issuing authority. Reregistration will be refused if a new holder of the permit was punished for breaching mining waste management rules.

Links between the exploration permit and a future permit for extraction

A mining company already holding an extraction permit in a mineral deposit may apply for extension of its mining claim. Extension is possible for adjoining or separate mining claims within the same mineral deposit if the mineral reserves extracted on the basis of the existing permit last for up to five years. Application for extension of the mining claim is processed in the same way as a permit for a new mining area.

Average length to get an exploitation permit

On average 16 months if no EIA proceedings are initiated and auctioning is not necessary. Proceedings are considerably longer if environmental impact assessment (EIA) must be carried out, as an EIA itself takes usually 12-18 months (more, if there are concerns voiced by the public).

Main problems or major modifications related to extraction permitting

Permit proceedings as such are not too expensive, but can take a considerable amount of time to complete. Some of the reasons are hard to tackle and are caused by the complexity of the issue at hand (e.g. length of environmental studies or public consultation needed for decision-making).

1.7. Court cases on permitting procedures

The procedural and institutional framework of court appeals

Appealing a permitting decision in Estonia is in general rights-based. That is, to have the right to submit an appeal to a permitting decision to a court of law (legal standing) the decision must infringe the rights of the person submitting the appeal. In practice, if a permit is not granted, the applicant has a right to challenge this decision. In case a permit is granted, the person whose rights it infringes, e.g. neighbours may appeal the decision in the court of law. Generally, the courts only review the decision in the light of rights that are supposedly infringed, e.g. if a neighbour opposes a mining permit, only arguments related to his property and health are accepted by the court; arguments related to harm to protected species, for example, would be disregarded.

However, environmental NGOs have a right to challenge permits that are related to their environmental protection aims or previous activity. This means they may challenge permits on the grounds that it contravenes provisions of environmental law that are not related to someone's subjective rights, e.g. rules on protection of habitats and species.

Courts will review both the procedural as well as substantive aspects of the challenged permit in the extent described above. However, in case the permitting authority has applied discretionary decision-making powers, the court is limited to assessment whether the authority has identified all relevant rights and interests, weighed them in a rational way and given sufficient grounds for its decision in written form.

The courts have the power to annul the decision either as a whole or partly, but not to change it.

Courts may also apply injunctive relief, e.g. temporarily suspend the validity of the permit if this is necessary for ensuring that no rights or interests are permanently and irreversibly damaged during the period a case is being adjudicated.

The Estonian court system has three levels. Legal disputes on exploration and mining permits are in the first instance heard in the Administrative Courts (*halduskohus*). Appeals to Administrative Court decisions can be made at the Circuit Courts (*ringkonnakohus*). In case one of the parties is not satisfied with the decision of the Circuit Court, it may submit an application of cassation to the Supreme Court of Estonia (*Riigikohus*). Unlike the Circuit Courts, the Supreme Court has a wide margin of discretion to decide whether to hear a case or not (it does so only in cases of clear maladministration of justice by Circuit Courts or if a precedent need to be created for future case law).

Supreme Court also acts as a constitutional court. Right to challenge constitutionality of legislation is, however, limited. This can only be done by President of Estonia, Chancellor of Justice (the ombudsman), council of a local municipality and the Parliament. Administrative or Circuit Court may decide not to apply a certain provision of law due to its unconstitutionality and in this case, the issue will be taken up in the Supreme Court too.

Quantitative data or expert assessment of the last 20 years in minerals permitting cases

Some of the most important decisions by the Supreme Court regarding mineral rights are presented below in Table 3.

Table 3: Estonia. Overview of decisions made at the Supreme Court regarding mineral rights.

