

Nordic Environmental Permitting Processes

 Nordic Council
of Ministers



Content

Foreword	4
1. Introduction	6
1.1 So close, but yet so far away...	6
The legal systems in the Nordic countries	6
A study on environmental permitting	10
The report from the study	11
2. Environmental law and procedure in the Nordic countries	12
2.1 Denmark	12
Danish public law and administration	12
Environmental legislation	13
Environmental administration and decision-making	15
Supervision and enforcement	16
System for administrative appeal and judicial review	16
2.2 Norway	17
Norwegian public law and administration	17
Environmental legislation	19
Environmental administration and decision-making	21
Supervision and enforcement	22
System for administrative appeal and judicial review	23
2.3 Iceland	24
Icelandic public law and administration	24
Environmental legislation	24
Environmental administration and decision-making	25
Supervision and enforcement	26
The role of the courts	27
2.4 Sweden	27
Swedish public law and administration	27
Environmental legislation	28
Environmental administration and decision-making	29
Supervision and enforcement	30
The role of the courts	31
2.5 Finland	32

Finnish public law and administration	32
Environmental legislation	33
Environmental administration and decision-making	34
Supervision and enforcement	35
The role of the courts	36
3. Conclusions and discussion	37
Introduction	37
Integration in legislation and procedure	37
Case processing time	39
Eternal permits or permits limited in time?	41
Changes in the operation of permitted activities	42
Permitting, supervising and enforcing	42
Challenges to the permitting process from the administration's point of view	43
References	44
Websites	44
Bibliography	46
Annex I – Minutes from the Workshop on 22 and 23 March 2022	48
Discussion on scenario A	49
Discussion on scenario B	58
Annex II – Minutes from the Workshop with Stakeholders on 22 March 2023	67
About this publication	75

This publication is also available online in a web-accessible version at:
<https://pub.norden.org/temanord2023-522>

Foreword

The Nordic Council of Ministers has committed to promote a green transition among member countries, and work towards climate neutrality and a sustainable circular and biobased economy. The practice of environmental permitting has been acknowledged as essential to the green transition. Efficient and quality permitting processes are a prerequisite for a successful transition of the industry sector.

To promote a conversation amongst the Nordic countries, the Nordic Council has financed a project to arrange a workshop on the topic of Nordic environmental permitting. The overall purpose of the workshop was to share experiences, best practice and knowledge of environmental permitting practices in the Nordic countries and on that basis identify key success factors.

This report builds on the discussions and analysis before, during and after the workshop. To that end it includes a comparative study among Denmark, Norway, Iceland, Sweden and Finland concerning this issue, focusing on two scenarios: 1) a permit for a new industrial installation that will have effects on the environment, and 2) a change of a permit in an existing industrial installation as part of the effort to achieve climate neutrality.

The report first introduces some general comparative remarks about the Nordic legal systems and environmental law and decision-making. Thereafter, the study and its parameters are introduced (Chapter 1). After this, a brief description is given for each of the countries in the study: Denmark, Norway, Iceland, Sweden and Finland (Chapter 2). Here, general information is given about each country's national law and administration, environmental legislation, environmental administration and decision-making, supervision and enforcement, and finally system for administrative appeal and judicial review. In Chapter 3, some conclusions are drawn from a workshop that was undertaken with representatives from the authorities from all five countries. Here, also a couple of challenges to the permit systems are presented and issues of interest for further comparative studies are discussed. Finally, there are two annexes to the report, containing the minutes from the two workshops that were held as part of the study, the first on 22–23 March 2022 (Annex I) and the second on 22 March 2023 (Annex II).

The lead author of the report is Jan Darpö, emeritus professor in environmental law, at the Faculty of Law/Uppsala Universitet. The project has been steered by Naturvårdsverket (Swedish Environment Protection Agency) guided by a reference group comprised of representatives from all the Nordic countries. The report has been proofread by Merideth Wright, former judge at the Vermont Environmental Court (USA)

1. Introduction

1.1 So close, but yet so far away...

The legal systems in the Nordic countries

Comparing environmental decision-making in different countries is not an easy task.^[1] Even in legal systems that we regard as relatively close, there are basic differences “under the surface” which may have an effect on the understanding between the systems. One such difference relates to constitutional traditions. Among the Nordic countries, constitutionalists talk about the “western” tradition in Denmark, Norway and Iceland, and the “eastern” tradition in Sweden and Finland.^[2] This division goes back to the Kalmar Union between the aristocracies in the Nordic area. After the breakup in 1523, two national states emerged; Denmark and Sweden, more or less constantly in political and armed conflict with each other for more than 200 years. Norway was united with Denmark until the peace treaties after the Napoleonic wars in 1814, according to which the country was forced into a union with Sweden. Norway broke from this union in 1905. Iceland on its part, became independent from Denmark in two steps, in 1918 and 1944 respectively. Finland was part of Sweden until 1809 when the country became a Grand Duchy under the Russian Czar, winning independence after the Russian revolution in 1917. As this development took place in an era when the basis for the modern national states in the Nordic countries were founded, it is reflected in two distinct constitutional traditions. Denmark, Norway and Iceland belong to the western tradition, whereas Sweden and Finland belong to the eastern. Today, this division may seem obsolete, but it still has an impact on issues such as the relationship between the Government and the administration, the independence of the municipalities, and the role of the courts. For example, Sweden and Finland have both general courts and administrative courts, while Denmark, Norway and Iceland only have general courts.^[3] Since the environmental appeal procedure in an administrative court is “reformatory” – meaning that the court decides on the merits of the case anew – the concept of “decision-maker” differs between the countries having such courts and those countries where ordinary judicial review (legality control) is performed by the general courts.

There are obviously other differences between the Nordic countries that play a certain role when it comes to environmental legislation and decision-making. The

1. Although such efforts are made in official reports, by business and other stakeholders, see for example Chapter 10 in the final report from the Swedish Miljöprövningsutredningen, *Om prövning och omprövning* (SOU 2022:33).
2. See *The Nordic Constitutions: A Comparative and Contextual Study*. Hart Studies in Comparative Public Law, eds. Helle Krunke and Björg Thorarensen, Hart Publishing (2018).
3. Constitutional courts do not exist in any of the countries.

basic structure of our industry and commerce varies, which affected the focus area of early environmental legislation from the 1970s. Denmark with its heavy dependence on ground water and dense population was one of the pioneers concerning liability for contaminated land, whereas Sweden was one of the first in Europe that introduced a modern permit regime for controlling discharges from industrial activities. Similar examples from Norway, Finland and Iceland can be found as well. Even so, today's environmental law is very similar in our countries, not least as a result of international agreements and EU law.^[4] Denmark has been a member of the Union since 1973, Sweden and Finland joined in 1995. Norway and Iceland are not members, but bound to most of EU environmental regulation by the European Economic Agreement (EEA). Thus, those two countries have agreed to abide by most of the EU laws on the environment, such as the Industrial Emissions Directive (2010/75, IED), the Waste Framework Directive (2008/98), the Water Framework Directive (2000/60, WFD), as well as both the EIA Directive (2011/92) and the SEA Directive (2001/42).^[5] Concerning EU regulation relevant for this study, only the two "nature directives" – that is the Birds Directive (2009/147) and the Habitats Directive (92/43) – are exempted from the EEA agreements with Norway and Iceland. Thus, formally, all the Nordic countries are bound by much the same overarching regulation.

However, there is a major difference between being a member to the Union and being connected to it only through the EEA. For most part, this difference concerns the enforcement of law. It is true that the EFTA Surveillance Authority (ESA) has the same role as the EU Commission and that the EFTA court closely follows the case law of the Court of Justice of the European Union (CJEU), but the influence of the EFTA institutions in Norway and Iceland is more indirect. Through the doctrine of direct effect, regulations and provisions in directives which are unconditional and sufficiently precise take precedence over conflicting national legislation in the EU member states. The national courts in Denmark, Sweden and Finland are therefore obliged to apply such pieces of EU law directly, setting aside the national regulation on the issue in question. This is not the situation in Iceland and Norway as the EEA does not create supranational powers for its institutions. According to the EEA Agreement, legislative power is not delegated to the international institutions, which means that EU law needs to be implemented into national law.^[6] Thus, EU law does not have priority over other Norwegian or Icelandic legislation. Surely, the courts in those two countries must give considerable weight to EU regulations when interpreting national law, but not so much as to set aside clear national

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4. In the end of Chapter 3, links are given to website where the reader can find each country's environmental legislation. Already here, however, it is worth mentioning that a list of all national websites is listed on the website of the Nordic Council; <https://www.norden.org/sv/information/offentliga-rattsdatabaser-i-de-nordiska-landerna>
 5. The EEA agreement with Norway also includes the Renewable Energy Directive (2018/2001), but not the one with Iceland.
 6. Krunke, H: *Impact of the EU/EEA on the Nordic Constitutional Systems*. Chapter 7 in *The Nordic Constitutions: A Comparative and Contextual Study* (Hart Studies in Comparative Public Law), eds. Helle Krunke and Björg Thorarensen, Hart Publishing (2018), p. 179ff.

legislation.^[7] Moreover, judgements from the EFTA court are not legally binding; they are regarded as recommendations only in individual cases. Thus, the supreme courts in Norway and Iceland have the final say in cases concerning EU law, and there is even an example where the Norwegian Høyesterett departed from a judgement of the EFTA court.^[8] As for the legal value of judgements from the CJEU, it may be important whether they have been delivered before or after the EEA agreement was signed, although they usually are taken into account. Another important difference between the EU system and the EEA agreement is that the ESA cannot sue Iceland or Norway for fines for breach of the EU legislation covered by the EEA agreement.

European Union membership also has an effect on how international agreements are implemented and understood within the national legal systems. All the Nordic countries have a "dualistic" approach to the overarching instruments, which basically means that the international agreement must be implemented in national black letter law to become binding. For the members of the EU, however, things are not that simple when it comes to agreements that are signed both by the member state and the Union, which is the case concerning most conventions on the field of environmental law. This can be illustrated by the Convention on the Conservation of European Wildlife and Natural Habitats, the so-called Bern Convention.^[9] This Convention is signed by all European countries. In the EU, it is implemented through the 1979 Birds directive (2009/147) and the 1992 Habitats Directive (92/43). For members to the Union, this implies that the CJEU's case law under those two directives is directly relevant for the understanding of the international agreement. And what is more, sufficiently precise and unconditional provisions in that Convention such as the strict protection of certain animal species have direct effect in those countries. The wolverine is for example protected under Bern, but was "forgotten" when Sweden and Finland negotiated with the EU for accession. As this species did not exist in any of the member states at that time, it was not listed under the Habitats Directive.^[10] Irrespective of this, it enjoys the same protection as strictly protected species under that Directive, as it listed under Bern. This stands in sharp contrast with the EEA agreements with Norway and Iceland, where, as already noted, the Birds Directive and the Habitats Directive were not included. Even so, both countries are signatories to Bern. But Bern is not equipped with a Commission with enforcement competence, only a Standing Committee with more of a diplomatic role to play. Thus, the understanding of the obligations of Bern is exclusively a matter for the supreme courts of Norway and Iceland to interpret. This is especially so as the jurisprudence of the CJEU in cases under the two nature directives of EU law is not regarded as "state practise" according to international law in

7. Norges Høyesterett 2000-11-16 *Finanger I* (Rt 2000-1811).

8. Norges Høyesterett 2013-03-05 *STX-saken* (Rt-2013-258) and E-2/11 *STX Norway offshore*.

9. CETS 104 (19 Sept. 1979).

10. To be more precise, the wolverine is not strictly protected under Annex IV to the Habitats Directive, although it is mentioned in Annex II as an animal whose conservation requires designation of special protection areas (SAC).

Norway.^[11] At the end of the day, the obligations under Bern for EU member states are for the CJEU to decide, whereas for Norway and Iceland it is purely a matter for the national courts to decide according to the implementation legislation.

A final difference that is worth mentioning, even though it may be of less relevance for this study, is the position of the Sami people. The Sami – residing in Norway, Sweden and Finland – are the only indigenous peoples on the European continent. They enjoy international protection for their living, culture and land-use rights in those countries. Norway has signed and ratified the Indigenous and Tribal Peoples Convention of 1989, the so-called ILO Convention 169,^[12] whereas Sweden and Finland have declined to do so as of yet. Even so, the protection of Sami land-use rights has gained attention from the national courts in recent years. In 2020, the Högsta Domstolen declared that although the ILO 169 has not been ratified by Sweden, it shall be used as an international standard for the protection of Sami rights.^[13] The year after in Norway, the permits for the two biggest wind farms in Europe were declared void as the decision-making procedure had not respected the cultural rights of the Sami people in the area according to Article 27 of the International Covenant on Civil and Political Rights (ICCPR).^[14] Following the same line of reasoning, the Sami interests in Norway, Sweden and Finland will need to be taken into account in environmental decision-making on different development projects, perhaps most notably concerning mines, forestry and wind farms.^[15]

Having listed all the differences between the systems in the Nordic countries concerning legislation and administration in environmental matters, one must not forget the similarities as well. In all our countries, environmental law basically belongs to the public law area when it comes to the design of regulations, decision-making and enforcement, as well as the method for interpreting legal obligations.^[16] We are also signatories to all the international instruments concerning the common environment, such as the 1974 Convention on the Protection of the Marine Environment of the Baltic Sea Area, the so-called HELCOM.^[17] The 1974 Nordic Convention on the Protection of the Environment^[18] contains procedural rules on the permitting of activities having transboundary effects, something that sometimes is relevant for the situations discussed in this study. And finally, in order to give the full picture, the societies in our countries are rather similar and there is a mutual understanding between the environmental administrations among the neighbours.

11. See Article 31(3)(b) of the Vienna Convention on the Law of Treaties (VCLT).

12. UNTC 28683 (27/6-89).

13. Swedish Högsta domstolen 2020-01-23 (NJA 2020 s. 3).

14. Norges Høyesterett 2021-10-11 *Fosen-saken* (HR-2021-1975-S).

15. See Bugge 2021, para 13, Darpö 2021, J: *Hur många fick lov?* Bilaga 2 i Artskydd och beslutsprocesser. Naturvårdsverket Rapport 7009, oktober 2021, at p. 68, Vihervuori 2020 at para 1015.

16. Backer, I L: *Miljørett mellom offentlig rett og privatrett* (1996), s. 157.

17. 1507 UNTC 166 (1974).

18. 1092 UNTC 279 (1974).

A study on environmental permitting

The original idea for the comparison between the Nordic systems for environmental permitting was a study covering all kinds of decisions concerning at least three scenarios, namely: 1) Establishing a wind park consisting of 50 turbines at a height of 230 metres in a forested area and/or at sea, 2) A change of a permit in an existing industrial installation as part of the strive for climate neutrality, and 3) Setting up a business for recycling of textiles, from the collection of cloth (and other sources) to the marketing of recycled materials for different uses.

This design was made to cover both industrial installations and other important large-scale operations, as well as a "circular economy" activity, another important aspect in the transition towards a greener society. In the discussion that followed the proposal, the steering group realised that this was not a realistic approach, as it involved many more Governmental bodies and authorities than was envisaged from the beginning. Among the Nordic representatives, it was therefore decided to focus on the permitting procedures for industrial installations only, although using two scenarios:

A: A new industrial installation that will have effects on the environment. In this scenario it might be interesting to focus on industries where environmental impact assessment is not mandatory and where the national authorities have to decide whether an EIA is needed according to Article 4.2 of the EIA Directive, 2011/92/EU (projects listed in Annex II).

B: A change of a permit for an existing industrial installation as part of the effort to achieve climate neutrality, that is a change that aims to lower the facility's carbon footprint. Such changes may include increased energy efficiency in the installation, or a change of fuel or processes (such as electrification). In this scenario, it might be interesting to see how the national systems deal with the application of Article 20 of the Industrial Emissions Directive (2010/75).

Thus, the scope of the study represents a first limitation. On the other hand, we tried to cover all kinds of administrative decisions that are needed to go ahead with these activities: environmental permits, necessary decisions concerning nature conservation and species protection, as well as planning and building permits. The questions raised concerning the chosen two scenarios relate to the scope of the permitting procedure and the involvement of the public concerned, the relationship between the EIA and the permit procedure, case processing time, permits and enforcement, main challenges and interesting features in the national systems, and more.

It was further decided to undertake a two-day workshop involving delegations from all our countries, but only involving officials from the relevant Ministries and

decision-makers from the competent authorities and courts (see Annex I). Accordingly, what came out of the discussion during the deliberations reflects only the opinions of those participants, which is another important limitation of the study. Obviously, industry representatives may have another view on case processing time, EIA requirements, and the quality of the applications. Likewise, the public concerned may differ about the conclusions about transparency, as well as concerning the distribution of responsibilities between different authorities. In order to make up a little for this bias, the study was concluded with another workshop in March 2023 to provide a limited number of representatives from industry, academia and environmental non-governmental organisations (ENGO) an opportunity to share their views on a draft of the report (see Annex II). Even so, it is still important to emphasize once again that what comes out of this report are the authorities' viewpoints mainly. If one wants to get a more comprehensive picture on environmental permitting in our countries, all other stakeholders need to be involved from the beginning.

The report from the study

As noted, Chapter 1 is an introduction to the study and the report. Chapter 2 gives a basic account of the legal systems in the five countries involved. Under separate headings, Denmark, Norway, Iceland, Sweden and Finland are each briefly described concerning public law and administration, environmental legislation, environmental administration and decision-making, supervision and enforcement, and the role of the courts. Thereafter in Chapter 3, some conclusions are drawn, and some remarks are given concerning lessons learned during the workshop on environmental permitting that took place via zoom on 22–23 March 2022. At the end of this Chapter, some ideas about prospects for future studies are presented. In a final section of the report, national websites containing environmental information are listed, as well as reference literature and other sources. Two Annexes to the report contain the minutes from the workshops that were performed under the study.

