



MINLEX - Austria Country Report

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TABLE OF CONTENTS

- 1. AUSTRIA..... 2
 - 1.1. Summary of findings 2
 - 1.2. General introduction 3
 - 1.3. Legislation governing mineral exploration and extraction 5
 - 1.4. Authorities governing mineral exploration and extraction11
 - 1.5. Licensing procedures for exploration17
 - 1.6. Licensing procedures for extraction19
 - 1.7. Court cases on permitting procedures29
 - 1.8. Success rates of exploration and extraction permits33
 - 1.9. EU legislation impacting permits and licenses for exploration and extraction34

1. AUSTRIA

1.1. Summary of findings

Austria's mineral extraction sector is dominated by the production of industrial minerals (e.g. talc, salt, and magnesite) and construction minerals (e.g. aggregates). Most metal mines have been closed except a large iron ore (Styrian Erzberg) and a tungsten mine still in operation. State-owned minerals are rock salt, oil, gas and uranium. "Free for mining" minerals in Austria include all metallic ores and numerous industrial minerals. Landowner minerals comprise all the remaining minerals, such as dolomite, quartzite, bentonite, diatomite, mica, feldspar, marl, granite, clay, glass sand. Glass sand with SiO₃ content of more than 80 % and clay belong to the free for mining minerals.

Mining in Austria is mainly governed by the Mining Law (MinroG Act No. 38/1999, amended) which regulates the exploration and extraction of all mineral raw materials. The Austrian Mining Law includes a dynamic reference (§ 221a. MinroG) to other Federal Laws. The following laws may be concerned: Commercial Code 1994 (BGBl. Nr. 194), Federal Acts on Environmental Impact Assessment (UVP-G 2000), Water Management (215/1959) and Construction Coordination (BauKG 37/20099), Acts on Nature Protection and Acts on Land Use Planning (each Federal State has its own), the Work Inspection Act 1993 (ArbIG), among others.

Austria has a mixed permitting regime with decentralised and centralised procedures depending on the type of mineral. Two (main) authorities issue the exploration and mining permits: The District Administrative Authority (*Bezirkshauptmannschaft*) at first instance and (provincial) governor for landowner minerals (extracted at the surface), and the Federal Minister of Science, Research and Economy qua national mining authority (*Montanbehörde*) for "free for mining" minerals (including landowner minerals extracted not at the surface) and state-owned minerals. While the federal state is exclusively responsible for certain environmental issues (e.g. construction of waterways), other environmental issues (e.g. nature conservation, water protection, land use planning) rest entirely with the provinces (in German *Länder*). Water permits for free for mining minerals are usually dealt by the national mining authority. Other co-authorities may also be involved, e.g. in the case of archaeologically relevant sites the Federal Monuments Office (BDA).

With regards to exploration, for "free for mining minerals" an exploration licence is required which is usually granted in one month and is valid for 5 years with the possibility for extension; for landowner minerals exploration is part of the approval of an exploitation plan. The exploration of state-owned raw materials is for legal reasons reserved to the State (Art. 68 MinroG); the national mining authority (*Montanbehörde*) has to approve exploration activities.

Concerning extraction, for landowner minerals, the main permitting authority is the District Administrative Authority (for areas < 5 ha a maximum of 6 permits may be required); if the area is > 10 ha for hard rock quarries and > 25 ha for sand and gravel pits, an EIA is normally required. All required permitting procedures are issued from one authority (District Administrative Authority) but necessarily not always one chief negotiator is acting. Several negotiators act for the authority; in many cases the Mining Law (MinroG) and nature conservation laws are taken over by one negotiator, water permission by another negotiator.

The exploitation of "free for mining" minerals requires a mining license granted by the Federal Minister of Science, Research and Economy qua federal mining authority subject to an exploitation plan for five years. The operator also needs to obtain a nature conservation permit and (if needed) a water permit from the district administrative authority. The exploitation of state-owned raw materials requires the approval of an exploitation field for five years. An exploitation field is a space which is not

limited in depth and whose cut surface in the projection level of the national surveying system is a flat polygon. The Mining Law states that when considering an application for an extraction licence (free for mining or land-owned minerals), the owner of the land must be involved in the procedure. The average time for the granting of permits (granted parallel) takes 6 months for nature conservation, for water permits between 6 months and 2 years, for approvals related to the Mining Law an average of 1 to 2 years. In average (all costs included) mining procedures costs (without reallocation process) ranges from € 45,000 to € 50,000.

To identify mineral occurrences in conflict-free areas, the Austrian Mineral Resources Plan (AUTMINPLAN) was prepared by the Minister of Economy which strives to achieve a broad consensus among the federal government, the federal states and businesses. It thus represents an important "contract across generations" for safeguarding the supply of mineral resources. Permitting success rates are high in Austria. **There is a success rate (estimated) of up to 80 % for first-time applications, if the site is included in the designated plans of raw material priority areas of the AUTMINPLAN** and no other disturbances (e.g. local community campaigns, disagreements between communities) occur. The remaining 20 % are approved on appeal, and therefore the permitting success rate is almost 100 % within such areas. Outside of these areas, mining is also possible i.e. not forbidden by the AUTMINPLAN. The AUTMINPLAN itself has no legally binding character.

1.2. General introduction

The Republic of Austria is a central European country of an estimated 8.7 million inhabitants. The Austrian national territory covers 84,000 km², with more than 62 percent lying within the Alpine region. Austria's population density is around 104/km². In 2015 nominal GDP/per capita amounted to \$ 47,824. The Austrian Federal State is a parliamentary democracy **comprising nine provinces (Länder)**: Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria, Vorarlberg and Vienna. The nine provinces have their own state constitutions. However, the state constitutions cannot overrule the Austrian Federal Constitution. Provinces also have their own legislative bodies (*Landtag*) and separate executive bodies represented by the provincial state governments. The different regulations in the provinces also play a role in the exploitation of mineral raw materials. In the nine provinces, there are, for example, different land use planning and nature conservation regulations in force.

Mineral ownership

The Austrian Mining Law (MinroG), BGBl I 38/1999, as last amended by BGBl I 95/2016, distinguishes between "free for mining" raw materials (§ 3), state-owned (§ 4 (1)) and landowner raw materials (§ 5). Free for mining minerals wherever they exist are not owned by anyone (with the exception of minerals listed in § 3 (1) line 4 of the MinroG, which are the property of the landowner). They can be explored and extracted by anyone who meets certain legal requirements. State-owned minerals are the property of the federal government. Landowner minerals are the property of the landowner.

Free for mining minerals in Austria include all metallic ores, from which iron, manganese, chromium, molybdenum, tungsten, vanadium, titanium, zirconium, cobalt, nickel, copper, silver, gold, platinum and platinum group metals, zinc, mercury, lead, tin, bismuth, antimony, arsenic, sulphur, aluminium, beryllium, lithium and rare earth minerals can be extracted technically; additionally, gypsum, anhydrite, barites, fluorite, graphite, talc, china clay (kaolin), leukophyllite, plus all kinds of coal and oil schists and magnesite, limestone (with a calcium carbonate content of more than 95 percent) and diabase (if these mineral resources occur as hard rock), quartz (with a silicon dioxide content of more than 80 percent), clays (if they occur as soft rocks), coal, gypsum and anhydrite, graphite and talc. Rock salt, oil, gas and uranium/thorium are state-owned minerals.

Landowner minerals comprise all the remaining minerals, such as dolomite, quartzite, bentonite, diatomite, mica, feldspar, marl, granite, clay, glass sand. Glass sand with SiO₃ content of more than 80% and clay belong to the free for mining minerals.

The state has the responsibility for issuing mineral rights.

1.3. Legislation governing mineral exploration and extraction

Mining in Austria is basically governed by the Mining Law (MinroG Act No. 38/1999, subsequently amended) which regulates the exploration and extraction of all mineral raw materials. Austrian Mining Law includes a dynamic reference (§ 221a. MinroG) in relation to other Federal Laws (i.e. references in the MinroG related to other federal laws are to be seen as "dynamic" but do not automatically determine obligations).

Other laws which can be of relevance for permitting procedures are the Commercial Code 1994 (BGBI. Nr. 194), Federal Acts on Environmental Impact Assessment (UVP-G 2000), Water Management (215/1959) and Construction Coordination (BauKG 37/20099), Acts on Nature Protection and Acts on Land Use Planning (each Federal State has its own), the Work Inspection Act 1993 (ArbIG), Forest Law (Forstgesetz 1975) among others.

For prospecting/ exploration and for extraction activities two authorities' issue the corresponding permits: Districts (*Bezirkshauptmannschaft*) for landowner minerals and the Federal Ministry of Science, Research and Economy (in German *Bundesministerium für Wissenschaft, Forschung und Wirtschaft*) on behalf of the national mining authority (*Montanbehörde*) for "free for mining" minerals and state-owned minerals. The responsibility of the district administrative authority concerns only the surface extraction and processing of landowner minerals.

