Natura 2000 permit when applying for a processing concession under the Minerals Act

Ds 2023:5

Regeringskansliet
Klimat- och näringslivsdepartementet

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SOU and Ds can be found on regeringen.se under Legal documents.

Reply to the Referral Prime Minister's Office, SB PM 2021:1.
Information for those who will respond to a referral is available on regeringen.se/remisser.

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To the Government and the Head of the Ministry of Climate and Enterprise

On 2 May 2022, the Government Offices decided to appoint an investigator with the task of investigating the issue of examination of Natura 2000 permits when applying for a processing concession under the Minerals Act. On the same day, Alderman Inge Karlström was hired as an investigator.

The drafting lawyer Elin Thyr has been employed as a subject matter expert, with the task of being secretary and assisting in the investigation.

A special thank you goes to authorities, organizations and industry playerswho have contributed with data and views.

The departmental memorandum *Natura 2000-permits when applying for a processing concession under the Minerals Act* (Ds 2023:5).

The mission is thus completed.

Stockholm, February 28, 2023

Inge Karlström

/Elin Thyr

Content

Summary

This memorandum proposes legislative amendments to the effect that, where such a permit is required, the examination of a Natura 2000 permit must be carried out in connection with the examination of an application for a permit under the Environmental Code and not in connection with the examination of an application for a processing concession under the Minerals Act (1991:45).

The proposal means that the examination of a Natura 2000 permit, when such a permit is needed, is integrated with the examination of an environmental permit. At that stage of the process, the full scope of the mining project is known and the EU legal requirements for a full, accurate and final assessment of the impact of the activity on habitats or species in a Natura 2000 site can be fully catered for. The fact that the examination is no longer carried out at an earlier stage of the mining project, in the context of the examination of an application for a processing concession, is considered to reduce the risk that the Natura 2000 review does not meet the requirements set out in the case-law of the Court of Justice of the European Union.

The proposal, which mainly concerns the so-called EIA and nature directives, is deemed to comply with EU law mutatis mutandis. The proposal is expected to lead to positive effects for the mining industry in its electricity. The proposal is not expected to lead to any negative consequences for the prospector's security of being able to process a deposit for which a concession has been granted.

The amendments are proposed to enter into force on 1 July 2024.

- 1 Draft constitution

1.1 Proposal for an Act amending the Minerals Act (1991:45)

It is hereby provided that Chapter 4. Sections 2 and 10, Chapter 6. Sections 4 and 8. Sections 1–3 of the Minerals Act (1991:45) shall read as follows.

Current wording	*Proposed wording*
Chapter 4.	
2 §[1]	
A concession shall be granted if:	
1. a deposit likely to be economically assimilated has been found, and	
2. the location and nature of the deposit do not make it inappropriate for the applicant to receive the requested concession.	
A concession for the processing of concession minerals in alum shale may be granted only to the person who demonstrates that it is suitable for such processing.	
In matters concerning the granting of a concession, *Chapters 3 and 4.* and Chapter 5. *Section 15 of the* Environmental Code applies.	In matters concerning the granting of a concession, Chapter *3, Chapter 4. 1–7 §§* and chapter 5. *Section 18 of* the Environmental Code applies.
If a case concerning the granting of a concession relates to an activity that is later to be examined also in accordance with the Environmental Code or other laws, *Chapters 3 and 4* shall. The Environmental Code applies only to:	If a case concerning the granting of a concession relates to an activity that is later to be examined also in accordance with the Environmental Code or other laws, Chapter *3* shall*: and* Chapter *4. Sections 1–7 of the* Environmental Code apply

[1] Latest revision 2022:728.

The examination that takes place in the concession case.	only in the examination that takes place in the concession case.

In matters concerning the granting of a concession, a specific environmental assessment must be made, information provided and coordination must take place in accordance with Chapter 6. Sections 28–46 of the Environmental Code.

The concession may not contravene a zoning plan or zoning regulations. However, if the purpose of the plan or provisions is not frustrated, minor deviations may be made.

10 §[2]

If regular processing or the activities referred to in Paragraph9(1) are not carried out, the duration of the concession may, on application by the concessionaire, be extended by a maximum of ten years, if this is justified by the public interest in the proper exploitation of the mineral resources. In the examination, *Chapters 3 and 4.* the Environmental Code is applied.	In the absence of regular processing or the activities referred to in the first subparagraph of Paragraph 9, the duration of the concession may, on application by the concessionaire, be extended by a maximum of ten years, if this is justified by the public interest in the exploitation of the mineral resources in a manner in accordance with the rules. In the examination, Chapter *3. and Chapter 4. Sections 1–7 of* the Environmental Code apply.

Chapter 6.

4 §[3]

Where activities under a concession give rise to significant inconveniences which were not foreseen when the concession was	granted, the review authority may determine the conditions for the continuation of the activity necessary to prevent or reduce the nuisance. The same applies to work under diamond exploration permits . Otherwise, conditions in exploration permits or concessions may be amended only in accordance with the request or consent of the

holder of the permit or concession.	At the trial, *Chapter 3. Chapter 4 . Sections 1–7 of* the Environmental Code apply.

[2] Latest revision 1998:845.
[3] Latest revision 2022:728.

In the examination, *Chapters 3 and 4.* the Environmental Code is applied.

Chapter 8.

1 §[4]

Matters concerning the granting of exploration permits or processing concessions are examined by the mountain master, subject to section 2.

The mountain master may decide cases concerning the granting of exploration permits without any other party owner than the applicant having been able to comment .

In matters relating to the granting of a processing concession, the master of the rock shall, for the purposes of *Chapters 3*, *4* and 6. the Environmental Code, consult with the county administrative board of the county or counties where the concession area is located. In these cases, the County Administrative Board may decide on an archaeological investigation in accordance with Chapter 2. Section 11 the Cultural Environment Act (1988:950).

In matters relating to the granting of a processing concession, the master shall, for the purposes of Chapter *3, Chapter 4. 1– Sections 7* and 6 of the Environmental Code, consult with the county administrative board of the county or counties where the concession area is located. In these cases, the County Administrative Board may decide on an archaeological investigation in accordance with Chapter 2. Section 11 of the Cultural Environment Act (1988:950).

2 §[5]

Cases concerning the granting of processing concessions *shall* be referred to the Government if:	Cases concerning the granting of processing concessions *shall* be referred to the Government if:
1. the mountain master considers the question of concession to be particularly significant from a general point of view or	1. the mountain master considers the question of concession to be particularly significant from a general point of view or
2. the mountain master in the application of *chapter 3 or 4.* the Environmental Code isa reason to:	2. the mountain master for the purposes of chapter *3. or chapter 4. Sections 1–7 of* the Environmental Code find that:

[4] Latest revision 2013:668.
[5] Latest revision 1998:845.

deviate from what the county board has proposed.

reasons to deviate from what the county board has proposed.

3 §[6]

Cases in other respects concerning exploration permits or processing concessions are examined by the mountain master.

In cases concerning the extension of processing concessions pursuant to Chapter 4. Section 10, the master of the rock shall, as far as the application of *Chapters 3 and 4 are concerned.* environmental library, consult with the county administrative board of the county or counties where the concession area is located.

Matters concerning the extension of processing concessions pursuant to Chapter 4. Section 10 *shall* be referred to the Government's consideration of the mountain master for the purposes of *Chapter 3 or 4.* the Environmental Code finds reasons to deviate from what the County Administrative Board has proposed. Referral *shall* also be made of cases concerning the revocation of exploration permits or processing concessions for exceptional reasons in accordance with Chapter 6. Section 3 of this Act and of other matters under this section which the Master of the Mountains deems to be of particular importance from a general point of view.

In cases concerning the extension of processing concessions pursuant to Chapter 4. Section 10, as far as the application of Chapter 3 is concerned, shall be amended accordingly. *and Chapter 4. Sections 1–7* of the Environmental Code, consult with the county administrative board of the county or counties where the concession area is located.

Matters concerning the extension of processing concessions pursuant to Chapter 4. Section 10 *shall* be referred to the Government's review of the mountain master for the purposes of Chapter 3. *or Chapter 4. Sections 1–7* of the Environmental Code find grounds to deviate from what the County Administrative Board has proposed. Referral *shall* also be made of cases of revocation of:

Exploration permits or processing concessions for exceptional reasons according to Chapter 6. Section 3 of this Act and of other matters under this section which the Master of the Mountains deems to be of particular importance from a general point of view.

This law will enter into force on July 1, 2024.

[6] Latest revision 1998:845.

2 The case and its preparation

On 2 May 2022, the Government Offices decided to instruct an investigator to investigate the issue of examination of Natura 2000 permits when applying for a processing concession under the Minerals Act (1991:45). According to the assignment, the investigator must, to the extent possible with regard to EU law, submit proposals for constitutional amendments with the aim that a Natura 2000 permit, where such a permit is required, should not be a prerequisite for an application for a processing concession under the Minerals Act shall be grantable.

During the implementation of the assignment, dialogue has been conducted with the County Administrative Boards of Västerbotten, Norrbotten and Dalarna Counties, bergss taten, the Geological Survey of Sweden, the Swedish Environmental Protection Agency, the Swedish Society for Nature Conservation and Svemin and several companies active in different segments of the mining industry. Information has been collected about the work carried out within the framework of the Inquiry on sustainable supply of innovation-critical metals and minerals (N 2021:01).

3 Mission

3.1 The delimitation of the assignment

The assignment involves investigating the issue of examination of Natura 2000 permits when applying for a processing concession according to the Minerals Act (1991:45). The investigator shall, to the extent possible in the light of EU law, submit proposals for constitutional amendments with a view to the examination of a Natura 2000 permit, where such a permit is required, to be carried out in connection with the examination of an application for an authorisation under: the Environmental Code and not in connection with the examination of an application for a processing concession under the Minerals Act. The assignment does not include investigating and submitting proposals for constitutional amendments that apply to the examination according to Chapters 3 and 4. the Environmental Code in general when applying under the Minerals Act.

3.2 Starting points for the assignment

Parliament's announcement

In April 2021, parliament issued a notice to the government to make it clear that a Natura 2000 permit should not be a prerequisite for granting a processing concession, but that the examination in cases where it is required a Natura 2000 permit must be made in connection with the examination of permits according to the Environmental Code (Bet. 2020/21:NU16, rskr. 2020/21:257). The report states, among other things, that:

Sweden is a country with long traditions in the mining industry. The mining industry is important both for our country and for the European Union, and it needs to continue to develop in order to be able to extract critical metals and minerals that are crucial in the manufacture of new green technologies, and which concern everything from batteries to renewable energy. In order for Sweden to continue to stand strong as a mining nation and be able to grow in a sustainable way, it is therefore important to create favorable conditions for the mining and mineral industry. Sweden has great opportunities with good assets for materials and great know-how. At the same time, Sweden has several problems. It currently takes too long to get a permit for a new mine, the process costs too much money and there is an uncertainty about the permit process which is poor for applicants as well as those directly affected by an intended mine. The management of Natura 2000 permits has further increased uncertainty. The criticism is noticeable not least in the fact that Sweden has lost in the Fraser Institute's annual mining ranking Annual Survey of Mining Companies 2020. The committee believes that the trend must be reversed in order to take advantage of the opportunities Sweden has.

The Swedish Minerals Act, and the permit examination according to the Minerals Act, is structured to provide conditions for the applicant to reach mining by being able to increase the invested capital gradually in the project as knowledge of the project increases. Thus, the split trial allows the prospector to be able to finance a project in stages. Processing concessions under the Minerals Act give the prospector exclusive rights to futureeventual processing of the deposit and is an important sub-goal for the prospector to be able to invest additional capital in the continued development and permit testing of the project. The fact that the examination against the environmental code's housekeeping provisions is already done in the concession review is an important part of achieving the mineral law's purposes of a step-by-step process.

However, permit processes can be long and complicated. The Riksdag has on several occasions decided on announcements that the government will take action onthese permit processes. As recently as March 2021, the Riksdag decided on an announcement that the government will return to parliament no later than 30 June 2022 with concrete proposals for simplified permit processes and shorter processing times for the mining and mineral industry (bet. 2020/21:NU18, rskr. 2020/21:228).

In some cases, a so-called 'Green Paper' is required. Natura 2000 permits as a stage in the permit process for a mine establishment. With regard to the authorisation of activities which may affect a Natura 2000 site, the Supreme Court has held that an overall assessment should be made at some stage of the review, and that this assessment shall be complete, accurate and final. A permit requires the authority to be able to consider all

aspects of the activity and examine the repercussions on the protected area together (NJA 2013 p. 613).

It is thus clear that a comprehensive assessment for a Natura 2000 permit is to be made when such a permit is required and that such an assessment is to be made at some stage of the permitting process. However, it is not regulated that a Natura 2000 permit must exist under a certain review regime. For the mining and mineral industry and also from an environmental point of view, it would, in the committee's opinion, be more appropriate and reasonable for the examination of Natura 2000 permits to be carried out in connection with the examination of permits under the Environmental Code. It would also dispel much of the uncertainty about trials that now prevails.

There are ongoing investigations concerning the Minerals Act and the Environmental Code. However, none of these studies specifically concern the issue of Natura 2000 permits. The committee therefore believes that the ongoing investigative work should be supplemented by the issue of Natura 2000 appropriations. The Government should return to Parliament with proposals that make it clear that the examination in cases where a Natura 2000 permit is required must be made in connection with the examination of permits under the Environmental Code. The committee therefore believes that a Natura 2000 permit should not be a prerequisite for granting a processing concession.

The report on a sustainable supply of innovation-critical metals and minerals

In March 2021, the government decided to appoint a special investigator to review processes and regulations in order to ensure a sustainable supply of innovation-critical metals and minerals from primary and secondary sources. The mandate of the inquiry was not limited to any specific part of the review processes or regulations. According to the directive (dir. 2021:16), the assignment was to analyze and propose

- changes to review processes and regulations so that better account can be taken of both a project's local environmental impact and its societal benefits, e.g. reduced global climate impact
- changes in review processes and regulations so that a larger share of the value generated by the mining and mineral industry can benefit the whole country.

Through supplementary directives (dir. 2022:61), the inquiry was given an expanded assignment to investigate, within the framework of the ongoing assignment, how the supply of the innovation-critical metals and minerals that are necessary for the climate transition can receive a special position vis-à-vis other metals and minerals in the Environmental Code's provisions on the management of land and water, and submit the necessary legislative proposals. As a prerequisite and delimitation for the assignment, it was stated, among other things: that the Inquiry into a sustainable supply of innovation-critical metals and minerals (N 2021:01) should not investigate when in the trial stages a review of Natura 2000 permits should be made.

On October 31, 2022, the inquiry presented its report *A secure supply of metals and minerals* (SOU 2022:56).

4 Examination of mining activities

4.1 From exploration to extraction - a step-by-step process

The system for assessing the possibility of extracting minerals requires testing according to various legislations in several stages. The fact that the review process is divided into different stages is primarily justified by the mining industry's special conditions and the actors' need to attract venture capital. A trial that gradually provides greater certainty for the prospector to know that he will ultimately be allowed to process a deposit allows financing to be provided to the project gradually for the purpose of that survey work can be carried out, environmental assessments carried out, applications are produced, and concession and permit examinations can be carried out. The underlying idea of the Minerals Act is thus to promote exploration and knowledge building while taking reasonable account of opposing individual and public interests (Prop. 1988/89:92 p. 45 f. and Prop. 1991/92:161 p. 6).

The central steps in the process from exploration to mining operations are exploration permits, processing concessions, environmental permits, land allocation, and construction and land permits.

4.2 Survey work

Exploration permits and work plan

According to Chapter 1, "examination" means: Section 3 of the Minerals Act (1991:45) works to demonstrate a deposit of a concession mineral and to ascertain the likely economic value of the deposit and its nature in general, to the extent that such work entails encroachment on the rights of the landowner or other rights holder. Examination may in

normally only carried out by the person who has an exploration permit (Chapter 1, Section 4 of the Minerals Act).

An exploration permit under the Minerals Act gives the licensee an exclusive right in relation to the landowner and other prospectors to map the current bedrock geology (Chapter 2, Section 4 of the Minerals Act).

In chapter 3. Sections 3–8 of the Minerals Act contain rules for how exploration work may be conducted. Among other things, survey work may only be carried out in accordance with a current work plan and that the permit officer must, before the work begins, provide security for compensation for damage or encroachment caused by the survey work. Matters concerning the granting of exploration permits are examined by the mountain master.

An exploration permit is valid for three years from the date of the decision.

In chapter 2. Sections 6–8 of the Minerals Act provide for extension.

Other permits, etc. in the investigation phase

Certain measures within the framework of an exploration permit may require examination under other legislation.