The responsibility for Chapters 1, 2 and 3 rests with the author of this report; English editing for those chapters has been performed by former environmental court judge Merideth Wright, Vermont (USA). The description of the systems for environmental decision-making in the Nordic countries in Chapter 2 have also been read and commented upon by the national delegations. Responsibility for the Annexes with the minutes from the workshop rests with the Swedish Naturvårdsverket, after having received comments from the participants.

2. Environmental law and procedure in the Nordic countries

2.1 Denmark^[19]

Danish public law and administration

Denmark has a population of roughly 5,88 million. Both Greenland and the Faroe Islands are parts of the country, although they have special status as self-governing communities. Only Denmark proper is member of the EU, although with some opt-outs.

Generally speaking, the political and administrative structure in Denmark is built upon three tiers; national, regional and local. The central authorities are the Parliament, the government and its ministries and their appurtenant administrative bodies.^[20] These authorities develop national planning policies and provide guidance to lower levels of administration, which consists of five regions (*regioner*) and 98 municipalities (*kommuner*). The regions are primarily responsible for national health service, but also are responsible for some tasks related to social services, public transport, polluted soil and regional development. In contrast to the municipalities, the regions cannot levy taxes but are dependent on yearly grants from the Government. Both the municipalities and the regions are governed by elected councils and neither level is part of the state administration of Denmark.

According to section 82 of the Danish Constitution (*Grundloven*),^[21] the municipalities are in a relatively independent position. In a Nordic perspective, Danish municipalities are quite large with an average of 55,000 inhabitants. København stands out in this respect with 600,000 inhabitants and the regional area has more than 1,3 million inhabitants. Local government through the municipalities is a major force in Denmark due to the distribution of administrative competences. They handle the greater part of welfare and societal affairs and have a strong local tax base. Moreover, only the municipalities are regarded as local authorities in Denmark, not the regions. The municipalities are responsible for several environmental issues on local level.

19. This section is largely based on *IEL Environmental Law: Denmark* (2019) by Ellen Margrethe Basse, professor of environmental law at Aarhus Universitet. Clarifications and additional information have been furnished through email correspondence with the author.

20. <https://english.im.dk/responsibilities-of-the-ministry/governance-of-municipalities-and-regions/about-municipalities-and-regions>

21. Grundloven, 169/1953.

The supervision of the regions and the municipalities is performed by the State Administration which is relatively centralized. Each Minister is the top executive within his or her field. An important aspect of the power vested in the ministries is the right to implement legislation through statutory orders, circulars and different guidelines. The hierarchical relationship also implies that the superior authorities may have the authority to interfere in the doings of the lower level of the administration. Such responsibility can also be left to the appurtenant agencies and the five regions. In the field of environmental law, many ministries are involved, out of which the Ministry of Environment is primarily responsible for pollution control, protection and management of nature, forestry, wildlife and water. Two agencies support the Ministry in performing basic expert and administrative work: the Danish Environmental Protection Agency (*Miljøstyrelsen*), and the Danish Nature Agency (*Naturstyrelsen*). The Ministry for Food, Agriculture and Fishery is responsible for the regulation of agricultural activities. The Ministry for Climate, Energy and Utilities is responsible for water utilities, energy resources and the mitigation of greenhouse gases. The Ministry for Ecclesiastical Affairs has the competence to regulate spatial planning. Finally, the Ministry of Industry, Business and Financial Affairs should be mentioned, having the competence to regulate marine planning issues.

Environmental legislation^[22]

As noted, Denmark has been a member of the EU since 1973. The current implementation policy towards the EU is based on a "minimum implementation strategy".^[23] *Grundloven* dates from 1849 and has seen few changes over the years.^[24] For obvious reasons, it contains no provisions on citizens' rights to a safe, healthy and ecologically balanced environment. Instead, such rules on the constitutional level are expressed in the EU Treaties, supplemented with soft law instruments such as the Government's political strategy on sustainable development. Further, apart from the Polluter Pays principle, no internationally recognized principles of environmental law are expressed in Danish law.^[25]

In a Nordic comparison, Danish environmental law is fragmented.^[26] It consists mainly of framework regulations empowering the Minister in charge to implement the legal requirements by way of statutory orders, circulars, plans, guidelines and decisions. Statutory orders are legally binding. Environmental law in Denmark builds upon the ordinary instruments of administrative law, that is permit regimes, notification systems, registrations, inspections and enforcement. As regards the

22. All Danish legislation and subsequent regulation are published at the website; <https://www.retsinformation.dk/>

23. There is a forum - Erhvervslivets EU- og Regelforum – assigned to advise the Government on how to avoid unnecessary administrative burdens on Danish business; <https://em.dk/media/13298/kommissorium.pdf>

24. Suksi in *Nordic Constitutions* (2018), pp. 19-21.

25. Basse at pp. 75, 80.

26. Basse at p. 122. Her list on Danish environmental legislation on pp. 137-142 enumerates 86 different acts.

latter, there are both administrative orders and sanctions, as well as criminal sanctions.

The most important piece of legislation for this study is the Danish Environmental Protection Act (*MBL*).^[27] The *MBL* regulates pollution from private and public industrial activities. Important EU directives such as the Industrial Emissions Directive (2010/75, IED), the Ambient Air Quality Directive (2008/50), the Waste Framework Directive (2008/98) and all of its daughter directives, as well as some of the daughter directives connected to the Water Framework Directive (2000/60) are implemented in the *MBL*. The Act constitutes a comprehensive permit regime for installations and activities listed in two Annexes under the Statutory Order on Environmental Approval Listed Enterprises (*BEK*).^[28] Annex I to the *BEK* mirrors Annex I to the IED, whereas Annex II covers other activities and installations. In addition, there are directly applicable sector-specific statutory orders that regulate standards of information, conditions for emission and environment quality targets for different activities such as machine factories, geothermal heating systems, auto workshops and dry-cleaning facilities, etc. The permits under *MBL* are integrated so far as they regulate emissions to air, water and soil, as well as conditions as concerning noise and the handling of waste. It may be noted that there is no specific waste law in Denmark aside from the regulation in the *MBL* and several statutory orders, including the general Waste Statutory Order.^[29] The permit body is also obliged to evaluate any impact from the activity in question on Natura 2000 sites, as well as on protected species.^[30] Large livestock farms are covered by a specific permit regime in the Act on Environmental Approval for Livestock Holdings (*HDL*)^[31] and a statutory order issued under that law.

Other prominent pieces of Danish environmental legislation are the Chemicals and Products Act,^[32] the Contaminated Soil Act^[33] and the Nature Protection Act.^[34] The Water Basin Management Act^[35] implements the Water Framework Directive (2000/60), for which the *Miljøstyrelsen* is the competent authority together with the municipalities. The Water Course Act (1218/2019)^[36] regulates drainage and discharges to water courses.

Denmark is the most densely populated country in Scandinavia. This together with sensitive coastal areas and a very high dependence on ground water resources may

27. *Miljøbeskyttelsesloven (100/2022)*.

28. *Bekendtgørelse om godkendelse af listevirksomhed (2080/2021)*.

29. *Affaldsbekendtgørelse (2159/2020)*. It may also be noted that permits under *MBL* does not include a right to discharge sewage water into public sewage plants, for which a specific permit is required from the municipality in question.

30. *Habitatbekendtgørelsen (2019/2021)* and *Bekendtgørelse om administration af planloven i forbindelse med internationale naturbeskyttelsesområder samt beskyttelse af visse arter (1383/2016)*.

31. *Bekendtgørelse af lov om husdyrbrug og anvendelse af gødning m.v. (521/2019)*.

32. *Kemikalieloven (244/2022)*.

33. *Jordforureningsloven (282/2017)*.

34. *Naturbeskyttelsesloven (1986/2021)*.

35. *Vandplanlægningslov (126/2017)*.

36. *Vandløbsloven (1217/2019)*.

be the reason for why planning and building law was early developed. Today, large developments such as major infrastructural projects are approved in special legislation passed by the Parliament. The building of a wild boar fence along the border between Denmark and Germany and the construction of the peninsula Lynetteholm in København are two such examples.

In addition, there is a comprehensive legal system for developments under the Planning Act (*Planloven*) and the Building Act.^[37] As noted, the responsibility for the implementation of those laws rests with the Ministry of the Ecclesiastical Affairs and the Ministry of Social Affairs, Housing and Senior Citizens. The aim of the legislation on spatial planning is to ensure a general binding framework for decision-making on land use. The framework distinguishes among three zones: rural, urban, and summer cottage areas. Vertically, the planning system is further built upon two levels: 1) national planning through binding state plans and other directives on issues of national interest, and 2) municipal/local planning. Each municipal (structure) plan describes the future development of land use and some guidelines for the use of properties within the municipality. With reference to the municipal plan, the municipality can adopt local development plans, covering smaller areas, containing more specific regulation regarding the use of the area, heights of buildings, etc. Local development plans are binding for future land use in the area concerned. A wide array of issues and activities can be regulated in such a plan. In addition to complying with the local development plan, building construction requires a building permit.

Environmental administration and decision-making

The *Miljøstyrelsen* deals exclusively with environmental protection and is responsible for more than 60 environmental acts. Based on this legislation, the authority has the competence to permit and control many enterprises and local waste handling facilities. It also prepares statutory rules and guidelines for the Minister to adopt. Further, the *Miljøstyrelsen* decides on permits for the most complicated industrial installations and activities covered by the *MBL* and the *BEK*. For all other activities listed in the *BEK* and the *HDL*, permits are issued by the municipal boards. In Denmark, this division of responsibilities is based on the principle of subsidiarity, which implies that decisions shall be made at the lowest possible level.

As in the other Nordic countries, municipal (structure) plans and local development plans are decided by the municipal council. However, the Danish Ministry of the Ecclesiastical Affairs has far-reaching authority to guide and even interfere with such plans if they are in breach of national interests. To begin with, the Minister may lay down binding rules on the quality and content of local plans. The Minister may also publish statutory orders concerning national interests. Further, according

37. Planloven (1157/2020) and Byggeloven (1178/2016).

to the Planning Act, the Minister may veto a local plan in breach of certain national interests; business development, binding rules on environmental protection and nature conservation, culture and landscape preservation, and interests in national/regional facilities. Finally, the Minister may order the municipality to produce a local development plan or by way of a national directive establish legal effects on the land-use in an area similar to such a plan.

The implementation of the SEA Directive (2001/42) and the EIA Directive (2011/92) was originally performed in the Act on Environmental Strategic Planning (1533/2015) and *Planloven*. Since 2018, however, these rules are subject to legislation of their own, namely the Environmental Assessment Act (1976/2021) and the Statutory Order on the Environmental Assessments (269/2021).^[38] The municipalities are responsible for the EIA procedures in most cases, although the *Miljøstyrelsen* may in certain situations take over ("call-in") the responsibilities if the project in question concerns the competences of several authorities or is of significant importance. It may be noted that Denmark has utilized its competence to establish threshold criteria under Article 4(3) of the EIA Directive (2011/92) to be applied instead of case-by-case decisions on screening and scoping in the regulation of the agricultural use of fertilizer.

In all cases related to EIA it is the developer who is responsible for the EIA procedure and to provide the authorities with an EIA report. As for the authorities, a time limit of 90 days is set for the screening decision. The EIA procedure is concluded with a separate decision by the competent authority. Such an approval according to the Environmental Assessment Act can be part of a permit decision according to MBL or HDL. Even so, the activity with such a permit decision under either of these acts still needs to be in line with the local plans according to the Planning Act.

Supervision and enforcement

Supervision and enforcement in Denmark are performed by the same authority that issued the permit in question. Thus, this responsibility rests with the municipal council in most cases, including some installations under the IED. However, for heavily polluting and complex industries the responsibility lies with the *Miljøstyrelsen*. All supervision activities are regulated by the Statutory Order on Supervision of Environmental Polluting Activities (1536/2019).

System for administrative appeal and judicial review

In Denmark, there are no administrative courts. Instead, all administrative decisions may be challenged on issues of legality to the general courts according to Section

38. Miljøvurderingsloven (1976/2021) and Miljøvurderingsbekendtgørelsen (1367/2021).

63 in *Grundloven*. The general court system consists of 24 district court, two courts of appeal and one Supreme Court (*Højesteret*). However, for a long time Denmark has had an elaborate system of appeal boards to which most administrative decisions may be appealed by those who are affected, including the public concerned. The appeals boards apply the inquisitorial principle and commonly have the power to look into the case on its merits and may decide anew.

There are three such boards in the field of environmental law, namely the Environmental Protection and Food Appeals Board (*Miljø- og Fødevareklagenævnet*), the Spatial Planning Appeals Board (*Planklagenævnet*) and Energy Appeals Board (*Energiklagenævnet*). Organisationally, they are independent of but with administrative services provided by the Ministry of Industry, Business and Financial Affairs. All are located in Appeals Boards' House in Viborg, where they have a joint secretariat. The appeal boards are chaired by an external lawyer and the other members are assigned by the two courts of appeal, the Minister for Business and Growth, and the Danish Parliament. The composition of each board differs, although most cases are decided by the secretariat without involving the chair or the expert members. Permit decisions under the *MBL* and the SEA/EIA Act are handled by the *Miljø- og Fødevareklagenævnet*, whereas the *Planklagenævnet* takes care of decisions under *Planloven*. This system of appeals boards furnishes those who are involved in environmental cases with a simple, relatively fast and cheap possibility to challenge administrative environmental decision-making. Although one may bring such a case directly to a district court without exhausting the possibilities for administrative appeal, this possibility is rarely used in administrative cases under environmental law. However, it should be noted that, in contrast with the general courts in Denmark, the appeals board cannot request the CJEU for a preliminary ruling.^[39]

2.2 Norway^[40]

Norwegian public law and administration

The population of Norway is about the same size as Denmark and Finland, namely 5.5 million (2021). The country is a constitutional monarchy but, as in Denmark and Sweden, the King as an individual has merely a formal and symbolic function. The Norwegian Parliament (*Stortinget*) has one chamber with 169 delegates, elected on a four year basis. As noted in the introduction, Norway is not a member of the European Union but is a member of EFTA. Through the EEA agreement, the country is bound to most of the EUs environmental legislation with a couple of important exceptions: agriculture and fisheries are not included, nor are the two nature

39. C-222/13 *The Danish telecommunication Complaints Board* (2014).

40. This section is largely based on *IEL Environmental Law: Norway* (2021) by Hans Christian Bugge, emeritus professor of environmental law at the Department of Public and International Law at Oslo Universitet. Clarifications and additional information have been furnished through email correspondence with the author.

conservations directives of the EU that is, the Birds Directive (2009/147) and the Habitats Directive (92/43).

Traditionally, Norwegian public law is passed as framework legislation by the *Stortinget*, delegating to the Government the responsibility to adopt subsequent regulations. Policy implementation is performed by the Government, although it is quite common that the *Stortinget* issue instructions through political guidelines. As of today, the Norwegian Government is organised as follows. The Ministry of Climate and the Environment (*Klima- og miljødepartementet, KLD*) is the coordinating ministry for climate policy and law and is responsible for pollution control, nature conservation and the management of biodiversity, cultural heritage, and measures to promote outdoor recreation. The Norwegian Environment Agency (*Miljødirektoratet*) and the directorates for cultural heritage (*Riksantikvaren, Direktoratet for kulturminneforvaltningen*) are agencies under the Ministry. *KLD* defines the general lines of policy, prepares matters for the Government and *Stortinget* and issues general regulations within its area of competence. The Ministry for Local Government and Regional Development (*Kommunal- og distriktsdepartementet, KMD*) is responsible for spatial planning at the regional and local level. It also shares the responsibility for the EIA legislation with the *KLD*. Water resources and energy production is within the competence of the Ministry of Petroleum and Energy (*Olje- og energidepartementet, OED*), under which the Norwegian Water Resources and Energy Directorate (*Norges Vassdrags- og Energidirektorat, NVE*) has an important role to play as a decision-maker.

State administration is organised at three levels. The ministries develop governmental policies under the different policy areas, helped by specialized directorates and agencies which have decision-powers in individual cases. In addition, there is a state administration on the regional level, based on the division of the country into eleven counties (*fylke*), each having a county governor (*statsforvalteren*). The county governors are responsible for issues of regional or local importance as well as decision-making in public law matters. They also have a controlling function over the municipalities, including being the first instance of appeal for some decisions made at the local level.

Within each of the counties (*fylke*), there is also a regional authority for municipal cooperation and the taking care of joint tasks such as regional development and planning, secondary education, certain transport tasks, health care, and cultural heritage. These county authorities (*fylkeskommuner*) are led by directly elected assemblies (*fylkestinget*) and have their own administration, separated from the state authorities. In the course of the years, they have been awarded a growing number of tasks in different policy areas, as there has been a tendency to transfer power and competence from the state to the regional or even municipal authorities.

There are 356 municipalities (*kommuner*), which are administered by directly elected municipal councils, each headed by a mayor and a small executive cabinet. The municipalities are responsible for the many public services that are characteristic of the Nordic welfare state. In the field of environmental policy, the municipalities are responsible for spatial planning and management of certain protected sites for nature conservation and outdoor recreation. It may be noted that the Norwegian municipalities have a very strong position in society, even in a Nordic context. Out of tradition and early legislation from the beginning of independence in the early 1900s, the largest rivers cannot be exploited for hydro power by private entities, something that instead is performed by municipal or regional associations.^[41] As the municipalities also often act as strong defenders of natural values and the outdoor recreation of the local community,^[42] their role is one of conflicting interests.