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

Legislative sector	Code	English title	Web link	Licensing 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, and concession	AT L1	Act No. 38/1999 on Mining (Mining Law) MinroG, as amended by BGBI. I <u>95/2016</u>	<u>www.ris.bka.gv.at/Dokumente/BgblPdf/1999_38_1/1999_38_1.pdf</u>	Y	Y	Y	Y	Y	Y	Y		

Legislative sector	Code	English title	Web link	Licensing provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	AT L2	Federal Act on the research of the federal territory for usable minerals (<i>Lagerstätten-gesetz</i>), BGBl I 246/1947	www.ris.bka.gv.at/Dokumente/BgblPdf/1947_246_0/1947_246_0.pdf	N	N	Y	N	N	Y	Y	N	Lagerstättengesetz applies only for "exploration"
	AT L3	Mining Waste Ordinance, BGBl II 130/2010, as amended by BGBl II 132/2013	www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_II_132/BGBLA_2013_II_132.pdf	N	N	N	Y	Y	Y	Y	Y	
	AT L4	Accompanying regulations in connection with the creation of a European pollutant release and transfer register, BGBl I 380/2007	www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2007_II_380/BGBLA_2007_II_380.pdf	N	N	N	Y	Y	Y	Y	Y	
environment	AT L5	Federal Act on Environmental Impact Assessment (UVP-G 2000) BGBl I 697/1993, amended by 77/2012, last amendment 10/05/2016	www.ris.bka.gv.at/Dokumente/BgblPdf/1993_697_0/1993_697_0.pdf	Y	Y	N	Y	N	N	Y	Y	
	AT L6	Act on Immission Protection (Immissionsschutzgesetz Luft, IG-L) BGBl. I 115/1997, amended by law No. 77/2010	www.ris.bka.gv.at/Dokumente/BgblPdf/1997_115_1/1997_115_1.pdf	Y	Y	Y	Y	Y	Y	Y	Y	

Legislative sector	Code	English title	Web link	Licensing provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	AT L7	Act on Noise Protection, different in all states	www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2005_I_60/BGBLA_2005_I_60.pdf	Y	Y	Y	Y	Y	Y	Y	Y	It concerns the Bundes-Umgebungslärmschutz-gesetz, which is relevant for processing facilities; in the case of mining > relevant for IPPC-facilities.
	AT L8	Trade Regulation Act (<i>Gewerbeordnung</i>) BGBl. I 194/1994, amended by 155/2015	www.ris.bka.gv.at/Dokumente/BgblPdf/1994_194_0/1994_194_0.pdf	Y	Y	Y	Y	Y	Y	Y	Y	Gewerbeordnung 1994 is only relevant for minerals processing in certain cases; furthermore, MinroG refers to the Seveso- provisions of the Gewerbeordnung 1994 (the enforcement via MinroG-authority). MinroG contains specific provisions regarding "IPPC-facilities". Seveso provisions and IPPC provisions
	AT L9	Federal Environmental Liability Act (<i>Bundes-Umwelthaftungsgesetz</i>), BGBl. I 55/2009	https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2009_I_55/BGBLA_2009_I_55.pdf	Y	Y	Y	Y	Y	Y	Y	Y	
	AT L10	Chemicals Act (Chemikaliengesetz 1996) BGBl. I 53/1997, amended by 109/2015	www.ris.bka.gv.at/Dokumente/BgblPdf/2000_81_2/2000_81_2.pdf	Y	Y	Y	Y	Y	Y	Y	Y	
	AT L11	Act on Waste Management (<i>Abfallwirtschaftsgesetz</i> 2002) BGBl. I 102/2002, amended by 163/2015	www.ris.bka.gv.at/Dokumente/BgblPdf/2002_102_1/2002_102_1.pdf	Y	Y	Y	Y	Y	Y	Y	Y	

Legislative sector	Code	English title	Web link	Licensing provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
	AT L12	Landfill Directive (Deponieverordnung), BGBl II 39/2008, amended by 291/2016	https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2008_II_39/BGBLA_2008_II_39.pdf	Y	Y	Y	Y	Y	Y	Y	Y	
nature conservation, forestry	AT L13	Act on Nature Protection, separate for each state	www.ris.bka.gv.at	Y	Y	Y	Y	Y	Y	Y	N	
	AT L14	Act on Forest Protection (<i>Forstgesetz</i> 1975) BGBl. I 440/1975, amended by 102/2015	www.ris.bka.gv.at/Dokumente/BgblPdf/1975_440_0/1975_440_0.pdf	Y	Y	Y	Y	Y	Y	Y	Y	
water management	AT L15	Water Management – (<i>Wasserrechtsgesetz</i> 1959), BGBl I 215/1959 amended by No. 54/2014	https://www.ris.bka.gv.at/Dokumente/BgblPdf/1959_215_0/1959_215_0.pdf	Y	Y	Y	Y	Y	Y	Y	Y	

Legislative sector	Code	English title	Web link	Licensing provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
land use planning, spatial development, soil management	AT L16	Act on Land Use Planning, separate for each state	www.ris.bka.gv.at	Y	Y	Y	Y	Y	Y	Y		
transportation, construction, catastrophe protection, police, military	AT L17	Act on Catastrophe Management – separate for each state	www.ris.bka.gv.at	Y	Y	Y	Y	Y	Y	Y		
	AT L18	Allgemeine Bergpolizeiverordnung, BGBl II 114/1959, amended by 21/2002 and II 33/2012	www.ris.bka.gv.at/Dokumente/BgblPdf/1959_114_0/1959_114_0.pdf	N	N	Y	Y	Y	Y	Y	Y	
	AT L19	Construction regulations of the states	www.ris.bka.gv.at	N	N	N	N	N	Y	Y	N	If the Federal building law refers to Kompetenztatbestand "Bergwesen" (Artikel 10 Abs. 1 Z 10 B-VG), no application of the provincial building law is possible.

Legislative sector	Code	English title	Web link	Licensing provisions (Y/N)	Deadlines (Y/N)	Relevant to (Y/N)			Relevant at (Y/N)			Remarks
						exploration	extraction	post-extraction	local	regional	(central) national	
culture heritage												included in Nature Protection Law
Public administration, court procedures	AT L20	Federal Act on Safety and Health at Work (ArbeitnehmerInnenschutzgesetz) BGBl. I 450/1994, amendment by No. 60/2015	www.ris.bka.gv.at/Dokumente/BgblPdf/1994_450_0/1994_450_0.pdf	N	N	Y	Y	Y	Y	Y	Y	worker protection
	AT L21	Opencast mining regulation (Tagbauarbeitenverordnung) BGBl. II 416/2010	www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2010_II_416/BGBLA_2010_II_416.pdf	N	N	Y	Y	Y	Y	Y	Y	worker protection, based on RL 92/104/EWG
	AT L22	Drilling operations regulation (Bohrarbeitenverordnung), BGBl. II 140/2005	https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2005_II_140/BGBLA_2005_II_140.pdf	N	N	Y	Y	Y	Y	Y	Y	worker protection, based on RL 92/91/EWG
	AT L23	Labour inspection BGBl. I 27/1993, amended by 51/2011	www.ris.bka.gv.at/Dokumente/BgblPdf/1993_27_0/1993_27_0.pdf	N	N	Y	Y	Y	Y	Y	Y	worker protection

1.4. Authorities governing mineral exploration and extraction

According to Austrian Mining Law, the Federal Ministry of Science, Research and Economy (in German *Bundesministerium für Wissenschaft, Forschung und Wirtschaft*) on behalf of the national mining authority (*Montanbehörde*) is responsible for all mineral regulations concerning state-owned minerals, "free for mining minerals" and underground mining projects for all minerals.

All other minerals are landowner minerals (including ornamental stones, sand, gravel, crushed rock, etc.) and relevant mineral permits are issued by the competent county authority (*Bezirksbehörde*), although not for all aspects (mining, forest, water law) by the same negotiator. In cases with an area above 10 hectares for hard rock and 25 hectares for sand and gravel, an EIA permit is required.