In sensitive environments, drilling or other measures can risk having a significant impact on the environment of a Natura 2000 site. In that case, a Natura 2000 trial needs to be initiated. It may also be necessary to obtain an exemption from the ban on off-road driving in accordance with the Off-Road Driving Act (1975:1313) and to obtain exemptions from the provisions on beach protection and species and biotope protection, respectively. The exemption exercise is done at the municipal environmental committee and the county administrative board, respectively. Survey work may also need to be reported for consultation according to Chapter 12. Section 6 of the Environmental Code. The notification is made to the supervisory authority, which is usually the county administrative board.

In some cases, it may be necessary, as part of the survey work, to test mine part of the deposit to investigate how the material will behave in an enrichment process. In cases where test mining takes place, there is a much greater impact in the environment than is the case with other investigative measures.

Test mining constitutes environmentally hazardous activities that require permits in accordance with Chapter 9 of the Environmental Code. Even the subsequent treatment of it

Broken out material is environmentally hazardous activity that requires permits (Chapter 4). Section 15 of the Environmental Review Ordinance (2013:251)). The application for sample mining is examined by the environmental review delegation at the County Administrative Board. Test mining can also constitute a water activity that requires a permit according to Chapter 11. the Environmental Code. If a planned test break is to be assessed according to both Chapters 9 and 11. The Environmental Code is examined by the Land and Environment Court.

4.3 Processing concession

Exclusive rights to a mineral deposit

According to Chapter 1, processing means: Section 3 of the Minerals Act on the extraction and utilisation of concession minerals. A decision on a concession determines who has the right to extract the minerals found in the area. If several have applied for a concession in the same area, it shall take precedence that has an exploration permit for any of the minerals covered by the application (Chapter 4). Section 3 of the Minerals Act). The decision on the concession implies an exclusive right to the processing of a particular mineral within a coordinate-determined area of the mineral applied for. However, the concession does not give anyone the right to start mining and extractive activities as a permit is also required under the Environmental Code (see section 4.4).

In order to have an application for a processing concession granted, it is required that a deposit has been found that is likely to be economically assimilated. The application must therefore contain detailed information on the survey results in the area and the economic conditions for the extraction and processing of the deposit, so-called ore evidence. It is also required that the location and nature of the deposit do not make it inappropriate for the applicant to be granted the requested concession. The nature of the deposit refers to the fact that some minerals may have special significance, for example from a defense and foreign policy point of view. The assessment of the location of the deposit is about the need to avoid inappropriate land consolidation of concession areas. In the concession case, an assessment is also made of whether mining on the site is compatible with the housekeeping provisions in Chapters 3 and 4. the Environmental Code. Nor may a concession contravene:

zoning plan and zoning regulations. However, if the purpose of the zoning plan or zoning regulations is not frustrated, minor deviations may be made.

Of Chapter 4. Section 2(4) of the Minerals Act states that if a case concerning the granting of a concession relates to an activity which is subsequently to be examined also under the Environmental Code or other laws, 3 and 4 chapter. The Environmental Code is only applied to the examination that takes place in the concession case. The examination is final and involves an assessment of what is an appropriate and appropriate land use of the land covered by the application for processing concession. Any re-examination according to Chapters 3 and 4. The Environmental Code shall not be made in connection with a subsequent application for a permit under the Environmental Code.

The binding effect of the examination under the Minerals Act in a concession case applies only to the activity that has been examined in the case, i.e. to the use of a concession case. a certain specified activity located in a certain area and with a certain permissible impact on any conflicting interests. If additional land or water areas later need to be used for the business, it becomes a question of a new balance with the application of Chapters 3 and 4. the Environmental Code for the additional activities (Prop. 1991/92:161 p. 10).

Application and procedure

What an application for a processing concession must contain is stated in sections 17–18 of the Minerals Ordinance (1992:285). It says, among other things, that the European Union should be given the opportunity to do so. that the application must be in writing, submitted to the mountain master and contain information about the applicant, which concession mineral the application relates to, which properties are affected by the application, the the impact of the planned activities on public and private interests and the measures needed to protect them; the applicant's plan for the activity, etc. The application shall also include: information required by Chapter 4. Section 2, fifth paragraph, of the Minerals Act so that a specific environmental assessment can be made, information provided and coordination takes place in accordance with the provisions of Chapter 6. Sections 28–46 of the Environmental Code.

The mountain master shall, for the purposes of chapters 3, 4 and 6, be subject to the following provisions: environmental

code, consult with the county administrative board of the county or counties in which:

the concession area is located (Chapter 4). Section 2, third paragraph, and Chapter 8. Section 1, third paragraph, of the Minerals Act).

The mountain master decides on matters concerning the granting of a processing concession (Chapter 8, Section 1, first paragraph of the Minerals Act). However, the matter shall be referred to the Government if the mountain master deems the question of concession to be particularly important from a general point of view, or the mountain master in the application of Chapter 3 or 4. the Environmental Code finds reasons to deviate from what the County Administrative Board has proposed in its consultation opinion.

Terms and period of validity

A concession shall be subject to the conditions necessary to protect public interests or individual rights, or alternatively to ensure that natural resources are explored and safeguarded in a expedient way.

A processing concession is normally valid for 25 years. In chapter 4. Sections 8–11 of the Minerals Act provide for extension.

4.4 Permits according to the Environmental Code

The overall purpose of the Environmental Code is to promote sustainable development that means that current and future generations are assured of a healthy and good environment. The permit examination according to the Environmental Code , which is a completely independent examination in relation to the Minerals Act, intends to ensure that a planned activity meets the requirements that follow from the Environmental Code.

Mining and extractive activities constitute environmentally hazardous activities subject to permits in accordance with the provisions of Chapter 9. the Environmental Code and Chapter 4. the Environmental Review Regulation. This means that permits are required for the mining and enrichment of minerals as well as the landfilling of extractivewaste. To the extent that mining requires the diversion of groundwater and the construction of dams, a permit for water operations is also required according to the provisions of Chapter 11. the Environmental Code. What is meant by water activities is defined in Chapter 11. Section 3 of the Environmental Code.

During the permit examination, it is assessed whether the applied activity can be allowed according to the general rules of consideration in Chapter 2. Environmental Code

and other admissibility rules in the beam. If the activity is admissible, an examination is made of the conditions and other restrictions that should apply to the business.

The entire planned mining operation and its environmental impact are tested together during the permit examination. Follow-on activities, such as transport, access roads and mass handling, are also included in the trial. The activity applied for may not begin before an environmental permit has been issued.

An application for an environmental permit is examined by the Land and Environment Court. In certain cases, the Government may reserve the right to examine the admissibility of mining and extractive activities (Chapter 17, Section 3 of the Environmental Code).

4.5 Land allocation and building and land permits

Rules on land allocation can be found in Chapter 9. minerals law. A land allocation ordinance is held at the request of the person who has a processing concession. The ordinance determines which land within the concession area the licensee may use for the processing of the deposit. It is also determined which land or space within or outside the concession area the concessionaire may use for the activities related to processing. Through the land allocation, the right to extract minerals is linked to the right to use the land or space required for the business. A land allocation decision is required even if the holder of the concession owns the land that needs to be used for mining.

As a final step in the process until mining operations can begin, building permits and land permits are needed according to the Planning and Building Act (2010: 900) for the construction of facilities and for certain earthworks, respectively.

5 Examination of Natura 2000 permits

5.1 Nature Directives

Natura 2000

With membership of the European Union became the Habitats Directive, also known as the Habitats Directive (Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as last amended by Council Directive 2006/106/E G of 20 November 2006) and the Birds Directive (Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of: wild birds) binding on Sweden. The directives are often referred to collectively as nature directives. The directives provide for the protection of habitats and animal and plant species, inter alia, through the creation of a European network of protected areas (Natura 2000). The nature directives provide both site protection and protection for species. In particular, the aim is to maintain or restore a favourable status for the conservation of certain types of habitats and for populations of certain species of wild birds and plants.

The Natura 2000 network is set up through a specific procedure; where each Member State identifies, inter alia, sites which are important for the conservation of habitats and species covered by the Directives and designates them as special areas of conservation. These are habitats whose natural range within the Community is very small or has shrunk considerably. Among the species of Community interest are a number of Swedish animals and plants whose long-term survival is threatened.

In Sweden, at the turn of the year 2021/22, there were just over 4,000 Natura 2000 areas with a total area of 5,797,073 hectares of land and inland waters and 2,005,821 hectares of sea, respectively. About 13 percent of Sweden's total land and inland water area is included in the Natura 2000 network.

Regulation in the Directives

The Habitats Directive sets out criteria according to which EU Member States are to propose a list of sites where there are such habitat species and species listed in the Directive. The list must be submitted to the Commission together with information identifying the sites and indicating the conditions that led to the inclusion of the sites in the list (Article 4(1)). In agreement with each Member State, the Commission shall, on the basis of the Member States' lists, draw up a draft list of sites of Community importance for the conservation of habitats and species (Article 4(2)). As soon as a site has been included in this list, the site shall be subject to a certain specified protection (Article 4(5)). The list is then adopted by the Commission in accordance with a specific procedure (Article 4(2)). Once a site has been selected according to the described procedure, the Member State concerned must designate the site as a special area of conservation (Article 4 (4)).

The Commission may also find that a site is missing from the list proposed by the Member State and that the site is indispensable for the conservation of a habitat or species. In that case, the Commission shall initiate a consultation procedure with the Member State. If the Commission and the Member State do not reach an agreement, the matter shall be referred to the Council. The Council may decide that the site is of Community importance (Article 5(1) to (3)). During the consultation period and pending the Council's decision, the Member State shall take appropriate measures to prevent deterioration of the habitat and disturbance of: the species for which the site has been designated, where such disturbances may have a significant impact on the objectives of the Directive (Article 5(4) in conjunction with 6(2)).

For SACs, Member States shall take the necessary conservation measures, including, if necessary, the preparation of appropriate management plans in particular for:

the sites or integrated into other development plans, as well as appropriate laws, regulations or agreements, corresponding to the ecological needs of the habitat types present on the sites (Article 6(1)). The Member States must therefore maintain a certain level of protection for designated areas, but each Member State is free to choose which mechanisms to use within its own country in order to meet the requirements.

Once the Commission has included a site on its draft list of sites of Community importance:

Member States must take appropriate measures to prevent deterioration of the habitats and disturbance of the species for which the sites have been designated, where such disturbances may have a significant impact on the objectives of the Directive (Article 6(2)).

All plans and projects which are not directly related to or necessary for the management of a site, but which alone or in combination with other plans or projects may have a significant impact on the site, shall be appropriately assessed with regard to the impact on the purpose of preserving the site. A plan or project may be approved by the national authority only after the authority has satisfied itself that the site concerned will not be damaged. Where appropriate, the Authority shall also hear the opinion of the public (Article 6(3)).

If the assessment is that the area could be damaged, the plan or project may in some cases still be approved. However, this presupposes the absence of alternative solutions and the need for the plan or project to be carried out for imperative reasons of overriding public interest, including those of a social or economic nature. It also requires the Member State to take all necessary compensatory measures to ensure that the overall ecological coherence of the Natura 2000 site remains. If the site contains a habitat type or species which is a particular priority under the Directive, the assessment may take into account only those factors relating to human health or the general safety, significant environmental consequences or, following an opinion from the Commission, other imperative reasons of overriding public interest (Article 6(4)).

The Birds Directive also provides for the protection of certain species and their habitats. Species protection applies to all European bird species with some exceptions. The protection of habitats shall relate to:

the habitats of certain specified species and of migratory birds and nesting, molting and wintering areas; According to the Directive, areas that Member States consider most suitable are to be classified as SPAs.

Protection areas under the Birds Directive and conservation areas under the Habitats Directive together make up the European Natura 2000 network. The protection provisions of the Habitats Directive also apply to protected areas under the Birds Directive (Article 7 of the Habitats Directive in conjunction with Article 4(1) to (2) of the Birds Directive).

Implementation of the Directives

The nature conservation directives have been implemented in Swedish law mainly through provisions in Chapter 7. Sections 27–29b of the Environmental Code and 15–20a of the Ordinance (1998: 1252) on site protection under the Environmental Code, etc. (Prop. 1994/95:117, Prop. 2000/01:111 and Prop. 2011/12:158).

5.2 Natura 2000 trial

Natura 2000 examination of processing concessions

In chapter 4. Section 8 of the Environmental Code states that the use of land and water that may affect a natural area that has been listed as a protected or conservation area under the nature conservation directives, and which includes activities or measures that require a permit under Chapter 7. Section 28a of the Environmental Code may only come into being if such a permit has been granted.

By reference in Chapter 4. Section 2 of the Minerals Act (1991:45) to the environmental code's housekeeping provisions, the provisions on the protection of Natura 2000 sites become applicable in matters concerning the granting of processing concessions. The need for a Natura 2000 assessment may also arise when a planned mining and extraction activity is subject to permit testing under the Environmental Code or during earlier stages of the process from exploration to an environmental permit. The focus of the further presentation is on Natura 2000-

the examination in connection with the consideration of an application for a processing concession.

The mountain master shall consult with the county administrative board regarding the application of the environmental code's housekeeping regulations (Chapter 8). Section 1, third paragraph of the Minerals Act). The County Administrative Board's assessment within the framework of the consultation includes, among other things: to consider whether the land use of the concession applied for can have a significant impact on the environment of a Natura 2000 site. If the County Administrative Board deems this to be the case, the project may not be taken without a Natura 2000 permit having been granted. Questions about permits according to Chapter 7. Section 28a of the Environmental Code is examined by the county administrative board of the county in which the area is located (Chapter 7). Section 29(b) of the Environmental Code).

In HFD 2022 note. 20 (Laver), the Supreme Administrative Court has clarified that a Natura 2000 permit must exist before a decision on a processing concession can be issued. Thus, a case concerning the granting of a concession cannot be finally heard until there is a final status for an application for a Natura 2000 permit.

A multi-stage trial

In chapter 7. Section 28a of the Environmental Code states that a permit is required to carry out activities or take measures that may significantly affect the environment in a Natura 2000 site. The requirement for a permit excludes activities or measures which are directly related to or necessary for the management of the site concerned. Activities that began before 1 July 2001 are also exempt from the requirement for a permit (Entry into force and transitional provisions to the Act (2001:437) amending the Environmental Code). The decisive factor in determining whether an activity or measure requires a permit is not where the activity is carried out or the action is taken, but rather the impact that it may have on the environment of a Natura 2000 site.

In chapter 7. Section 28(b) of the Environmental Code states that a permit may be granted only if the activity or measure cannot harm the habitat or habitats on the site intended to be protected or not causes the species or species to be protected to be disturbed which may significantly impede the conservation of the site.

Assessment addresses not only the effects of the planned activity or measure itself, but also whether, together with other ongoing or planned activities or measures, it may affect the environment or species in a protected area.

The Natura 2000 trial thus consists of two stages. The first step concerns a position on whether the planned activity or measure has such an impact on the environment in a Natura 2000 site that the permit requirement according to Chapter 7. Section 28a of the Environmental Code is updated. The second step concerns an assessment of whether a permit can be given according to the requirements set out in Chapter 7. Section 28(b) of the Environmental Code.

About the conditions according to Chapter 7. Section 28(b) of the Environmental Code is not complied with, a Natura 2000 permit can still be granted on the basis of Chapter 7.
Section 29 of the Environmental Code. The absence of alternative solutions, the activity or measure must be carried out for imperative reasons of overriding public interest, and the necessary measures are taken to compensate for the loss of environmental value so that the purpose of the to protect the area concerned nevertheless can be accommodated. A permit may, pursuant to Chapter 7. Section 29 of the Environmental Code is only submitted after the government's permission.

Step one: assessment of whether Natura 2000 permits are required

The permit requirement in Chapter 7. Section 28a of the Environmental Code is updated if an activity or measure can have a significant impact on the environment in a Natura 2000 site. The expression "may affect" implies that it is a risk assessment where it does not need to be established that the activity or measure will result in " a significant impact on the environment". The term 'environment' includes not only the habitats and species identified when the Natura 2000 site was established, but also the environment in a broader sense. The permit requirement has thus been formulated in more general terms (compared with the rule in Chapter 7, Section 28b of the Environmental Code) to capture activities and measures that can typically affect the environment in a protected area. The assessment of whether the impact is significant or not is made in light of both the nature of the activity or measure and the sensitivity of the area to impact. Where a planned activity or measure has a direct impact on the habitats or species which:

covered by the protection in a designated area receives the threshold for permit requirement according to Chapter 7. Section 28(a) of the Environmental Code is considered to be low.

During the consultation with the County Administrative Board, the Mountain Master collects the County Administrative Board's assessment of whether the land use of the requested concession may significantly affect the environment in a Natura 2000 site (Chapter 8, Section 1, third paragraph of the Minerals Act). The assessment at this stage is primarily based on the data contained in the environmental impact assessment produced, which in turn is based on assumptions about the impact of the mining project on protected areas. The County Administrative Board has the opportunity to request additional information.