Environmental legislation^[43]

Even though Norway is not a member of the EU, the country is a party to most of the regional and global conventions in the field of the environment on which the EU environmental legislation is based concerning air pollution, waste, climate change, natural resources, nature conservation and species protection, marine protection and water pollution. Further, the most important pieces of EU environmental legislation are directly implemented in Norwegian law in accordance with the EEA agreement, most importantly here the IED (2010/75), the Ambient Air Quality Directive (2008/50), the Waste Framework Directive (2008/98), the Renewable Energy Directive (2018/2001), the Water Framework Directive (2000/60), as well as both the EIA Directive (2011/92) and the SEA Directive (2001/42).

The Norwegian *Grunnloven*, 1814-05-17) dates from 1814 and has obviously seen many changes over the years. Since 1992, *Grunnloven* has included a provision on environmental protection, today Article 112. This Article contains a substantive right to a healthy and "natural" environment for the citizens, as well as a procedural right to access to environmental information. Article 112 is an important political symbol and guideline for the interpretation of legislation, although its value as a yardstick in judicial review of environmental decision-making has been limited.^[44]

For the focus of this study, the most important pieces of Norwegian environmental legislation are the following. The 1981 Pollution Control Act (*FL*)^[45] covers all kinds

41. In 2015, 55% of the major hydro power installations were in the hands of the municipalities or the counties (*fylkeskommuner*), 35% were state owned, see Darpø (2016) at p. 4.

42. This factor must not be underestimated in Norway, where according to a poll referred to in Bugge (2021, at para 29), 90% of the population enjoy hiking, skiing or similar activities twice or three times a week on average. according to a poll referred to in Bugge (2021, at para 29), 90% of the population enjoy hiking, skiing or similar activities twice or three times a week on average.

43. All Norwegian legislation and subsequent regulation are published at the website <https://lovdata.no/>

44. *People v Arctic Oil case* (Norges Høgsterett, 2020-12-22 in case no. 20-051052SIV-HRET), see Bugge at para 49-49A.

45. Forurensningsloven (1981-03-13-6).

of pollution from stationary sources, waste management and liability for environmental damage. The Act establishes an integrated system to prevent and control pollution of the air, water and soil. Some basic environmental principles are expressed in the *FL*, such as BAT and the Polluter Pays Principle, whereas others are implicit in the basis of the regulation. Examples of the latter are the precautionary principle ("*føre-var-prinsippet*" in Norwegian) and the principle that environmental damage should as a priority be rectified at its source (cf. Article 191 TFEU). The *FL* establishes a general licensing system for polluting activities, although today it mostly applies to industrial installations and other kinds of operations of some size or environmental impact. The IED is implemented in the *FL* and the subsequent Pollution Regulation.^[46]

Other important environmental laws in Norway are the Climate Act,^[47] the Product Control Act,^[48] the Water Resources Act,^[49] the Regulation on Hazardous Waste,^[50] the REACH Regulation^[51] and the Forestry Act.^[52] As neither the Birds Directive (2009/147) nor the Habitats Directive (92/43) is included in the EEA agreement, the legislation on nature conservation is purely domestic. The main piece of legislation here is the Nature Diversity Act.^[53]

The aim of the Planning and Building Act (*PBL*)^[54] is to establish a comprehensive system of spatial planning in order to promote sustainable development for the good of individuals, society at large and future generations. Spatial planning according to the *PBL* is intended to contribute to the coordination of national, regional and local commitments and to give guidance for the use and protection of land and natural resources. The *PBL* is built upon a hierarchy of plans; Regional plans (*regionplan*) issued by the county councils guide all lower level plans (sector plans and municipal plans). Regional plans are also instrumental for the implementation of the EU Water Framework Directive (2000/60). General municipal master plans (*kommuneplan*) draw up the main lines for land-use activities in a wide sense, whereas the local development plans (*reguleringsplan*) give the particulars of the development. The development plan may have the form of an "area regulation" (*områderegulering*) for a somewhat extended area that the municipality wants to develop or secure for certain purposes, including protection of the environment. More common, however, is a more detailed regulation (*detaljregulering*) with the purpose of developing a smaller area with a limited number of constructions, commonly based on the proposal of a private developer. The regional plans are regarded as recommendations, while both the municipal

46. Forskrift om begrensning av forurensing (2004-06-01-931).

47. Lov om klimamål (2017-06-16-60).

48. Produktkontrollloven (1976-04-09-21).

49. Vannressursloven (2000-11-24-82).

50. Forskrift om gjenvinning og behandling av avfall (2004-06-01-930).

51. REACH-forskriften (2008-05-30-516 with amendments).

52. Skogbrukslova (2005-05-27-31).

53. Naturmangfoldloven (2009-06-19-100).

54. Plan- og bygningsloven (2008-06-27-71).

master plan and the development plan are legally binding on future land use and exploitation. The latter plan may also be used as a basis for expropriation. Finally, the *PBL* contains rules on building permits. As a rule, building permits are issued on the basis of the land-use plan for the area in question.

The Norwegian implementation of the EIA Directive and the SEA Directive is found in the *PBL* and the Regulation on EIA.^[55] The legislation basically reflects the requirements of the two directives, applying to all types of projects and land-use plans that may have a significant impact on the environment and on society. A common distinction is made between two groups of projects, out of which one category always requires an EIA (Annex I to the Regulation), whereas the other (Annex II) obliges the competent authority to undertake an evaluation in the individual case (a "screening decision"). In Norway, there is a close link between spatial planning and permits for different operations that may have a significant impact on the environment. Land-use plans are as a rule decisive for the localization and development of infrastructure and major industrial and other projects. A SEA/EIA is mandatory for regional plans and municipal master plans that provide guidelines and framework for projects listed in Annexes I and II. Local development plans must include a SEA/EIA if the project may have significant environmental or social effects. The EIA must establish the investigation and communication requirements not only in the planning procedure, but also any subsequent permit procedure. Thus, the EIA will also as a rule be used by the developer when applying for a permit according to *FL*.

Environmental administration and decision-making

Concerning pollution control, the administration is to a large extent undertaken by the *Miljødirektoratet* and the *statsforvaltaren*, even though the municipalities are responsible for some tasks as well. Licenses under the *FL* are normally issued by *Miljødirektoratet*, although some competence regarding activities having a regional or local importance has been delegated to the county governor (*statsforvalteren*).^[56] Licenses under the *FL* are integrated, as they cover all types of pollution and disturbances (air, water, soil, noise, waste). A license cannot be issued in breach of a regional plan or municipal plan. As the Act provides wide administrative discretion, the permit may also to some extent take into account other environmental concerns, such as nature conservation and species protection.

According to the *PBL*, all plans are decided by elected assemblies: the regional by the county council (*fylkestinget*), and master plans/local development plans by the municipal council (*kommunestyret*). Thus, planning in Norway is, much as in other Nordic countries, a regional or local issue. However, a state authority may raise objections (*innsigelse*) if a regional or municipal plan has a substantial effect on

55. Forskrift om konsekvensutredninger (2017-06-21-854).

56. See *Statsforvalterens myndighet etter forurensningsloven, oreigningslova og produktkontrollloven*, [Klima- og miljødepartementet](#), Rundskriv 16.12.2020 (12/5062).

national or regional interests which has not been taken properly into account. If such an objection is raised, mediation will be carried out with the county governor (*statsforvalteren*) as chair and ultimately the controversial issues will be decided by the Ministry for Local Government and Regional Development (after consulting with other parts of the Government). The Ministry can also adopt a state plan in order to run over the conflicting regional or municipal plan. To this backdrop, the Government may issue State planning guidelines (*statlige planretningslinjer*) that play an important role in the relationship between the national, regional and local levels. It should finally be noted that also neighbouring municipalities as well as the Sami Parliament can raise *innsigelse* against a plan, triggering a similar procedure. [57]

As for the EIA, the process is integrated in the ordinary procedure for land-use planning or licenses under the sector legislation. Thus, the EIA procedure in Norway is not an independent decision-making process. At an early stage, the developer is required to notify the permit authority that an application is on the way, thus preparing for this procedure. As noted, an EIA is mandatory for projects under Annex I, and is based on a case-by-case decision for projects under Annex II to the Regulation on EIA. Criteria for these screening decisions are also given in the Regulation, as well as the details of the procedure. A proposal for a "study programme" must be presented, informing about the project in question, the environmental issues the project may raise, the methods for the investigation, realistic alternatives and how public participation will be guaranteed. After public consultation, the competent authority decides on the study programme, which then is to be carried out by the applicant, or – if the EIA is made for a regional or municipal plan – by the planning authority. The possible environmental impacts are assessed through the study programme and the findings must be included in the application for the plan or project. The content and form of the EIA is prescribed in the Regulation, basically reflecting Annex IV of the EIA Directive (2011/92). The application, together with the EIA, is made public and consultations are undertaken. Additional studies may be required and comments from the public must be taken into account when the competent authority decides on the plan or permit. Thus, the final say on whether the EIA suffices will be in the hands of the planning authority or permit body.

Supervision and enforcement

As in Denmark, monitoring, supervision and enforcement in Norway is performed by the same authority that issued the permit in question. The *FL* talks about the "pollution control authority" (*forurensingsmyndigheten*), which means the

57. A similar legal construct in the Energy Act has been used by the municipalities the other way around, so to speak. By raising *innsigelse* against licenses for wind farms, the hosting municipalities have managed to stop these developments in a number of cases by having the cases "lifted" to the political level, namely the Ministry of Petroleum and Energy, see Darpö in NMT 2020:1 at pp. 73f.

Miljødirektoratet with delegation powers. In some types of cases, it is the county governor (*statsforvalteren*) that monitors and supervises the operators, as well as enforcing the legal obligations on the permit holder. *Statsforvalteren* also oversees the municipal authorities on those areas where they are awarded a supervisory and enforcement competence, for example concerning local sewage installations. The instruments afforded in the *FL* are the ordinary ones of public law, that is, orders, fines, access to property, etc. The pollution control authority is also obliged to notify the police when they have reason to believe that a crime has been committed.^[58]

System for administrative appeal and judicial review

In contrast to the other Nordic countries, Norway does not have either administrative courts with general jurisdiction or environmental appeals boards. Instead, all administrative appeals are made within the ordinary line of administration and can only be brought to the next level of the hierarchy. Under the *FL*, municipal decisions are appealed to the county governor (*statsforvaltaren*). Decisions by the county governor are appealed to the *Miljødirektoratet*, whereas decisions by the *Miljødirektoratet* and the *Riksantikvaren* may be tried by the Ministry (*KLD*). Concerning decisions under *PBL*, the line of appeal is similar, although the final say rests with the Ministry for Local Government and Regional Development (*KMD*).

Judicial review of decisions made by the Government can be brought to court, but compared to the other Nordic countries, this rarely happens. Three factors are relevant here. First, criteria for licenses are either very technical or broadly formulated, leaving the administration considerable room for discretion to decide, for example, what is 'socio-economically effective'. In practice, the review in court is confined to formal issues and other basic rules of good governance.^[59] Second, it is procedurally complicated to bring an action for judicial review in Norway, as one must bring the claim to the first level in the general court system, that is the District Court (*tingrett*). Thereafter, the case must proceed through the Court of Appeal (*lagmannsrett*) before arriving at the final instance, the Norwegian Supreme Court (*Høyesterett/Høgsterett*). Third, the costs of bringing such a case may be considerable, as the loser-pays-principle applies as the main rule in almost all instances.^[60]

58. It can be noted that Norway has a leading role in Europe in fighting environmental crimes, introducing a special police force for these matters; <https://www.okokrim.no/kriminalitetsomraader.547992.no.html>

59. See Backer, IL: *Ulveforvaltning og ulvefelling*. Lov og Rett 2022, s. 7-27.

60. In 2018, the WWF challenged the decision on hunting wolves, the litigation costs in Oslo District Court amounted to more than NOK 450,000 equivalent to €47,000. However, in cases concerning important legal principles, the claimants can be exempted from paying the opponent's costs, see the case concerning Barents Sea mentioned above.

2.3 Iceland^[61]

Icelandic public law and administration

Iceland is a republic, a parliamentary democracy with an elected president who functions as head of state. The executive power rests with individual ministers and each of them bears political and legal responsibility in a defined area of subject-matter. As in Denmark, Finland and Norway, public authorities are not constitutionally separated from the government.^[62] Administrative functions are also entrusted to central governmental agencies and municipal authorities. Acts by the Parliament (*Alþingi*) and administrative regulations (secondary legislation) issued by individual ministers make up the most important public law legislation. General guidelines and other "soft law" instruments are sometimes issued by national agencies.

Iceland is currently divided into 64 municipalities. Pursuant to Article 78 of the Constitution (*Stjórnarskrá Lýðveldisins Íslands*)^[63] the municipalities manage their affairs independently as laid down by law. Accordingly, the municipalities have the right to local self-government. Further, they are administratively independent and do not form a part of the central government hierarchy; thus, other administrative authorities lack the power to supervise or overrule municipal decisions. However, and in line with Article 109 of the Local Government Act (*LGA*),^[64] the Minister of Infrastructure is entrusted with the role of general administrative monitoring of municipalities. According to the Local Government Act, an elected municipal council governs the administration of each municipality and elects a chair.^[65] However, in the larger municipalities, the day-to-day business is usually run by a professional administrator, local bodies, specialized officials and committees.

Environmental legislation

The bulk of Icelandic environmental law has undergone considerable development the last three decades. In addition to the ratification and incorporation of the most important global and regional environmental treaties, a sizeable part of the EUs environmental law relating to pollution prevention and environmental quality has, through the European Economic Area (EEA) mechanism, been implemented into the Icelandic legal system.^[66] In addition to the Nature Conservation Act,^[67] the

61. This section is largely written by Professor Aðalheiður Jóhannsdóttir, Faculty of Law, University of Iceland.

62. See further Bull, T: *Institutions and division of powers*. Chapter 3 in *The Nordic Constitutions* (2018).

63. *Stjórnarskrá Lýðveldisins Íslands*, 33/1944, see https://www.government.is/library/01-Ministries/Prime-Ministers-Office/constitution_of_iceland.pdf

64. Sveitarstjórnarlög nr. 138/2011.

65. See further Valsson, T.F.: *Sveitarstjórnarréttur*, Bókaútgáfan Codex (2014), pp. 323–331.

66. Jóhannsdóttir, A: *Would Article 79 of the 2016 Bill make much Difference? Some considerations on the legal consequences of the proposed constitutional environmental provisions*. In *Icelandic Constitutional Reform. People, Processes, Politics*, eds. Ágúst Þór Árnason and Catherine Dupré, Comparative Constitutional Change, Routledge (2021), p. 207.

67. Lög nr. 60/2013 um náttúruvernd.

Hygiene and Pollution Control Act,^[68] and the Planning Act,^[69] most environmental related legislation regulates particular issues. These include the Act on the Protection of Sea and Beaches Against Pollution,^[70] the Act on Water Management,^[71] the Water Act,^[72] the Act on the Treatment of Waste,^[73] and the Chemicals Act.^[74]

Environmental administration and decision-making

The local governments are responsible for spatial planning and land-use decisions, and for building and development permits.^[75] Other public tasks and services in this field of law – including environmental protection, licensing, and control – are as a rule divided between central government agencies,^[76] on the one hand, and local bodies, government officials and committees on the other. On the national level, there are the Environment Agency (*Umhverfisstofnun*), the National Planning Agency (*Skipulagsstofnun*), the Icelandic Food and Veterinary Authority (*Matvælastofnun*), the Directorate of Fisheries (*Fiskistofa*), the National Energy Authority (*Orkustofnun*), and the Housing and Construction Authority (*Húsnæðis- og mannvirkjastofnun*). Most environment-related administrative decisions stemming from local governments and central government agencies, including environmental licenses, may be appealed to a higher administrative level within the administrative system (administrative recourse/appeal). Depending on the decision at hand, the higher instance may be an independent and impartial instance – such as the Environmental and Natural Resources Board of Appeal (*Úrskurðarnefnd umhverfis- og auðlindamála, ÚUA*)^[77] – while in other instances, appeals may be made to a central government agency, or directly to the responsible minister.

Iceland has recently reformed its legislation concerning EIAs. According to the Act on Environmental Assessment of Projects and Public Plans and Programmes,^[78] listed projects are either subject to an EIA or must be screened in order to determine whether they might have significant effects on the environment and should therefore be subject to an EIA. For certain activities, threshold criteria are used. The developer of a project that is subject to an EIA must draft a scoping document (Assessment Plan), which the National Planning Agency announces.

68. Lög nr. 7/1998 um hollustuhætti og mengunarvarnir.

69. Skipulagslög nr. 123/2010.

70. Lög nr. 33/2004 um varnir gegn mengun hafs og stranda.

71. Lög nr. 36/2011 um stjórn vatnamála.

72. Vatnalög nr. 15/1923.

73. Lög nr. 55/2003 um meðhöndlun úrgangs.

74. Efnalög nr. 61/2013.

75. See Act (123/2010) on Spatial Planning, also Jóhannsdóttir, A: *Inngangur að skipulagsrétti, lagarammi og réttarfræmð*, Háskólaútgáfan (2016), pp. 158–180, 201–232, and 252–279.

76. Including the Environment Agency of Iceland, <https://ust.is/english/>, the National Planning Agency, <https://www.skipulag.is/en>, the Icelandic Food and Veterinary Authority, <https://www.mast.is/en>, the Directorate of Fisheries, <https://www.fiskistofa.is/english>, and the National Energy Authority, <https://nea.is/>, the Housing and Construction Authority <https://www.hms.is/>.

77. See further Jóhannsdóttir, A: *Some Critical Views Relating to the Implementation of Article 9(2) of the Aarhus Convention in Iceland and the Situation of ENGOs*. In *Festskrift till Jan Darpö*, eds. Maria Forsberg et al., lustus förlag 2022, pp. 215–235.