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

	Code	Name of entity	English name of entity	Address / web access	Role in licensing	Relevant to			Statute or relevant piece of legislation	Remarks
						exploration	extraction	post extraction		
First instance permitting (local, regional, central, national)	AT E1	Montanbehörde Ost - Wien (BMWFW)	Mining authority - Federal Ministry of Science, Research and Economy (BMWFW)	Main office BMWFW and branch office Montanbehörde Ost 1200 Wien, Denisgasse 31	Issue of licenses (mineral rights) and permits for exploration, extraction;	Y	Y	Y	Mining Law (MinroG)	
	AT E2	Montanbehörde West (BMWFW)	Mining authority - Federal Ministry of Science, Research and Economy (BMWFW)	Branch office Montanbehörde West 5020 Salzburg, Aignerstraße 10	Issue of licenses (mineral rights) and permits for exploration, extraction;	Y	Y	Y	Mining Law	

	Code	Name of entity	English name of entity	Address / web access	Role in licensing	Relevant to			Statute or relevant piece of legislation	Remarks
						exploration	extraction	post extraction		
	AT E3	Montanbehörde Süd (BMWFW)	Mining authority - Federal Ministry of Science, Research and Economy (BMWFW)	Branch office Montanbehörde Süd 8700 Leoben, Straußg. 1	Issue of licenses (mineral rights) and permits for exploration, extraction;	Y	Y	Y	Mining Law	
	AT E4	Bezirksverwaltungsbehörden	District authorities (80 in total + 15 statutory cities)	-	Issue of permits for extraction of land owner minerals (aggregates, quarries)	Y	Y	Y	Mining Law	80 district authorities + 15 statutory cities
	AT E5	Landesregierungen der 9 Bundesländer Burgenland, Kärnten, Niederösterreich, Oberösterreich, Salzburg, Steiermark, Tirol, Vorarlberg und Wien	Provincial governments of the 9 provinces Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria, Vorarlberg and Vienna	http://www.burgenland.at http://www.ktn.gv.at www.noe.gv.at https://www.land-oberoesterreich.gv.at/ https://www.salzburg.gv.at www.steiermark.at/ https://www.tirol.gv.at/ www.vorarlberg.at/ https://www.wien.gv.at	Issue of EIA	N	Y	N	Environmental Assessment Law	

	Code	Name of entity	English name of entity	Address / web access	Role in licensing	Relevant to			Statute or relevant piece of legislation	Remarks
						exploration	extraction	post extraction		
	AT E4	Bezirksverwaltungsbehörden	District authorities	-	Issue of plant permit, if outside of mining area (outside MinroG)	N	Y	N	Trade regulation act (GewO)	80 district authorities + 15 statutory cities
	AT E4	Bezirksverwaltungsbehörden	District authorities	-	Check of values and targets set out in law	Y	Y	Y	Air Pollution Impact Act (IGL)	80 district authorities + 15 statutory cities
	AT E4	Bezirksverwaltungsbehörden	District authorities	-	Values and targets set out in law	Y	Y	Y	Federal Noise Protection Act (Bundesumgebungslärmschutzgesetz)	80 district authorities + 15 statutory cities
	AT E4	Bezirksverwaltungsbehörden	District authorities	-	Control of toxic substances	Y	Y	Y	Chemicals Act (ChemG)	80 district authorities + 15 statutory cities
	AT E4	Bezirksverwaltungsbehörden	District authorities	-	Set out rules for the handling of hazardous and non-hazardous waste	N	Y	Y	Waste Management Law (AWG); Waste Management Acts of the provinces.	80 district authorities + 15 statutory cities
	AT E4	Bezirksverwaltungsbehörden	District authorities	-	Remediation of contaminated sites	Y	Y	Y	Act on the Remediation of Contaminated Sites (AlsaG)	80 district authorities + 15 statutory cities
	AT E4	Bezirksverwaltungsbehörden	District authorities	https://www.bmlfuw.gv.at/	Forest protection and controlling	Y	Y	Y	Forest Law	80 district authorities + 15 statutory cities
	AT E4	Bezirksverwaltungsbehörden	District authorities	https://www.bmlfuw.gv.at/	Check of water contamination	Y	Y	Y	Water Act (WRG)	80 district authorities + 15 statutory cities

	Code	Name of entity	English name of entity	Address / web access	Role in licensing	Relevant to			Statute or relevant piece of legislation	Remarks
						exploration	extraction	post extraction		
	AT E4	Bezirksverwaltungsbehörden	District authorities	-	Land use planning controlling	Y	Y	Y	Land use planning	80 district authorities + 15 statutory cities
Second instance permitting (regional, central, national)	AT E5	Landesregierungen	Provincial governments	-	Issue of mining permits (land owner minerals)	N	Y	Y	Mining Law (MinroG)	Web access provincial governments see AT E5
	AT E5	Landesregierungen	Provincial governments	-	Facility management, controlling	N	Y	Y	Trade regulation act (GewO)	Web access provincial governments see AT E5
	AT E6	Bundesverwaltungsgericht	Federal Administrative Court	https://www.bvwg.gv.at/	Issue of mining permits (free for mining minerals)	Y	Y	Y	Mining Law (MinroG)	Decides on BMWFV decrees in MinroG matters
	AT E7	Landesverwaltungsgerichte	State/Regional Administrative Courts	-	Issue of mining permits (land owner minerals)	Y	Y	Y	Mining Law (MinroG)	Decides on regional authorities' decrees in MinroG matters
	AT E8	Landesregierungen; Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft	Provincial governments; Federal Ministry of Agriculture, Forestry, Environment and Water Management (BMLFUW)	https://www.bmlfuw.gv.at/	Management and controlling regarding air pollution	N	Y	Y	Air Pollution Impact Act (IGL)	Web access provincial governments see AT E5

	Code	Name of entity	English name of entity	Address / web access	Role in licensing	Relevant to			Statute or relevant piece of legislation	Remarks
						exploration	extraction	post extraction		
	AT E8	Landesregierungen; BMLFUW	Provincial governments; BMLFUW	https://www.bmlfuw.gv.at/	Management and controlling regarding noise	N	Y	Y	Federal Noise Protection Act (Bundes-LärmG)	Web access provincial governments see AT E5
	AT E8	Landesregierungen; BMLFUW	Provincial government; BMLFUW	https://www.bmlfuw.gv.at/	Management and controlling regarding chemicals	N	Y	Y	Chemicals Act (ChemG)	Web access provincial governments see AT E5
	AT E8	Landesregierungen; BMLFUW	Provincial government; BMLFUW	https://www.bmlfuw.gv.at/	Waste management and controlling	N	Y	Y	Waste Management Law (AWG); Waste Management Acts of the provinces.	Web access provincial governments see AT E5
	AT E8	Landesregierungen; BMLFUW	Provincial government; BMLFUW	https://www.bmlfuw.gv.at/	Remediation of contaminated sites	N	Y	Y	Act on the Remediation of Contaminated Sites (AlsaG)	Web access provincial governments see AT E5
	AT E8	Landesregierung; BMLFUW	Provincial government; BMLFUW	https://www.bmlfuw.gv.at/	Forest protection and controlling	N	Y	Y	Forest Law (ForstG)	Web access provincial governments see AT E5
	AT E8	Landesregierung; BMLFUW	Provincial government; BMLFUW	https://www.bmlfuw.gv.at/	Check of water contamination	N	Y	Y	Water Law (WRG)	Web access provincial governments see AT E5
	AT E8	Landesregierungen	Provincial governments		Land use planning controlling	N	Y	Y	Land use planning	Web access see AT E5
	AT E9	Arbeitsinspektorate des Sozialministeriums	Labour inspection of the Federal Ministry of Labour, Social Affairs &	http://www.arbeitsinspektion.gv.at/inspektorat/Bauarbeiten_Bergbau/Bergbau/	Safety and health at work controlling	Y	Y	Y	Federal Act on Safety and Health at Work and mining-relevant	

	Code	Name of entity	English name of entity	Address / web access	Role in licensing	Relevant to			Statute or relevant piece of legislation	Remarks
						exploration	extraction	post extraction		
			Consumer Protection						regulations (ASchG)	
Court jurisdiction	AT E10	Verfassungsgerichtshof	Constitutional Court	www.vfgh.gv.at	Legal authority for complaints against the findings of the administrative courts, against local authorities	N	Y	Y	All mining-relevant laws	
	AT E10	Verwaltungsgerichtshof	Supreme Administrative Court	www.vwgh.gv.at	Legal authority for complaints against administrative courts	N	Y	Y	All mining-relevant laws	
	AT E11	Bundesverwaltungsgericht	Federal Administrative Court	https://www.bvwg.gv.at	Issue of mining permits (free for mining minerals)	Y	Y	Y	Mining Law (MinroG)	Decides on BMWFW decrees in MinroG matters
	AT E12	Landesverwaltungsgerichte	State/Regional Administrative Courts	-	Issue of mining permits (land owner minerals)	Y	Y	Y	Mining Law (MinroG)	Decides on regional authorities' decrees in MinroG matters

Note:

AT E4: The Trade Regulation (*Gewerbeordnung* 1994) does not play any role in the case of minerals extraction.

AT E5: The district administrative authority issues the permit of extraction of surface landowner minerals. The provincial governor issues the permit if extraction is exceeding the borders of the administrative district.

AT E8: The chemical law can also be enforced by the Bundesminister für Wissenschaft, Forschung und Wirtschaft on behalf of Montanbehörde (for example, in the case of free for mining minerals). For example, in the case of waste, forestry and water law, the district administrative authority often is responsible for issuing permits.

AT E10: VfGH and VwGH also can provide decisions concerning exploration of mineral raw materials.

1.5. Licensing procedures for exploration

Summary of licensing procedures for exploration

Only one authority is responsible for each procedure.

The District Administrative authority issues permits for all land-owned minerals, although, in the case of **exploration for landowner minerals, no permit is required**. The **permits for exploring for free for mining and state-owned minerals are issued by the Federal Ministry of Science, Research and Economy** (in German *Bundesministerium für Wissenschaft, Forschung und Wirtschaft*) on behalf of the national mining authority (in German *Montanbehörde*).