Thus, at the consultation stage, it is a question of a more general risk assessment of the impact of the activity, before the operator or authority has evaluated the exact effects on the habitats and species protected in a Natura 2000 site and what adaptations to the activity can required to reduce such effects. This latter assessment is made when an application for a Natura 2000 permit is examined and sufficient investigation is available.

Step two: examination of whether a Natura 2000 permit can be granted

If the permit requirement according to Chapter 7. Section 28a of the Environmental Code has been updated, an assessment needs to be made to assess whether the conditions for a Natura 2000 permit are met or not.

Application for a permit according to Chapter 7. Section 28a of the Environmental Code is made by the county administrative board of the county where the protected area is located. The application can also be made to the environmental review delegation or the Land and Environment Court, which examines permits according to Chapter 9. and Chapter 11. the Environmental Code (Chapter 7). Section 29(b) of the Environmental Code). In these cases, the application for a Natura 2000 permit is made integrated with the application for a permit under Chapter 9 or 11. the Environmental Code. If an application for a Natura 2000 permit has already been submitted to the County Administrative Board, the Land and Environment Court may reserve the right to consider that application (Chapter 21). Section 3 of the Environmental Code). Before applying for a Natura 2000 permit, a specific environmental assessment must be carried out. It means, among other things: that the operator shall consult authorities and other stakeholders and produce an environmental impact assessment which is submitted to

the review authority.

Section 6.2 provides a more detailed description of the different steps of a specific environmental assessment.

An activity or measure does not in itself have to cause damage or significant disturbance to the environment in a protected area, but may, together with decided or ongoing activities carried out in the area, mean that the limit of acceptable impact is exceeded. Therefore, when examining an application for a Natura 2000 permit, cumulative effects are also assessed, i.e. how the activity or measure alone or together with other ongoing or planned activities and measures may affect the site as a whole. Activities or measures to be taken into account when taking into account cumulative effects may include, for example: ditches, roads or what follows from decided building permits, zoning plans or environmental permits.

A Natura 2000 permit may be subject to conditions (Chapter 16, Section 2 of the Environmental Code).

In some cases, the examining authority may not grant a Natura 2000 permit without the government's permission (Chapter 7). Section 29 of the Environmental Code). This may be the case if a permit cannot be granted as a result of the requirements of Chapter 7. Section 28(b) of the Environmental Code, but the review authority considers that there are grounds for having the issue examined in accordance with Chapter 7. Section 29 of the Environmental Code. In that case, the review authority must, with its own opinion, submit the matter to the Government (Chapter 19, Section 2 and Chapter 21, Section 7 of the Environmental Code). The Government only examines whether the conditions according to Chapter 7. Section 29 of the Environmental Code is complied with. If the government gives permission, the review authority makes the final assessment of whether the conditions a for a Natura 2000 permit are met.

5.3 What are the requirements for the Natura 2000 trial?

A trial that is complete, accurate and final

In NJA 2013 p. 613 (Bunge), the Supreme Court clarified that a review based on Article 6(3) of the Habitats Directive assumes that there is an overall assessment of the impact of the activity on the protected interests of the area concerned. The assessment shall be complete, precise and final so that it is possible to disperse any

scientific doubt as to these effects. The Supreme Court held as follows (paragraphs 11–13).

11. According to the Habitats Directive (Article 6(3)), a plan or project can only be approved if a national authority has satisfied itself that the affected site will not be damaged. The authority shall assess from a scientific perspective the impact of the plan or project on the site. An approval assumes that there is "no reasonable doubt that the activity cannot have a harmful effect" on the area. (See Waddenvereniging and Vogelbeschermings- vereniging, paragraphs 55 and 59.) It should therefore be clear that the activity is not harmful.

12. The legal application of the Court of Justice of the European Union expresses in various ways that the review should be comprehensive. The national authority has to take into account the cumulative effects that different plans and projects may have on the objective of conserving the Natura 2000 site and must ensure that there is no long-term adverse impact on the site. All aspects of the plans and projects shall be identified using the best possible scientific information and know-how. A review does not meet the requirements of the Habitats Directive if it contains deficiencies or lacks complete, precise and final assessments and conclusions. It shall be possible to dispel any reasonable scientific doubt as to the impact of the planned works on the site. (See Waddenvereniging and Vogelbeschermingsvereniging, paragraphs 53 to 56, Alto Sil case, paragraph 100, and judgment of 11 April 2013 in Case C-258/11 Sweetman, paragraphs 41 and 45.)

13. The permit examination must therefore cover all the effects that the applied for activity may have on the Natura 2000 site. This, in turn, means that an overall assessment should be made at some stage of the trial, and that this assessment should be complete, precise and final. A permit requires that the authority can consider all aspects of the activity and examine the repercussions on the protected area together.

The Supreme Court's decision makes it clear that a review based on Article 6(3) of the Directive assumes that somewhere in the process a complete, precise and final assessment is made of the impact of the activity on the interests worthy of protection in a Natura 2000 site. The decision has had an impact on practice, see e.g. HFD 2016 ref. 21 (North Marsh) and judgments of the Land and Environment Court of Appeal of 18 June 2014 in cases M 7307-13 and

M 11820-13, on 30 April 2019 in Case M 10717-17 and 28 August 2018 in case M 10355-17.

The regulation in the Minerals Act is based on the fact that the examination according to Chapters 3 and 4. The Environmental Code must be made as early as possible and on only one occasion. At the same time, it can be difficult to predict all possible consequences of a project at an early stage. This is because the process from exploration to finished mining is divided into different stages and that complete information about the mine's final design and impact on the environment is usually available only at the final stage of the process. That relationship has been highlighted in the HFD 2016 ref. 21 (Northern Marsh) where the Supreme Administrative Court overturned the government's decision on processing concessions. The reason for this was that the environmental impact assessment did not contain any data on the land use of operating installations (waste rock deposits, sand reservoirs, clearance ponds, etc.), with the result that no test of (land use for the operating plants) impact on the environment in nearby Natura 2000 sites had come into being.

The Supreme Administrative Court's ruling indicates that the basis for review of an application for a Natura 2000 permit – in order to meet the requirements of a comprehensive review that is complete, precise and final – should be in principle equal detailed and comprehensive as the basis for the subsequent application for a permit under the Environmental Code, in respect of those parts of the activity that may have an impact on the environment in the Natura 2000 site.

The Natura 2000 test may need to be re-conducted

Not infrequently, a long time elapses between when a processing concession is granted and when the examination of an application for a permit under the Environmental Code is initiated. It is also not uncommon for the detailed design and location of facilities for operation, etc. to be used in this way. is amended in a way that has an end in the environmental impact of a Natura 2000 site. In this situation, despite the fact that a Natura 2000 permit has already been obtained, it may often be necessary to reassess the impact of the mining project on the protected area.

In order to exclude the risk of significant impacts on a protected area, the case-law of the Court of Justice of the European Union requires that the previous Natura 2000 trial contain complete, precise and final conclusions on the basis of which any reasonable scientific doubt can be dispelled as to the impact of the works, and provided that the relevant environmental and scientific data have not changed, that the project has not been modified and that there is no any other plans or projects to be considered (Friends of the Irish Environment Ltd, C-254/19, EU:C:2020:680, paragraph 55).

It is for the national review authority to check, prior to a final environmental assessment of a project, whether a Natura 2000 reassessment needs to be carried out. According to the case-law of the Court of Justice of the European Union, if the project has been modified in a way that justifies a new Natura 2000 review, it is not sufficient to examine only additional aspects of the expected environmental impact on the protected Area. In order for a comprehensive, accurate and final assessment to have taken place, it is necessary that all aspects of the impact of the activity on the protected area be re-examined (a.a., paragraph 58).

Thus, for a developer, it may be necessary, integrated with the examination of an application for an environmental permit, to reapply for a Natura 2000 permit even though such a permit has already been obtained.

6 Environmental assessments of activities and measures

The following section deals with the EU law rules that concern environmental assessments of activities and measures and the implementation of those provisions in Swedish law. The specific environmental assessment is an important part of several of the steps towards the establishment of a mine, including the production of a Natura 2000 permit where one is needed. The section therefore also describes the case law of the European Court of Justice when it comes to stall processes that take place in several stages and how it relates to the permit examination in a Swedish context.

6.1 EU and international law

EIA Directive

Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, known as 'environmental impacts ', on the environment. The EIA Directive, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 a pril 2014 amending Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment. A brief description of the EIA Directive and the amending Directive can be found in Prop. 2016/17:200 p. 59 ff. When reference is made in the further text to the EIA Directive, it refers to the codified version of the Directive currently in force.

The EIA Directive contains provisions to ensure that a systematic environmental impact assessment is carried out for projects which, by reason of their nature, size or location, entail

a significant environmental impact. To this end, the Directive imposes a permit requirement and requires an assessment of the impact of projects before granting permission (Article 2(1)).

Article 3 requires a case-by-case environmental impact assessment to identify, describe and assess in an appropriate manner the significant direct and indirect effects of a project on population and human health, biodiversity, soil, water, air, climate and landscapes, material assets, cultural heritage and landscapes and the interaction between these factors. The manner in which assessment is to be carried out is set out in Articles 5 to 10.

Annex 1 to the Directive lists the projects subject to mandatory environmental assessment requirements in accordance with Articles 5 to 10. Annex 2 lists the projects on which Member States may assess on a case-by-case basis or applying thresholds or criteria whether an environmental assessment in accordance with Articles 5 to 10 is to be carried out. For those activities and measures that are not deemed to have a significant environmental impact or that are not listed in either Annex 1 or 2, the Directive does not require either a permit requirement or an assessment of their environmental impact.

If an environmental assessment of the project is required, the developer must prepare and submit to the responsible authority an environmental impact assessment (Article 5(1)). Annex 4 to the Directive lists the information to be included in an environmental impact assessment .

The Aarhus Convention and the Espoo Convention

Sweden is a party to the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the so-called Aarhus Convention. The Convention aims to ensure the public's right to access environmental information held by public authorities, to participate in environmental decision-making processes, and to have access to justice in the Environmental issues. The Aarhus Convention has also been acceded to by the European Community. Sweden is also a party to the Convention on Environmental Impact Assessment in a Transboundary Context, the so-called Convention on Environmental Impact Assessment. The Espoo Convention, which aims at cooperation to prevent transboundary environmental effects and contains requirements for:

to inform neighbouring countries and the general public about planned activities that may cause environmental effects. A brief description of the Aarhus Convention and the Espoo Convention can be found in Prop. 2016/17:200 pp. 59 and 63.

6.2 The regulation in the Environmental Code and the Environmental Assessment Regulation

In chapter 6. The Environmental Code contains provisions on, among other things, specific environmental assessments for activities and measures, as well as on coordination (of work with other environmental assessments) and on so-called environmental assessments. small environmental impact assessment. The provisions are implemented by the Environmental Assessment Ordinance (2017:966). Through these provisions, the requirements of the EIA Directive and other international legal acts on specific environmental assessments for activities and measures are implemented in Swedish law.

The provisions on environmental assessments are designed to focus on the process of carrying out an environmental assessment involving the public concerned and the relevant environmental authorities rather than the document – the environmental impact assessment – resulting from the process and describing the environmental impact of a certain activity or action. Activities and measures refer to all parts of a project, i.e. not just the part that is subject to a permit. The environmental assessment must thus be made based on the project as a whole (prop. 2016/17:200 p. 195; see also MÖD 2007:50). The focus of the further presentation is on provisions on specific environmental assessments of activities and measures.

Anyone who intends to carry out an activity or measure that is subject to the requirements for a specific environmental assessment must first investigate whether the project can be expected to have a significant environmental impact (Chapter 6). Section 23 of the Environmental Code). This is done, among other things, by the responsible party conducting a survey consultation with the county administrative board, the supervisory authority and the individuals who can be assumed to be particularly affected (Chapter 6, Section 24 of the Environmental Code). Anyone who is part of the circle of an inquiry consultation should be able to take part in a consultation document. It shall include information such as the design and

scope of the activity or measure, its location, the environment in the areas affected, the likely significant environmental effects and what measures can be taken to prevent and remedy them, as well as the operator's assessment of whether a significant environmental impact can be adopted (Section 8 of the Environmental Assessment Regulation). After the investigation, the County Administrative Board shall decide in a special decision whether the activity or measure can be expected to have a significant environmental impact (Chapter 6, Section 26 of the Environmental Code).

If it has already been decided in advance that an activity or measure has a significant environmental impact, it is not necessary to carry out a special investigation in accordance with Chapter 6. Sections 23–26 of the Environmental Code. This is the case if the operator himself assesses that the project has a significant environmental impact or if the project is covered by the provisions of Section 6 of the Environmental Assessment Ordinance in conjunction with the applicable provisions of the Environmental Review Ordinance (2013:251). In those cases, the provisions of Chapter 6 need to be applied. Sections 24–27 of the Environmental Code are not applied and the operator does not have to wait for a decision from the county administrative board on the issue of the environmental impact of the activity or measure. Instead, the operator can proceed with carrying out the specific environmental assessment.

The specific environmental assessment means that the operator must consult on how an environmental impact assessment should be delimited (delimitation consultation), produce an environmental impact assessment and submit it to the examining authority, and that the review authority must give the opportunity for comments on the environmental impact assessment and complete the environmental assessment (Chapter 6, Section 28 of the Environmental Code).

A first step in the specific environmental assessment is to carry out the delimitation consultation (Chapter 6, Sections 29–32 of the Environmental Code). The purpose of the delimitation consultation is to address the environmental effects of the project in a broad context in order to arrive at an appropriate delimitation in the upcoming environmental impact assessment. The delimitation consultation shall take place with the county board, the supervisory authority and the individuals who are likely to be particularly affected by the activity or measure, as well as with the other state authorities, the municipalities and the public that are likely to be affected. of the activity or action (Chapter 6). Section 30 of the Environmental Code). The public also includes environmental and nature conservation organisations operating in the locality where the activity or measure is planned. The consultation circle often includes the Swedish

Environmental Protection Agency, Kammarkollegiet, the Swedish Agency for Marine and Water Management and the Swedish Civil Contingencies Agency. The municipality and the relevant municipal committees are also expected to be part of the consultation circle. However, the members of the consultation circle may be determined on a case-by-case basis , taking into account the nature and extent of the activity or measure envisaged. Those who are part of the consultation circle for the delimitation consultation shall be able to consult a consultation document. Such evidence may have been produced if an inquiry consultation had been held. The data can then also be used for the delimitation consultation with any additional information that may be needed if any changes have occurred since the survey consultation. If no survey consultation has taken place and no consultation dossier has therefore been produced, such a dossier must be produced for the delimitation consultation. The documentation must contain the same information as before a survey consultation (Section 8 the Environmental Assessment Regulation).

The delimitation consultation must begin and the consultation documentation must be submitted to the consultation circle in sufficient time to allow for meaningful consultation before the operator prepares the environmental impact assessment and the final permit application (Chapter 6, Section 31 of the Environmental Code). An assessment of the length of time before the delimitation consultation to be provided must be determined on a case-by-case basis . In making the assessment, account should be taken, inter alia, of: taken to the scope and complexity of the substrate.

It is important that the county administrative board has an active role during the consultation. The County Administrative Board should provide the operator with guidance on how the environmental impact assessment should be designed and take a position on which issues are relevant from an environmental point of view. In chapter 6. Section 32 of the Environmental Code states that the County Administrative Board shall, during the delimitation consultation, work to ensure that the content of the environmental impact assessment is given the scope and level of detail needed for the permit examination (Prop. 2004/05:129 p. 55 f.).

A specific environmental assessment shall be documented in an environmental impact assessment submitted to the review authority. According to chapter 6. Section 35 of the Environmental Code requires the environmental impact assessment to contain information about the project itself, its location, design and scope. Sections 16–19 of the Environmental Assessment Ordinance contain additional requirements for what an environmental impact assessment must contain. About the

business or the measure can be assumed to affect the environment in a Natura 2000 site, the environmental impact assessment must also contain the information needed for a review according to Chapter 7. Sections 28(b) and 29 of the Environmental Code (according to Chapter 6, Section 36 of the Environmental Code). Since the definition of environmental effects is broad, there is a need to delimit an environmental impact assessment in order to reduce the risk of it becoming unnecessarily extensive. It is therefore stated in Chapter 6. Section 37 of the Environmental Code states that the information to be included in the environmental impact assessment pursuant to Sections 35 and 36 shall have the scope and level of detail that is reasonable in view of current knowledge and assessment methods, and which: is necessary for an overall assessment to be made of the significant environmental effects that the activity or measure is likely to entail.