Field	Date	Annotation
Geological explorations	2015-11-13	The main function of local government is not to give out permits for geological explorations, this is their secondary function, this is a national issue.
	2010-06-10	Developers have to have the right to challenge the refusal for geological exploration permit.
	2009-09-30	Government can grant permit for exploration even if the local government is refusing to give the permit.
Refusals for mining permits	2013-10-15	<p>Permit for extraction does not replace other regulations, if developers are granted an extraction permit, they still need to make sure that they are following all other regulations as well.</p> <p>A permit for extraction can be granted in regions where the local areal planning does not foresee any mining activities. In such a case the mining permit is still valid but cannot be used before the areal planning is changed.</p> <p>A permit for mining can be granted in regions where the local areal planning does not foresee any mining activities. In such</p>

Field	Date	Annotation
		a case the mining permit is still valid but cannot be used before the areal planning is changed.
Protection of earth crust	2014-04-24	Minerals in earth crust have to be used in a sensible manner and usage of land containing mineral resources has to be regulated. This does not mean however that any other kind of economic activity would be impossible in places that have mineral resources. It means that before granting the right for activities that could limit the utilization of mineral resources, an assessment has to be carried out.
Environmental impact assessment	2015-10-07	Splitting one project into many small ones (that individually would not need environmental impact assessment) does not mean that the developer does not need to carry out the environmental impact assessment required in the first place.
	2015-05-13	Mining activities with significant environmental impacts need an environmental impact assessment, in which enough counter measures for mitigating the impact are described.
	2014-12-15	A new environmental impact assessment does not need to be carried out just because the owners of the impacted properties have changed.
Environmental fees	2016-03-21	Environmental fee is not a tax, environmental fee is the price for using environmental resources.
	2013-12-16	Government cannot change environmental fees on a short notice. These changes are unconstitutional and need to be repealed.
	2005-03-17	Paying an environmental fee does not mean that the person responsible for pollution would not have to compensate for the damages that this pollution causes to third parties.
Environmental protection principles	2007-02-28	All decisions concerning environmental protection have to be made using the principle of caution.

Case No.: 3-4-1-27-13

Name of court: Supreme Court of Estonia (Constitutional Review Chamber)

Date of judgement: 2013-12-16

Name of plaintiff (or appellant): Chancellor of Justice

Name of defendant: Government of the Republic

Judgment in favour of: Chancellor of Justice

Relevance to which stage of permitting (exploration/extraction/post-extraction): extraction

Piece of legislation on which the claim (or appeal) is based (providing the Art. No. and topic as well, if any): Regulation of the Government of the Republic of 12 November 2009 No

171 on environmental fees related to extraction of water (Art 1) and Regulation of the Government of the Republic of 12 November 2009 No 172 on environmental fees for extraction of mineral resources (Art 1)

Description (summary) of the case: The case was brought by the Chancellor of Justice because of complaints from mining companies, which were against the sudden rise in environmental fees imposed by the Government. The regulations in question first foresaw a steady rise of environmental fees between 2010-2015. In October 2012, however, the Government changed the regulations in a way that would have increased the fees much more rapidly. Chancellor of Justice was on the opinion that such change of rules was against the principle of legal certainty and not justified in this instance.

The Government claimed that firstly the principle of legal certainty did not apply as the new fees were not applied retrospectively and even if it applied there were good reasons to change the fees (need to increase resource efficiency, faster than expected economic growth).

The Supreme Court found that principle of legal certainty did apply in this case. The proposed changes infringed the mining companies' freedom of entrepreneurship. Although the goals of increasing resource efficiency and public income were legitimate, the court found that the circumstances based on which the fees are determined, had not changed so significantly as to justify the changes in fees. Therefore, the amendments were deemed unconstitutional and annulled by the Supreme Court.

Case No.: 3-4-1-9-09

Name of court: Supreme Court of Estonia (Constitutional Review Chamber)

Date of judgement: 2009-09-30

Name of plaintiff (or appellant): Council of Koigi municipality

Name of defendant: Estonian Republic

Judgment in favour of: Estonian Republic

Relevance to which stage of permitting (exploration/extraction/post-extraction): exploration and extraction

Piece of legislation on which the claim (or appeal) is based (providing the Art. No. and topic as well, if any): Earth's Crust Act, Art 20 and 34

Description (summary) of the case: The constitutionality of certain provisions of Earth's Crust Act was challenged by the Koigi municipality. The provisions prescribe that in case a local municipality does not agree with issuing of an exploration or mining permit, the permit may still be issued if so decided by the Government of the Republic. The Koigi municipality found that this was unconstitutional violation of its autonomy, as the exploration and mining permits have a great influence over municipalities' decisions, especially as regards land-use and spatial planning.