Differences in licensing for the different types of mineral deposits

Austrian Mining Law (MinroG) distinguishes between prospecting and exploration. Permits are only issued through expressions of interest; there is no public tender.

Prospecting (§ 6 and § 7 MinroG)

- Free for mining and landowner raw materials:

Due to the fact that in the first phase of exploration it is not clear which raw materials will be found, it is not possible to differentiate between free for mining and landowner raw material during this phase. At this stage, therefore, it is only necessary to make an announcement to the authority and to report on the findings at the end of each year.

- State-owned raw materials:

The exploration of state-owned raw materials is regulated separately. For legal reasons, exploration is reserved for the State.

Exploration (examination of an area containing mineral occurrences in order to determine if extraction is viable)

- “Free for mining” raw materials

In order to examine natural occurrences of free for mining raw material, an exploration license (*Schurfberechtigung*) is required (§ 8 MinroG), issued by the Federal Mining Department.

- State-owned raw materials

The exploration of state-owned raw materials is for legal reasons reserved to the State (§ 68 MinroG); the authority has to approve exploration activities. The exercise of the rights concerning rock salt is reserved for Austrian Salinen AG.

Note: The State does not use explore these minerals but gives the right to companies (based on contracts).

- Landowner minerals

The exploration of landowner minerals does not require any permission.

Description of licensing procedures

In order to prospect for free for mining mineral resources, an exploration permit, known as a "*Schurfberechtigung*", is required. This is the exclusive right to explore a deposit for the purpose of determining the exploitability in an area approved by the authority. If the exploration licence is awarded, the operator is required to provide a work programme exploring type, extent, purpose, timing, safety measures and responsibilities (§ 18 MinroG).

Average time required to obtain a permit

In line with the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz AVG*) the authority has a legal timeframe of six months from the date of a request to announce a decision. This timeframe is only relevant in the case of free for mining minerals, since the exploration of landowner minerals does not require a permit. It is standard practice for the authorities to require about three months to grant an exploration license.

Approval period

An exploration license (*Schurfberechtigung*) is awarded for the duration of the current year and the next four calendar years. Extensions for further periods of five years are possible, if it can be proved that exploration has been carried out in at least one of the five calendar years (§ 13 (1) MinroG).

Geographic areas covered by the permit

The area is limited to a radius of 425 m, however, not limited by depth (§ 9 (1) MinroG).

Rights and duties of the licensee

An exploration license offers the exclusive exploration right for free for mining minerals (§ 9 (1) MinroG). The mandatory work programme shall ensure safety, including measures for securing the surface usage after completion of exploration (§ 18 (1) MinroG).

Legal nature of the right

Prerequisites for the acquisition of an exploration license, rights and duties of a licensee, and the termination of an exploration license are regulated under §§ 8 to 16 MinroG.

Links between the exploration permit and a future license for extraction

When the natural occurrence has been explored, and has been approved as mineable, and the operator can prove that the required technical and financial resources exist, the authority can issue a mine licence (§ 25 (1) MinroG), which, in turn, is the basis for a future extraction permit.

Key problems or major modifications related to exploration licensing

In the case of many areas containing mineral occurrences, exploitation would be in contradiction with regional land use planning. To identify mineral occurrences in conflict-free areas, the Austrian Mineral Resources Plan (AUTMINPLAN) was established. Mineral occurrences that are proven to be worth protecting because of quality, quantity and because they do not coincide with conflict areas in terms of land-use have been handed over to the competent provincial authorities, declaring them to be raw material

safeguarding areas in land use planning. Information for Austria therefore already exists; the AUTMINPLAN is a best practice example¹.

1.6. Licensing procedures for extraction

Summary of all the different permitting procedures for extraction

Austrian Mining Law includes a dynamic reference to other Federal Laws (§ 221a. MinroG). If MinroG refers to provisions of several (mining-related) laws, these need to be taken into account, as amended from time to time, by the competent authority issuing the mining permit. The following regulations may be concerned: Commercial Code 1994, Environmental Impact Assessment Act 2000, Water Act 1959, Work Inspection Act 1993, Pollution Control Act – Air, Federal Environmental Noise Protection Act, Railway Expropriation Compensation Act, the Federal Roads Act 1971, the Federal Act on Safety and Health at Work and its mining-relevant regulations, General Administrative Procedure Act 1991, Federal Tax Code, Tax Enforcement Code, General Land Act 1955, and the Opencast Mining Regulation (TAV).

In Austria, under federal constitutional law, governmental responsibilities for environmental issues are divided between the Federal State and the provinces/states. While the Federal State is exclusively responsible for certain environmental issues (for example, construction and maintenance of waterways), other responsibilities (for example, nature conservation) rest entirely with the provinces. In certain areas (for example, waste management and forestry), the Federal State acts as the legislator, while the provinces are responsible for administering environmental law adopted on the federal level (indirect federal administration – *mittelbare Bundesverwaltung*). Recently, the EU has become the main source for environmental law. Therefore, EU Regulations and Directives relating to environmental issues must also be considered². The supreme authority is (principally) the Federal Ministry for Agriculture, Forestry, Water and the Environment. Nevertheless, in general, the relevant (regional) agencies/authorities act at district or provincial level. The municipalities and local authorities need to follow the requirements of these higher ranking environmental authorities; however, they also have several defined responsibilities within their territory (*Selbstverwaltung* – self-governance) such as local waste management.

Table 3: Austria. Environmental regulations of the EU and their implementation.

Core area	Environmental regulations of the EU	Implementation in Austria
Sustainable development	Strategy for the sustainable use of natural resources;	National Sustainability Strategy;
	Thematic strategy on waste prevention and recycling;	Environmental Impact Assessment Act;
	Action plan for environmental technology;	Nature and soil protection acts of the provinces; forestry law;
	Environmental indicators	Mineral raw materials law; Spatial planning of the provinces
Climate change	Greenhouse gas emissions;	Climate strategy;

1 Weber, L. (Eds.) (2012): Der Österreichische Rohstoffplan. – Archiv für Lagerstättenforschung, 26, 264 S., Geol. B.-A., Vienna,

2 Christian Schmelz, Bernd Rajal and Christina Toth, Environmental law and practice in Austria: overview; available at <http://uk.practicallaw.com/6-503-1951#a591212>

Core area	Environmental regulations of the EU	Implementation in Austria
	Greenhouse gas emissions trading; Kyoto protocol and strategy; Post-Kyoto 2012	Environmental Impact Assessment Act; Environmental compatibility; Strategic environmental assessment; Austrian Emission Allowances Act; Trade regulation act; Mineral raw material law
Waste management	Framework Directive Waste; General waste management, landfills; Management of mining waste; Shipment of waste; IPPC and pollutant register PRTR; Combustion of waste; Hazardous and radioactive waste	Waste Management Act; Act on the Remediation of Contaminated Sites; Landfill Directive ("Deponieverordnung"); Federal Waste Management Plan; Mineral raw material law
Air pollution	Framework Directive air - CAFE; Emission limit values pollutants; Air quality information; Transport and CO ₂ ; Industrial VOC and IPPC; Pollutant emissions from large combustion plants; Silica dust problems - social dialogue	Air Pollution Control Act; Trade regulations; Strategic environmental assessment; Emissions Allowance Trading Act (Emissionszertifikatengesetz - EZG); Mineral raw materials law; Spatial planning of the provinces
Water protection and water policy	Framework Directive Water policy; daughter directives Groundwater protection Drinking water / surface water protection Water protection; marine pollution; Protection of waterways and lakes	Water Law Act; Mineral raw materials law; Spatial planning of the provinces
Protection of nature and biodiversity	Biological Diversity Biological Diversity Action Plan	Nature and soil protection acts of the provinces; Forestry law;

Core area	Environmental regulations of the EU	Implementation in Austria
	Natura 2000 Alpine Convention / Berne Convention Biodiversity / Rio de Janeiro Convention Forests, flora and fauna, genetic engineering	Radiation Protection Act; Mineral raw materials law; Spatial planning of the provinces
Soil protection	Soil protection strategy; IPPC Policy	Soil protection acts of the provinces; Forestry law; Mineral raw materials law; Spatial planning of the provinces
Chemical products	REACH, pesticides, biocides, fertilizers; Endocrine disrupters, POP and PCB, risk control	Chemicals Act; Solvents regulation; Mineral raw materials law
Civil protection	Civil protection convention; Preparation for emergencies; Accidents - dangerous substances; Impact of industrial accidents; Flood management	Civil protection acts of the provinces; Mineral raw materials law
Noise pollution	Combating ambient noise; Mechanical noise; Noise Protection Policy Green Paper	Federal Act for Noise protection; Mineral raw materials law; Spatial planning Acts of the provinces Federal Act on Safety and Health at Work Noise Vibration Silica dust

Source: WKO, Wasserbacher 2006

Description of the permitting procedures

Ownership of mineral rights is determined by MinroG, which labels a mining authorisation or mining right as "*Bergbauberechtigung*", while "*Bergbauberechtigter*" refers to the holder of a mining right. Mining rights include authorisation for the exploration and extraction of raw materials.