It is ultimately the responsibility of the operator to ensure that the consultation is carried out in accordance with the applicable legal requirements and that the environmental impact assessment contains the information needed for the permit examination. It follows from court practice that a poorly conducted consultation process or a too narrowly defined environmental impact assessment may result in the rejection or rejection of the permit application (e.g., NJA 2008 p. 748 and 2009 p. 321 and MÖD 2006:5 7, 2007:50 and 2012:19).

If the review authority deems that the environmental impact assessment can be used as a basis for the continued environmental assessment, the authority must announce that the environmental impact statement exists, make it available to the public and give the public reasonable time to comment (Chapter 6, Section 39 of the Environmental Code). The period of expression shall not be less than 30 days. In chapter 6. Sections 40–41 of the Environmental Code require the content of the proclamation and that the environmental impact statement be published on an appropriate website and in the local newspaper.

The review authority shall decide whether the environmental impact statement meets the requirements of Chapter 6. the Environmental Code and, when the permit issue is decided, complete the environmental assessment by identifying, describing and making a final and comprehensive assessment, taking into account the content of the environmental impact assessment and what has emerged during the handling of the case or case; of the environmental effects. The authority's decision must be announced (Chapter 6, Sections 42–44 of the Environmental Code).

The person who makes a specific environmental assessment must strive to coordinate the work with other environmental

assessments that are made or with similar work done according to other statutes (Chapter 6, Section 46 of the Environmental Code). The provision aims at both coordination during the consultation phase and coordination later in the process when an environmental impact assessment is produced.

6.3 Environmental assessments of mining projects

As set out in section 6.2, a specific environmental assessment involves various steps whereby the operator consults authorities and other stakeholders and produces an environmental impact assessment that is submitted to the review authority. In the continued presentation, the focus is partly that the requirements to carry out an environmental assessment for a mining project are updated on at least two occasions (sometimes several), and partly that the requirement for what the environmental impact assessment should contain may vary depending on on the stage of the trial process at which the description is produced.

Processing concession

According to chapter 4. Section 2, first paragraph of the Minerals Act (1991:45), a processing concession shall be granted if a deposit that is likely to be economically assimilated has been found and the location and nature of the deposit do not make it inappropriate for the applicant to receive the requested concession. In matters of processing concession, Chapters 3 and 4. the Environmental Code is applied; The application shall take place only during the examination of the concession and not at the subsequent environmental permit examination (Chapter 4, Section 2, third and fourth paragraphs of the Minerals Act).

In chapter 4. Section 2 of the Fifth Minerals Act contains a reference to provisions in Chapter 6. the Environmental Code on making a specific environmental assessment. The fifth paragraph of the provision was given its current wording in the context of the most recent review of the implementation of the EIA Directive. In that legislative case, it was considered that several factors, including that a well-conducted consultation reduces the risk of later requests for additions and for appeals, suggested that the provisions of Chapter 6. the Environmental Code shall apply to examination of the granting of processing concessions. It was also considered that activities that are tested under the mineral law's rules on processing concessions are of such a nature that a significant environmental impact can always be assumed, which is why it should not be opened up to an opportunity to take forward a so-called. small environmental impact statement (Prop. 2016/17:200 p. 157 f. and p. 220 f.). In the memorandum that

preceded the bill, there is a detailed discussion of the applicability of the EIA Directive to the examination of processing concession cases (Ds 2016:25 p. 252 f.)

> Thus, before applying for a processing concession, the operator must carry out a specific environmental assessment and produce an environmental impact assessment (see section 6.2). The environmental impact assessment shall include, inter alia, information enabling it to be considered whether the mining project will have a significant impact on the environment in a Natura 2000 site. About the permit requirement according to Chapter 7. Section 28a of the Environmental Code requires the operator to apply for a Natura 2000 permit (see section 5.2). The environmental impact assessment must also contain information that makes it possible to make assessments and trade-offs of how the mining project relates to the housekeeping regulations in Chapters 3 and 4. the Environmental Code in general.

Natura 2000 permits

An application for a Natura 2000 permit is examined by the county administrative board of the county where the protected area is located. The application can also be made to the environmental review delegation or the Land and Environment Court integrated with an application for a permit under Chapter 9 or 11. the Environmental Code. If an application for a Natura 2000 permit has already been submitted to the County Administrative Board, the Land and Environment Court may reserve the right to practice that application (Chapter 21). Section 3 of the Environmental Code). Before applying for a Natura 2000 permit, the operator must carry out a specific environmental assessment and produce an environmental impact assessment (see section 5.2).

The environmental impact assessment shall always include a description of the impact of the activity on the purpose of conserving the Natura 2000 site, a description of the options that have been considered with a justification for the choice of a particular option;

and the information that is otherwise needed for the examination according to Chapter 7. Sections 28(b) and 29 of the Environmental Code (Chapter 6). Section 36, first paragraph, of the Environmental Code). If the operator intends to obtain only a Natura 2000 permit, the content of the environmental impact assessment may be limited to the information needed for that assessment (Chapter 6, Section 36, second paragraph of the Environmental Code). If the application is instead made integrated m ed an application for a permit under Chapter 9 or 11. The Environmental Code applies to the requirements for what an environmental impact assessment must contain in full.

The information needed for the examination of an application for a Natura 2000 permit varies depending on the nature and extent of the activity applied for and the purposes for which the site concerned has been established. The regulations also state that the information to be included in an environmental impact assessment must have the scope and level of detail that is reasonable in view of current knowledge and assessment methods, and which are needed for an overall assessment to be made of the significant environmental effects that the activity or measure can be assumed to entail (Chapter 6, Section 37 of the Environmental Code).

The environmental impact assessment shall enable an assessment to be made as to whether the activity is likely to damage the habitats or cause significant disturbance to the species for which the site has been established. According to Section 17 of the Ordinance (1998:1252) on site protection according to the environmental etc., the County Administrative Board shall draw up special conservation plans for Natura 2000 sites. Information for the environmental impact assessment can be drawn from the conservation plan for the Natura 2000 site concerned, which contains site-specific information on what can damage or disturb designated habitats and species and how a favourable conservation status can be maintained. Some Natura 2000 sites lack a conservation plan and a description of their conservation purpose. If this is the case, the operator may demonstrate more broadly how mining activities may affect the area's ability to contribute to the maintenance of the favourable conservation status of protected species and habitats.

Permits according to the Environmental Code

For quarrying and open-pit mining with an area of activity exceeding 25 hectares, the EIA Directive always requires a

specific environmental assessment. For mining and extraction activities in general, including roasting and sintering plants, Member States maydecide whether the project requires a specific environmental assessment, which may be carried out by means of an individual examination or by setting limit values or criteria by the Member State (Article 4, Annexes 1 and 2). to the Directive).

The EIA Directive's requirements for examination and specific environmental assessment for quarries and mining in open pits have been implemented in Swedish law, e.g. through Chapter 4. Sections 11–16 of the Environmental Review Ordinance and Section 6 of the Environmental Assessment Ordinance. It is clear from the provisions that facilities for the mining of ore or minerals and facilities for the processing or enrichment of ores or minerals – regardless of their size or size – constitute activities subject to authorisation. The same applies to sample mining and processing facilities for sample purposes. Paragraph 6(1)(1) of the Environmental Assessment Regulation states that an activity is likely to have a significant environmental impact if it is subject to a permit requirement under, inter alia, the following: Chapter 4. Sections 11–16 of the Environmental Review Ordinance. This means that a specific environmental assessment must always be made for activities related to the mining of ore or minerals as well as facilities for the processing or enrichment of ore or minerals.

Before applying for a permit under the Environmental Code, the operator must carry out a specific environmental assessment and produce an environmental impact assessment, which must enable a comprehensive assessment of the environmental effects of the mining project. A more detailed explanation of what the requirement for a specific environmental assessment entail can be found in section 6.2.

Specific environmental assessments can be carried out

The system for assessing the possibility of extracting minerals requires testing according to various legislations and in several stages. The central steps in the process are exploration permits and processing concessions according to the Minerals Act and permits according to the Environmental Code. In order to realize a mining project, a specific environmental assessment must therefore be carried out and an environmental impact assessment is produced on at least two occasions, firstly before the application for a processing concession and partly before the application for an environmental permit.

If the developer intends to test mine part of the deposit to investigate how the material will behave in an enrichment process, a permit is required according to the Environmental Code for test mining. Even in that case, a specific environmental assessment needs to be carried out and an environmental impact assessment produced.

It may also be necessary to carry out a specific environmental assessment and produce an environmental impact assessment on another occasion. This is the case if the project is deemed to affect the environment in a Natura 2000 site in such a way that the permit requirement in Chapter 7. Section 28a of the Environmental Code is updated and the operator therefore needs to apply for a Natura 2000 permit.

It is not necessary to re-implement every step of the process when the trial system requires a specific environmental assessment. Through the rules on coordination in Chapter 6. Section 46 of the Environmental Code enables coordination of the implementation of specific environmental assessments for different purposes and the work of producing an environmental impact assessment. The operator may, within a broad framework, coordinate consultations, studies and other measures to collect and collate information.

When should a comprehensive assessment of the environmental impact of the project be made?

It follows from the case-law of the Court of Justice of the European Union that , where a project is subject to a step-by-step permit process under national law , the assessment of environmental impact must in principle be carried out as soon as possible to identify and assess all the effects of the project on the environment (Wells, C-201/02, EU:C:2004:12, paragraphs 52 and 53, Paul Abraham and others, C-2/07, EU:C:2008:133, paragraph 26, and Inter-Environnement Wallonie ASBL, C-411/17, EU:C:2019:622, paragraph 85). D a competent authority is obliged to carry out an assessment of the effects of the project on the environment even after a previous permit has been granted. The assessment shall be of an inclusive nature and cover all points of the project which have not yet been assessed or which need to be reassessed (Barker, C-290/03, EU:C:2006:286, paragraph 48). Where a Member State entrusts the power to assess part of the environmental impact of a project and to take a decision on the basis of that partial assessment to an authority other than the authority empowered to approve the project, this partial assessment and the previous decision shall not prejudge the overall assessment that the authority competent to approve the project must in any event make (Namur-Est Environment ASBL, C-

463/20, EU:C:2022:121, paragraph 62).

When it comes to a multi-stage permit review and how it relates to the Natura 2000 assessment, the CJEU has ruled that the assessment required by Article 6(3) of the Habitats Directive should in principle be carried out as soon as all the effects that the project in question may have on a protected area can be identified with sufficient precision (Inter-Environnement Wallonie ASBL, C-411/17, EU:C:2019:622, paragraph 143).

According to Swedish law, a mining operation may only begin when all necessary permits are in place, partly a processing concession according to the Minerals Act and partly a permit according to the Environmental Code. In addition, decisions on land allocation, building and land permits, etc. are also needed. decisions (see section 4). The current system is thus based on a divided trial and the different decisions are independent of each other. Against this background, the examination of processing concession cases and the subsequent environmental permit process should be considered equivalent to those described in the case-law of the Court of Justice of the European Union as the granting of permits in stages. The same assessment has been made in the latest review of the implementation of the EIA Directive (Ds 2016:25 p. 256).

Thus, EU law requires that a comprehensive and comprehensive assessment of all environmental impacts be carried out prior to the decision providing for the final approval of a mining project. In principle, the requirement also applies when the environmental effects of the project require a Natura 2000 assessment. The question of how the Swedish review regime, where Natura 2000 issues are presumed to have been finally examined already at the concession stage, relates to EU law has been dealt with in section 5.3.

7 Mapping

7.1 Processing concession cases in 2012-2021

Decision of the mountain master

During the period 2012–2021, the mountain master has made decisions in 58 processing concession cases. Of these, processing concessions have been granted in 38 cases, while the other decisions have concerned the rejection, rejection or dismissal of the application. During the same period, r 22 decisions on processing concessions have been appealed to the government, while two cases, Eva K No. 1 (dnr 1183/2007, 285/2009) and Kallak K No. 1 (559/2013), have been referred to the Government for review under Chapter 8. Section 2 of the Minerals Act (1991:45).

The case of Eva K No. 1 was referred to the government in November 2014. The government referred the case back in June 2016, after which the mountain master granted processing concessions in November 2017.

The case of Kallak K No. 1 was first referred to the government in February 2015. The government referred the case back in June 2016. The mountain master again referred the matter to the government in June 2017, after which the government announced the processing concession in March 2022. The case is currently before the Supreme Administrative Court. As of December 2022, the case for judicial review was still pending.

In December 2022, there were twelve open processing concession cases with bergsstaten. Four of these concerned applications received in 2022, while the rest concerned applications received in 2021 or earlier.

Decision of the government

During the period 2012–2021, the Government has decided on 24 processing concession cases under the Minerals Act. Of these, eight cases have been referred back to the Mountain State. Five of the decisions on referral back have taken place in the lightof the Supreme Administrative Court's decision HFD 2016 ref. 21 (North Marsh). The cases referred back are Eva K nr 1 (dnr 1183/2007, 285/2009), Kallak K nr 1 (dnr 559/2013), Viscaria K nr 7 (dnr 312/2011), Norra Kärr K nr 1 (dnr 838/2012) and Kyrkberget K nr 1 (dnr 728/2014).

In December 2022, there was an open case about processing concessions with the government (Kyrkberget K no. 1).

Mountain State Processing Times

Table 7.1 shows that both the inflow of applications and the number of decisions taken have been relatively steady during the period examined, possibly with some decline in recent years. Even the processing time from the complete application to the mountain master's decision does not show any major deviations for most years.

Table 7.1 Proceedings at the Mountain State

Processing concession cases

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Applications received	6	6	6	9	4	4	2	4	3	3
Decision	7	7	9	3	10	6	5	5	1	5
Total case time*	123	550	825	941	453	1080	957	624	2 962	1 049
Turnaround**	72	62	54	42	45	51	23	65	8	152

* Average days for cases where a decision was made during the year, calculated from the time the case was received until the date of the decision.

** Days on average for all cases where a decision was made during the year, calculated from the time the last supplement in the case was received until the decision day.

In terms of total case time, a significant variation is noticeable from year to year, with a tendency to increase after 2016. Processing concession cases can be very different from one another. For example, a case concerning a concession for the extension of an existing mine is generally less complicated compared to a case concerning the establishment of an entirely new mine. It is therefore difficult to draw any firm conclusions from the investigated

Material. One circumstance that has affected the case times is the Supreme Administrative Court's decision HFD 2016 ref. 21 (Norra Kärr), in which the court clarified the scope of the review under Chapter 4. Section 2 of the Minerals Act. Since the ruling means that the impact of operating facilities must also be taken into account when assessing Natura 2000 issues, additional documentation material has been required in pending processing concession applications, which has led to extended processing times at bergsstaten (SGU, Annual Report 2021, p. 32 f.).

Time from concession decision to final force

Decisions on processing concessions are appealed to the government. Decisions made by the government can in turn be subject to judicial review by the Supreme Administrative Court.

Table 7.2 shows that the factor affecting the average time from decision to finality is largely whether or not appeals against grant decisions are lodged.

Table 7.2 Time from concession granted to final

Granted processing concession applications

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Decision to grant processing concessions	7	5	5	2	6	6	4	2	0	1
Time from decision to final*	207	191	92	36	45	189	328	41	-	74
Decisions under appeal**	2	3	3	0	2	4	1	0	0	0
Time from decision to final (appeal)***	633	346	148	-	80	265	1 200	-	-	-

* Average days for cases where a decision to grant a processing concession was issued during the year.

** Number of decisions to grant processing concessions that were appealed to the government during the year.

Days on average for cases where decisions to grant processing concessions were announced during the year, and which were appealed to the government.

Even when it comes to the length of time before a granted concession that has been appealed becomes final, it is difficult to draw any general conclusions. However, the cases behind the statistics for 2012 and 2018 should be looked at more closely , as the averages for those years differ from those of other years.

In 2012, two decisions to grant a labour concession were appealed. Bergmästaren's decision regarding the Disputed Mine K No. 1 became final after the government's decision. In that case, the time from the concession decision to the final force amounted to 507 days (approximately 17 months). For Rönnbäcken K No. 3 – a case that gained legal force only after the government's decision had been judicially reviewed by the Supreme Administrative Court – the corresponding period was 759 days (approximately 25 months).

The statistics for the year 2018 refer only to one decision to grant processing concession, namely Viscaria K No. 7, which gained legal force after the government's decision. In that case, the time from the concession decision to the final date amounted to 1,200 days (approximately 40 months).

Cases involving a Natura 2000 assessment

According to chapter 8. Section 1, third paragraph of the Minerals Act, the master of the Rock shall, in matters relating to the granting of a processing concession, consult with the county administrative board of the county or counties in which the concession area is located, with regard to the application of Chapters 3, 4 and 6. the Environmental Code. The consultation means that the County Administrative Board must give its opinion on, among other things, the possible impact of the activities on the environment in nearby Natura 2000 sites, and whether Natura 2000 permits are required. If the County Administrative Board assesses the investigation regarding, for example, the the impact on the environment in a Natura 2000 site is not sufficient, the County Administrative Board may request that the basis for the application be supplemented.