The Supreme Court agreed that both exploration and mining decisions have some influence on the functions and autonomy of local municipalities. However, the Court found that final decision-making over exploration and mining of mineral resources is not a local issue. As no municipality has overview of demand and supply of mineral resources in the country as a whole they would not be able to make fully informed choices on these matters. The current rules enable the balancing of local and country-level interests in theory; to ensure that in practice both the municipalities and the Government of Estonia must reason their

decisions from respective perspectives. Supreme Court also found that the municipalities should be able to challenge decisions by the Government in a court of law.

Case No.: 3-3-1-35-13

Name of court: Supreme Court of Estonia

Date of judgement: 2013-10-15

Name of plaintiff (or appellant): MTÜ Ruu küla heakorra selts

Name of defendant: Environmental Board

Judgment in favour of: MTÜ Ruu küla heakorra selts

Relevance to which stage of permitting (exploration/extraction/post-extraction): exploration and extraction

Piece of legislation on which the claim (or appeal) is based (providing the Art. No. and topic as well, if any): Environmental Impact Assessment Act (Art 22)

Description (summary) of the case: MTÜ Ruu küla heakorra selts (a local NGO) challenged the mining permit to open a quarry on several grounds, including failure to hold a second public consultation after an EIA report had been amended, although this was required by the EIA Act (Art 22(5)2)).

The Supreme Court held that the failure to hold the second public consultation was unlawful. The Court reiterated (based on previous case-law) that in environmental matters the lawfulness of the proceedings is crucial for legality of the decision made. Due to wide margin of discretion, following the procedural requirements to the full extent is the only way to ensure that the final decision is lawful. If not all procedural requirements are fulfilled, it is impossible to assess whether the failures had an impact on the final decision or not and in such a case the decision should be annulled.

Conclusions

Estonian court system has a relatively low barrier of entry which has resulted in quite a comprehensive case law. The Supreme Court has ruled on many issues. Most notably it has explained division of powers between state/municipalities in the field of exploration and mining of mineral resources, clarified the principles and goals behind environmental fees related to mining and how these should be set and highlighted the importance of due process for the legality and validity of exploration and mining permits.

1.8. Success rates of exploration and extraction permits

Processing of applications for mineral rights at the Environmental Board of Estonia

The sample consists of decisions made during 01.01.2017 – 31.12.2018 about granting or declining the permits for extraction or geological exploration. This period was chosen because starting 01.01.2017 Environmental Board is the only permitting authority.

Table 4: Estonia. Decisions made during 01.01.2017 - 31.12.2018

	Extraction permit	Geological exploration permit
Granting the permit	77	113
Refusing the permit	4	5

Source: Estonian Environmental Board

The Environmental Board has made a total of 199 decisions; the statistics are presented in Table 4.

The success rate for exploration and extraction permits were of 95% and 96% respectively. In some cases permit applications are withdrawn by the applicants, when it becomes clear, that the permit will not be issued. Considering that, the success rates may actually be somewhat lower.

1.9. EU legislation impacting permits and licenses for exploration and extraction

- 1) Does your country have any restrictive regulation on the private or legal entities performing the duties of an exploration or extraction concessioner, operator and/or holder of mineral rights as compared to the Services Directive (2006/123/EC)?

The main restriction / requirement related to provision of services and free movement thereof related to exploration and extraction for companies is the requirement to employ a "specialist in charge". This is a person who is considered to be competent to organise and direct mining operations, secondary utilisation of workings or preparation of relevant plans. According to the Earth's Crust Act and Regulations based on the Act, the specialist must be competent (have professional training, work experience and necessary knowledge).

- 2) Does any of your permitting documentation require the involvement/signature of a geologist or mining engineer? If yes, which are these permits? Does it require a BSc or MSc or PhD or chartered (certified) professional?

Currently there is no such requirement.