78. Lög nr. 111/2021 um umhverfismat framkvæmda og áætlaða.

When a project is subject to the EIA Act, the National Planning Agency then after having consulted with the public issues an opinion on the scope and level of detail of the information to be included by the developer in the environmental impact assessment report.^[79] The EIA report submitted by the developer is required to be open for public comments for six weeks before the National Planning Agency issues an opinion on the environmental impact of the project. A permit for development – a collective term including not only permits issued by local government but also all other permits and licences that may be necessary for the project – must be based on the opinion of the National Planning Agency and the licensing authority is required to lay out how the permit corresponds to the opinion of the National Planning Agency.

According to the Administrative Procedure Act^[80] an administrative decision must be announced to all parties to the decision. Operation permits are issued in accordance with Act (7/1998) on Hygiene and Pollution Control and Regulation 550/2018 based on that Act either by the Environment Agency of Iceland or the municipal Environmental and Public Health Office. Some projects that must undergo an EIA are subject to a building permit.^[81] Depending on the location of the project, building permits are issued by the municipal authorities or the Iceland Construction Authority. Other projects may be subject to a licence issued by the National Energy Authority or the Icelandic Food and Veterinary Authority.

When applying for a permit, the developer must submit an analysis on whether the premises for the EIA have changed. In addition, the developer or the permit authority may at any time request an opinion from the National Planning Agency on whether the EIA must be revised, if there are reasons to believe that the basis of the report has changed. If the development does not commence within ten years of the opinion of the National Planning Agency on the given EIA, it is mandatory to request a new opinion.

Supervision and enforcement

On a general level, the responsibility for supervision and enforcement of environmental law is divided between the central level and local level. The division is commonly tied to the location, type, size or complexity of the activity in question. On the national level, competent authorities are, for example, the Environment Agency, the Food and Veterinary Authority and the National Energy Authority. The local level consists of the local governments, and municipal bodies and committees. As in Norway and Denmark, the responsibility for the supervision and enforcement of the law in relation to licensed activities, as a rule, rests upon the licensing authority. As already noted, the ultimate legal and political responsibility

79. In practise, all decisions and opinions of the National Planning Agency are published on the agency's website.

80. Stjórnisýslulög nr. 37/1993.

81. Reglugerð 550/2018 um losun frá atvinnurekstri og mengunarvarnaeftirlit.

for supervision and enforcement of environmental law rests with the relevant minister. However, the Minister would not act directly against a company or an individual unless law explicitly provides such an authority.

Typical tools for the enforcement of the law are fines, decisions to clean up or reverse the situation, orders aimed at a company or individual to cease an illegal situation or action, and sometimes to report the case to the police for investigation and – if there is sufficient evidence – to report the case to the prosecutor for a decision on whether to take action in court.

The role of the courts

In Iceland, the judicial system consists of three tiers of general courts: eight District Courts, the Court of Appeal, and the Supreme Court. These courts deal with most subject matters, including criminal law, civil law, administrative law and, in addition, constitutional issues.^[82] Similar to Denmark and Norway, administrative courts have not been established in Iceland. Thus, parallel to the possibility for the public concerned to make an appeal within the administration – commonly to the competent Ministry^[83] – the public concerned may challenge an environmental administrative decision by launching judicial review in a district court. None of the general courts is specialized in environmental law. However, in many instances, an administrative recourse by appeal is possible, including to the Environmental and Natural Resources Board of Appeal (ÚUA), which specialises in environmental and natural resources issues.^[84] The administrative recourse is very often used before going to court. This picture, however, is made more complex as the parties to a decision – such as landowners and operators – still have the possibility to go directly to court, whereas members of the public concerned cannot do so. As the ÚUA commonly stays its proceedings until the court case is decided, it may be argued that the appeal process is not equal for all parties to such environmental cases.^[85]

2.4 Sweden^[86]

Swedish public law and administration

In Sweden, the executive power rests with the Government (regeringen), which always decides as a collective. Administratively, the Government is assisted by the Government Offices, comprising all ministries. Under the Government there are

82. See Bull, T: *Institutions and division of powers* (2018).

83. See for example Article 111 of the Local government act, stating that a party to a case may appeal an administrative decision falling under the scope of article 109 of the act to the minister.

84. See Act on Environmental and Natural Resources Board of Appeal (Lög nr. 130/2011 um úrskurðarnefnd umhverfis- og auðlindamála).

85. See Jóhannsdóttir, A. (2022), pp. 227–228.

86. The text in this section is based on Annika K Nilsson's contribution to the European E-justice portal (2021-09-22) and Darpö 2015.

some 400 national and regional agencies and public authorities. Administrative functions are also entrusted to municipal authorities or delegated to private bodies. EU Regulations, Acts by the Parliament (*Riksdagen*) and Governmental Ordinances are most important in public law legislation, although regulations issued by national agencies also play an important role. General guidelines and other "soft law" instruments are frequently issued by all national and regional agencies.

Sweden is divided into 21 counties (*län*) and 290 municipalities (*kommuner*). Each county has a County Administrative Board (*länsstyrelsen*) headed by the County Governor. Constitutionally, the County Administrative Boards are governmental agencies with expert staff in various areas within the field of public law. At the local level, each municipality has an elected assembly, the municipal council (*kommunfullmäktige*). The municipal council appoints the municipal executive board (*kommunstyrelsen*), which leads and coordinates the tasks and responsibilities of the community. The Swedish municipalities are responsible for executing and providing a significant proportion of all public tasks and services, including environmental and health protection. Traditionally, the municipalities have a strong independence. There exist avenues for governmental agencies to intervene – not least due to the influence of EU law – but overall they are not common within administrative law.

Moreover, according to the Swedish constitution (*Regeringsformen*),^[87] all authorities are independent in their decision-making concerning exercise of authority towards individuals or in applying the law. This independence from any influence from other authorities or the Government, together with the fact that the Government always decides as a collective, entails that – similarly to Finland – the notion of "ministerial rule" does not exist in Sweden. Thus, the relevant ministry is not permitted to intervene in an individual matter that is being handled by an agency or a municipality.

Environmental legislation

Sweden has a universally applicable Environmental Code (*MB*),^[88] which harmonises the general rules and principles in this field. The Code applies to all activities that may harm the environment and the human health. It contains the environmental principles and provisions providing for environmental quality norms as well as environmental impact assessments (EIA). Listed industrial undertakings, quarries and other environmentally hazardous activities, as well as water operations, are subject to permit or notification requirements. The Code also contains provisions relating to nature conservation and species protection including Natura 2000 chemicals and waste. EU Regulations and Directives on these subject

87. Kungörelse (1974:152) om beslutad ny regeringsform.

88. Miljöbalken (1998:808).

areas are all implemented in the Environmental Code. National regulations are issued by among others the Environmental Protection Agency (*Naturvårdsverket*), the Chemicals Agency (*Kemikalieinspektionen*) and the Agency for Marine and Water Management (*Havs- och vattenmyndigheten*).

Certain activities are also regulated in special pieces of legislation. Planning and building issues are covered by the 2010 Planning and Building Act (*PBL*).^[89] Infrastructure installations, such as railroads and highways, have regulations of their own, as do mining, forestry and nuclear installations. Permits for electric grids and nets are decided according to the Electricity Act.^[90]

Environmental administration and decision-making

The authority to issue plans and permits under the Planning and Building Act resides with the municipalities. To a certain extent, the municipalities also act as decision-makers under the Environmental Code. This applies for example on licensing for minor environmentally hazardous activities, handling of certain categories of waste and the management of ambient air quality.

The County Administrative Boards has a general responsibility for "green" issues and water-related activities, as well as a role as a coordinator of public interests. Additionally, they issue permits for waste transportation and disposal, chemical activities, and similar activities. Concerning environmentally hazardous activities listed in the Ordinance on environmental licensing,^[91] the responsibility to issue permits rests on the Regional Licensing Boards (*Miljöprövningsdelegationen*), which are hosted by 12 of the County Administrative Boards. In their decision-making, these boards are independent from the county administration and the County Governor.

Installations and activities considered to have a substantial environmental impact must obtain a permit from the Land and Environmental Court, as do all kinds of water operations. This latter situation, in which courts "exercise administrative powers", is unique in Europe.^[92] Also national authorities, such as the *Naturvårdsverket*, the Swedish Chemicals Agency (*Kemikalieinspektionen*) and the National Board of Health and Welfare (*Socialstyrelsen*), are responsible for some environmental decision-making.

Permit decisions according to the specific legislation on mining, infrastructure projects and nuclear installations are made by national authorities and their regional branches, such as the National Transport Administration (*Transportstyrelsen*), the Geological Survey of Sweden (*Sveriges Geologiska*

89. Plan- och bygglagen (2010:900).

90. Ellagen (1997:857).

91. Miljöprövningsförfordningen (2013:251).

92. C-263/08 *Djurgården-Lilla Värtan* para 37.

Undersökning) and the Swedish Radiation Safety Authority (*Strålsäkerhetsmyndigheten*). The Swedish Forest Agency (*Skogsstyrelsen*) and its regional branches make decisions regarding forestry.

Some projects may also be preceded by a governmental decision on "permissibility" according to Chapter 17 of the Environmental Code before a permit can be granted. A mandatory requirement for such a decision is today restricted to large scale activities, such as nuclear activities, major infrastructure projects and certain industrial installations. However, the Government may also on a case-by-case basis by its own initiative decide that they shall try the permissibility of other activities. However, Governmental decisions on permissibility today mostly concerns the national defence. The Supreme Court has also made clear that a decision on permissibility cannot exclude a subsequent complete, precise and definitive evaluation of all effects of the activity. Thus, such a preliminary decision is not a guarantee for a permit at the end of the day.^[93]

As for the EIA, the responsibility under the Environmental Code to undertake the procedure and to produce the investigation rests solely on the operator. In an initial public consultation, the County Administrative Board (*länsstyrelsen*), the supervisory authority and individual stakeholders shall be heard, after which the Board decides on whether an EIA is required (the "screening decision"). After this, another hearing is performed with a wider circle of authorities and other stakeholders about the content of the EIA (the "scoping"). When the EIA procedure and investigation is concluded, the operator submits the EIA together with the application for the permit. Normally, additional amendments are requested by the permit authority of its own accord or on the proposal of different stakeholders. When the EIA is complete, the permit application together with the EIA is announced. It is for the permit authority to have the final say on whether the procedure and content of the EIA meet the requirements of national and EU law. It should also be noted that the permit under the Environmental Code integrates all environmental impacts of the activity: discharges to air, soil and water, water management, chemicals and waste, nature conservation and species protection (Natura 2000). However, plans and permits according to the *PBL* lie outside the permit under the *MB*, although they are taken into account.

Supervision and enforcement

The responsibility for decision-making on permits is kept strictly separate from the subsequent supervision/enforcement of those permits. National agencies may issue general guidance and recommendations directed to other authorities on supervision and enforcement, but actual supervision and enforcement directed to the permit holders is a task for the regional or local authorities. The basic provisions

93. NJA 2013 s. 613 with reference to C-127/02 *Waddenzee* (2004), C-404/09 *Alto Sil* (2011) and C-258/11 *Sweetman* (2013).

about the responsibilities are directly pointed out in the Code, while the more precise distribution of competence among the authorities is regulated in the Ordinance on Environmental Supervision and Enforcement.^[94] Concerning industrial installations, the County Administrative Board is assigned as the competent authority. This competence may, however, be delegated to the municipal Environmental Board. This possibility is used to such an extent that one may actually conclude that the supervision and enforcement on these activities normally rests with the local authorities. However, if the local level does not fulfil its obligations as a supervisory authority the County Administrative Board may withdraw the delegation as well as order the municipality to fulfil its obligations under the law. As the County Administrative Boards nevertheless are responsible for "green" issues – that is, nature conservation and species protection and supervision concerning water-related activities – they still have authority to request an updating of the permit. Such initiatives are, however, extremely rare. As noted, as all authorities are independent under the Constitution from any interference by the Government or other administrative body when deciding on issues concerning permits. National or regional authorities representing a certain interest may of course issue an opinion in the decision-making procedure, and ultimately, if their interests are not taken into account, appeal the permit decision to court.

The role of the courts

Sweden has administrative courts for the appeal of administrative decisions and ordinary courts for civil and criminal cases. The administrative courts decide cases on the merits in a reformatory procedure, meaning that they may replace the appealed decision with a new one following analysis of all the relevant facts of the case. Furthermore, the ultimate responsibility for the investigation of the case rests with the court according to the "ex officio principle". The Environmental Code establishes a system of five Land and Environmental Courts and one Land and Environmental Court of Appeal. They are all divisions within the ordinary courts, but essentially act as administrative courts for cases under the Environmental Code and the Planning and Building Act. A Land and Environmental Court has some of the characteristics of a tribunal, consisting of both law-trained judges and technically-trained experts. All members of the courts have an equal vote. Appeals in most cases concerning the environment follows this route: Municipal level → County Administrative Board → Land and Environmental Court → Land and Environmental Court of Appeal. Some cases can also be brought to the Supreme Court, mainly cases that has started at the land and environment court. Thus all appeals of environmental decisions follow this route, although the starting-point and terminus may differ.

94. Miljötillsynsförordningen (2011:13).

However, some cases are dealt with in a different manner. Decisions on hunting and forestry are appealed to the administrative courts. Permits concerning mining and infrastructure projects made by national authorities and their regional branches can be appealed to the Government. Governmental decisions can be challenged by launching an action for judicial review in the Supreme Administrative Court (HFD).^[95] This procedure furnishes a legality control in accordance with the European Convention on Human Rights (ECHR) and the Aarhus Convention. In addition to this, some municipal statutes and decisions can be challenged in a legality-control procedure in the administrative courts by any of the municipality's inhabitants according to the Local Government Act.^[96]

2.5 Finland^[97]

Finnish public law and administration

The Republic of Finland has a population of roughly 5.5 million. The country is administratively divided into 19 counties (*maakunta/landskap*) and 309 municipalities (*kunta/kommun*). The counties are governed by the member municipalities and serve as forums of cooperation in the areas of health care and social services. As for the state administration, it follows the territorial division of the counties, although state agencies are responsible for one or more of these in different combinations. The Regional State Administrative Agencies so-called AVI-centres are divided into regions (*alue/region*). They are in charge of basic public services, as well as responsible for different permits and law enforcement. There are six AVI-centres in mainland Finland and a similar administrative body on Åland. In addition, there are 15 Centres for Economic Development, Transport and the Environment (ELY-centres) which also form part of the state administration. Each ELY-centre is responsible for the promotion of regional business and industry, cultural activities, transport and infrastructure. They also have important tasks related to the environment and the climate, such as the use of natural resources, nature protection and water management planning. On central level, the Ministry of the Environment is tasked with a wide array of responsibilities. Alongside with the traditional issues concerning environmental policies, pollution control and waste management, it is also responsible for land-use, planning and building, nature conservation and outdoor recreation. This is also reflected in the responsibilities of the environmental divisions of the ELY-centres, which are even wider, covering water management under the responsibility of the Ministry of Agriculture and Forestry. The ELY-centres, however, do not have the competence to issue permits

95. See Rättsprövningslagen (2006:304).

96. Kommunallagen (1991:900).

97. This section is largely based on *IEL Environmental Law: Finland* (2020) by Pekka Vihervouri, former president of the Finnish Supreme Administrative Court (HFD). Clarifications and additional information have been furnished through email correspondence with the author.

under the most important environmental legislation (see below). Even so, the ELY-centres play an important role in the permit procedures by way of their status as authority responsible for supervision and expert bodies, and ultimately, a right to appeal permit decisions.

According to the Finnish Constitution,^[98] the municipal administration is based on self-government. On local level, they are responsible for public services such as social welfare, health care, education and technical infrastructure. The sizes of the Finnish municipalities vary greatly, from a little more than 1,000 inhabitants over 600,000. Alongside with the general tasks of municipalities, they are also assigned with duties concerning the implementation of national legislation. These duties are commonly undertaken by legislatively created municipal authorities.

A superior authority in Finland cannot intervene in individual cases under consideration by subordinate authorities or municipal boards. This basic notion is also valid for the relation between a Ministry and its subordinate authorities.

Environmental legislation

Finland is a member of the European Union, as well as a Party to most multilateral environmental agreements on the European and global level. The international obligations and all of the EU Regulations and Directives are implemented in the national environmental legislation. On the constitutional level, there is an express provision stating that the responsibility for the environment belongs to all. Further, according to section 20 in the Finnish Constitution, it is the duty of the Government to ensure a healthy environment and to provide opportunities for all to have a say in environmental matters.

Fundamental environmental principles such as the Precautionary Principle, Best Available Technology (BAT) and Polluter Pays Principle (PPP) are expressed in the Environmental Protection Act (*ML*).^[99] The *ML* together with the Water Act (*VL*)^[100] containing regulation of the use of water bodies and related construction ("water management") establishes a comprehensive permit regime, covering all activities that pose a risk of environmental pollution from different sources into air, water or land. The *ML* together with the Environmental Protection Decree^[101] is based on an integration approach with a very wide scope of non-sectoral application. The permit regime ranges from industrial installations, landfills, airports, quarries and harbours through fish farms and animal husbandry to municipal sewers and waste management facilities. Many of the provisions of the Waste Act^[102] are directly applicable in the permit procedure under *ML*. The IED regime is implemented in the *ML*, as well as some forty other EU pollution-related

98. Suomen perustuslaki (731/1999).

99. Ympäristönsuojelulaki (2014/527).

100. Vesilaki (2011/587).

101. Valtioneuvoston asetus ympäristönsuojelusta (2014/713).

102. Jätelaki (2011/647).

directives for stationary activities or installations. Detailed provisions are largely left to different topic-specific decrees under the Act. Provisions on environmental quality standards for water and ambient air are given, mostly reflecting the EU legislation in those areas. A permit according to the *ML* and the Water Act may also include an evaluation and acceptance that the project is in line with the rules on Natura 2000. Nowadays, the *ML* also contains "lighter" alternatives to the permit regime, namely notifications and registrations. The difference between the two is that the notification procedure concludes with an administrative decision, whereas registration merely means that the competent authority is informed about the planned activity. The minimum environmental protection requirements for the registered activities are issued in sector specific degrees.