During the period 2012–2021, bergsstaten decided on a total of 58 processing concession cases. Of these, 45 cases were tried on the merits, which included consultation with the county administrative board. In a third of these, during the consultation, the County Administrative Board raised the issue of impact on nearby Natura 2000 sites. In two-thirds of the total 15 cases in which the County Administrative Board initiated a Natura 2000 assessment, the authority concluded, in some cases after completion by the applicant, that a Natura 2000 permit was not required. But in the remaining five cases, the County Administrative Board ruled that a Natura 2000 permit was required.

In summary, the County Administrative Board has estimated that Natura 2000 permits have been required in about 11 percent of

the cases where consultation with the authority has been carried out. These cases will be highlighted in more detail in the next episode. Even one of the cases where the County Administrative Board finally concluded that a Natura 2000 permit was not required is interesting and is therefore described in more detail.

7.2 Mining projects with impediments

Stekenjokk K No. 1 and Levi K No. 1

In August 2011, Vilhelmina Mineral AB applied for a processing concession for two areas. The area Levi K nr 1 (dnr 907/2011) is located in Västerbotten County and Stekenjokk K nr 1 (dnr 906/2011) is located on the border between Västerbotten and Jämtland counties. The concession areas thus affect two county administrative boards.

Bergmästaren rejected the application in February 2014 on the grounds that the rules in Chapters 3 and 4. the Environmental Code was an obstacle to the concession. When balancing the national interests for reindeer husbandry and valuable substances and minerals, the mountain master judged that preference should be given to the national interest in reindeer husbandry.

The applicant appealed the mountain master's decision to the government. During the processing with the government, the company supplemented the environmental impact assessment with a second-hand alternative. The company had, among other things, investigated the possibilities for semi-annual mining as well as opportunities for enrichment and landfilling in Norway. In view of the fact that the design of the project had changed, the Government considered that a new examination needed to be carried out and that, in accordance with the principle of order of instance, it should take place at bergsstaten. The Government therefore decided in November 2017 to refer the matter back to the mountain master (Ministry of Enterprise and Innovation N2014/01145).

In May 2019, after some correspondence and additions from the applicant, the County Administrative Board of Jämtland approved a processing concession for Stekenjokk K No. 1. The same month, however, the County Administrative Board of Västerbotten County announced that the documentation needed to be supplemented for both areas.

Following further additions by the applicant, including: Regarding how the hydrology in the area could change, the County Administrative Board of Västerbotten County gave its opinion in December 2019. The County Administrative Board considered that there was a lack of a description of how

hydrology could affect designated conservation values within a nearby Natura 2000 site. Against this background, the County Administrative Board considered that it was necessary to consider the issue of a Natura 2000 permit before the authority could assess whether the concessions could be approved.

The company submitted an application for a Natura 2000 permit to the County Administrative Board of Västerbotten County in September 2020. On June 2, 2022, the County Administrative Board granted a permit pursuant to Chapter 7. Section 28a of the Environmental Code for mining activities in connection with and within the Natura 2000 area Vardo-, Laster and Fjällfjällen in Vilhelmina municipality (dnr 521- 7466-2020). The permit was subject to a number of conditions.

The Natura 2000 permit was initially appealed to the Land and Environment Court in Umeå, however, the appeal was withdrawn and the court dismissed the case in October 2022 (case no. M 1965-22). The Natura 2000 permit became final in November 2022.

While the processing of the application for Natura 2000 permits has been pending before the National Board of Health, bergsstaten has not taken any procedural steps in the concession cases.

As of December 2022, processing concession cases were still open.

North Marsh K No. 1

In July 2012 , Tasman Metals AB applied for a processing concession for Norra Kärr K nr 1 (dnr 838/2012) in Jönköping Municipality. After the consultation according to Chapter 8. Section 1 of the Minerals Act approved the application by the County Administrative Board of Jönköping County on the condition that facilities outside the concession area would be assessed in accordance with Chapters 3 and 4. the Environmental Code in the event of a permit examination according to Chapter 9. the Environmental Code. Bergmästaren granted the concession in May 2013. The decision stated that the impact of future mining on the area outside the concession area would be considered in the Land and Environment Court's review under Chapter 9. the Environmental Code.

The mountain master's decision was appealed to the government, which in January 2014 decided not to hear certain appeals due to a lack of right of complaint. The government rejected the other appeals. The Government stated, among other things, that the question of which environmental pope should be allowed and what conditions should apply to the activity is examined by the

Land and Environment Court at the the permit examination according to Chapter 9. the Environmental Code. The Government considered that there were no obstacles under Chapters 3 and 4. the Environmental Code against granting the requested concession and that the requirements of the Minerals Act for granting the processing concession were met (Ministry of Enterprise and Innovation N2013/3396).

The government's decision was challenged by the Supreme Administrative Court. The Court held that there could be no doubt that the future land use of operating facilities would affect surrounding areas. Nor could it be excluded that neighbouring Natura 2000 sites could also be significantly affected. By virtue of the limitation that had occurred in the concession case, the court held, the review had not included the application of Chapters 3 and 4. the Environmental Code concerns land use for operating facilities. This meant that the assessment of impacts on Natura 2000 sites provided for in Chapter 4. Section 8 of the Environmental Code had not come about. Thus, neither the decision of the mountain master nor the government had included such a review as referred to in Chapter 4. Section 2 of the Minerals Act. Since it was not obvious that the error had no bearing on the decision, the Supreme Administrative Court overturned the government's decision by judgment of 22 February 2016 (HFD 2016 ref. 21).

Against the background of the Supreme Administrative Court's ruling, the government decided to show the case back to the Mountain State.

In March 2019, following correspondence and additions from the applicant, the County Administrative Board of Jönköping County rejected a processing concession. The reason was that the environmental impact assessment was so deficient that it could not be used as a basis for assessing the appropriateness of the land use under 3 and
Chapter 4. the Environmental Code. The County Administrative Board also considered that there was insufficient evidence to rule out an unauthorized impact on nearby Natura 2000 sites and that the activities therefore required Natura 2000 permits.

In May 2019, bergsstaten informed the applicant that the authority would not take any action in the matter until the company applied for and received notification of Natura 2000 permits.

The applicant announced in November 2020 that the company had not yet submitted an application for a Natura 2000 permit, but that work was underway to produce documentation for an application. The company also came in with

a timetable for the work, in which, among other things, it is possible to carry out the work in which it is possible to carry out the work in question . stated that it intended to submit an

application for a Natura 2000 permit by April 2021. The Mountain State rejected the application in May 2021. This is in view of the fact that no application for a Natura 2000 permit had yet been submitted to the County Administrative Board. The applicant appealed the decision to the government, but withdrew the appeal in June 2022 (Ministry of Enterprise and Innovation N2021/01754).

According to information gathered in the dialogue with the parent company Leading Edge Materials, work is continuing to develop supporting material for an application for a Natura 2000 permit.

Åkerberg K No. 1

Boliden Mineral AB applied in December 2013 to convert åkerberg in Skellefteå municipality (dnr 1539/2013) into a processing concession. In the application, the applicant had stated that a Natura 2000 permit would be required in the forthcoming environmental assessment. In its opinion to bergsstaten, the County Administrative Board of Västerbotten County approved a processing concession. At the same time, the County Administrative Board agreed with the applicant's assessment regarding the need for a Natura 2000 permit.

In August 2014, the mountain master granted a processing concession for the area. The decision stated that what was being examined in the case was the company's application to convert the case in question into a processing concession, and that the issue of Natura 2000 authorisation was not included in that trial gen. The mountain master's decision has not been appealed.

Laver K No. 1

In September 2014, Boliden Mineral AB applied for a processing concession for the area Laver K nr 1 (dnr 1179/2014) in Älvsbyn municipality. The County Administrative Board of Norrbotten County considered that there was a risk that the activity sought would cause significant damage to the environment in a nearby Natura 2000 site. The County Administrative Board stated that it was not possible to make a different assessment with

less than that a trial under Chapter 7. Section 28(a) of the Environmental Code was implemented.

The applicant argued that it was not necessary to apply for a Natura 2000 permit before the mountain master made a decision in the concession case.

The mountain master rejected the concession application in December2016. The master of the mountain considered that the examination of a Natura 2000 permit could neither be carried out after the examination of the processing concession nor that there was a possibility of reconciling the granting of a processing concession with a proviso to subsequent testing. Since the applicant did not intend to supplement the application with a Natura 2000 permit, a processing concession could not be granted.

The applicant appealed the mountain master's decision to the government, which rejected the appeal in December 2020. The government tamed the mountain master's assessment that a Natura 2000 permit must be in place at the time of the decision on a processing concession (Ministry of Enterprise and Innovation N2017/00095).

The company then applied for judicial review of the government's decision to the Supreme Administrative Court, which concluded by a judgment of 20 June 2022 in Case No. 798-21 that the government's decision could not be considered contrary to any rule of law and that the decision would thus stand (HFD 2022 note 20). The court noted that the text of the act in Chapter 4. Section 2, third paragraph of the Minerals Act states that the provision of Chapter 4. Section 8 of the Environmental Code applies to cases concerning the granting of processing concessions and that that provision requires a Natura 2000 permit for activities affecting the environment in the protected area.

Kristineberg K No. 6

In December 2017, Boliden Mineral AB applied for the processing shoecession for the area Kristineberg K nr 6 (dnr 1080/2017) in Lycksele municipality. Several Natura 2000 sites – Rävlidmyrbäcken, Vattuledningsmyrbäcken and Kolbäcken, all of which are tributaries of the Vindel River – were adjacent to or within the concession area. The Natura 2000 area of Vormbäcken, located at a further distance from the concession area, could also be affected.

In the consultation, the County Administrative Board of Västerbotten County approved the applied concession. The County Administrative Board assessed that the activities would not have any negative impact on the protected areas closest to the concession area that would require a Natura 20 00permit. In the case of Vormbäcken, the County Administrative Board stated the following:

> Vormbäcken is the recipient for existing mining operations in the area and will also be the discharge point for this additional part. The company states that they will investigate and develop a purification technical solution with the goal that the expanded operations will not entail additional impact on the watercourse. The County Administrative Board therefore believes that the impact on the Natura 2000 watercourse Vormbäcken can only be assessed when this investigation has been made and that it must therefore be handled in the examination of the environmental permit. Overall, the County Administrative Board considers that the national interest in Natura 2000 is not in conflict with the concession sought and that coexistence is possible.

The mountain master did not find grounds to make any other assessment than the county administrative board regarding the possibility of coexistence between the planned activities and the affected watercourses. Since the concession was not needed is preceded by a review of Natura 2000 permits and other conditions according to Chapter 4. Section 2 of the Minerals Act was met, the Mountain Master decided in October 2018 to grant the applied processing concession. The decision was not appealed.

7.3 Discussion

The Supreme Administrative Court's decision HFD 2016 ref. 21 (Norra Kärr) has changed the conditions for the examination of processing concession cases. The decision has extended the scope for what is to be tried in a concession case. As a result of the Supreme Administrative Court's position, the government referred a number of cases back to bergsstaten for re-examination. As bergsstaten notes in its annual review for 2021, the decision has led to extended processing times due to the fact that additions have been required in pending processing concession cases.

As the scope of the review has been extended to the site of

operating installations, it is reasonable to assume that questions of environmental impact in neighbouring Natura 2000 sites will be raised more frequently in cases of granting a concession efte r HFD 2016 ref. 21 (North Marsh). This is highlighted not least by the fact that the Natura 2000 issue has come up in the Stekenjokk K No . 1 and Levi K No. 1 cases after these were referred back from the government in November 2017. In those cases, the processing concession case has been open with the Mountain State since the beginning of 2020, pending a Natura 2000 permit.

The cases referred back are in conflict with Åkerberg K No. 1, which was decided in August 2014, i.e. before HFD 2016 ref. 21 (North Marsh). It was a conversion of a claim granted under the older Mining Act (1974:342) into a processing concession. According to paragraph 5(f) of the transitional provisions of the Minerals Act, the application in that case was to be examined without the application of Chapter 4. Section 2(1)(1) and (2) of the same Act. Other rules in Chapter 4. Section 2 would, however, apply, which meant that the application, inter alia, was to be made in the form of a decision to make a difference. would be tried under Chapters 3 and 4. the Environmental Code.

In Laver K No. 1, where in December 2016 the mountain master rejected the application for a processing concession, the question of Natura 2000 permits came to a head. By the Supreme Administrative Court's decision HFD 2022 note. 20 (Laver) it was clarified that, in cases where the permit requirement under Chapter 7. Section 28(a) of the Environmental Code has been actualized, there must be a final Natura 2000 permit before a processing concession can be granted.

Kristineberg K No. 6 is interesting in this context. The County Administrative Board of Västerbotten County stated, on the one hand, that the impact on the Natura 2000 site in question should be assessed only when examining the environmental permit and, on the other hand, that the national interest in Natura 2000 is not in conflict with the sought Concession. The mountain master did not find grounds to depart from that assessment. The county administrative board's opinion and the mountain master's decision came after HFD 2016 ref. 21 (Norra Kärr), but before HFD 2022 note. 20 (Laver). It is questionable whether the county board and the mountain master had made the same assessments today.

A decision that is not appealed generally becomes final after about a month. But if the decision is appealed, the time until final force increases significantly, not least if the government's decision also have been judicially examined by the Supreme Administrative Court (see Section 7.1 and Table 7.2).

The picture that emerges is that most processing concession cases are handled and decided by the mountain master relatively

smoothly. Of the applications examined on the merits between 2012 and 2021, just over half have resulted in a granted processing concession without any subsequent appeal. In those cases, it took only a few months from the time the application was complete until a granted processing concession gained legal force.

The survey shows that the County Administrative Board has raised the Natura 2000 issue in one third of the concession cases where consultations have been carried out. In the vast majority of these cases, the issue has not significantly affected the length of proceedings. The survey also shows that the County Administrative Board has assessed that a Natura 2000 permit has only been required in about 11 percent of the total number of cases where consultation with the County Administrative Board has been carried out.

The survey shows that for the five cases where consultation with the authority has been carried out and the permit requirement according to Chapter 7. Section 28a of the Environmental Code has been updated, the processing time has been significantly extended. The tendency is noticeable especially after the Supreme Administrative Court's ruling in the HFD 2016 ref. 21 (North Marsh). It can be expected that the ruling in HFD 2022 note. 20 (Laver) will lead to further extended processing times for those cases concerning the granting of processing concessions where the permit requirement under Chapter 7. Section 28a of the Environmental Code is brought up to date.

8 Problem picture

8.1 The mining industry's conditions

The mining industry in Sweden

Sweden is a country with long traditions in the mining industry. The mineral sector has been an important part of the development of a welfare society and the mining cluster is important for Sweden's economy and for the labor market in several ways. The cluster consists not only of mining companies, but also of companies that provide the mining industry with technology and companies that use minerals from the mines. Several of these collaborations have been going on for over a hundred years and include large Swedish technology companies (SOU 2022: 56 p. 144).

Norrbotten and Västerbotten counties dominate the picture with four-fifths of the total number of employees and workplaces in the industry. The mining industry accounts for one tenth of the counties' gross regional product and the mineral sector in general for another tenor so. Active mines mainly refer to traditional base metals such as iron and copper. In addition, there is significant potential for the extraction of several so-called innovation-critical metals and minerals needed for climate change, e.g. rare earth elements all and natural graphite. The latter resources are available in the two northernmost counties but also in other parts of the country. At the same time, the number of exploration permits and active mines in Sweden is decreasing (SOU 2022: 56 p. 142 f. and 161 f.).

The mining industry is unique in relation to other industrial industries because investments are determined by specific geological conditions. The probability that an exploration will lead to a mine is usually between one in a hundred and one in a thousand. The probability is greater if there is a great deal of knowledge about the specific

geological situation. From the time a promising exploration is carried out, it usually takes ten to fifteen years before a company can begin mining operations on the site. The permits required for extraction require that the operator has been able to demonstrate, among other things, that the activity can be carried out in an environmentally acceptable manner. The exploration phase is thus characterized by major investment risks and by the absence of operating income, only costs. It is only when the mine is in operation that revenue from operations is generated (SOU 2022:56 p. 176).

In the mining industry, companies that have one or more active mines in Sweden, such as LKAB, Zinkgruvan Mining AB, and Boliden Mineral AB, operate, as well as so-called . junior mining companies that rely on external capital for exploration and are mainly active at an early stage of the life cycle of a mining project. About 75 percent of the exploration in Sweden is carried out by the two large mining companies LKAB and Boliden AB. It is primarily junior companies that carry out exploration for innovation-critical metals and minerals (SOU 2022: 56 p. 192).