The state has the responsibility for issuing mining authorisations. A mining authorisation entitles the holder to explore and/or exploit mineral resources for the purposes of industry and trade. The mining authorisation holder is a legal or natural person who has obtained

the mining authorisation by concession in accordance with the provisions hereto. According to § 1 (14) MinroG, a mining authorisation can include:

Exploration right:

- Exploration license
- Right of the State to explore state-owned raw materials

Extraction right:

- Free for mining raw materials: mining license
- State-owned raw materials: right of the State to extract state-owned raw materials.
- Landowner raw materials: Extraction plan (equivalent to mining rights)

Free for mining raw materials require a mining license. A mining license permits the holder to extract and to acquire free for mining minerals (§ 22 MinroG). Mining rights are granted for mining claims (*Grubenmaß*). A mining claim is not limited by depth, but is defined by a surface area projected in a flat rectangle with an area of 48000 m². Mining rights for mining fields are conferred by the competent authority, if a (judicial) person applies for them. Conditions for the permission are:

- The occurrence of free for mining raw material has to be economically viable
- Other permissions must not be opposed to the mining right
- Consideration of the public interest (nature conservation, land use planning, tourism, environmental protection, water management, (rail) traffic, national defence)

State-owned raw materials require the approval of an extraction field. An extraction field is a space which is not limited by depth and whose cut surface in the projection level of the national surveying system is a flat polygon. If state-owned raw materials other than hydrocarbons (i.e. rock salt) occur, the area must not be larger than 1 km². If the required conditions are fulfilled, the extraction field has to be approved by the authority (§ 74 MinroG). As already mentioned, mining licenses represent legal entitlements. In order to exercise these rights, other authorisations and permits are also required. In order to authorise the mineral extraction concerning free for mining as well as state-owned raw material (with the exception of hydrocarbons) an extraction plan is required.

For surface extraction of **landowner raw materials** an extraction plan is also required; however, this plan includes additional requirements compared to the extraction plan for free for mining and state-owned raw materials.

Application requirements – Extraction plan

The operator has to declare an intention to (explore and) extract raw materials to the authority; according to § 113 MinroG, and the announcement must contain an extraction plan with the following content:

- Proposed planning period
- Description of the planned extraction and transportation of the raw material

- Planned safety measures
- Information about the emissions expected due to extraction, and statements on their reduction
- Description of the measures taken to protect the surface and to protect surface utilisation after concluding extraction, and information about the costs for these measures
- Information about the expected utilisation of the open cast area.

In the case of free for mining raw materials and state-owned raw materials, an extraction plan must include:

- Layout plans of the mining areas as well as the measures that must be taken in order to guarantee the safety of the surface and the safety of the surface after concluding the mining activity.

The permit for an extraction plan requires the following conditions (§ 116 MinroG, § 116 refers to all extraction plans, §§ 80-83 MinroG includes further requirements for surface landowner minerals):

- The mining activities listed in the extraction plan must be approved by a mining permit.
- No destructive extraction of a deposit, i.e. the extraction must correspond with the technical, economical and technical safety requirements.
- Dealing with the surface has to be economically viable and considered in detail.
- Measures must be planned to protect the surface utilisation after ending the mining activities.
- Avoidance of emissions in line with the highest technical standards must be implemented.
- There shall be no harm to the lives or health (including no unreasonable annoyance) of persons.
- There shall be no unreasonable harm to the environment.
- The production of waste should be avoided in accordance with best technical state of the art.

Public entities involved in the process and number of permits

The number of entities involved in the licensing process is dependent on the regulatory conditions controlling mineral extraction. Conditions can include: noise, emissions (e.g. dust), traffic, flora/fauna, soil, water, landscape. According to MinroG, the mining permit covers all these conditions and will be issued by one authority.

In the case of **free for mining minerals**, the Federal Mining Department is the issuing authority. Separate permits might be necessary in relation to nature conservation law, water management law, waste management law, and forestry law.

The conditions for issuing the mineral rights, approval of extraction plans and for the authorisation for mining installations are laid down in MinroG. The competent authority will first ensure that activities defined by the extraction plan are covered by a mining license, that the applicant has the financial capability to carry out the restoration and aftercare activities required, that the proposed conditions are sufficient to ensure the health and safety of people and to protect the environment, as well as neighbouring property and other mineral deposits and land surfaces.

Consultation process: MinroG states that, when considering an application for an extraction licence (for free for mining raw materials or for landowner raw materials), the

owner of the land must be involved in the process. A land transfer declaration or a lease agreement must have already been completed when applying for an extraction licence. The provincial authority also becomes a (legal/formal) consultee in so far as the application relates to land use planning, protection of nature/environment, tourism or other aspects. One aim of this process is to ensure that the public interest is taken into account. This can also mean consulting other relevant authorities (e.g. in relation to transport, the environment, water). Extraction plans (see above) may only be approved if the proposed measures are sufficient to protect surrounding property, the neighbours, the safety of people, and the environment as addressed in conditions.

The main authority for the extraction of **landowner raw materials** is the District Administrative Authority (*Bezirkshauptmannschaft*); for areas exceeding five hectares, an EIA may be required to be issued by the provincial government. For an area of less than five hectares, permits in pursuance of the following laws can be required:

- MinroG
- Water Law: The water authority as part of the county authority is a party to water management master plan regulations in MinroG.
- Nature Conservation Law
- Waste Management Law
- Forest Law
- Occasionally, Monument Protection Act, construction regulations of the states, etc.

Hence, more than six permits can be required, most of them issued by the District Administrative Authority. In the case of suspected archaeologically relevant sites, the Federal Monument Office must be consulted as a further licensing authority³. Numerous experts are involved as a matter of course in approval procedures according to the Mining Law, competent for the Water Law, geology, hydrogeology, engineering, electronics, construction, conservation, spatial planning, air quality, noise, forestry, construction technology, environmental lawyers, monument conservator, members of local communities, and finally, the labour inspectorate. In western provinces tourism is also relevant in relation to transport and transportation roads.

Appointment of experts

The county authority identifies the experts relevant for the process. Although the applicant may disqualify an expert on the grounds of bias, in general no objections are raised. The process manager determines how many experts, numbering between 9 and 15 or more, are required for the licensing process. The county authority verifies compliance of the extraction operation plan with the provisions of air pollution control, water rights (concentrated procedure), etc.

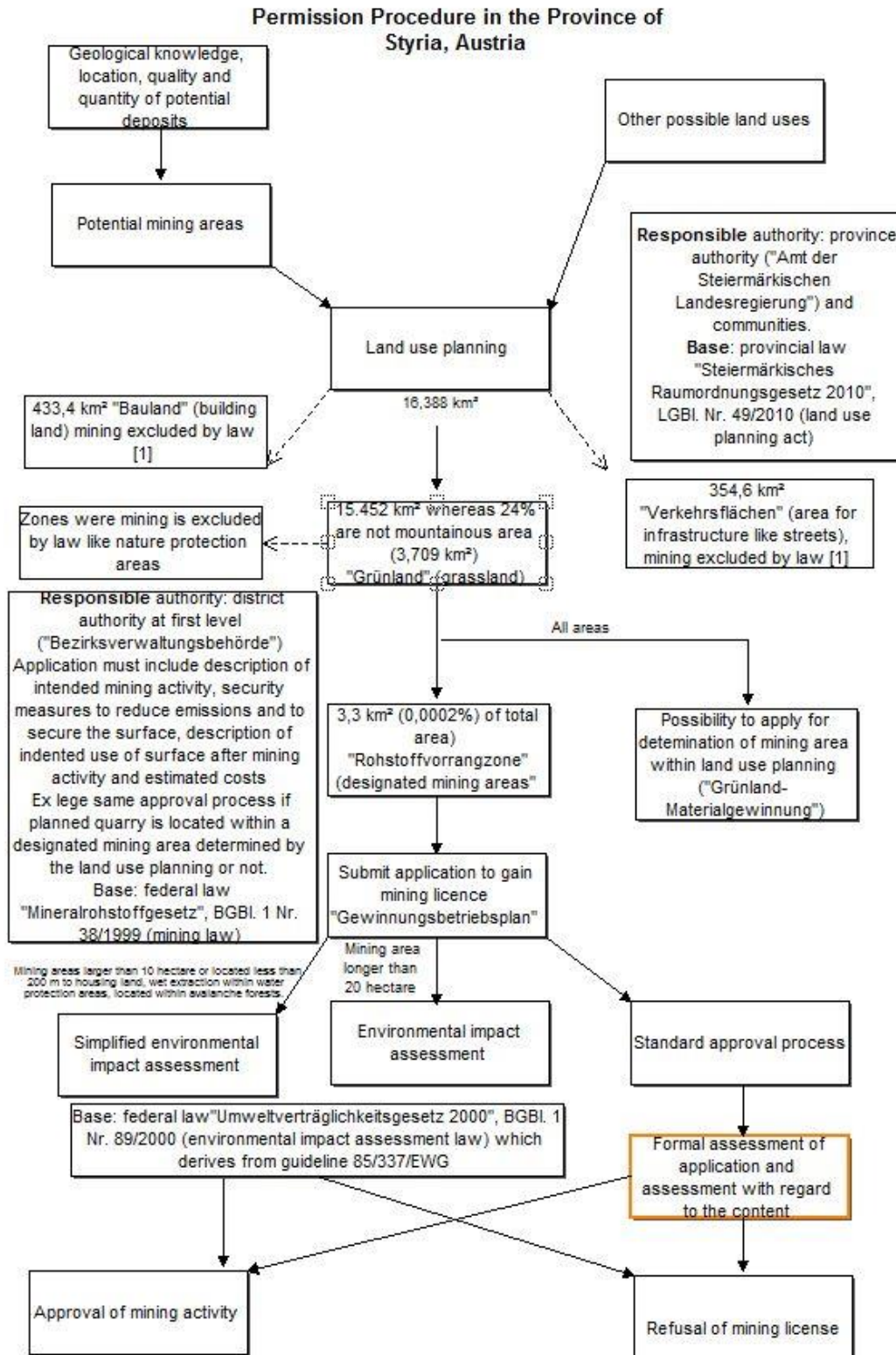
Concentrated procedures vs. one-stop-shop model