The Land Use and Building Act^[103] and the supplementary Land Use and Building Decree^[104] contain provisions on planning and zoning, as well as permits and consents for different kinds of land-use and construction. The aim of the legislation is to organise the use of land areas and building activities in a way that creates the preconditions for a favourable living environment. The Act gives the municipalities and the counties a wide competence to decide on land-use matters at the local level, although there is also some possibility for the state to give guidance by way of National Land Use Goals. The most important instruments for the regulation of land-use and construction are building permits (and construction permits for "lighter" developments), together with the Regional plans and Local master plans with a mostly guiding effect. Detailed plans are used for regulating developments with binding effect. A permit according to the *ML* or *the VL* cannot be issued in breach of a Detailed plan, a Regional plan or a Local master plan. Finally, the recently reformed Climate Change Act^[105] lays down the general framework for the planning of climate change policy and the monitoring of its implementation.

Environmental administration and decision-making

Under the *ML*, the competence to issue permits is divided between the Environmental Permit Divisions in four of the Regional State Administrative Agencies (AVI-centres) and the municipal Environmental Authorities. What kind of operation requires a permit and the distribution of competence between the authorities is made clear in different Annexes under the Environmental Protection Decree. The AVI-centres are responsible for large scale activities, such as those that may have a significant effect on the environment, or those which, by their size and nature, type of emissions, use of natural resources, waste management, etc. warrant the decision to be made by a regional (state) authority. The same goes for activities which, as well as an *ML* permit, also require a permit according to the *VL*. Normally, permits according to *ML* and the *VL* are tried by the AVI-centre in the

103. Maankäyttö- ja rakennuslaki (1999/132).

104. Maankäyttö- ja rakennusasetus (1999/895).

105. Ilmastolaki (423/2022 and 108/2023).

same procedure.^[106] Municipal Environmental Authorities are permit bodies for activities having lesser environmental impact. The AVI-centres are exclusively competent to decide on IED installations. The Environmental Permit Division at the centre is independent in its decision-making and has access to legal, technical and environmental expertise.

Under the Land Use and Building Act the municipalities play a key role as decision-makers for all building and construction activities. However, this competence must be utilized by a specific independent Building Supervision Authority required by law. The role of the ELY-centres in this field of law is mostly to give guidance for planning and building.

The EIA procedure is regulated in the Environmental Impact Assessment Procedures Act and the Government Decree on Environmental Impact Assessment Procedures.^[107] It is notable that the EIA procedure in Finland is separated from the different permit procedures, preceding the latter. As required by the EIA Directive, there is an obligatory list, supplemented by an enumeration of projects that need to be evaluated on a case-by-case basis, in order to see whether an EIA must be undertaken. For all cases, the competent "liaison authority" for the EIA procedure is the ELY-centre. The centre is responsible for providing all information necessary from different authorities and for negotiating with the developer. For those projects that need to be evaluated on a case-by-case basis, the ELY-centre must decide whether the project needs an EIA ("screening decision") within one month after all relevant information is submitted. If that decision is positive, the developer needs to set up an assessment programme for public scrutiny and the liaison authority must present its view on the accuracy of that programme. Ultimately, the developer's assessments result in an Environmental Impact Statement (EIS), which will be submitted to the ELY-centre for further public scrutiny. Within two months, the authority is obliged to make a reasoned opinion on the sufficiency and quality of the EIS. After this, the EIS – together with the statement of the ELY-centre – is published and made available to the relevant planning or permit authority. Consequently, the EIS may be used for different permit applications under a wide array of environmental acts and periods of time. On these occasions, however, the ELY-centre must confirm that the EIS is up to date. In addition to these initial competences of the ELY-centres, the liaison authority may also appeal those permit decisions, claiming insufficiencies in the EIS or the EIA procedure.

Supervision and enforcement

As in Sweden, supervision and enforcement under the *ML* is also divided between the regional (state) level and the municipal level. The distribution of responsibility

106. There are further possibilities to merge permit procedures according to the Act on Adjusting Certain Environmental Permit Procedures (Laki eräiden ympäristöllisten lupamenettelyjen yhteensovittamisesta (2019/764).

107. Laki ympäristövaikutusten arviointimenettelystä (2017/252) and Valtioneuvoston asetus ympäristövaikutusten arviointimenettelystä (2017/277).

follows the same lines as the distribution of competence to issue permits, namely that when a permit is issued by the AVI-centre, the supervisory authority is the ELY-centre. Permits issued by the municipal Environmental Protection Authorities are supervised by them. Several other authorities such as the Finnish Safety and Chemicals Agency and the municipal food safety authorities also play a role in supervising and controlling the activities, but the actual enforcement of permits, notifications and registrations rests exclusively with the ELY-centres and the municipal Environmental Protection Authorities.

The role of the courts

As in Sweden, the court system in Finland is dualistic, having general courts and administrative courts. The general courts (District Courts, Courts of Appeal and the Supreme Court) deal with civil and criminal cases, whereas the administrative courts deal with administrative matters on appeal. There are six Regional Administrative Courts in Finland, plus the Administrative Court of Åland. Judgements and decisions by the administrative courts may be appealed to the Supreme Administrative Court, although there is a leave to appeal requirement. The jurisdictional districts of administrative courts are determined in accordance with the regional division of the counties so that one Regional Administrative Court deals with appeals from one or more counties. However, legal proceedings of certain categories of matters have been concentrated in one or a few administrative courts. For appeals of decisions made under *ML* and the *VL*, the Vaasa Administrative Court has exclusive competence for the entire country. Thus, that court deals with roughly one fourth of all environmental cases. Other environmental cases – concerning issues such as nature conservation and soil extraction – are handled by the regionally competent administrative court. In the administrative courts the procedure is reformatory, meaning that the review covers the case or the controversial issue on its merits. The result of the review may be that the court upholds, alters or quashes the decision at stake. In cases under *ML*, changes are made most commonly when a remit back to the administrative body seems to be unnecessary, for example when the controversy only concerns a condition within a permit. It may be noted that, as in Sweden, the two Supreme Courts are independent of each other. As the Finnish Supreme Court deals with very few environmental cases – in contrast with Sweden where the Supreme Court is the last instance in a number of those cases – this division seems to be a lesser problem.

Many municipal decisions concerning the environment can only be challenged by way of municipal appeal to the administrative courts. As for the Land Use and Building Act, it only allows for such an action. In a municipal appeal, the scope of review strictly speaking only covers legality issues. However, this still includes both procedural and substantive legality. Unlike the ordinary judicial review in environmental cases, the administrative court cannot change the decision on municipal appeal, only accept or quash it.

3. Conclusions and discussion

Introduction

As already noted, this part contains conclusions and remarks from the comparison among the Nordic systems for environmental permitting. The ambition here is to highlight a couple of key issues that were discussed during the Nordic workshop in March 2022. The text is aimed at providing a general understanding of certain key features that were elaborated on, although some evaluative remarks from the author also are included. When the latter occurs, it is clearly marked in the text. Further, when different opinions have been expressed, all shifting views are presented.

The discussion points presented in this part relate to whether the environmental permitting systems are integrated or divided into different decision-making procedures by several authorities. This point includes the relationship between the EIA procedure and the permit procedure(s). Some thoughts are also given about case processing time in the permit systems. Next the discussion elaborates on differences among the countries concerning permits limited for periods of time or without time limits ("eternal permits"). Thereafter, pros and cons are discussed about the relation between the permitting body and the authorities for the supervision and enforcement of the regulation in given permits. The last key point is how and when changes of the permits and the conditions therein are evaluated by the authorities and who may initiate an updating procedure in this context. Finally, some thoughts are given about the major challenges in the permitting systems.

Integration in legislation and procedure

The national permitting systems in the Nordic countries build to a large extent on an integrated approach. In the permit procedure concerning the scenarios chosen as examples, most environmental aspects of the industrial installation are evaluated, whether those are emissions to air, pollution of the ground and water, noise, waste management and water operations. Sometimes this follows from the design of applicable law, as is the case in Denmark, Sweden, and Norway. The Miljøbeskyttelsesloven (*MBL*), Miljöbalken (*MB*), and Forurensningsloven (*FL*) cover (almost) all environmental aspects of the regulated activities, which is the reason why permits issued under that legislation may set up all kinds of precautionary requirements and other conditions for the operators to adhere to. The Icelandic and Finnish legislation are more divided, but the authorities have wide possibilities to merge the permit procedures and thus obtain integration. The reason for

integration can partly be found in the requirements of EU law, initially by the 1996 IPPC Directive (96/61), nowadays the IED (2010/75). As noted, all the Nordic countries are bound by that piece of common legislation. The picture is more divided as regards nature conservation and species protection as Iceland and Norway have legislation of their own on those issues, but even so, the integrated approach seems to apply. In all the systems studied, the permit authorities are required to take the "green interests" and protected areas such as nature reserves into account when regulating an activity.

Planning law is a different matter. Without exception in the Nordic countries, binding plans and building permits are for the municipalities to decide upon. Commonly, environmental law presupposes that plans precede permits in time. Even if this is not a legal requirement, plans do have an important steering effect on any subsequent permit according to the environmental legislation. As a general rule, one cannot obtain such a permit in breach of a binding plan. That way, compatibility with the plan becomes a necessary – but not sufficient – condition for issuing the environmental permit. In addition, the applicant must also comply with environmental regulation. Building permits, on the other hand, commonly – but not always – are issued by the local authorities after the environmental permit is in hand. Such a permit must obviously also be compatible with the overarching plan for the area in question. The division between what is regulated in the building permits and the environmental permits seems not to raise any specific challenges concerning industrial activities. Most, if not all, environmental effects of the activity are regulated in the environmental permit, whereas the building permit is more limited to issues concerning the building as such, the land and the logistics in the area.

Planning law and planning authorities also play an important role concerning the implementation of the EIA system in some of the Nordic countries. In Norway and Iceland, a SEA/EIA is mandatory for regional plans and local development plans if they allow for an activity that may have a significant effect on the environment. The EIA processed for this purpose may subsequently be used when applying for an environmental permit. If there is no such plan, the applicant for an environmental permit needs a decision on the matter from the municipal authorities. Also in Denmark (until 2018), the SEA/EIA procedures were found in the planning legislation, but today there is a specific Environmental Assessment Act. In Iceland, there is a similar separate piece of legislation, but it is for the National Planning Authority to decide on the quality of the EIA. In Sweden the SEA/EIA procedures are mainly regulated in the Environmental Code and in a subordinate governmental regulation. Iceland, Norway and Finland all have divided procedures for the EIAs and the environmental permits, with two different competent authorities issuing separate decisions. In Sweden, the EIA procedure and the permit procedure always are integrated into one. This is also commonly the case in Denmark, as there will be a joint decision on the EIA and the environmental permit.

One may find both pros and cons with the integration of environmental law and procedure. In those continental systems where the permit procedures are more divided, a common argument favouring such an approach is that environmental protection improves when specialized authorities on ambient air, water quality, etc. are set to defend their area of specialization. Contrasting with this, one may argue that concerning the legislation as such, it is a clear advantage for the developer to deal with one authority competent to handle all major environmental impacts from the activity in question ("one-stop-shop" or – as the saying goes in Finland – "allt i en lucka"). From an environmental point of view, it also seems beneficial to have one authority applying a holistic view to all the environmental impacts from the activity. Concerning the EIA, it may also seem efficient to have that procedure integrated in the permit procedure. On the other hand, with such integration there is an inherent risk that the permit body finds flaws in the investigation, but still accepts the EIA as it "suffices to evaluate this application". To undertake a comprehensive investigation and public participation procedure concluding with a decision on the EIA from an expert authority may seem more in line with the aims of the EIA Directive. Such a comprehensive EIA may thereafter be used for all permits needed to proceed with the activity in question. Against this, one may argue that such a system requires a mechanism in order to guarantee that the EIA is up to date. A confirmatory decision such as we find in the Icelandic system may be a solution to that. Another drawback with a separate EIA procedure is that it may trigger more appeals, which will make the decision-making lengthier. Finally, some of the Nordic countries have tied the EIA procedure to local development plans. It may seem a suitable solution, although it would be interesting to learn more about how one can foresee all the environmental impacts of the planned activity at such an early stage.

Case processing time

The case processing time from farm to fork depends on a variety of factors. Dealing with an activity that may require a decision on whether an EIA is needed, the processing of such a "screening decision" obviously will take some time. That way, activities listed in the "obligatory list" may be swifter to handle, although they commonly also are more complex concerning environmental impacts. Thereafter, the EIA procedure as such is time consuming, with consultations, remits, public hearings and – not least – several requests for supplementary investigation and information. When the EIA is confirmed – be that by a separate decision or by some kind of procedural move by the permit body such as the announcement of the application – finally, the permit procedure takes time in itself.

Concerning the screening decision, the time spent varies between one month in Finland, to 60 days (according to law) in Sweden and 90 days in Denmark. For the EIA procedures, they take on average 20 weeks in Iceland, 10–13 months in Finland, and 12–24 months in Denmark. As for the permit procedure as such, the time spent

ranges from less than 7 months in Denmark (200 days), 8 months in Iceland, 9–12 months in Norway, 13 months in Finland and 7–8 or 12–18 months in Sweden, depending on whether the permit authority is the Regional Licensing Board or the Land and Environmental Court. It should be noted that these data on case processing time do not include plans and building permits according to that specific legislation. Even so, in most countries there are cases where the permit procedure as a whole has taken a substantially longer time, as much as 6–7 years. Some of the systems apply set time limits in legislation for parts of the procedure, while most utilize internal benchmarks or performance targets for the administration.

The overall impression from this study is that the Nordic systems do not differ very much in environmental permitting concerning the time spent for the decision-making in the first instance. However, a caveat is needed here; the question about how much time is spent for processing a permit application cannot be answered without a much more thorough investigation, applying a systematic approach with similar factors to take into account for each country. To begin with – what is being measured? A reasonable point of departure is that you cannot start the calculation until the application for an EIA or a permit is regarded as complete, which commonly triggers the announcement of the case to the public concerned. Even so, the case processing time varies a lot depending on what steps of the process is measured and what is integrated in those steps. Obviously, the different solutions chosen for the relationship between the EIA procedure and the permit procedure need to be taken into account. Further, it is meaningless to make a comparison without also considering the appeals stage, as, in some countries at least, a large portion of permit decisions are challenged either by the applicant or the public concerned. In this respect, it is for example almost impossible to undertake a relevant comparison between Norway and Sweden, where the appeals are made to the political level within the competent Ministry as compared to a court of law. Where the administrative decision-making may be swifter in Norway, the appeals stage may be (very) lengthy compared with the one in Sweden. Another factor that needs to be considered is if and under what conditions the permit can be utilized by the applicant during the time that the decision is on appeal.

During the workshop, the participants discussed the factors that usually have a negative or positive effect on the case processing time in environmental permitting cases. Changes in the application, the need for supplementary information, the lengthy remits to the municipalities and the lack of administrative resources in the permit body were pointed at as common factors that prolonged the procedures. On the positive side the participants mentioned better service to the applicants using digital tools and check lists, standard terms for certain installations, emphasizing the duty for the permit body to undertake investigation on its own accord in line with the ex officio principle, and cooperation between different permit bodies. On digitalization, there seem to be big differences among the countries. Iceland seems to have made the most progress in this respect, as the permitting bodies make information available to the public in a public database both during the procedures

and after the decisions are made. It would be interesting to study further how to develop such means in order to improve legal certainty, transparency and public participation in the permit system. It was finally noted as a common understanding that there is a strong political urge for swifter permit processes, while also stressing that the standard for environmental protection must not be lowered.

Eternal permits or permits limited in time?

In all of the Nordic countries except Iceland, the environmental permits are unlimited in time. In those countries having such "eternal" permits, time limited permits commonly can be used for certain kinds of activities or when the environmental impacts are uncertain. In Iceland, permits always are limited to 12 or 16 years depending upon whether the decision-maker is the municipal Environmental and Public Health Office or the Environment Agency. With this system, the permit holder is obliged to apply for a renewed license before the time period has elapsed for the current permit. When this happens, the permit procedure commonly is swifter as some of the old investigation can be used again. In all of the countries, the permit holder may – or under certain conditions are obliged to – apply for an update of the permit when important changes occur in the operation. Also the authorities can ask for updates or even revocation of the permit, but this rarely happens.

In Finland, Sweden and Denmark, a certain activity may be regulated by several different and subsequent permits. Thus, as one installation may have many permits, this impairs transparency and makes the understanding of what is regulated more complicated for the public concerned. In Norway, it is the activity that is regulated, not the installation. A "permit" is therefore often a combination of decisions made throughout the years. In contrast, a single permit is used in Iceland; and if changes are made to that permit, the permit document will be altered. As the permit will be posted on the authority's website, the regulation for the activity is easily accessible and understandable for the public concerned.

A question which was touched upon but not discussed in any depth in this study is what the environmental permit actually covers. The most obvious answer would be that it only covers what is expressly regulated with explicit conditions. However, this may not be the legal situation. In Sweden for example, the situation is more complex, as anything that is covered in the application can be said to be regulated in the permit, even if that issue is not mentioned in the permit or covered by an express condition. It would be interesting to undertake further comparison on this aspect of the permit systems. A closely related question is whether there is a legal requirement for the permit holder to continually work to reduce the emissions and other environmental effects of the permitted activity, as is the case in Norway.