In Sweden, it is attractive to have a mine in operation. This is because there is good physical potential, a relatively low effective tax rate and strong input factors, such as access to energy, transport infrastructure and skills. At the same time, Sweden has lost its attractiveness when it comes to exploration, which is largely considered to be due to uncertainties related to the trial processes (SOU 2022: 56 pp. 181 et seq.). These uncertainties include linked to the examination of Natura 2000 issues.

A multi-stage trial

As described in section 4, the trial of a mining project takes place in several stages. One reason for this is that a gradual addition of resources to the project is required in order for a deposit to be located and assessed as mineable, the exclusive rights to be monitored and finally an environmental permit to be applied for. Through the exploration permit, certain issues are examined, and certain capital can be contributed to the project, the same applies to the processing concession and the environmental permit. The more circumstances that have been tried at a certain stage of the process; the more capital can be injected because then with greater certainty it will go

To say that in the end a mine will be able to be opened. Since the trial takes place in several stages, in the early stages of the project there is also not complete information about the mine's final design (SOU 2022: 56 p. 408).

The phased trial means that there is rarely information on how the mining project with operating facilities for mining, processing and transport will be finally designed at the time when a processing concession is usually sought. Rather, knowledge of the impact and decisions about the design of the project will emerge as time goes on. This means that it is usually not possible at an early stage of the process to assess the impact of the business on the environment completely, accurately and definitively in the way as required by Union law. The consequence of this is that a Natura 2000 assessment, which is nevertheless carried out at the concession stage – and which is often based on assumptions about the final design of operating facilities, etc. – risks having to be redone at a later stage of the Process. This leads to problems such as predictability, efficiency and legal certainty at the various stages of the trial, which in turn hampers the willingness to invest in new mining projects (see Section 8.5).

8.2 Time challenges

Exclusivity

In the exploration phase, exclusivity (exclusivity) is the single most important part of the institutional framework that affects the attractiveness of investments. The regulations need to ensure that the prospector receives exclusive rights to the exploitation of the area for mining activities and that competing companies cannot take over the area as long as the exclusive rights are guaranteed (SOU 2022: 56 p. 178).

The exploration permit guarantees the licensee exclusive access to exploration work. Exploration permits are limited in time and can, upon application by the licensee, be extended to be valid for a maximum of 15 years (Chapter 2). Sections 5–8 of the Minerals Act (1991:45)). The exclusive right to mine a deposit requires a processing concession, which as a general rule is valid for 25 years, with the possibility of extension

(Chapter 4). Section 7-11 of the Minerals Act). As the regulatory system is designed, in order for the exclusivity to continue to be guaranteed, an application for a processing concession must be submitted to bergsstaten before the exploration permit has expired.

The need to wait for the market

The mineral sector is characterized by a combination of short and very long perspectives. There is often good knowledge of mineral resources for a long time before a process to begin extraction begins. In order for a company to justify spending resources on the extraction of a mineral resource, the project must be able to be assessed as profitable. Which minerals and other substances are profitable to extract and offer on the commodity market varies greatly with prices. Metal prices, in comparison with prices of many other commodities, are more volatile because demand can change significantly faster than supply. High economic growth leads to a rapidly increasing demand for metals. At the same time, it can take over a decade to significantly increase production capacity (SOU 2022:56 pp. 107 and 157).

In order for income from operations to be absorbed at a time when the market is favorable, it is critical for a company to be able to make investments for the establishment of a new mining project at the right time. Even if a processing concession has been granted, the market conditions and business considerations may mean that the company chooses not to start the study of methods for mining and enrichment, planning of operating facilities and transport, etc. several years later. This applies not only to junior mining companies that depend on venture capital, but also to established mining companies with strong cash flows.

When market conditions are not favourable, it is nevertheless important that the exclusive rights to the deposit are secured for the future. An application for a processing concession must therefore be submitted to bergsstaten before the expiry of the exploration permit in order not to lose the exclusive right to the property.

Natura 2000 trial

Natura 2000 permits are reviewed by the county administrative board of the county where the protected area is located, not by the mountain master. The examination of an application for a Natura 2000 permit requires a specific environmental assessment , including consultation with various stakeholders and the preparation of an environmental impact assessment by the applicant. Additions to assess impacts on protected species and natural environments may be needed after the application has been submitted. After the county administrative board has made a decision, appeals can be made to the Land and Environment Court and then to the Land and Environment Court of Appeal. The process between the initiation of an application and the granting of a Natura 2000 permit and the entry into force of law can take several years.

Strategies and discussion

Since a Natura 2000 permit is required to have become final before a processing concession can be granted, an applicant has to choose between two alternative courses of action.

One option is to apply for a Natura 2000 permit from the county administrative board and wait for it to become final before an application for a processing concession is submitted to bergsstaten. Such a procedure may be appropriate if the applicant itself considers that the planned activity will have a significant impact on a protected site and that a Natura 2000 permit is therefore required.

The second option is for the applicant company to submit an application for a processing concession and await the county board's assessment. If the county administrative board during the consultation procedure according to Chapter 8. Section 1(3) of the Minerals Act considers that a Natura 2000 permit is necessary, the application is submitted to bergsstaten dormant until the company has obtained a Natura 2000 permit from the county administrative board.

The first option assumes that a Natura 2000 permit has become final before the expiry of the exploration permit. Otherwise, an application for a processing concession must be initiated before the Natura 2000 permit has become final. In many cases, the exploration phase lasts for a long time, sometimes as long as the exploration permit is valid. This means that the first option is not always practicable because a

applicant companies rarely have several years available for a Natura 2000 trial before the expiry of the exploration permit. During the dialogue with companies in the mining industry, no example of projects where the procedure has been used has emerged.

The second option is to secure the exclusive rights to the deposit by initiating an application for a processing concession, even if the exploration permit expires in the meantime. However, the processing time at bergsstaten can be very long. This is because a test necessary for the prospector takes place with another authority. Since the exclusivity is secured as long as the case is open with the Mountain State, the applicant has an interest in ensuring that the concession case is not closed before the Natura 2000 review is finally settled. However, there may be other aspects that mean that a decision on the concession case should not be delayed for too long.

In a decision on 14 January 2021, JO has criticised bergsstaten for slow processing of a processing concession case (refs 8068-2018 and 8104-2018). The case concerned the requested concession Norra Kärr K No. 1. The criticism concerned the processing time from the time the case was returned from the government in June 2016, which, according to JO, seemed to depend predominantly on the length of time that the applicant company had been made available to submit certain additions and opinions (see section 7.2). JO considered that bergsstaten had not acted with sufficient firmness and had been too generous in granting the applicant a deferral of completions. JO stated that when assessing what constitutes a reasonable length of proceedings, the nature and complexity of the case must be taken into account, but that it must also be taken into account that, in addition to the applicant , there are property owners and other property owners involved. Against this background, too, it was considered important that the handling is carried out in the most efficient and rapid way possible and that the decision of the case is not unnecessarily delayed. In the decision, the JO also criticized the Mountain State for the fact that the authority's position on the stay of proceedings had not been documented by a formal decision.

The JO decision shows that the right to deferral is not unlimited. This is also illustrated by the circumstantial fact that the mountain master ultimately rejected the application for a concession in the case of Norra Kärr K No. 1, because the company had not applied to the County Administrative Board for a Natura 2000 permit. The JO decision means that a prospector cannot count

with a processing concession case being kept open in all circumstances.

None of the courses described appears to be an ideal alternative, especially as the applicant (as described above) needs to wait for good market conditions. However, as the regulatory system is structured, the applicant needs to obtain a Natura 2000 permit while the concession case is being handled by bergsstaten. As the mining project is at an early stage, the Natura 2000 permit is based in whole or in part on assumptions about how the project will be designed, which is very likely to result in the trial having to be repeated at a later stage (see section 8.3).

The review system also contains a conflict of objectives as it can take a long time for the applicant company to obtain a Natura 2000 permit from the county administrative board, while the Mountain State has a requirement to handle concession cases as quickly and efficiently as possible without delaying a decision unnecessarily.

8.3 A Natura 2000 permit needs to be tested if:

Res judicata

The assessment of the impact of a mining project on a Natura 2000 site must, in order to meet the requirements, set by the Court of Justice of the European Union, be complete, precise and final. If the permit granting process is divided into several stages, it is also required that the relevant environmental and scientific data have not changed, that the project has not been modified and that there are no other plans or projects to be considered.

As described above, a Natura 2000 trial at an early stage of the mining project is often based on assumptions about the final design of the project. Not infrequently, a longer period of time elapses between the time a processing concession is granted and when an environmental permit is tested, in some cases several years. The project will then have time to develop in the meantime and the final design will change, which may have a different impact on the environment in the nearby protected area than was anticipated when the Natura 2000 permit was announced.

EU law is based on the fact that, in the event of regulatory conflicts, it takes precedence over the laws of the Member States and that it can be applied directly. The Court of Justice of the European Union has extensive case law in which developments over time have placed an increasing emphasis on the primacy of EU law. In assessing the impact of Union law vis-à-vis final judgments and decisions in national law, the Court of Justice of the European Union can be said to seek a balance between, on the one hand, legal certainty requirements (that authorities and individuals can rely on the conformity of decisions to be definitive) and, on the other hand, the requirement for the effective implementation of Union law.

As regards the significance of a Natura 2000 environmental assessment already carried out in an environmental assessment carried out later, the case-law of the Court of Justice of the European Union requires the national review authority to check whether a Natura 2000 assessment needs to be reassessed and, if a re-examination is deemed necessary, to carry out a full assessment of the impact of the project on the protected area (see section 5.3).

In NJA 2013 p. 613 (Bunge), the question was how the res judicata of a final admissibility judgment under the Environmental Code relates to the subsequent permit review when the activity may affect a Natura 2000 site. The Supreme Court noted that, where an application for an environmental permit relates to an activity that may affect a Natura 2000 site, Union law requires a complete, precise and final assessment to be made in aggregate form. Furthermore, the Court stated that EU law must be given an effective impact in the field of environmental law and that, when examining permits, the Court must first consider whether an assessment meeting the requirements of EU law has been made in the admissibility judgment. This, the court argued, is less likely to be the case, given that the precise content of the permit and the conditions for it remain to be determined. The Supreme Court thus held that the overall assessment should be made at the time of the permit review, notwithstanding the res judicata of the admissibility judgment.

The Supreme Court's decision in NJA 2013 s. 613 (Bunge) together with the requirements for the effective implementation of EU law, means that a land and environment court cannot be considered to be prevented from considering whether a new Natura 2000 review needs to be carried out in the context of the environmental permit review. This is even though a Natura 2000 permit already exists and has gained legal force. If the assessment results in a new Natura 2000 assessment needing to be carried out, all aspects of the impact of the activity on the site

must be re-examined, not just those parts that were not previously addressed when the Natura 2000 permit was decided.

Even if the design of the mining project has not been changed in a way that triggers requirements for a new Natura 2000 assessment, the subsequent environmental permit review may still raise questions affecting the res judicata of the Natura 2000 permit.

One example is that mining activities often require lowering the groundwater level, which in turn can have consequences for groundwater-dependent species in a protected area. The issue of impacts on groundwater-dependent species is addressed in the context of the Natura 2000 assessment, which usually leads to the imposition of conditions for the Natura 2000 permit. In the subsequent environmental permit review, conditions must be decided for the entire operation of the business, including: for that part of the activity relating to groundwater subsidence. It may then be necessary to adopt conditions with a different factual content from the conditions decided for the Natura 2000 permit. Also the assessment of the impact of a mining activity on protected species and on water bodies (Chapters 5 and 8). the Environmental Code) are examples of issues to be examined in the environmental permit, while those questions may also be relevant for the assessment of the effects of the activity on the environment in a nearby Natura 2000 site.

In the comprehensive assessment of the activities to be made in the environmental permit examination, the Land and Environment Court may conclude that the combined effects of the activity justify combining the environmental permit with conditions that impose different and more far-reaching requirements than the conditions prescribed for the Natura 2000 permit.

The foregoing means that situations may arise in which the res judicata of the Natura 2000 permit granted by the County Administrative Board when the Mountain State considered the application for a processing concession has to give way to the requirements for the effective implementation of Union law, either through a new and complete examination of the conditions for a Natura 2000 permit or through: that the environmental permit be subject to conditions with other factual content than the conditions for a previously decided Natura 2000 permit.

Follow-on companies

When examining an environmental permit, account must be

taken of other activities or facilities, so-called follow-on companies, that may be needed for the applied activity to be able to come into being or be conducted in an appropriate way (Chapter 16, Section 7 of the Environmental Code). Transports to and from the business area are examples of follow-on companies that may need to be taken into account in the environmental assessment.

In HFD 2016 ref. 21 (Northern Marsh), the Supreme Administrative Court ruled that the influence of facilities necessary for the operation of a mine, such as waste rock deposits and sand reservoirs, should be included in the concession review. On the other hand, the Court did not address the question of whether it also applies to follow-on companies. The decision could be read in the opposite way, which means that the impact of follow-on companies must be taken into account first in the environmental permit examination. At the same time, the Supreme Administrative Court referred to the case law of the Court of Justice of the European Union which states that there should be a complete, accurate and final assessment of the impact on the protected area.

It is questionable whether it is possible to make an overall assessment as required by Union law without also taking into account the impact of follow-on undertakings. The Land and Environment Court of Appeal (formerly the Environmental Court of Appeal) has stated that a project's entire environmental impact must be assessed in one and the same examination, and that this includes follow-on companies (MÖD 2007: 50). The European Court of Justice has also stated that what in a Swedish context is treated as a follow-on company should be included when the environmental effects of a project are tested (Paul Abraham et al., C-2/07, EU:C:2008:133, paragraphs 42–46).

Conclusions

It is often difficult at an early stage of a mining project to know how operating facilities should be designed and where they should be located, as well as account for so-called "operating facilities". follow-up companies. The uncertainty makes it difficult to assess the impact that operating facilities and follow-on companies may have on species and the environment in nearby protected areas. The basis for a

Natura 2000 assessment may then be based on assumptions. As a result , the Natura 2000 assessment may very likely need to be redone at a later stage of the process when knowledge of the mining project has increased, or that conditions for a previously decided Natura 2000 permit are changed by conditions in the state of the environment that imposes different and more far-reaching requirements in relation to the environment in a protected area.

The ambiguities linked to whether a previously decided and final Natura 2000 permit will remain valid or whether it needs to be re-examined at a later stage of the process; leads to uncertainty about, in particular, the effectiveness of the review process, legal certainty and predictability. The uncertainty affects not only the applicant companies but also other stakeholders. A Natura 2000 trial carried out twice within the framework of the same mining project also entails costs and an inefficient use of resources for both applicants and authorities.

8.4 Challenges of parallel trial processes

Parallel processes

As a way of dealing with some of the problems that have been highlighted so far in this section, an applicant company can initiate parallel processes, ie. submit an application for a processing concession and environmental permit simultaneously to the Mountain State and the Land and Environment Court, respectively. In that case, an application for a Natura 2000 permit is processed by the Land and Environment Court integrated with the application for an environmental permit (Chapter 7). Section 29(b), second paragraph, and Chapter 21. Section 3 of the Environmental Code).

In chapter 4. Section 2(4) of the Minerals Act states that the environmental code's housekeeping provisions apply only to the examination that takes place in the concession case, if the case concerns an activity that will later be examined also under the Environmental Code. However, the provision does not prevent chapters 3 and 4. the Environmental Code is applied in the environmental assessment if it takes place before the examination of the concession case (see the judgment of the Land and Environment Court in Umeå on April 29 , 2021 in case no. M 2672-18). If the environmental permit is examined before the mountain master has decided on the concession case, it is assumed

that i.e. that the Land and Environment Court examines the location of the business also on the basis of Chapters 3 and 4. the Environmental Code.

Two examples

In the spring of 2020, the company Talga Group applied for a processing concession for the extraction of graphite in Vittangi in Kiruna municipality (Nunasvaara Södra K nr 1, dnr 590/2020). At the same time, the company submitted an application for an environmental permit, which was later supplemented by an application for a Natura 2000 permit. The Land and Environment Court in Umeå announced the application in the spring of 2022. Huvud hearing in the case is scheduled to be conducted in the spring of 2023 (case no. M 1573-20). In December 2022, the case for granting a processing concession was still open with bergsstaten.

Boliden Mineral AB applied in March 2018 for a processing concession to extract copper (Liikavaara K nr 2, dnr 254/2018). The concession area is directly adjacent to an existing area for which the company has a concession, Liikavara K No. 1. In September 2018, the company submitted an application for an environmental permit to the Land and Environment Court in Umeå, which was then supplemented with an application for a Natura 2000 permit. The application for an environmental permit concerned mining in both concession areas.