For instance, the Forestry Law (if the mining site is located in a forest area) are negotiated in separate procedures and not always through one chief negotiator; negotiations on MinroG and nature conservation are often led by one, while water permission is led by another negotiator. The one-stop-shop model for a mining project is mostly relevant to the EIA procedure: The administrative authority is the environmental authority of the state

³ The expert opinions of the Federal Monument Office have to be paid by the operator, such as in the case of historical graves (in German: *Awarengräber*), which required a payment of € 70,000 in expert fees.

government, which deals with all relevant specific laws relating to mining, environment, forestry, etc. Once the environmental permit is granted, the specific authorities have to oversee, control and check the development and fulfilment of the project.

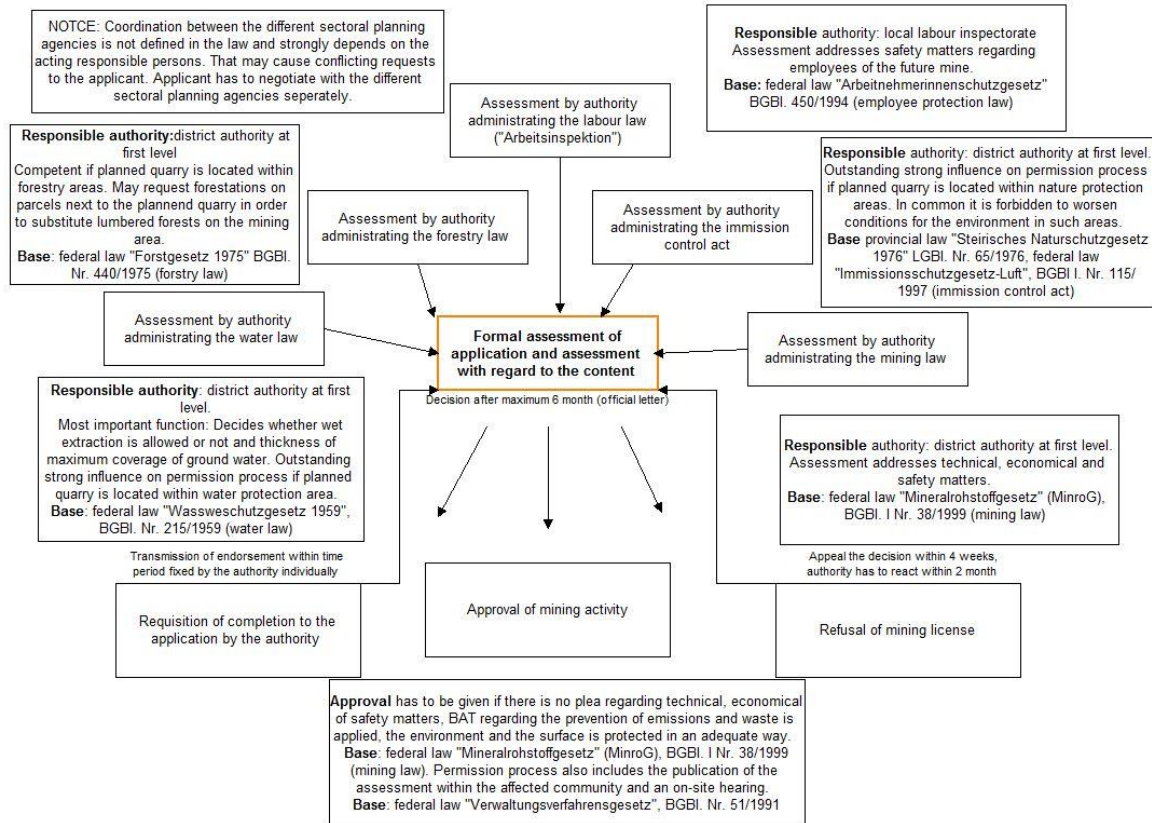
Fig. 1: Flowchart of the Permission Process in the province of Styria, Austria.



Günter Tiess, legal basics from 2010

Source: Department of Mineral Resources and Petroleum Engineering (2010): Report on Planning Policies and Permitting Procedures to Ensure the Sustainable Supply of Aggregates in Europe, commissioned by UEPG (2010).

Fig. 2: Continuation of previous flowchart. Details of the formal assessment phase.



Günter Tiess, legal basics from 2010

Source: Department of Mineral Resources and Petroleum Engineering (2010): Report on Planning Policies and Permitting Procedures to Ensure the Sustainable Supply of Aggregates in Europe, commissioned by UEPG (2010).

Extraction of minerals requiring an EIA procedure

An EIA must be conducted when the surface area is greater than 10 hectares for hard rock quarries and 25 hectares for sand and gravel pits. For an area of up to 10 hectares, the authorities may refrain from undertaking an EIA procedure, provided the proposed activity does not conflict with environment protection. The government (cooperation between central and provincial governments) has issued a guideline on how to conduct "EIA procedures relevant for mining" ("*Leitfaden UVP für Bergbauvorhaben*") in an efficient way, which was updated in 2011⁴.

Costs of procedures

The cheapest procedure is the extension of an existing mining site, which does not require any itemised expert reports, but short statements. The costs amount to a maximum of EUR 15,000. New licensing procedures (without any reclassification proceedings) based on expert reports can cost from 150,000 to several million Euros. The costs of an expert report range from 5,000 to 10,000 Euros.

The costs of EIA procedures, including project documents and re-designation is somewhat more than 100,000 Euros. Additional external expertise such as a one-day on-site inspection, costs 10,000 Euros, while legal fees can cost 100,000 Euros. The average cost

4 http://www.umweltbundesamt.at/fileadmin/site/umweltthemen/UVP_SUP_EMAS/uvp-leitfaeden/Bergbau_Leitfaden.pdf

of EIA procedures altogether is greater than 200,000 Euros and is never less than this amount. An interviewee provided an example of a decision by the Court of Administration costing 500,000 Euros, in which case the initial rejection at local government level was subject to an appeal and finally approved two years later.

Timeframes

Extraction licences for free for mining minerals are open-ended. However, the issue of a licence requires that extraction operations actually take place. If this requirement is not met, the extraction licence may be withdrawn. This regulation is not true for free for mining minerals listed under § 3 (1) item 4 MinroG.

The extraction of free for mining and state-owned raw materials requires that an extraction plan for five years be set up (§ 112 MinroG). Under certain circumstances, a shortening or extension of this time period is possible. If there is an interruption of more than five years, however, an extraction plan is also required.

Geographic areas covered by the permit

According to § 153 (1) MinroG, mining areas are those areas that are – in the case of free for mining minerals – the subject of an extraction permit (*Grubenmaß, Überschar*) or of a mining management plan in the case of landowner minerals.

Average length to get an exploitation permit

Approvals in line with MinroG take on average one to two years to be granted, if the following requirements are met: The mining area must be included in the priority areas for raw materials of the regional land use plan and the provided operation plan must be adequate. The time required might be less for free for mining minerals. Additional nature conservation permits take about six months to grant, and water permits can take from six months to up to two years or more (e.g. in the case of water protection issues).

Average length of EIA procedures

Timeframes for EIA procedures are defined in the EIA law, depending on the size of the project, which determines the type of procedure that must be adhered to. The authority must provide a schedule within which the procedure is to be concluded. Regarding regular EIA procedures, the authority has to come to a decision within nine months after an application has been submitted. Simplified procedures must be decided six months after the application at the latest.

Although in theory an EIA procedure might last for one year, in practice, the average duration is about three years.

Rights and duties of the licensee

The rights and obligations of a mining license holder are seen as an important principle in MinroG. Mining license holders are authorized to produce, operate, and use for their own mining purposes mining facilities, company vehicles, surface mining equipment, operating equipment and the like.