Changes in the operation of permitted activities

In the Nordic permit systems, small changes in the operation of permitted activities are handled by the supervisory authorities. When emissions increase or more substantial changes are made in production or other parts of the activity, an amendment or a change in the permit is required. Commonly, such alterations can be made in the existing permit. Although some of the Nordic delegations stated that these "multilayer" permits do not create any problem from the administrations' point of view, it was also noted that this issue also depends upon how often renewals were made. In Finland, for example, most permits are rather new as there was a major review around the year 2010. In contrast, many environmental permits in Sweden issued under the Environmental Protection Act during the period 1969–1997 still are valid. It was finally noted during the workshop that when changes are made in the permitted activity, an evaluation of the need for a renewed EIA is commonly made in all countries by way of a screening decision. Concerning new BAT conclusions, it was observed that all countries have challenges in meeting the 4-year time limit due to technical complexities and the construction of the national implementation legislation. Finally, the obligation for the supervisory authority to undertake regular overviews in order to control whether the permit is up to date and in line with best available techniques seems to be standard in all of the countries studied. Annual reports from the permit holder of the activity's performance and environmental effects are helpful in this respect.

Who may apply for a renewed permit procedure is another interesting question to discuss in this context. Obviously, the permit holder is able to make such an application. Also the permit body or the supervisory authority may take action in certain situations, if an agreement cannot be reached with the permit holder. Whether and under what conditions other authorities or the public concerned are able to take such initiatives or can challenge the competent authorities' omission to do so was not elaborated upon during the workshop and may deserve further study.

Permitting, supervising and enforcing

In Sweden, permitting and supervision/enforcement of given permits is traditionally handled by two separate authorities. After 2010, this is also the situation in Finland at the state level. Here however, the decision-making, supervision and enforcement in the municipalities is handled by the same authority. This is also the general system in Denmark, Norway and Iceland, meaning that the permit body also handles the control of the permitted activities.

One may discuss pros and cons in both systems. The Swedish perspective has always been that permitting and enforcement must be separated in order to avoid conflicts of interest. There is also a fear that if the competences are jointly

organised, the permit function will always be prioritised over enforcement when resources are meagre. Another advantage to the separation of permitting and enforcement is the safeguarding of transparency in the system. On the other hand, from those systems where the enforcement of the permits is handled by the permit body, it has been argued that such an organisation facilitates communication between the authorities and the operators. As an example, the procedure for adaptations and alterations of the permits becomes swifter and easier to handle. It is also an advantage for those who handle the issuing of permits to get feedback from the civil servants responsible for supervision of the activities.

Both systems may seem have good arguments on their side, but in this question as in many other in this study, a full picture cannot be obtained without hearing the opinion of the operators and the public concerned. It would also not be very surprising if the legislator in Brussels wants to have a say in the matter, as enforcement of EU law has come in focus in recent years.

Challenges to the permitting process from the administration's point of view

Obstructing factors and other challenges in the permit procedure have also been discussed in the study. A general viewpoint from the delegations was that the applications often lack necessary information and therefore must be amended, while at the same time there is a high pressure to handle permit cases swiftly. Moreover, baseline reports according to IED, the Habitats Directive and the Water Framework Directive are technically complicated and legally difficult to handle. Also the requirements of the Seveso Directive (2012/18) prolong the permit procedure as many different authorities are involved. These are examples from a general development within environmental law, not least on EU level, namely that the regulation becomes more and more complicated. How to handle this in a manner that meets the requirements of legal certainty, equality and transparency, while at the same time meet the demands for swifter case handling, is a major challenge for the administration. In this respect, lack of administrative resources and access to experienced personnel are obviously decisive for the efficiency of the decision-making authorities and courts. As an example, the delegation from Sweden mentioned that the Regional Licensing Boards are not always staffed with full time experts. Moreover, courts do not normally have the possibility of prioritizing between large scale operations of economic and social importance and more minor cases, such as conflicts between neighbours. During the permit procedure, requests for prolonged time limits for permits may cause substantial delays. Further, a viewpoint that was expressed during the discussion was that the definition of what constitutes a "major change" or "significant change" in a given permit may be a complex matter to decide. And finally it was pointed out that the municipalities must be involved in an early stage of the permit procedure in order to ensure that the information about local plans etc. is updated and correct.

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Websites

Denmark

- In Denmark environmental permits are published at Digital MiljøAdministration (DMA): <https://dma.mst.dk/>. At the same site, the public can access, among other things, relevant information about environmental inspections and administrative enforcement. The digital portal for submission of applications for environmental permits is called Byg og Miljø and can be accessed at; <https://www.bygogmiljoe.dk/>
- The link to our webpage at the Environmental Agency of Denmark (Guidance on approval and reassessment); <https://miljogodkendelsesvejledningen.dk/>
- Danish legislation can be found at; <https://www.retsinformation.dk/>

Norway

- Norwegian permits and emission figures; [Norske utslipp - Utslipp til luft og vann og generert avfall](#)
- Guidance and permits; [Slik søker du om tillatelse etter forurensningsloven - Miljødirektoratet \(miljodirektoratet.no\)](#)
- Norwegian legislation can be found at; [Lover - Lovdata](#)

Iceland

- The link to our webpage at the Environment Agency of Iceland (general information regarding permits, application etc.); <https://ust.is/atvinnulif/mengandi-starfsemi/>
- The link to our public consultation page (applications received, draft permits under consultation, issued permits, other advertisements etc.); <https://ust.is/atvinnulif/opinber-birting/>
- The list of permits issued by the EAI; [Umhverfisstofnun | Starfsleyfi \(ust.is\)](#)
- Icelandic legislation can be found at; [Lagasafn | Alþingi \(althingi.is\)](#)

Sweden

- The Regional Licensing Boards provide information about the permitting process, for example the Regional Licensing Board at the County Administrative Board of Stockholm; [Prövning av miljöfarlig verksamhet i Länsstyrelsen Stockholm \(lansstyrelsen.se\)](#)
- Information about IED; [Industriutsläppsdirektivet \(IED\) \(naturvardsverket.se\)](#)
- General information about environmentally hazardous activities that only require notification to the supervisory authority; [Environmental hazardous activities of Type C - Find Permit - verksamt.se](#)
- There is no database where the public can access all permits. Permits that shall be made available to the public according to article 24 in IED is published by the Swedish EPA (Naturvårdsverket). Most decisions by the Land and Environment Court of Appeal are published by the court; [Mark- och miljööverdomstolens avgöranden - Mark- och miljööverdomstolen vid Svea hovrätt](#)
- The supervisory authorities can access a database where information reported by the operators is available (not accessible to the public); [SMP Svenska MiljörapporteringsPortalen - Revision 954 \(lansstyrelsen.se\)](#)
- Swedish legislation can be found at; [Documents and laws - Riksdagen](#)

Finland

- Database environmental permitting; <https://ddei5-0-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=https%3a%2f%2fylupa.avi.fi%2fsv%2dFI&umid=C248EFE1-DBCF-8405-85DE-C81A0484C86C&auth=aa2a6666dad3109e072cd23e72dcb4db4081a53-381a5f9ebede9abbfd3f6af442f11e96719c8d6d>
- Here is also link to the place where you can do the actual application and send it to permit authority. It requires identification before you are able to start filling information needed and scroll through contents; <https://sahkoinenasiointi.ahtp.fi/sv/palvelut?tyyppi=lupa>
- Finnish legislation can be found at; [Translations of Finnish acts and decrees - FINLEX®](#)

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Annex I – Minutes from the Workshop on 22 and 23 March 2022

The countries were represented by delegations from their national authorities representing in-depth knowledge on the processes of the national permitting systems.

Anders Turesson opened the seminar and presented the setting and purpose of the workshop; which was to identify areas where we can have a Nordic dialogue and cooperation and an exchange of views on the permitting systems.

Each country then made a brief presentation of their respective permitting system after which the other countries were given an opportunity to ask questions and comment on the presentations:

- What authority is the permitting body? Is it the municipality or a state body?
- How does the operator know who to approach with the application?
- Is it possible for the ministry to "call in" the permitting process or intervene in a case when the permitting body is a municipality or another state body?
- Is it possible to combine and integrate different procedures such as Natura 2000, building plans, water protection, Environmental Impact assessment etc? It is noted that NO and IS have not signed the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (that means NO and IS don't have Natura 2000 areas)
- Which authority is the supervisory authority? Same as the permitting body?
- Public participation: in what stages of the process is the public consulted?

Discussion on scenario A

Scenario A formed the basis of the discussions on the first day of the workshop (22/3).

Scenario A: A new industrial installation that will have effects on the environment. In this scenario it might be interesting to focus on industries where environmental impact assessment is not mandatory and where the national authorities have to decide whether an EIA is needed according to Article 4.2 of the EIA Directive, 2011/92/EU (projects listed in Annex II).

The delegations described how their respective systems would handle different aspects of the permitting process based on questions that had been presented to the delegations before the workshop. Some additional questions were raised during the workshop. The discussions and additional questions were, in summary:

The scope of the permitting process and involvement of the public and stakeholders

- Does the permitting process include the environmental assessment process?
- Are there multiple processes or one integrated process? Can the decision-making processes under different laws be merged?
- In what ways is the public given access to information and participation in the permit procedure?
- Which stakeholders and interests are consulted within the frame of the permitting process, and how are they consulted?

In **FI** the EIA is separated from the permitting process and it is done before the permitting process. The two processes are not handled by the same agency. In scenario A the operator has negotiations in advance with the authorities for permitting and EIA, where they discuss whether EIA is needed or not. It is possible to integrate a water permit in the process, but chemical safety or land use is handled by another competent authority.

Public participation in the permit process and the EIA is separated. The application and information about environmental consequences is made available online by the permitting authority and information about the application is also published in newspapers. The permitting authority involves other authorities. The authority asks for statements from several authorities: municipalities, the Food Safety Agency, Fishery Agency and Chemical Agency.

The EIA process and permitting process in **DK** is on paper two processes, but the processes are integrated as much as possible, and it is often an integrated process. The permitting authority decides on the quality of the EIA. The permitting authority

announces the call for input regarding scope of the EIA-report and the permit on its website. The public concerned or companies that might be directly involved will receive a letter directly.

In **IS** the permitting process is separated from the EIA and the processes are handled by different agencies. The decision-making process cannot be merged but it is possible to prepare the EIA report and apply for a permit. In most cases that simultaneous procedure is not feasible since the EIA forms the basis of the permit and it is therefore needed before the permit can be applied for. In practice this often means the operator needs a decision on the EIA before making the permit application.

For industrial activity in **NO** the operator needs to get in touch with the permitting authority to determine whether an EIA is needed. If the activity is in line with the zoning plan it goes to the permitting authority. It is not possible to give a permit according to the Pollution Control Law for an activity that is not foreseen in the zoning plan. If the activity is not in line with the zoning plan the application goes to the municipality. The municipality then asks the operator to issue a program for the EIA which is public. Then the municipality decides on which procedure the operator has to follow. When the EIA is completed it becomes part of the permit application.

The permitting system in **SE** consists of multiple processes. Some are integrated such as the environmental permit, water permit and the Natura 2000 permit. Other regulations that may affect the activities include the Planning and Building Act and the Electricity Act.

The EIA is partly integrated. The EIA process starts with a consultation where the operator is responsible for consulting relevant authorities, municipalities and the public. This part is done before the application. The permitting body can demand supplements of the EIA from the operator and then makes a final decision on whether the EIA is complete. In this later part the permitting body is responsible for involving the public and other stakeholders.

The form of the process varies depending on whether the permitting body is a court or a Regional Licensing Board which is part of the County Administrative Board. The permit process in the court has a public hearing and site visit. The Regional Licensing Board normally has a written procedure.

Is there a limit to objections that can be made about the EIA? Can the same questions be raised in the process of the EIA as in the permitting process? Can supplements be made to the EIA?

In **FI** there are no limitations, it is possible any actor to submit opinions on the EIA and the application. It is not possible to appeal the statement about the quality of the EIA.

In **DK** the environmental permit process and the EIA process are integrated and will finish at the same time. Normally, there will be one joint decision that can be appealed with regard to both the environmental and the EIA process. The appeal on the EIA can only be a legality control by way of launching judicial review proceedings in court. In an environmental permit appeal, all substantial questions can be reviewed.

In **IS** there are no limits. The developer of a project or the relevant licensor can at any time request an opinion from the National Planning Agency on whether the developer's environmental impact statement must be revised, if they believe that the basis of the environmental assessment report has changed. Some questions can be raised in the permitting process, as in the EIA, since the NPA issues Reasoned Conclusion and Scoping opinions that are not decisions which can be appealed to the Environmental and Natural Resources Board of Appeal. The decision on whether to issue a permit is based upon the reasoned conclusion of the NPA. In the case of an appeal to the Environmental and Natural Resources Board of Appeal, the complainant could make the case that the permit is based on a flawed EIA.

If the EIA is not sufficient in **NO** it is possible for the permitting authority to go back to the operator based on what comes out in the public hearing. This has been done on several occasions.

In **SE** the permitting body decides on both the permit and whether the EIA meets the requirements of law at the same time. If the decision is on appeal, complaints can be made regarding both the EIA and the permit as such.

Case processing time and quality of the application and other material

- Is there available data on the time used for the permitting process in the different countries?
- In your view, what factors affect time efficiency in the permitting processes?
- Are there good examples of guidance and tools aimed at reducing case processing time? (e.g. digital application, BAT checklists, digital approval guidelines, guidelines in general (air, noise, etc.), standard terms, BAT conclusions as standard terms (general binding rules), industry executive orders (general binding rules).
- In what ways are authorities involved in preparing an application?

There is a lot of data about the processing time in **FI**. In general, the decision on whether or not an EIA is needed or not is given within one month. The EIA process is about 12 months. In general, no binding time limits apply to the permit process.

There are internal performance targets for permitting authorities at state level, the aim is for the permit procedure to be ten months in median months processing time. For new installations it is usually ten months. In average for all, the process is normally just over thirteen months. The permit processing time is counted from when the application is submitted to the authority. However, supplements are often needed. There are some factors that affect the time use; changes in the operator's plans for the activity and lack of resources at the authority.

New regulations have been introduced to speed up the process. The authorities try to give enough guidance to applicants so that the quality of the documents will be sufficient from the beginning. A national client service number has been introduced where applicants can call and be referred directly to the right permitting authority. There is a lot of cooperation between authorities. Digitalization is increasing, in the future the permit process might all be electronic.

There are no set deadlines in the permitting process in **DK** but there is a service target of 200 days of an IED permit. It varies very much. The screening for the EIA should be made no later than 90 days from when a fully informed application has been submitted to the authority. There is no fixed time for the EIA process but normally it takes between 1½ and 2 years.

Good examples of guidance and tools that can be mentioned are the application system with checklists and appendices of what information should be provided and links to where one may find the necessary information. There are standard terms for certain types of industries, typically those that are given permits by municipalities. There is day to day dialogue with operators, and that way the permitting authority receives information about applications that are coming.

If the applicant does not use the permit within 2–5 years, the applicant has to apply again. If an activity that has a permit is terminated/shut down the operator must apply again after three years if the operator wishes to continue.

In **IS** the EPA issues a scoping opinion within seven weeks from when the developer submits a scoping report. The time can be extended. The time frame for consulting the public and relevant authorities is a minimum of six weeks. The NPA then issues a reasoned conclusion within seven weeks. The Environmental Agency of Iceland has an internal benchmark of 240 days to issue a permit. The public health authorities do not have the same benchmark. The draft permit must be advertised during four weeks before a decision can be made. The decision then needs to be made within four weeks.

Consultations with municipalities can delay the EIA process. Other factors that can delay case processing time are the quality of the application, lack of supplements from the operator and contacts with the municipalities and NPA, and the workload at the agency. The public health authority has meetings every week.

The NPA will launch a new digital application tool that will hopefully contribute to reducing the case time. A BAT-checklist has helped. The Environmental Agency has issued standard terms for the public health authorities which also has helped shorten the time. Teamwork on permits has improved permits, but it hasn't really shortened the case processing time.

NO is aiming towards 6 to 9 months for straightforward permits. If the permit includes EIA the benchmark is 9–12 months. There are no strict rules, only benchmarks. There are examples where complicated cases, such as mining, have taken 6–7 years. The problems seem to be the same in SE and DA. If the project is controversial the process is prolonged. The appeal process at the ministry can sometimes take several years. There is no time limit for the EIA in NO.

Miljödirektoratet involves other authorities in the process. Remits are made to other authorities, regional agencies, labour issues, Seveso, water management, etc. Miljödirektoratet remits target specific agencies and use public notification as well. Miljödirektoratet handles large installations. Wind farms and hydro power are handled by another agency (Norges Vassdrags- og Energidirektorat). Miljödirektoratet have guidance documents. The guidance document clarifies what the authority needs in order to handle an application.

There is some data regarding case processing time in **SE**. The permitting process takes a little more than a year in first instance when the first instance is the Land and Environment Court. The courts are aiming at 12 months for decision, but it generally takes between 14–15 months. The permitting process in first instance takes 6–12 months when the first instance is the Regional Licensing Board. There are more complicated cases that take more time.

There are guidelines from relevant authorities, for example, information to the applicant on what the courts require. The permit body including the courts have an obligation to investigate the case and to guide the applicant. Cooperation between the Regional Licensing Boards has also helped in reducing case time.

Are permits given for a limited time? Is it possible to revoke permits?

FI: According to the environmental act permits are valid until further notice, but they can be set for a fixed time limit in exceptional situations. It is possible to give a license that is limited in time, for example 10 years, if there is a special reason, but for the time being there is no time-limiting in general. Time limit is an exception and can for example be used when the environmental impact is not yet known and there is a need to evaluate before giving an indefinite permit. There are multiple ways to address this in the permit. It is possible to revoke permits.