On April 29, 2021, the court issued permits under the Environmental Code for the mining of ore and waste rock, as well as permits under Chapter 7. Section 28a of the Environmental Code (judgment of the Land and Environment Court in Umeå on 29 April 2021 in case No M 2672-18). The ruling became final in February 2022, after the Land and Environment Court of Appeal and then the Supreme Court decided not to grant leave to appeal.

In December 2022, the processing concession case was still open with the Mountain State.

Difficulties with parallel processes

The strategy of parallel processes may be suitable for certain types of projects and for applicant companies with the conditions to finance an environmental permit application before a processing concession has been secured. Junior mining companies that rely on venture capital generally do not have those conditions.

The examples presented above are projects that are relatively limited in nature. As for the Liikavaara project, the deposit has been known for a long time. A decisive factor is that the applicant had a processing concession for Liikavaara K No. 1 since the early years, and that the concession now sought, Liikavaara K No. 2, constitutes an extension of the same mineral deposit. Thus, the conditions have existed for gathering knowledge and producing the documentation required for an environmental permit application for a long time.

Even for large mining companies such as Boliden Mineral AB and LKAB, it is not always possible to apply for a concession and environmental permit in parallel. LKAB's exploration project "Per Geijer" and Boliden Mineral AB's project "Laver" are examples of projects that consist of deposits that span large areas and that have required major exploration efforts for a long time. Both deposits have exploration permits that expire within a few years. During the dialogue with the companies, it emerged that none of the projects has developed so far that it is possible to produce an environmental permit application before the exploration permit expires.

In addition to the fact that the conditions for parallel processes are not always at hand, other problems of a more procedural nature can also arise.

An application for an environmental permit for mining operations often requires a permit for water operations according to Chapter 11. the Environmental Code. For the examination of an application for water activities, it is a prerequisite that the applicant has control over the water in the area where the activity is to be conducted. If the applicant cannot prove the so-called procedural resourcefulness, the application may be rejected by the Land and Environment Court. The fact that resourcefulness is a procedural prerequisite is not directly stated in the legislation but has been established in the legal justifications and subsequently confirmed in practice for a long time. (In SOU 2009:42 p. 178 b. there is a review of how resourcefulness as a process prerequisite has been treated in the preparatory work for the Environmental Code and previous water legislation. See also NJA 1993 p. 331 and 2012 p. 362 and Kruse, Act (1998:812) with special provisions on water activities Chapter 2, Section 1, Karnov 2023-01-16 (JUNO), which discusses said decisions of the Supreme Court.)

Resourcefulness as a procedural prerequisite for an application according to Chapter 11. the Environmental Code has so far been considered to follow from the concession decision (Judgment of the Land and Environment Court of Appeal of 30 April 2019 in

Case No. M 10717-17, see also NJA 1964 p. 460). Therefore, if an application for an environmental permit is initiated before a processing concession has been granted, the applicant must be able to prove the procedural resourcefulness in some other way than by referring to the processing concession decision. One possibility is that the company will agree with the landowners concerned by civil law and thus be able to invoke a granted right of use in accordance with Chapter 2. Section 2 of the Act (1998:812) with special provisions on water activities, the so-called residual water law. Another possibility is that the planned mining activities have been given a design that makes it possible to support the procedural resourcefulness on primarily point 5 of Chapter 2. Section 4 of the Residual Water Act. The company may also, in a separate case unrelated to an application for an environmental permit, bring an action for special coercive rights pursuant to Chapter 28, Section 10 of the Environmental Code (cf. Chapter 7, Section 2, Section 6 of the Residual Water Act). The provision on special coercive measures has a narrow scope and thus does not constitute a comprehensive alternative to voluntary agreements with the landowners concerned. This means that the application for an environmental permit, which is initiated before a processing concession has been granted, risks being rejected if the applicant fails to enter into an agreement on resourcefulness with the landowners concerned or otherwise prove the procedural resourcefulness. The applicant must then await a decision in the concession case, and deal with the Natura 2000 issue within that framework, before an application for an environmental permit can be initiated with the Land and Environment Court.

Conclusions

The strategy of parallel applications to bergsstaten and the land and environment court gives rise to procedural challenges for the applicant companies, not least in cases where the so-called procedural resourcefulness of an application for an environmental permit must be ensured through agreements with the landowners concerned. Parallel processes are not presented as a realistic option for solving the problems that arise when a Natura 2000 permit needs to be obtained early in the process.

8.5 Problems with raising capital

The road from the first exploration efforts to a finished mine is long and requires significant investments. What matters for the willingness to invest in the mining industry are three factors: the physical potential, costs for inputs (e.g. physical infrastructure, energy and labor), and the institutional framework that regulates the playing field for investments in mining activities (SOU 2022: 56
p. 177). This memorandum addresses part of the institutional framework, specifically the examination of Natura 2000 issues, and how it in turn affects the examination of processing concession cases under the Minerals Act.

A functional test is a fundamental prerequisite for securing financing for exploration in Sweden and avoiding the risk of investment capital instead being invested in other countries. Functionality in the review process can be described in terms of predictability and transparency, efficiency and legal certainty, as well as a balance between natural resource use and protection of existing values. Predictability and transparency are ultimately about the fact that it is clear to all parties involved what will be required of them in the review process and that decisions are well justified. An effective and legally secure review process is about there being clear roles for different actors in the process, that documentation arrives at the right time and that review authorities and referral authorities act objectively in relation to the regulations and the applicant. It needs to be clear what steps are included in the trial process and what is to be done in the different steps. Achieving a balance between the use of natural resources and the protection of existing values is a complex task that ultimately rests on a political balance. A functional test can be said to have succeeded in considering the political intentions behind the regulations. In order for this to happen, there must be clarity in how priorities between different interests should be made (SOU 2022: 56 p. 248 f.).

The functionality weaknesses identified in the Natura 2000 trial relate above all to efficiency, legal certainty and predictability. There are significant ambiguities in the process when it comes to the question of whether a Natura 2000 trial needs to be carried out and at what stage it should be carried out. As the regulations in Chapter 4. Section 2 of the Minerals Act is structured is not

it is unlikely that the Natura 2000 test may need to be repeated at a later date in order to comply with the requirements of EU law for a complete, precise and definitive assessment.

The lack of functionality leads to the fact that the trial process leading up to a processing concession can take a very long time. The shortcomings lead to increased costs for the applicants and an inefficient use of the authorities' resources. From the developer's perspective, there is a risk that the very important exclusive rights to the deposit cannot be secured.

The problem factors particularly affect junior mining companies whose operations are largely financed by external capital, since a decided processing concession is used to attract capital that enables the development of a basis for the environmental permitting process. At the same time, it is important to point out that the problems of an early Natura 2000 trial do not only affect junior mining companies. The survey in section 7 shows that the shortcomings in the functionality of the trial process also affect large, established mining companies.

The problems that have been described lead individually and collectively to mining companies and financiers experiencing great uncertainties about the trial process, something that several actors have specifically pointed out during the dialogue. In the event of excessive uncertainties about the functionality of the trial process, there is a risk that investments in the Swedish mining industry will not be made.

9 Considerations

9.1 Natura 2000 assessment moved to environmental permit assessment

Proposal: The examination of Natura 2000 permits is moved from the examination of processing concession cases to the examination of permits under the Environmental Code. This means that a Natura 2000 permit, where such a permit is required, should no longer be a precondition for granting a processing concession under the Minerals Act.

Reasons for the proposal

A more effective trial

There are several problems with the current trial regime. Processing times are long in processing concession cases where a duty to grant permission according to Chapter 7. Section 28a of the Environmental Code has been updated. Even if a Natura 2000 permit is granted, it is not excluded for several reasons that the same issues need to be re-examined at a later stage of the process from exploration to mine start. The functional deficiencies in the review process give rise to uncertainties, which, among other things, make it difficult to raise capital and risk that investments in the mining industry will not be made. The possibility of couple of all-round processes in which a mining company simultaneously applies for a processing concession and environmental permit does not solve the problems in all situations.

One solution to several of the problems identified is to move the examination of Natura 2000 permits from the consultation stage to the environmental permit examination. The proposal provides for a Natura 2000

A permit, where such a permit is required, is no longer a prerequisite for a processing concession under the Minerals Act to be granted. This avoids the long lead times that sometimes occur before a processing concession can be granted, and that the exclusive right to a public goodness, which is so important to the developer , can be secured in a more efficient way.

A major advantage of allowing the Natura 2000 assessment to take place in the environmental permit process is that it is only at that stage that the full scope of the activity, including follow-up companies, is known. It is then possible to carry out a complete, accurate and final assessment of the environmental impact of a Natura 2000 site in accordance with the requirements of Union law, without that assessment being based on assumptions. This also removes ambiguities about the res judicata of an early Natura 2000 permit and double-examination of Natura 2000 issues – through the requirement for a new permit or additional conditions – completely avoided.

The proposal can be expected to lead to mining companies having to apply the strategy of applying for processing concessions and environmental permits in parallel.

The proposal no longer makes it necessary to finance the basis for a Natura 2000 test already at the concession stage. Instead, capital can be added to mining projects gradually, and investments in a detailed basis for a Natura 2000 trial do not have to take place until the exclusive right to the deposit is secured by a processing concession. The proposal is thus well in line with the fact that the examination under the Minerals Act takes place gradually.

Natura 2000 issues are not uncommon in the types of cases dealt with by land and environmental courts. The courts therefore have extensive experience of the issues that arise. The proposal means that Natura 2000 issues related to mining projects will be examined by five land and environmental courts compared to 21 county administrative boards, which paves the way for a uniform practice in the area to be developed.

The County Administrative Board is one of the so-called County Administrative Boards. mandatory authorities that, in an application case with the Land and Environment Court, bring an action to safeguard environmental and other public interests (Chapter 22). Section 6 of the Environmental Code). The County Administrative Board of the county where the area concerned is located thus has the opportunity to comment on an application for a Natura 2000 permit that is made integrated with an application for an environmental permit (Chapter 7). Section 29(b), second paragraph, of the Environmental Code). The proposed

thus means that the county administrative boards' knowledge of local conditions can continue to be utilized.

There may be situations where it may be an advantage for the prospecting company that a Natura 2000 permit is granted early in the process. Although such cases may be assumed to be rare, the proposal does not prevent an application for a Natura 2000 permit from being examined before the environmental permit examination. It follows from Chapter 7. Section 29(b), first paragraph, of the Environmental Code, which specifies which authority examines the issue of Natura 2000 permits.

Another advantage of the proposal is that processing concession cases do not lie dormant for long periods of time with bergsstaten pending the examination of an application for a Natura 2000 permit and the decision of the county administrative board has become final.

In the light of the foregoing, the proposal is expected to make the concession process clearer, more efficient and to increase predictability. This leads toa more efficient allocation of resources, both for applicant companies and for authorities. Property owners and the general public also benefit from a more predictable and efficient process. Through increased functionality, the uncertainties that have partly contributed to a reduced willingness to investing the Swedish mining industry are reduced.

From a legal point of view, the proposal requires small changes. Instead of a reference to the whole of chapters 3 and 4. the Environmental Code in Chapter 4. Section 2, third and fourth paragraphs of the Minerals Act, a reference is made to Chapter 3. and Chapter 4. Sections 2–7 of the Environmental Code. That the Natura 2000 trial should instead take place together with the examination of a permit according to Chapter 9. and, where appropriate, Chapter 11. The Environmental Code is set out in Chapter 7. Section 29(b), second paragraph, of the Environmental Code, and thus does not in itself require any change in procedure. The corresponding change is also made to Chapter 8. Section 1, third paragraph, of the Minerals Act.

Compatibility of the proposal with EU law

In order for it to be possible to proceed with the proposal, it must not face any obstacle in relation to EU law.

The road leading up to the opening of a mine is today based on a step-by-step trial. The system for examining cases concerning the granting of processing concessions and the subsequent environmental permit

the process may be considered equivalent to what is described in the case-law of the Court of Justice of the European Union, in relation to the EIA Directive, as the granting of authorisations in stages (see section 6.3).

When an application for an environmental permit is initiated with the Land and Environment Court, the applicant company has normally already been granted a processing concession under the Minerals Act. If the environmental effects of the mining project arise, the permit requirement according to Chapter 7. Section 28(a) of the Environmental Protection Act requires that the county administrative board, on application by the company, has issued a Natura 2000 permit while the concession case was being considered by bergsstaten.

In chapter 4. Section 2(4) of the Minerals Act states that the examination in the concession case – which involves the application of Chapters 3 and 4. the Environmental Code – excludes a later examination of the housekeeping provisions of the environmental permit process. It has been the stated intention of the legislature that the review of the housekeeping regulations made at the concession stage should be binding on the later environmental review (Prop. 1991/92:161 p. 10). The question is whether that order, as far as Chapter 4 is concerned. Section 8 of the Environmental Code is compatible with EU law.

In order for the assessment of the environmental impact of a mining project in a Natura 2000 site to be compatible with Union law, it is necessary that the assessment meets the requirements for a complete, precise and final review in accordance with the case-law of the Court of Justice of the European Union.

If a Natura 2000 assessment has already been carried out, in order for that assessment to be taken into account in the final approval of the activity, the previous assessment must include complete, precise and final conclusions on the basis of which any reasonable scientific doubt can be raised as to the impact of the works, and that the relevant environmental and scientific data have not changed, that the project has not changed and that there are no other plans or projects to be considered. Otherwise, it is necessary to reassess the impact of the project on the protected area. According to the case-law of the Court of Justice of the European Union, it is for the national review authority to check whether a Natura 2000 assessment needs to be re-examined before a final approval of the activity.

Under the current system, which examines Natura 2000 permits in the context of the application for a processing concession, authorities and land and environmental courts have, as a result of the chiseled out in the case-law of the Court of

Justice of the European Union a great responsibility to draw attention ex officio to the need for a renewed Natura 2000 review at the environmental permit stage. This means that the intention behind the regulation in Chapter 4. Section 2, fourth paragraph, of the Minerals Act – to exclude a review of Chapters 3 and 4. the Environmental Code in the later environmental permit process – cannot be maintained in all situations. The current review system is thus problematic from an EU legal perspective (see sections 5.3 and 6.3).

The proposal would move the Natura 2000 test away from the concession test and instead become an integral part of the examination of an environmental permit. At that stage, the full scope of the project is known and the EU legal requirements for a complete, precise and final assessment of the environmental impact of activities in a Natura 2000 site can be fully met.

The proposal means that the Natura 2000 test will be carried out only once, namely during the final environmental assessment of the mining project. This minimises the risk that review authorities will not pay attention to situations where Union law requires a reassessment of the impact of activities on the environment in a protected area even though a Natura 2000 permit is already obtained earlier in the process.

9.2 Necessary consequential amendments

If there is no regular processing of the deposit (nor is there any preparation work or other preparation, etc.), the duration of the concession may, on application by the concessionaire, be extended by a maximum of ten years, if this is justified by the public interest in the proper exploitation of the mineral resources way (Chapter 4). Section 10 of the Minerals Act). When considering an application for an extension of the concession period, the mountain master shall consult with the county administrative board regarding the application of chapters 3 and 4. the Environmental Code (Chapter 8, Section 3 of the Minerals Act).

The environmental code's housekeeping provisions shall also apply in certain cases when a question has arisen to change the terms of exploration permits or concessions (Chapter 6, Section 4 of the Minerals Act). In order not to impose longer-term requirements on the examination in cases of change of terms or extension of the concession period than

What is proposed to apply to cases concerning the granting of processing concessions, should Chapter 4. Section 10, Chapter 6. Section 4, third paragraph, and Chapter 8. Sections 2 and 3, second and third paragraphs of the Minerals Act are amended to include a reference to Chapter 4. Section 8 of the Environmental Code is removed.

An editorial change in the Minerals Act is required because previous amendments to the fifth chapter of the Environmental Code have not been noticed. The reference in Chapter 4. Section 2 of the Minerals Act to Chapter 5. Section 15 of the Environmental Code shall instead be to Chapter 5. Section 18 of the Environmental Code.

No consequential amendments to statutes other than the Minerals Act are deemed necessary.

10 Entry into force and transitional provisions

Proposal: The amendments will enter into force on 1 July 2024.

It is not considered necessary to

Reasons for the proposal: The amendments are proposed to enter into force on 1 July 2024.

The proposal does not change the conditions to the detriment of operators who have submitted an application for a processing concession. It is therefore not considered necessary to provide for any transitional measures.

11 Consequences

11.1 The problem and what you want to achieve

As has been described in Section 8, there are several problems with the current regulation in Chapter 4. Section 2 of the Minerals Act, which means that a Natura 2000 permit, when one is needed, is a prerequisite for granting a processing concession.

Processing times are long in concession cases concerning a permit requirement according to Chapter 7. Section 28a of the Environmental Code has been updated. Even if a Natura 2000 permit is granted, it is not excluded for several reasons that a new Natura 2000 assessment will need to be carried out at a later stage of the process from exploration to finished mine. The functional deficiencies in the review process give rise to uncertainties, which, among other things, make it difficult to raise capital and risk that investments in the mining industry will not be made.