However, the entitlement of a mining license holder is contrasted with special duties. Thus a mining operator is obliged to make provisions (§ 109 MinroG) for the protection of life, health and safety of people, the environment, the deposit and the surface during the mining activities as well as the protection of surface use after the termination of mining activities. Before making use of the surface and the near-surface area of external properties for mining activities, the mining license holders must adhere to the agreement made with the landowner. Realities and parts thereof within the area covered by the extraction license are lawfully held as mining areas.

Closure phase

Under MinroG, operators are required to notify the competent authority of their intention to abandon a mine and to decommission the plant. The mine closure plan must include (§§ 112 (2) and 114 MinroG):

An exact demonstration of the technical implementation of closing and securing operations.

Documents dealing with the securing of the surface in the interests of the safety of persons and things.

Documents addressing the required measures to ensure that the surface can be made usable again.

The significant geological deposits and technical documents.

A register of the mining maps.

The mine closure plan has to be approved by the competent authority (§ 117 MinroG). The mining license holder has to take measures to secure the surface use after terminating the mining operations (§ 159 MinroG). External properties which have been used for mining operations have to be restored to their former or a similar condition.

Restoration

The operator is responsible for carrying out and paying for restoration. The competent authority must ensure that restoration takes place as agreed. Normal practice is that an operator deposits at the bank an amount of money large enough to secure restoration of the site. Other kinds of safeguarding, such as e.g. land register guarantees, insurance, etc. are regulated by § 116 (11) MinroG. The relevant authority ensures that securities have been provided.

Legal nature of rights

The authorities in Austria are strictly bound by law. Contractual agreements between mining authorities and applicants with regard to the issue of permits and licences are not allowed.

The designation of raw material areas under the AUTMINPLAN was an important step, although the AUTMINPLAN has no legal status and is not implemented identically in all nine provinces.

Art. 6 of the Natura 2000 Directive was transposed into regulations of the Nature Conservation Act.

Development of new mining sites (*NeuaufschlieBungen*) versus extension of existing mining sites

New mining sites will only be authorised if regional land use planning identifies mining areas. In general, this is considered every five years. To give a rough estimate, around 25 percent of these are new mining sites (e.g. in Upper Austria over the last 10 years).

The demand for mining areas is currently being met by existing mining sites, because of regional land use planning concepts which work as follows: An area capable of providing a ten-year supply is designated by the relevant authority. Mining areas/raw material priority zones can be approved at regional level, if local communities agree. Communities as a party in these proceedings and the "public interest" in the exploitation of raw materials can both contribute to decision making on new mining sites.

Without the consent of communities, the provincial government of Oberösterreich, for example, will not designate raw material priority zones. However, communities often declare themselves neither for nor against, or in some cases even disagree.

Natura 2000 sites

According to the Austrian Economic Chamber, there are some plant sites in Austria in NATURA2000 areas, where both new excavations and extensions have been and are being approved. The Federal Government and the Austrian provinces have agreed that there should be "simple and economically acceptable permits for dismantling and sites in NATURA2000 areas".

On our request concerning mining permits in Natura2000 areas, representatives of the Lower Austrian Nature Conservation Association (*Niederösterreichischer Naturschutzbund*) pointed out that over the past 15 years, eight former gravel pits have been renovated in the Natura 2000 area of Tullnerfelder Donauauen. They were extended to a size of approx. 3 ha or more and depths up to 5 m. In this way, the existing vegetation was removed on about 20 hectares. The directive of the BMLFuW from 1975, which recommends sizes of 3-5 ha for the new installation of wet dredges, was the basis. Other reasons are minor deposits of rubble. Also the ÖWAV Regelblatt 217/2014 "Protection of the ground water" was applied for quarrying of sand and gravel. Procedures according to the MinroG were not applied in these cases.

1.7. Court cases on permitting procedures

The procedural and institutional framework of court appeals

Against decisions by the Federal Administrative Court or the State Administrative Courts a revision to the Administrative Court, as well as a complaint to the Constitutional Court, is possible. Proceedings at third instance last about two years.

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

The Federal Ministry of Science, Research and Economy as the legal federal authority for mining relevant complaints does not collect any statistical data on mining permitting cases. Court cases can be inspected at the Legal Information System of the Republic of Austria (<http://ris.bka.gv.at/>), a data base providing federal and state legislation in its current version, law gazettes, and case law.

Most decisive and representative court judgements

Case No. AT1: 2005/04/0115, 2005/04/0116, and 2005/04/0117

Name of court: Supreme Administrative Court

Date of judgement: 12/09/2007

Name of plaintiff (or appellant): 34 private persons/adjoining landowners, municipality W represented by the mayor (GZ 2005/04/0116), Dipl. Ing. HW (2005/04/0117)

Name of defendant: Federal Minister of Economics and Labour, K GmbH as party involved

Judgement in favour of: defendant

Relevance to: extraction, construction of a mining road

Legislation on which the court case is based: AVG §8; MinroG 1999 §§ 2, 116, 118, 119; UVPG 2000 § 3, and Anh1 Z25, 26; BergG 1975 §145; GewO 1994; VwRallg.

Description (summary) of the case

In April 2005, three parties appealed against a recent decision by the Federal Ministry of Economics and Labour, which entitled a mining licence holder to establish a mining road. One party complained against the impairment of access roads and timber transportation paths by the planned mining road. Two other parties complained against the possible impacts of later gypsum extraction, which would not have been considered in the Ministry's decision. Furthermore, the omission of an EIA procedure was criticised, as well as the underestimation of dust and noise pollution. Additionally, specific health problems and diseases had been taken into account by medical assessments. With regard to land use, no industry had ever been planned for the area.

Two and a half years later, in September 2007, the Higher Administrative Court as the court of final appeal, rejected the claims on the grounds that the proceeding was (only) the establishment and operation of a mining road and not the extraction itself (p.8). At the given time, any pollution by a subsequent extraction may not be detected. Therefore, the decision by the Ministry was in conformity with the law (with reference to verdict 2000/04/0196 dated from 21 December 2004, concerning the authorisation for constructing an access and transportation road in line with MinroG). Likewise, the medical assessment was found to be within the law, corresponding to the state of medical science instead of responding to health problems in individual cases.

Finally, limitations of access roads and timber transportation path through the construction of the mining road represent no object of a licensing proceeding in line with § 119 MinroG, but fall within the jurisdiction of civil courts (p.10).

Case No. AT2: 2009/04/0121

Name of court: Supreme Administrative Court

Date of judgement: 18/10/2012

Name of plaintiff (or appellant): X in Y

Name of defendant: Decision of 16 February 2009 by the Governor of Styria (Zl. FA13A-17.10-1/2008-38); A GmbH as party involved

Judgement in favour of: defendant

Relevance to: exploration/extraction

Piece of legislation on which the claim (or appeal) is based: AVG §§ 8, 38; MinroG 1999 §§ 116 (3), 119; VwRallg

Description (summary) of the case

On 14 May 2008, the district authority B approved an extraction plan for above-ground extraction of porphyroid filed by the party involved. The plaintiff issued a complaint against the district authority's decision, claiming her status as a neighbour in line with § 119 (6) item 3 MinroG. She complained her health was being affected by noise and dust. Moreover, she feared her property could be damaged due to vibrations. Her appeal was dismissed in the second instance by the Styrian Governor's decision in February 2009.

In April 2009, the appellant further complained against the Styrian Governor's decision. She challenged the immission expert's opinion, the medical report, the vibration and blasting technical assessment and the consent of the owners.

Her appeal was dismissed as unfounded in October 2012 by the Administrative Court in the third instance. The entire legal process lasted for four and a half years.

Case No. AT3: 2009/04/0080 and AW 2009/04/0009

Name of court: Supreme Administrative Court

Date of judgement: 17/09/2010

Name of plaintiff (or appellant): X and Y in G

Name of defendant: Decision of the Federal Minister of Economy, Family and Youth from 16 January 2009, Zl. BMWA-67.150/0108-IV/10/2007; T AG in G as party involved

Judgement in favour of: the defendant

Relevance to: extraction

Legislation upon which the court case is based: AVG §8; GewO 1994 §77 Abs3; IG-L 1997 §2 Abs 4 and 14; MinroG 1999 §§ 116, 119; VwRallg;

Rejection of the appeal in line with: § 30 Abs. 2 VwGG, (VwGH, GZ: AW 2009/04/0009)

§ 42 Abs. 1 VwGG (VwGH, GZ: 2009/04/0080).

Description (summary) of the case

In January 2007, T AG filed an extraction plan for clay mining which was authorized by the Federal Ministry of Economics, Family and Youth by a decision of 16 January 2009, Zl. BMWA-67,150 / 0108-IV / 10/2007. The plaintiffs filed a complaint against this decision because the expected dust and noise levels (humidification of access roads, compliance with the permitted working hours) would exceed the prescribed health and safety limits and would take into account the data of other stations in terms of weather conditions. They also doubted that the mining activity would be limited to the prescribed level and, if exceeding the approved mining depth, might represent a risk to groundwater supplies.