- 3) Do you have legislation on financial guarantees (with regard to the Extractive Waste Directive, Art. 14)? Is the cost calculation of this guarantee done by an independent third party?

Yes. The requirement to have financial guarantees for operating a mining waste facility is provided in the Waste Act (Art 35.3). The amount of the guarantee is calculated by the authority issuing waste permits (Environmental Board), but this is based on the assessment of costs of rehabilitation work made by independent and sufficiently qualified third parties.

- 4) Is there a list of inert mine waste published in your country in accordance with Art. 1(3) of Comm. Dec. 2009/359/EC?

Yes.

- 5) Do you use the risk assessment of 2009/337/EC Commission Decision of 20 April 2009 on the definition of the criteria for the classification of waste facilities in accordance with Annex III of Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries for abandoned sites as well?

Yes.

- 6) Has your country applied the waiver of the Landfill Directive paragraph 3 of Art. 3: MS may declare at their own option, that the deposit of non-hazardous non-inert mine waste, to be defined by the committee established under Art. 17 of this Directive can be exempted from the provisions in Annex I, points 2, 3.1, 3.2 and 3.3 (location screening, multiple barriers, leachate collection)?

Yes, this derogation is foreseen by the Regulation of the Minister of Environment on construction, use and closing down of landfills, Art 14(5).

- 7) Does a mine operator have to prepare and submit both a general waste management plan and a mine waste management plan as well? To the same or separate authorities?

Currently the mine operator needs to prepare and submit just a mining waste management plan, there is no obligation to prepare a general waste management plan.

- 8) Has your national legislation transposed the Accounting Directive (2013/34/EC), with special regards its Art. 41-48 on the extractive industry? Do these rules on financial reporting appear in the concession law or mining act either?

Yes. These rules are found in Art 45.2 of the Accounting Act.

- 9) Has your national legislation transposed the Transparency Directive (2004/109/EC, 2013/50/EU), especially Article on the extractive industry? Do these rules appear in the concession law or mining act either?

Yes. These rules are found in Art 184.12 of the Securities Market Act.

- 10) Does your competent authority ask for or check the CE marks of the exploration or extraction equipment when permitting or when having on-site inspections? Does the mining authority have a regulatory/supervision right in product safety/market surveillance in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance?

The mining authorities do not have the regulatory/supervision right in accordance with the Regulation (EC) No 765/2008. Supervision over exploration or extraction equipment and its conformity with EU requirements is exercised by the Technical Regulatory Authority. Due to this and due to the fact that no specific requirements to exploration or extraction equipment are set during permitting, the CE marks are not checked by environmental authorities neither when permitting or during later on-site inspections.

- 11) Do you have national or regional guidance document or a piece of legislation specific to the Environmental Impact Assessment (EIA) on mineral extraction (incl. mineral processing, waste management, closure)? If yes, please provide link and/or text in English and/or in original language.

No.

- 12) Could you please specify that at which permitting stage (value chain stage, e.g. non-penetrative prospecting, exploration, setting mining plot, approving technical operation plan, starting extraction) is a detailed EIA is required in your country?

EIA may be required when applying for an exploration permit (EIA for exploration activities) or when applying for an extraction permit (EIA for extraction and closure).

- 13) Does your country apply the option of Article 4(b) of the EIA Directive (2011/92/EU) („... for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10 ...

through thresholds or criteria set by the Member State”) for mining projects? If yes, under what criteria?

Yes, we have specified, that deep drillings start at 1000 m.

- 14) Was there any case in your country when Article 10 of the EIA Directive (2011/92/EU) was applied („limitations ... with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest“)? Which were these exclusions, if any?

We are not aware, that there have been such cases with extractive industry projects. In general we have national laws for protecting commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest. These are applied where appropriate.

- 15) Do competent authorities in your country apply the IPPC permit and the Extractive Waste BREF for mining under the scope of the Industrial Emissions Directive?

No.

- 16) Do you have national BREF(s) (Best Available Technique Reference Document(s)) specific to the whole (or stages or subsectors) minerals extractive sector?

No.