In this memorandum, it is proposed that the examination of Natura 2000 permits be moved to the examination of permits under the Environmental Code. A Natura 2000 permit shall, where a permit is needed, no longer be a prerequisite for granting a processing concession under the Minerals Act.

The proposal is expected to lead to a clearer, more efficient concession process and an increase in predictability, leading to a more efficient allocation of resources, both for mining companies and for authorities. Through increased functionality in the trial process, the uncertainties that have partly contributed to a reduced willingness to invest in the Swedish mining industry are reduced.

11.2 Alternative solutions

Mining is different from other industrial activities in that it is site-bound and only very few exploration efforts lead to the establishment of a mine. In view of the fact that exploration activities require substantial investment while the economic outcome is always uncertain, it has been considered essential in previous legislative cases that a prospector may: as certain guarantees as possible that he may process the deposits found (see, e.g., Prop. 1988/89:92 p. 61, Prop. 1991/92:161 p. 7 and Prop. 1997/98:90 p. 212 f.).

The proposed solution involves moving a significant part of the trial s to a later stage of the process. Fewer aspects linked to the business are thus settled when a processing concession is announced. This could lead to the value of the processing concession being perceived as lower and thus acting less as collateral to attract the risk capital needed to finance the implementation of a specific environmental assessment and the development of the necessary data for the environmental process. Junior mining companies that lack revenue beyond venture capital are particularly vulnerable to such an outcome.

It is questionable whether the proposal to relocate the Natura 2000 test will actually mean that a granted processing concession will have a lower value. Junior as well as established mining companies have stated in the dialogue that it is almost always expected that another Natura 2000 trial will need to be carried out later in the process, and that an early Natura 2000 trial thus does not contribute significantly to the value of the processing concession.

At the same time, it cannot be ruled out that the proposal involves a certain watering down of the value of a processing concession. In addition , an early rejection of an application for a Natura 2000 permit is preferable to a rejection late in the process, when substantial resources have been invested in the project. An early announcement would mean benefits and time savings for mining companies as well as for authorities and property owners. Even for non-profit organizations involved in environmental organizations, who often experience that long and unclear processes take a lot of time and energy, an early rejection can be positive.

In order to take advantage of the benefits of the proposal in this memorandum, and to some extent deal with a situation where a rejection comes late in the process, it has been considered whether a supplementary provision should be included in Chapter 4. Section 2 of the Minerals Act. The provision could take the form of a valve where the application for a processing concession is rejected if, during the consultation, the County Administrative Board deems it clear that a Natura 2000 permit will not be granted. The advantage of such a solution is that the negative message is given early before the exploration company has made large investments to produce a detailed basis that highlights the impact on the environment in a protected area.

However, there are several difficulties with such a solution. In order for the County Administrative Board to be able to assess that a Natura 2000 permit will clearly not be able to be issued – in a review that is intended to take place at a later date – a solid basis is required to describe the impact of the activity on the environment in a nearby Natura 2000 site. There is also a significant risk that the documentation produced and the assessment made by the county administrative board lose relevance because it is not uncommon for the design to of the planned mining project will be changed in the meantime until the environmental permit examination. Another outcome is that the county administrative board does not consider itself able to take a position on the issue on the grounds that the documentation is deficient. Since a valve needs to be constructed with a high requirement – obviously – it is likely that the County Administrative Board will only exceptionally consider that a Natura 2000 permit will not be permitted, which means that: the provision does not realize its purpose.

It is uncertain what the legal consequences are of the county administrative board's assessment that a Natura 2000 permit will clearly not be able to be issued. The possibility of having such a position reviewed is limited, except by complaining about the concession decision to the government. If the government makes a different assessment than the county administrative board on the Natura 2000 issue, the government can either grant a processing concession if the conditions are met, or show the case back to bergsstaten for re-examination. Alternatives for an applicant, who has a different opinion than the county board on the matter, would be to apply for Natura 2000 permits before processing concession and take height for a subsequent appeal process if the county board rejects the application. During all

circumstances remain uncertain because an early assessment is not binding on the examination to be carried out in connection with the application for an environmental permit (see section 8.3).

Overall, a provision designed as a valve is not considered to result in any positive effects for either stakeholders or authorities. The alternative solution with a so-called valve has therefore been removed.

It is considered that there are no other solutions that can address the functional deficiencies in the review process identified in this memorandum and that are at the same time compatible with EU law.

11.3 Socio-economic effects

In 2021, the Swedish mining industry (metal mines excluding smelters) had a turnover of almost SEK 69 billion, which is more than double compared to 2016 (Bergverksstatistik 2021, SGU periodic publications 2022 :1, p. 82). According to estimates, the mineral sector contributes just over 1 percent of Sweden's gross domestic product. If indirect effects are taken into account, the contribution is estimated to be between 3 and 4 percent (SOU 2022: 56 p. 147). According to the report on a sustainable supply of innovation-critical metals and minerals, the mining industry risks declining by an average of just over a quarter, to annual net sales of just under SEK 50 billion, if changes in the trial system are not implemented (SOU 2022: 56 p. 549). The indirect effects of the mining industry and the mineral sector on the national economy should also be taken into account, i.e. the indirect effects of the mining industry and the mineral sector on the national economy. economic activity in other industries due to the mining industry. The wider mining cluster also includes high-tech industries (batteries, wind turbines, electric vehicles) whose importance cannot be overestimated, especially in light of the efforts required for the green Conversion. The proposal in this memorandum means that the examination of Natura 2000 permits, where such a permit is required, is moved from the examination of processing concessions to the examination of permits according to the Environmental Code.

The proposal removes the uncertainties for applicant companies that currently arise when examining an application for a processing concession, which contributes to better conditions for investments in the mining industry. Increased investment in mining and the mineral sector also has positive consequences for employment and public services in those parts of the country

that have favourable conditions for mineral extraction and related industries.

In summary, the proposal is expected to lead to effects that are positive for the national economy in Sweden.

11.4 Effects of non-implementation of the proposal

In recent years, Sweden has lost places in the annual ranking that the Fraser Institute makes of mining regions. In 2016, Sweden was in place 8, two years later in place 21 and in the 2020 survey Sweden ended up in place 36. The negative development is driven, among other things. of the industry's assessment of uncertainties surrounding environmental regulations and regulatory processes (SOU 2022:56 p. 187 f.).

The functional shortcomings in the review process identified in this memorandum relate mainly to efficiency, legal certainty and predictability. The uncertainty that the shortcomings give rise to affects industry players negatively and is considered to have a dampening effect on the willingness to invest in the Swedish mining industry.

The zero option, i.e. The fact that no change is implemented is considered to entail a continued risk of non-investments in the mineral sector and related industry.

11.5 Consequences for authorities and the public sector

The proposal means that it is no longer necessary for concession matters with *bergsstaten* to remain open while the county administrative board is processing an application for a Natura 2000 permit. As a result, that time for processing an application for a processing concession will be reduced. The proposal is not expected to lead to any cost increases for the Mountain State.

The proposal means that the examination of Natura 2000 permits will be moved from the *county administrative boards* to the land and environmental courts and that the examination will only be carried out once, namely in connection with the examination of an application for an environmental permit. County administrative boards will continue to have to take a position on Natura 2000 issues, but not as a decision-making authority, but as

referral body to the Land and Environment Court. The proposal can be expected to bring some relief to the county administrative boards by minimizing the risk of a re-Natura 2000 trial. The proposal is not expected to lead to cost increases for county boards.

The proposal is also not expected to lead to any cost increases for *the land and environment courts*. Since the Natura 2000 review becomes part of an application for a permit under the Environmental Code, the change does not lead to an increase in the number of cases before the courts. However, the complexity of the application objectives and thus the working instance of a case may increase slightly. Because related issues around eg. Species protection and nature conservation issues are being considered In the application cases, any increase in the workload of the land and environmental courts is expected to be marginal.

The proposal is not expected to have any impact on other activities within the *Geological Survey* of *Sweden,* nor to have any consequences for the *Swedish Environmental Protection Agency's* operations. Thus, no cost increases for each authority can be expected. In summary, the proposal is not expected to lead to cost increases or revenue reductions for the general public.
The consequences for the relevant authorities are expected to be limited and can be addressed within the existing framework.

The proposal is of no significance for municipal self-government and is not expected to have any negative effects on municipalities and regions.

11.6 Consequences for companies

The proposal in this memorandum is expected to lead to positive effects for companies operating in the mining industry in several ways.

It can be expected that the total time taken by the review process can be significantly shortened as it is no longer necessary to pause the processing of an application for a processing authorisation pending on a legally valid Natura 2000 permit, which in itself can take several years. This also puts the applicant in a better position to secure the necessary exclusivity to mine a deposit (see Section 8.2).

With the implementation of the proposal, the basis for a Natura 2000 trial does not need to be financed until a later stage. This means that the applicant company does not need to lock in capital early in process.

In addition, a situation where the Natura 2000 trial needs to take place twice is avoided, which in itself leads to time savings and cost savings for the mining companies concerned.

The proposal means that the country's five land and environmental courts, instead of 21 county administrative boards, will examine Natura 2000 issues linked to a mining project. It should be beneficial from a process perspective and creates the conditions for uniform management and praxis, which increases predictability for the applicant companies.

The proposal contributes to increased efficiency, legal certainty and predictability in the examination regime, which can lead to a strengthened willingness to invest in the Swedish mining industry. An increased willingness to invest is unconscionable for companies in the industry. This is especially true for so-called junior mining companies, which rely on venture capital to finance a permitting process. Established mining companies generally have a greater ability to handle not only uncertainties but also greater costs early in the process. The proposal can therefore be expected to lead to junior mining companies strengthening their competitiveness in relation to established mining companies.

In section 9, it has been discussed whether the proposal could reduce the value of a processing concession, with the consequence that it will be more difficult for junior mining companies to attract capital.

The risk of the processing concession falling in value is difficult to evaluate and quantify. At the same time, when assessing that risk, account should be taken of the fact that the proposal simplifies and clarifies the examination of an application for a processing concession, which in itself is considered to lead to an increase in willingness to invest. It is also a general view in the industry, among both established and nine mining companies, that the problems with the current review system are greater than the risks that the proposal would entail a certain watering down of the value of the processing concession.

In light of the foregoing, the proposal is expected to lead to positive effects for the mining industry as a whole. The proposal is not expected to lead to any negative consequences for the prospector's security of being able to process a deposit for which a concession has been granted.

11.7 Consequences for property owners and the public

The proposal makes it clear at what stage of the process a Natura 2000 trial is to take place. The postponement of the Natura 2000 trial could be perceived as negative as it is not until late in the process that it is possible to present views on the environmental impact of the planned activity on a protected site. However, the change is expected to facilitate understanding of the process for property owners and the public. In addition, the proposal means that a review of Natura 2000 permits no longer needs to be carried out twice, which in itself saves time and resources for, above all, property owners and non-profit members of environmental organisations.

11.8 Consequences for the environment

The proposal means that, where such a permit is required, a Natura 2000 permit will no longer be a prerequisite for granting a processing concession. A concession granted does not in itself confer a right to commence a mining activity, nor is it a guarantee that the activity will ultimately be approved. In order for this to happen, the project must live up to all the requirements set by current legislation. An activity can only begin when all necessary permits have been granted, including permits according to Chapters 9 and 11. the Environmental Code, as well as Natura 2000 permits. The proposal is thus not expected to lead to any negative effects on the environment.

The mining industry is important for the green transition. A more effective trial can help make parts of the green transition happen faster, and thus provide climate benefits.

11.9 Implications for the application of the national interest system

One question that is raised during the dialogue is whether there is a risk of incomplete or conflicting assessments, e.g. because the national interest in nature conservation cannot be properly weighed off before it is clear that a Natura 2000 assessment has been carried out. Against this background, the dialogue has put forward views that:

the application of Chapters 3 and 4. the Environmental Code as a whole should be moved to the environmental process, not just the provision in Chapter 4. Section 8 of the Environmental Code. One argument for this position is that the overall perspective in the application of the housekeeping regulations is lost if Chapter 4. Section 8 of the Environmental Code no longer applies to concession matters.

The provisions of Chapter 3. The Environmental Code contains rules that the areas containing certain values or that are of importance for certain purposes must, as far as possible, be protected against measures that could significantly damage the specified values of the areas, significantly impede certain activities or constitute obstacles to certain facilities. The authorities specified in section 2 of the Ordinance (1998:896) on the management of land and water areas shall indicate to the county administrative boards which areas they deem to be of national interest for each purpose.

The areas listed in Chapter 4. Sections 2–8 of the Environmental Code – and which have been decided by parliament – are, with regard to the natural and cultural values that exist in the areas, in their entirety of national interest.

The provision of Chapter 4. Section 8 of the Environmental Code was introduced in 2001, while the other provisions in Chapters 3 and 4. the Environmental Code was introduced in the Natural Resources Act (1987:12) and then transferred to the Environmental Code.

The provision of Chapter 4. Section 8 of the Environmental Code constitutes a stop rule in that if the permit requirement under Chapter 7, Section 28a of the Environmental Code has been updated, the planned activity or measure may only take place if a Natura 2000 permit has been granted. Other provisions according to Chapters 3 and 4. The Environmental Code constitutes balancing rules aimed at an assessment of which use of land and water areas is most appropriate. The application of the various housekeeping rules and the procedure for examining the various housekeeping provisions are therefore different.

The proposal integrates the Natura 2000 assessment with the examination of an environmental permit. This enables a coherent assessment – at a stage when the applicant company can develop sufficient knowledge about the impact of the mining project on the environment – of not only Natura 20 00issues but also questions which applies to site protection in general, species protection, impact on water, etc., while conditions for the environmental permit can be decided based on the project's overall environmental impact . The proposal thus contributes to a more

efficient management of competing claims to land and water areas. Ds 2023:5

The proposal is not considered to entail any risk that the overall perspective in the examination of the environmental code's housekeeping provisions will be lost.

11.10 Assessment of the compatibility of the proposal with Union law

Section 9.1 reviews the considerations made regarding the assessment that the proposal complies with the obligations arising from Sweden's membership of the EU.

In conclusion, it is considered that the proposal, which mainly concerns the EIA and nature directives, is compatible with EU lawas appropriate. The proposal also helps to reduce the risk that the requirements imposed by the Court of Justice of the European Union for the examination of Natura 2000 issues are not applied in a congruent manner.

11.11 Assessment of whether special account needs to be taken of the date of entry into force and whether there is a need for special information measures

The proposed amendments to the Minerals Act are not of such a nature that stakeholders need time for adaptation. The proposed changes are therefore considered to be able to enter into force as soon as possible, however, 1 July 2024 has been proposed as a possible date.

The proposal also does not put mining companies at a disadvantage that have submitted an application for a processing concession or have started work on a specific environmental assessment to produce the basis for a Natura 2000 assessment. It is therefore not considered necessary to provide for any transitional measures.

It is not considered that there is a need for special information efforts.

12 Constitutional commentary

12.1 The proposal for an Act amending the Minerals Act (1991:45)

Chapter 4. Section 2

In the *third paragraph, the* reference is changed from Chapter 5. Section 15 of the Environmental Code to Chapter 5. Section 18 of the Environmental Code. The change is editorial and is a consequence of the fact that previous changes in the fifth chapter of the Environmental Code have not been noticed.

The third and fourth paragraphs are amended so that the reference to Chapter 4. Section 8 of the Environmental Code is removed. Examination of a Natura 2000-untilcontinued according to Chapter 7. Section 28a of the Environmental Code, where such a permit is required, shall therefore no longer be made in connection with the application for a processing concession.

The detailed considerations can be found in section 9.1.

Chapter 4. Section 10

The paragraph is amended to include the reference to Chapter 4. Section 8 of the Environmental Code is removed.

The detailed considerations can be found in section 9.2.

Chapter 6. Section 4

The third paragraph is amended so that the reference to Chapter 4. Section 8 of the Environmental Code is removed.

The detailed considerations can be found in section 9.2.

Chapter 8. Section 1
The third paragraph is amended so that the reference to Chapter 4. Section 8 of the Environmental Code is removed. The change is a consequence of the change in Chapter 4. Section 2 of the Minerals Act.

Chapter 8. Section 2
The paragraph is amended to include the reference to Chapter 4. Section 8 of the Environmental Code is removed.
The detailed considerations can be found in section 9.2.

Chapter 8. Section 3
The second and third paragraphs are amended so that the reference to Chapter 4. Section 8 of the Environmental Code is removed.
The detailed considerations can be found in section 9.2.

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Ministry series 2023

Systematic list

A ministry memorandum is being prepared within the Government Offices. It is published in the departmental series, abbreviated Ds.

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