The complaint was rejected on 17 September 2010 by the Administrative Court (file number 2009/04/0080).

Case No.: AT4: VGH 2005/04/0044

Name of court: Supreme Administrative Court

Date of judgement: 24/02/2006

Name of plaintiff (or appellant): citizens' initiative in S.

Name of defendant: Environmental Senate, Diabas company as party involved

Judgement in favour of: the defendant

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

Piece of legislation on which the claim (or appeal) is based: Alpenkonvention 1995; AVG; EURallg; IG-L 1997; MinroG 1999 §§ 3, 22, 23, 34, 83, 116, 119, 194; MRK Art 6 (1); NatSchG Slbg 1999; ROG Slbg 1998; UVPG 2000 §§ 1, 2, 3, 6, 12, 17, 19; VwGG § 39 (2) Z6; VwRallg.

Description (summary) of the case

According to MinroG, diabase belongs to the group of free for mining minerals. The mining of diabase falls within the competence of the Federal Mining Department. Mineral resources are classified as free for mining minerals if their occurrence is rare in proportion to its high economic significance (p.4).

In the following court case, a citizens' initiative appealed against the extension of a diabase mining area in Salzburg region. In its judgment of 24 February 2006, the Austrian Supreme Administrative Court as court of last resort dismissed their complaint in its entirety and upheld the decision by the Environmental Senate in second instance.

In March 2004, the Government of Salzburg authorized the party involved to extend already existing diabase mining in the region of S. (in accordance with § 17 UVPG) and approved the mining license for a period of 45 years. An EIA had been carried out and in an official statement of 10 February 2004, the state environmental attorneys classified the project as environmentally friendly. The total amount of exploitation was estimated at 14,258 million cubic meters (39,923 million tonnes), approximately 900,000 tons per year. "The diabase will be mined in three phases, each with several floors; for the purpose of visual and noise protection, a wall of mining waste material shall be built. In addition, the adjacent forest remains untouched. A comprehensive package of environmental measures will be implemented, including the shift of biotopes and a habitat management for the affected wildlife." (p.1)

Note: The Federal Minister of Economics and Labour (BMWA) issued the mining license. The Government of Salzburg was responsible for the EIA-procedure. Only the decision of the Government of Salzburg was rejected.

That same year, the citizens' initiative appealed against the decision by the Government of Salzburg. Essentially, they challenged the public interest argument for mining diabase at that location. Alternative, richer mining locations were cited, which required less effort in terms of nature conservation. Furthermore, the appellant feared the deterioration of the ecosystem by destroying fens, especially relating to endangered or protected animal and plant species.

This appeal was dismissed by the Environmental Senate in the second instance, based on geological expert assessments and the economic benefit for the region as pointed out by the Government of Salzburg. Arguments of nature protection were countered with the statement that "any intervention in nature and landscape would be compensated." Based on a statement by the expert for nature conservation, appropriate habitats would be provided to avifauna and flora. There would be no reason to fear the extinction of specific bird species (p. 8).

In April 2005, the citizens' initiative filed a complaint against the decision of the Environmental Senate at the Supreme Administrative Court. The complaint was rejected on 24/02/2006. The Administrative Court essentially upheld the arguments of the Environmental Senate.

Case No.: AT5: Ro 2014/04/0015, Ro 2014/04/0020

Name of court: Supreme Administrative Court

Date of judgement: 20.5.2015

Name of plaintiff (or appellant): 1. municipality of S, 2. KK GmbH and 3. HK

Name of defendant: Federal Minister of Economy, Family and Youth, J K GmbH as party involved

Judgement in favour of: the plaintiff

Relevance to: extraction

Piece of legislation on which the claim (or appeal) is based:: AVG § 59 (1); MinroG 1999 § 116 (1); VwGG § 42 (2) Z1; VwRallg.

Description (summary) of the case

In the following, one of the few Austrian court cases in which a decision by the Ministry was annulled by the judgement of the Supreme Administrative Court will briefly be described.

Since 1953, diabase has been mined in the relevant region. According to the Austrian MinroG, diabase is a free for mining mineral for which an extraction plan has to be submitted at the latest every five years. By decision of 17 October 2012, an extension of the mining site was approved. In September 2013, the party involved filed a new recovery operation plan after MinroG, which was approved by the Federal Minister of Economy, Family and Youth for five years by 18 December 2013. The decision specified a number of requirements to be met, including measures to reduce dust and noise emissions. The three plaintiff parties submitted revisions against this decision. The most striking among these was the argument that the operating hours were not clearly defined for Saturdays. The decision of the Ministry noted that the operating times may be extended to Saturdays "in exceptional cases". Since these "exceptional cases" were not defined in greater detail, it would not be possible to check whether the relevant requirement was met regarding noise generating activities on Saturdays. For this reason, the Ministry's decision was annulled by the Supreme Administrative Court's judgement from 20 May 2015.

Conclusions

To summarize, it can be pointed out that requests for mining authorisations in Austria are rarely refused. According to legal advisers from the Federal Ministry of Science, Research and Economy and experts from practice, in most of the court cases complaints against mining authorisations were rejected (see the examples in the court cases AT1 – AT4).

This is mainly due to the fact that applicant companies usually clarify in advance whether a project is eligible for approval. A comprehensive preparation of relevant documents and a timely clarification of the requirements with the authority before applying for a permit increase the chance of approval.

1.8. Success rates of exploration and extraction permits

There is a success rate of up to 80 % for first-time applications, if the site is included in the designated plans of raw material priority areas of the Austrian Mineral Resources Plan (AUTMINPLAN) and no other disturbances (e.g. local community campaigns, disagreements between communities) occur. The remaining 20 % are approved on appeal. There may be additional requirements and difficulties, but rejections are uncommon, and

the success rate, including appeals, is therefore almost 100 %. The success rate of applications for exploration and extraction permits is relatively high because the operator has a legal claim only for zones dedicated to the AUTMINPLAN. Outside these zones, the success rate is zero. Hence, in Austria operators have investment security and legal certainty.

The Austrian Mineral Resources Plan itself has no legally binding character. According to the land use planning laws of individual countries ("provinces") **raw material priority zones have to be included in the land use plans** (based on the results of the Austrian Mineral Resources Plan). Only in the case of the surface extraction of landowner minerals, the land use planning (specifically the local land use plan) play a role (mining prohibition zones according to § 82 MinroG). Apart from these aspects, procedures are also complex and costly. One notable problem is that the number of selected priority raw material areas is relatively low and the land purchase prices are determined by the landowners, with inflated purchase prices sometimes being paid.

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

Results of the expert consultations with Dr. Helga Prisching and Dr. Karin Aust, Federal Ministry of Science, Research and Economy) and Mag. Robert Wasserbacher, Austrian Association for Building Materials and Ceramic Industries.

- 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)?

No, MinroG does not prescribe any regulations comparable to Services Directive (2006/123/EC).

- 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?

Yes, the request for approval of mining right (§ 27 (4) and § 35 (3) item 3 MinroG); the request for approval of a mining site (§ 75 (2) item 2 MinroG) and the request for approval of an extraction plan (§ 80 (2) item 5 MinroG).

A BSc or MSc or chartered (certified) professional are NOT required. In pursuance of § 138 MinroG, the responsible mine surveyor ("Markscheider") assumes his/her function on the basis of his/her adequate professional qualification or a thorough knowledge of the legislation (esp. § 174 (1) MinroG).

- 3) Do you have a 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?

Answer: Yes, the Mining Waste Regulation is only necessary for mining waste installation category A; the calculation is undertaken by insurers and checked by the authority.

- 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?

No.

- 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?

Adequately transposed into law by Mining Waste Act and Mining Waste Regulation.

- 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)?

Adequately transposed into law by Mining Waste Act and Mining Waste Regulation.

- 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?

Yes, in certain cases. In line with § 117a (1) MinroG and in principle of sustainable development, the holder of a mining authorisation has to provide a waste management plan for minimization, treatment, recovery and disposal of mining waste. In pursuance of §§ 170 and 171 MinroG the appropriate authorities are – dependent on the raw material category – the county authority or the Federal Mining Department.

In line with § 10 Waste Management Law, a waste management plan has to be provided for mining sites where (other than mineral or mining) waste is generated and where more than 20 workers are employed. The appropriate authority is legally defined by § 38 AWG 2002 – being, in the majority of cases, the governor. Mineral mining wastes do not fall within the scope of AWG 2002.

- 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. For systematic reasons, the Accounting Directive has been transposed under the Austrian Commercial Code §§ 243c and 267b, – and thus not under MinroG.

- 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. For systematic reasons, the Transparency Directive has been transposed under various capital market regulations (esp. Rechnungslegungs-Änderungsgesetz 2014, BGBl. I No. 22/2015) – and thus not under MinroG.

- 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?

Yes, via the labour inspection and the annual or five-year inspection of quarries. The mining authority has to check the CE marks of the exploration or extraction equipment in line with § 123 of MinroG (legal compliance in respect of mining equipment).