DK: The permits are issued for a limited time in some cases, but it is not usual. As a general rule, approvals are without expiration. If the permit is time limited and the time runs out they will have to apply again. Time limit is usually only applied for activities that involve testing of new products or processes. When the operator applies for a new permit, the EIA process is often faster because there is only need to do a screening to test if the former full EIA can still be seen as valid.

IS: Permits are required to be issued for a specified period and to be reviewed at least every 16 years. The permits issued by the Environmental Agency are usually issued for 16 years. This means the permits have to be reviewed every 16 years. The public health authorities usually issue permits for 12 years. If the operator does not apply for a new permit within the time limit the old one expires. Getting a new permit is usually a shorter process. An EIA that has been done previously can often be used. A review of the permit can be initiated if it is needed due to new technology or increased pollution. It is usually not possible to revoke permits. This process is in review by the agency. The Environmental and Natural Resources Board of Appeal recently concluded that a new operating license can only be issued when the applicant does not have a valid operating license for the activity for which he is applying for a license. <https://uua.is/urleits/43-2021-eldsneytisbirgdastod/>

NO: Permits are open-ended, there is no time limit. Permits that are limited in time are used for activities that involve testing of new products or processes when there is a need to find out how the activity affects the environment. It is generally possible to review the permits after 10 years. That is because it is assumed that new techniques have developed during that time, and that the activity can be given new conditions. There is also a possibility for the operator to apply for changes in the permit. It is possible for the authorities to step in and stop the activity if there is an emergency. Having a permit should be predictable for the operator. Therefore, the authorities have options, but they do not have free hands. It is good to have open ended permits but there is a need to be able to intervene to reflect the

development of new techniques etc.

There is a possibility to revoke permits if the operator fails to meet the requirements of the permit or is not able to perform the conditions. This is extremely rare; it has been done once since 1981.

SE: There is no general time limit for permits in SE. Time limited permits are used for some industries and activities: windmills, fish farms, ground water, and quarries. It can also be used in complicated cases and when there is not enough data. It is possible to revoke permits but in practice it never happens

Is it possible for the permit body to prioritise between applications?

It is possible to prioritise in **NO**, but the permit authority aims to handle the applications in turn.

It is possible to prioritise in **FI**. Some cases can be taken before others, for example those with the largest environmental impact, a positive environmental impact or if there is an application for a new big installation. Currently, there is no regulation on how to prioritise.

DK has the possibility to prioritise between applications. There are no rules in the legislation regarding the priorities but in practice the authorities do prioritise. New installations that cannot start without a permit are prioritised. Companies that have more than one ongoing permit process at the same time notify the agency about which of the applications is more important for them.

It is possible to prioritise in **IS**, but it is a bit limited by the administrative law. The permitting authority normally takes up permit applications in date order but if it is something important and there is a good reason to prioritise, it is possible.

In **SE** one of the difficulties is that the people working with permitting in the Regional Licensing Boards do not work there full time, they have other work as well.

One of the difficulties for the courts is that the courts handle many different cases and they handle them in the order they came in. It is not easy to prioritise. It is possible to take emergency into account. Cases that have been remanded from a higher instance are prioritised.

Do you have one permit decision or layers? Is it easy for the public to know what is regulated in this activity?

FI: There are layers of permits; an operator can have 20 permit decisions and that can be a problem. There are some old permits but there are also many cases where the legal requirement has changed. For example, monitoring has been stricter in recent years, and that needs to be reflected in the permit. There are also cases when changes have taken place and the whole permit has been updated. It can be difficult for the public to know what the regulation for a specific industry is. The plan is to introduce consolidated permits and to introduce an e-service where permits are accessible to the public. All permits issued by the state environmental permit authorities are published in the internet database for environmental permitting.

NO: When a permit is issued the document contains information on what the permit is issued for and why certain conditions have been set. The permit can be amended if there are changes in the activity or limits.

DK: There are multiple layers of applications as in FI. Often but not always there is one basic permit and supplements to the basic permit.

IS: There is only one permit. If the authority changes the permit, the permit will be updated.

SE: There are layers of permits, but it is also possible if there are many amendments for the County Administrative Board to require that the operator apply for a new permit.

What are the main challenges in the permitting process?

FI: The quality and information from the operators is key to a successful process. There is pressure coming from the outside, for example to make the process smoother and introduce time limits. Permit practice is quite long in terms of number of pages. Monetary resources are a limitation at the government agencies; there are not enough people in the permitting offices as well as in the appeal courts. There is a need for experienced people handling the permit and sometimes the different government agencies compete for the same persons.

DK has pretty much the same challenges as Finland but also the Seveso part of the permitting process extends the processing time because there are several authorities involved.

The main challenges in **IS** vary from project to project. It is common for data to be of such a nature that it is time consuming to determine whether it is satisfactory or not.

The frequency of changes in laws and regulations is quite rapid.

The formulation of requirements in the license depends on many considerations. The results of the Planning Agency must be taken into account, among other things, and it has sometimes been the case that the plans described in the application for a permit are not in accordance with the project that was notified to the Planning Agency or the environmental impact assessment. In this case, the data needs to be harmonized. Solutions to this problem vary from project to project, but in all cases the applicant needs to take some action.

The fact that the permitting process, the EIA, and the permit application are divided between governmental agencies in Iceland can affect the processing time from start to finish, from EIA to the permit publication.

It might also complicate the process that there are different governmental agencies issuing permits so it is often necessary to analyse whether the permit should be issued by the Environment Agency or the public health authorities. Act no. 7/1998 lists which operations fall under the jurisdiction of the Environment Agency or the relevant public health authority, but it is still sometimes unclear. In some cases, an operator needs a permit from both the Environment Agency and the relevant public health authority for the same project, simply because the scope of each permit includes different operations. In that respect, it is sometimes unfortunate that the process is handled by different government agencies in Iceland.

NO: One of the main challenges is to get the information needed from the applicant, in particular regarding the BAT conclusions. The hearing process gives very different views on what documentation is needed and sometimes it is hard to reach an agreement.

There are challenges in **SE** regarding prolonged processes. For example, the courts handle many cases at the same time. The assessments and legislation are sometimes complicated. Applications often need supplements, for example, more certain data. Another factor that can delay the process is that the applicants and authorities, especially municipalities, often ask for more time to complete the application or respond to the court's questions.

Discussion on scenario B

Scenario B formed the basis of the discussions on the second day of the workshop (23/3).

A change of a permit in an existing industrial installation as part of the effort to achieve climate neutrality, that is, a change that aims to lower the facility's carbon footprint. Such changes may include increased energy efficiency in the installation, or a change of fuel or processes (such as electrification). In this scenario, it might be interesting to see how the national systems deal with the application of Article 20 of the Industrial Emissions Directive (2010/75).

Changes in an installation and special regulations for processes that are part of the green transition

- Is it possible to apply for a permit that covers only the change in the installation (Article 20 3 of the IED)?
- Is the permitting process for a change in an installation different from the permitting process for a new installation?
- Are there any special regulations for permitting processes regarding installations or changes in installations that are part of the green transition, such as giving the cases priority over others?

FI pointed to the fact that it is in the operator's interest to have changes in operation if the operator wants to keep up with the market. The supervising authority needs to know what is going on in the factory. Based on the information the supervisory authority can make decisions and take actions. In FI there are many small changes that do not require a change in the environmental permit, these changes are handled by the supervisory authority. If the changes are big however, for example if the change leads to the emissions going up, there is a need to change the permit.

Changes that aim to lower carbon footprint are changes that rarely require a change in the environmental permit. This is because there are improvements to the industry that rarely increase the emissions.

Is a possibility to change only part of the permit when the changes are small. The most common environmental permit applications when we talk about IED, are not handled as a whole permit, but only the change itself. The legislation gives the supervisory authority the authority to ask the operator for statements in order to see how big the change is. One effect of the possibility to change only parts of the permit is that some operators can have multiple permit decisions that are valid at the same time, sometimes up to 20 permit decisions.

Public notification can be done in a simplified form for changes in a permit compared to the full permitting process.

For a permit decision there is a right to appeal for public concerned, resulting in a time period of normally 2–3 years before the operator has a legal valid decision if both appeal stages are needed in order to resolve the dispute. In general, the operator can start operating even if there is a legal process pending in the court. Since there is always a risk that the appeal court will not approve the use of a change in permit it may sometimes be better to apply for a full new permit for the entire installation.

In **FI** the permitting and supervising authorities are separated on state level. At municipal level the permitting authority also supervises the permit. In case of changes, the supervisory authority gets annual reports from the operator about changes and has a dialogue on changes during regular inspections. The supervisory authority informs about recent changes in legislation which may lead to changes in the permit. The operator informs about plans for the future and there is a dialogue about the need to change the permit.

The supervisory authority can use administrative enforcement in order to get the operator to apply for a new permit, but it is usually not needed.

The permit conditions in FI are relatively updated since there was a big review before 2010.

In **DK**, any change in the installation that entails changes in the amount of pollution or waste generation needs an environmental permit. It is possible to only change a part of the permit. As in FI an installation can have several different permits. The application for a change in the permit is almost the same as for a new permit; the requirements are the same.

If the operator applies for a change there is a need to apply for an EIA at the same time, but normally a screening is enough. It is decided on a case-by-case basis whether a new EIA is needed. Usually, a new EIA is only needed if the change is so big in itself that the operator decides it will be as easy for them to get a new EIA. The operator provides material so that the agency can do a screening process and then decides whether the change is big enough to require a new EIA.

DK doesn't have any special regulation regarding the green transition, it is the same legislation.

The system in **IS** is pretty similar to the system in DK. New permits are not issued when there is a change. The permitting authority reconsiders the permit to see if the change fits within the scope of the permit; if not, the authority changes the permit. The process is very much the same as for a new permit, with consultation for 4 weeks etc. The system in Iceland is also similar to DK regarding the EIA, if the change fits within the EIA after a screening. The IS law gives the authority the possibility to review if there is a need to make a new EIA process. Permits are issued every 12 or 16 years and the authorities have regular overviews to see if it is up to date. If there is a new technology or if the law has changed, the permit can be reviewed. A review can be initialised by the operator or the agency.

The operator is required to notify the supervisory authority about changes in the operation. The supervisory authority and permitting authority are the same authority.

Regarding the question about green transition there are no special processes for this in the permitting process. However, there are some other tools such as tax relief promoting green transition.

NO regulates the activity, not the installation. In many ways a permit is a combination of decisions made over a time period of many years. For changes in a permit that extend emissions the operator has to apply for a change as a new activity. The process is the same as for a new permit. In the process the authority has to assess if the increase has an effect on the pollution. The operator is required to do a new EIA if the thresholds for when an EIA is needed are exceeded. It is then a new hearing process as if there were a new application. However, if there are no changes to the emissions or nuisance to the environment, there is no need for a new EIA.

The operator is required by law to work continuously to reduce emissions from the industry. The operator also is responsible to have a permit that reflects the activity carried out, based on how the activity is described in the application. Not all changes require a change in permit or notification to the authority, only increases in emissions, but if the activity is no longer in line with the permit, then a change in the permit is needed. The operator must then begin a dialogue with the permitting authority.

The operator reports to the supervisory authority every year and there are regular inspections.

SE concluded that the systems are quite similar in this aspect. There is a possibility to make a change in the permit unless the change is too great; the process is pretty much the same as a new permit.

In SE, if the change in the operation is small, the operator can just inform the supervisory authority. If the supervisory authority deems that the change is too big to be subject to notification, if there have been many changes to the activity, or if

the permit is old, it is possible for the supervisory authority to require the operator to apply for a new permit.

The supervisory authority is separated from the permitting authority.

There is so far no priority or possibility to prioritise installations for the green transition.

If the authorities think that there is a need for a new application and the operator does not agree, what happens? What happens when the system builds upon a joined organisation for supervision and permitting, and you don't agree with each other? Can the authorities make changes to the permits of their own accord?

In **DK** the supervising and permitting authority is the same. If the operator does not agree with the authority's assessment an administrative procedure is initiated.

It is basically the same in **NO** as in DK. When an inspection is performed and the activities are out of the scope of the permit, the operator is informed that they operate illegally. If the operator does not take action, there are enforcement activities. The decision can be appealed in an administrative order (decisions from statsförvalter can be appealed to miljödirektoratet).

A change in the existing permit is a part of the supervising process and not the permitting process. The supervisory authority inspects if the operator acts within the permit or in a manner that creates pollution outside the frame of the given permit. Also there has to be a proportionality between the need for change in the existing permit and the costs of a new application.

IS: If the operator does not want to apply for a change in the permit, the authority can make changes to the permit. The authority can for example make changes to conditions and demand information from the operator. This is not done frequently; it is only for big and important changes, and the procedure needs to follow administrative law. The situation where the officers responsible for supervision and the officers responsible for permitting do not agree has not occurred yet. If the public health authority and the Environmental Agency do not agree the conflict is referred to the Minister for a final ruling.

In **NO** It is possible for the authority to make changes to the permit. There are conditions in the law that describes when and the authority must inform the operator. The operators need predictability, and the change has to be reasonable. Necessary investments and costs must be considered. For example, if the authority is informed that new technology is developed that can decrease emissions and the industry does not adopt this new technology the authority can have a dialogue with the operator and inform the operator that the authority intends to change the permit. NO lost many pulp and paper industries because the industry could not

keep up with the new techniques. As in IS, the possibility for authorities to change permits is not used on a frequent basis.

In **FI** changes in permits can no longer be initiated by the permitting authority, but changes can be initiated by the supervisory authority, by the relevant authority protecting the public interest or a party suffering harm, or by certain registered associations or foundations (whose purpose is to promote the protection of the environment, human health or nature conservation, or the pleasantness of the living environment), and in whose operating area the environmental impacts in question arise. There has been a concern that the information in these cases is not the same as in the cases where the change is initiated by the operator. Changes are being made in the regulation to increase the possibility for permitting authorities to ask for supplements to the application.

What are the main challenges in the permitting process?

FI: One challenge is of course to define which changes are major changes. If there are no numbers or any exact data to base the decision on, it can be problematic to decide if the change is big enough to change the permit.

In principle the problems are very similar as the ones discussed regarding scenario A: to get the proper information and quality of the applications, to make sure there are enough supervisors to maintain a dialogue, keep track of developments and to work proactively, and to ensure enough resources for the permitting authorities. The legislation is comprehensive, and that is necessary, but some processes can take years.

DK: As the permitting process for changes is pretty much the same the challenges are pretty much the same: the quality of the applications, and the need to ask for more information. The authorities struggle with baseline reports, the habitat directive and the water frame directive because they are time consuming and legally difficult.

IS agrees with DK; the same problems occur in IS. It can be time consuming to go over the data and to see if it is satisfactory or not. One of the latest changes that was not implemented in Iceland until 2018 is the requirement for a baseline report. It has proved complicated to get started with these reports, but it is getting better.

NO: In short, we can echo what others said.

The challenges in **SE** are the same as in the other countries. A main challenge is to determine whether a whole new permit is needed or not.

Can you charge for the time spent?

IS It is possible to charge the applicant for the time. For a new permit and for some changes a basic fee is charged in the beginning then an hourly rate if the time spent on the permit is more than the basic fees assume.

SE: The operator pays for time spent through an annual fee for supervision that is same year after year. If the municipality is obliged to supervise, the municipality also has a right to charge for the cost through a notification procedure. Some municipalities also have an annual fee, but if the application is minor the fee is based on the work spent.

NO: The authority can charge when the application is filed but there is no possibility to charge for the activities leading up to the application. The authority can also charge for the inspecting activities.

DK have a fixed fee for each hour spent on processing a permit application and for environmental inspections.

Have you found anything interesting in the other countries' systems? Is there anything to study further together in the Nordic countries? Is there anything we could continue to discuss in this Nordic format?

FI have tried to improve the permitting instrument. Some things works well and some less well. Political leaders and the industry are concerned about the time consumption. The feedback is in general is quite positive. We are interested to hear about the Iceland process, where is the draft of the permit announced. Does that in the end improve the quality of the public participation in the hearing? Does this kind of procedure have the effect that there are fewer appeals?

FI tries to make the permitting process shorter, but at the same time to do it properly and not risk several hearings.

Most application should be handled within 10 months after the application. A digital application system is being tested at the moment. Maybe in 2024 FI will be giving permits through a new system. In the future FI will hopefully have shorter time and better participation from the public.

NO: We heard that FI is about to digitalise the process and we are also working towards this. We hope this will improve the communications between the authority and the industry. We hope to guide the industry better so the applications will have better quality. We are interested to hear where other Nordic countries are on digitalisation.

SE: Digitalisation has been looked into, but we have not come as far as Finland. There is reason to believe that communication would be easier. The progress is rather slow since there are several different authorities with different digital systems. Another conclusion is that it seems that the processes take about the same time – do you agree? At the end of the day the time consumption does not differ very much?

DK use a digital application system. It is mandatory to use it. The system is used no matter what authority the operator applies to (the Environmental Agency or the municipality). Up to now the system has mainly been used to send in the application, not to communicate. The authorities have not seen the improvements in the applications they were hoping for when implementing the digital application system. There is a public web site where information about industries is available such as the permits, inspections, enforcements etc.

IS showed their electronic system to the other participants of the workshop. There is a website accessible for all with information. When the permitting authority receives an application, it is announced on the website. Later on in the process a draft of the permit is announced and then the issued permits and all the comments received in the process. The information is in Icelandic.

NO: Regarding language, the communication is in Norwegian. A summary in English of what the application is about is offered to the public.

DK wonder if other Nordic countries has a threshold as to when a new permit is needed regarding a change? What change does not require a new permit?

IS: regarding thresholds for change in permits, normally the operator needs a new permit if its production has doubled.

The initiative from IS led to that the other countries shared links to relevant websites after the workshop (the links are on the last page of this document).

Separated or joint permitting and supervision agencies? What is the advantage of having separated supervision authority and permitting authority?

FI have the separated systems now on the state level but only since 2010, before that it was partly a joint system. The previous parliament planned a major revision where the plan was to bring it back to a joint authority. In the future it would be beneficial to have one governmental authority that handles both permits and supervision. The municipalities are independent and handle both permits and supervision.

There have been projects looking into how BAT conclusions have been implemented, and the difference is not very big. Even though the system is different, some things are done in very similar manner.

IS thinks it's only positive to have it joint. The permitting agency often get feedback from the inspectors who have visited the site.

SE: There were two reasons for having the permitting and supervision functions separated in SE. The first is objectivity. Experience from supervision should not affect the permitting. The second is resources. The County Administrative Boards used to handle both permitting and supervision with the result that the permitting was always prioritized over supervision. One may consider a solution with joint authorities but within the Swedish discourse it has not been seen as a possibility.

DK In regard to the permitting and supervising being joint it works well on both state level and municipal level. Public trust to the joint system has never been an issue. There are many advantages to the way the system is organised, it's good to have knowledge of the industrial installation and it would be more time consuming to have it separated.

BAT conclusions

NO: We struggle to keep up with the four-year rule of the BAT conclusions; do you have the same experience?

IS: The trouble with four years of BAT conclusions exists in IS as well. Permits are to be reviewed after four years from when the permits have been published. It has now been made clear that it has been published once it's in the Official Journal of the European Union but not the EEA supplement to the Official Journal although Iceland is an EEA/EFTA state. That changed things so now IS have a lot of permits to get through since these four years have passed.

In **SE** the county administrative board can give extended time to implement the BAT conclusions. The BAT conclusions are implemented through generally binding rules so it is a bit different. This means we do not have to review each permit.

FI: For the BAT conclusions there is a system where the BAT conclusions are applied directly in supervision and permit process. The process starts immediately after the BAT conclusions are published and typically permits are reviewed 2 years after the BAT conclusions have been published. FI don't have major problems with the deadline because of the way its implemented.

DK are challenged as well regarding the BAT and 4 years. In DK the authority announces that there will be a review of the permits. The authority strives to start in the first two years and then give the operators two years to implement the changes in the activity.

NO has the same system regarding BAT conclusions as DK, not general binding rules as in Sweden. A question to Sweden is therefore how it works to have general binding rules? Do the operators follow the requirement within 4 years and how do you supervise this?

SE: The operators report every year to the supervisory authority. The report contains information on how the operator complies with the permit and the new BAT conclusions. If an operator cannot comply, the operator may have to change the operation and might have to get a new permit – all within these four years. There have been questions regarding the Swedish system from the Commission. As far as we know we have not gotten an acceptance that the system is ok. It probably will not happen until after the review on the IED directive.

Annex II – Minutes from the Workshop with Stakeholders on 22 March 2023

Panel 22nd of March 2023

Hosted by the Swedish Environmental Protection Agency

Notes taken by Eleonora Rönström and Erik Ahrberg

Ministry of Climate and Enterprise at the Swedish Government

13.00–13.15 Welcome remarks and brief introduction by Anders Turesson, former Senior Advisor at the Swedish Ministry of Environment.

Presentation of the agenda and speakers.

Anders Turesson informs the participants that the webinar is being recorded and that the recording will be deleted after the notes have been distributed.

Marie Karlberg holds a short presentation about the Nordic Council of Ministers and its' vision for the Nordic countries along with PowerPoint presentation slides.

13.15–13.45 Presentation of the report – Professor Jan Darpö

Jan Darpö presents the report along with PowerPoint presentation slides.

13.45–14.40 Panel of stakeholders addressing key questions related to the report

(8 min each).

Participants

Moderator: Anders Turesson

Denmark: Jill Jean-Francois Morales, Arla Food

Finland: Matti Kattainen, Finnish Association for Nature Conservation (FANC)

Iceland: Ally Johansdottir, professor in Environmental Law at Iceland University

Norway: Gunnar Grini and Andreas Pihlstrøm, Norsk Industri

Sweden: Oscar Alarik, Swedish Society for Nature Conservation

Notes

Jill Jean-Francois Morales: Arla Foods have 22 production sites in Denmark with a diverse production. Overall, we have a good communication and cooperation with the agencies although there are areas of improvement. I have read the report and made some reflections about some possible points of discussion.

On page 31 there's talk about "eternal permits" and "time limited permits". I noticed the overall statement is that there's a common work to reduce the emissions and other environmental effects of the permitted activities like it is done in Norway – in this case I think that for the rest of our countries that are part of the EU this would be bad. As an example, Arla started "taking the elephant to pieces" by having pilot sessions and taking all the different areas that were bad, like noise, water, etc. and looked at our sites. We came up with a pilot plan that was up to legislation and if it worked, we rolled it out to other sites that fall under the same umbrella. It has worked perfectly and we have biweekly dialogues regarding this.

Another point of reflection from the report has to do with a conversation with a fellow Dane concerning autonomous municipalities that sometimes forget to spar with environmental agencies when drawing up plans. When they change their local plans, they do not always inform the agencies. Decisions could then be made on old/outdated information. As an industry that could lead to discrepancies and complicate the process due to necessary re-negotiation. That is something Arla has noticed and want to discuss the communication problems while keeping the autonomy.

Another point, about page 33 of the report, is some relevant examples from Arla. There can be a change/increase in production, maybe a site produces milk and yoghurt but it has been decided that it should start producing cream too, it can alter the original permission as it could be a significant change. [Time is running up for the discussion]. To summarize the industry perspective on this matter: the communication with agencies is very good. One thing that is difficult is to know when it is needed or not needed to apply for an environmental impact assessment.

Matti Kattainen: One thing that is important from the NGO point of view is the lack of resources in authorities. When things fall in between chairs for the authorities and a lack of communication it is a problem. It affects how the civil society views the legitimacy of the legal system. In general, many things are good but there are rooms for improvement. In Finland the hottest areas are mining and questions affecting Sami people. It is common in Finland that when the application comes you must renew it many times and there's a lack of information, and that takes time. We have many separate authorities in for example mining and they may be lacking some opinions. NGOs lack resources, only a couple of lawyers etc. and with separate authorities it is much harder to keep up with all different cases, there

are for example many new projects in Lapland. With one authority for all permits it would be a lot easier for everyone.

To summarize, I think it should go more to the comprehensive permitting process in Finland. Some laws have been amended in Finland this spring so you should look at those, like nature conservation act and mining act.

Ally Johansdottir: Very interesting comparison in the report and a few surprises. As written in the report the systems and constitutional traditions are not the same between countries. There are differences in legal cultures. This plays a role. It caught my attention. There's a misunderstanding in Iceland about how the EIA is conducted in Denmark and Norway, it's completely different from Iceland. The issue regarding if you have one or two procedures is central and has been a major issue in Iceland, we have two procedures which is probably based on misunderstanding of how the Danish system is. Three issues caught my attention, some of them should be further researched.

About administrative appeal and judicial review – how it takes place in Norway differs from the picture you get when you read about the Norwegian system in textbooks. No administrative courts in Norway like in Sweden or Finland and no boards like in Denmark and Iceland. I'm curious about how the implementation of Aarhus and the Directive takes place in Norway.

Another thing, the case processing time differs a little. I was under the impression that Iceland had the lengthiest process when you take everything into account, like spatial planning etc. That is what the stakeholders in Iceland argue. But Iceland's procedure is not as lengthy as thought – maybe it's the shortest. This should be further researched. Would be beneficial for all stakeholders to see how long time all different steps take.

The last thing I noticed is that the Icelandic permits are time limited which stands out.

To wrap up: very interesting and useful to have this kind of comparison. The timelines could be a very interesting comparison, in Iceland it is often argued that the Icelandic processes are very lengthy.

Andreas Pihlstrøm: The report is well written and very spot on regarding the Norwegian system. Regarding the permitting processes, the processing time is quite similar in Nordic countries. We believe that better dialogue, information, and skilled personnel are key factors for improvement.

Secondly the sectors want to point out that we need to speed up the process for the green establishment. We see the need for a green fast track.

Thirdly, we are aware of the different proceedings in all the countries. Sweden is especially interesting with the split between licensing and enforcing authorities to prevent conflict of interest.

Regarding the new BAT- conclusions. 4 years are challenging. We suggest 6 years.

Oskar Alarik: The report is a very good starting point for cooperation in this area. I recognize many of the issues brought up by Matti Kattainen. The report points out pros and cons with the different systems, I had no idea that the systems differed so much. We have seen our share of very flawed assessments. We think that the integrated approach is healthier in the long run since the environmental aspects are closely linked to each other. We also often see changes quite late in the processes and it's important to be able to take these into account.

Regarding case processing time, it is a major theme in the Swedish political debate. Stakeholders here think that the Swedish processing times are extremely lengthy compared to all of Europe. It is a relief to see that this is not really the case. There is unreasonably big focus on the environmental authorities and law and not so much on the applicant side and what applicants can do to not slow down the process. An example is that sometimes we have seen that the applicant has hired a consultant to examine a possible site for an activity. The examination is often carried out in the middle of the winter and does not fairly represent the wildlife in the area etc. When the NGOs carry out a new examination the result is totally different, they find rich floras/faunas or similar that have been overlooked.

Another thing is talk about mining permits: in Sweden there is a double process, this should be overlooked and transferred to the environmental courts. Also, there is a lot of talk about wind farms and the municipal veto in an unregulated process. We hope this will be dealt with soon, it looks that way, there are good proposals in this area.

Lastly, about eternal permits. We are deeply worried about eternal permits conserving old technology, and we think we need more time limited permits.

Anders Turesson: Are there any instant reactions to each other's presentations?

Jill Jean-Francois Morales: Based on Matti Kattainens presentation; about lack of resources. This is a reality not only in Denmark, but other countries as well. It's an interesting point to discuss.

Anders Turesson: Time for a break.

14.40–14.50 Break (updated time 14.20-14.35)

14.50–15.30 Moderated questions to the panel

Notes

Anders Turesson: Let's start off with some points of discussion from the last session. Would anyone like to advertise something that works especially well in their national system?

Jill Jean-Francois Morales: The ability to be sparring partners with agencies during the process. It is very helpful, especially when we're expanding or have new resources on site that lack experience from the process. Authorities have been very cooperative.

Gunnar Grini: It's easy for the companies to reach out to the case handler/authority. At least with EPA but probably also with state handlers, they can maintain the same people in the system for quite some time and are able to build up younger staff as well.

Oskar Alarik: The environmental court system in Sweden should be highlighted. The court system has led to richer processes and better predictability for applicants. The environmental courts are specialised and have officials who are experts in certain fields, the process is more informed. The supreme environmental courts have functions that makes it more predictable through precedence.

Ally Johansdottir: The positive issue of accessibility to documents in Iceland. All public licenses are available. The municipalities' licenses are not available yet. I was curious about the licensing in Norway, and how they integrated the decision making of the water directive. When I looked it up, nothing was available, in Iceland it would have been a lot easier. Everything is accessible.

Matti Kattainen: The new legislation that has passed, new climate act is very good, good access to justice. The new nature act coming is also very good and it will be monumental in the coming years.

Anders Turesson: Follow up question to Oskar Alarik; can you expand your statements about the courts?

Oskar Alarik: It's a big issue but the environmental courts are specialized in this aspect. It gives a more informed process. The Supreme Environmental Court helps the predictability by giving precedents.

Jan Darpö: There's a major difference between Norwegian system and others, where Norway have decision making on a national level rather than regional. It's harder to keep experienced, well-educated personnel in many regional licensing bodies. About fast tracks, Sweden have investigated this option at least two times and dismissed the idea. Most importantly because of the problem of deciding what projects should be in the fast track. All industries will be "green" when it is advantageous to them. And the courts do not have a possibility to prioritize.

Gunnar Grini: To comment on Jan's input. We didn't really understand about the Norwegian system, not only one agency is doing the licensing. Maybe we misunderstood. About the fast-track issue, it's very complex, a fast track will also mean a slow track, and it would be a challenge. Norway is working on new digital solutions for case handling. The most important is what Andreas Pihlstrøm said about complete applications to make the process smoother. There is a tradition regarding a good dialogue between companies and agencies. More EU-legislation pointing towards fast track. EU is willing to set up fast-tracks regarding the green transition. It all depends on setting up defined criteria. Companies will be disappointed if they're put in the slow track.

Jill Jean-Francois Morales: A practical example that has been applied to us recently because of energy crisis, we classified production sites depending on necessity; protected or not protected sites. Protected sites that produced "fresh sites". Sort of a fast track. It was a very pressured situation and I think we could learn from this. Guidelines are necessary for when the sites are qualified as protected or not. Otherwise, it's confusing for the companies. It helps with dividing the workload between sites and permits. Maybe we could look at the guidelines from energy authority, very good concrete examples that can guide the flow of work in the companies.

Oskar Alarik: About the need for a fast track. There's been two investigations about fast tracks in Sweden and the problem is that it creates procedures inside the procedure. You must find out if a company should be in the fast track or not. It is counterproductive, at least in Sweden.

Ally Johansdottir: I did not know that Sweden had investigated fast tracks. Judges decide all the time whether certain court-cases should be fast tracked. Fast tracking could increase the risk of the case not being properly prepared etc. It's difficult to decide which procedure should be fast-tracked, which one is "green".

Matti Kattainen: We have some kind of fast track for Finland, and it's for court appeals regarding hydrogen battery factories and other green transition projects. They will be picked up first and the courts have to speed up the proceedings. For wind the courts must speed it up as well. A proceeding inside a proceeding could be problematic. Picking up the applicant and fast tracking them is not so much work because you pick it up in the beginning when the application is not so big. Maybe one day of work. It's a priority but the qualifications are the same. Administrative prioritisations, not legally.

Gunnar Grini: We understand the problem of procedures within procedures. Maybe another entry point should be this; how can we ensure that important projects are not stuck in case admin procedures? Fast track is a way of discussing how we can prioritize important applications within the scope of EU and environmental law. And the priorities that come with the green transition.

Anders Turesson: Okay, let's move on to views on the EIAs, any thoughts about how applications can be improved?

Oskar Alarik: Replying to Gunnar, a key in climate installations are early discussions with the public concerned and companies and agencies on placement. That is important. You can avoid problematic areas in an early stage. For minerals its harder but other industries its easier. There are many inputs on how to improve EIAs, for example awards for good or bad impact assessments. Certifications on EIAs consultants to get rid of bad quality ones.

Ally Johansdottir: EIA procedures and quality of EIA applications has been an issue since the beginning. Iceland is obsessed with EIAs. Some are very long and good. And the consultants really make an effort to produce good reports. It's important that the quality is checked by the national planning agency. It's possible because Iceland is so small. The agency that checks the report is not the same agency that approves it. This procedure prolongs the process. However, it also contributes to the quality of EIAs. The system in Denmark has separate legislations on EIAs. See page 39 in the report. It looks like two procedures, but it is actually integrated. The license agency is also the one checking the quality, and that is not done in Iceland.

Jan Darpö: It is emphasized from governments, companies and other stakeholders that we need to speed up the process and at the same time keep the quality. The EIA procedure often benefits from time. When it comes to procedures regarding wind farms, we see a lot of applications and EIAs that are less adequate. During the public hearing, different authorities and the public concern provide with information, which the permit body takes into account when it asks for amendments. Thus, the procedure in itself gives much more quality to the permit process. To this background, it is important to not only talk about the speeding up the process, but also how to maintain the environmental requirements according to law.

Matti Kattainen: In our organisation we talk about more cooperation regarding information and that will help. Many times, the information gathered is not trusted. The idea is that when you are on the same page as NGOs, agencies, companies then the projects are not slowed down due to complaints etc. It can all be handled in the beginning of the proceedings.

Anders Turesson: The importance of good dialogue has been emphasized, what characterizes this and in what stage is it most important?

Oskar Alarik: The earlier the better. You can avoid the worst conflicts of interests, specifically regarding sites.

Jill Jean-Francois Morales: Agree with Oskar Alarik. Sometime in Denmark due to the setup of the municipalities they revise and announce what they have changed regarding the local laws. We must be careful where municipalities take decisions based on old information with regards to maps and planning.

Matti Kattainen: Agree with Oskar Alarik. Earlier is better, and to point out no-go and to-go areas for establishment in the beginning really helps a lot. Industrial parks etc are nice to make it easier to get permits.

Gunnar Grini: Area planning is very important. Many times, it's a good idea to place new industry where there's already industry. Not always easy, some judgements in EU complicate this. Maybe there is a water body in that area which usually complicates it a lot. The complexity of the environmental field is tricky, not very easy to understand where new industry should be placed.

Ally Johansdottir: Early dialogue is better, it saves a lot of time and money. Iceland has a new legislation on EIAs from 2021 and one provision is about pre-consultation. The idea is to bring the stakeholders and agencies to the table and discuss issues to avoid stress at a later stage. If I go in another direction, location is such an issue with regards to pollution. It's a big issue in all the Nordic states, according to Iceland the key actor is not the municipalities but the master planning that is affected by the government. And that puts positive obligations on municipalities with regards to planning for polluting industry.

15.30–15.45 Summary of the discussions by organiser

Jan Darpö gives some practical information about access to the report and about the notes from the webinar being put in an appendix.

About this publication

Nordic Environmental Permitting Processes

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TemaNord 2023:522

ISBN 978-92-893-7625-9 (PDF)

ISBN 978-92-893-7626-6 (ONLINE)

<http://dx.doi.org/10.6027/temanord2023-522>

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Cover photo: Pierre Châtel-Innocenti/Unsplash

Published: 4/7/2023

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