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Public participation as an element of a mineral deposit safeguarding system – international experiences

Introduction

A wide range of stakeholders play an extremely important role at each stage of a mining project's life cycle. Their type and number will of course largely depend on the advancement as well as the scale of the project and its location, including environmental and spatial conditions. A comprehensive identification of all groups and relationships between them may turn out to be the key to the success of a mining enterprise. Developing positive and cooperative relationships with stakeholders improves the likelihood that a project can proceed on budget and on time (Karlsen 2008; Sustainet 2018). Such a social consent for mining activities is also referred to as a Social Licence to (SLO). The term was originally used by

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mainly industries reliant on the extractive use of natural resources (Thomson and Boutilier 2011; Moffat et al. 2016). Its story began in the late 1990s when Placer Dome executive, Jim Cooney, coined the term to describe the fundamental shift in the public perception of the effects of mining due to the widespread publication of industry failures and social conflicts (McMahon 1997; Franks 2014). These conflicts resulted in the failure of many projects. The terminology is now widely used in many sectors (SBC 2013; Vanclay 2020). In each of these, it relates to an informal and voluntary consent or acceptance for a given activity, expressed in the lack of opposition from the local community, authorities and other stakeholders (Owen and Kemp 2013; Eerola 2017; Parsons et al. 2014; Lesser 2020; Hurst and Johnston 2021).

SLO might be more important and harder to obtain than a formal mining license due to the current market conditions and socio-economic circumstances. The current difficult geopolitical situation has highlighted the extremely high dependence on raw materials of the European Union (European Commission 2020; Ragonnaud and Szczepański 2022). This is highly problematic in the context of ensuring a stable economic development and implementing the energy transformation for the whole EU and its individual members. It is in such a situation that the EU should reach for its own raw material resources, using its enormous and documented potential in this area (Cassard et al. 2013, Lauri et al. 2018). Unfortunately – as shown by cases from recent years (Prno and Slocombe 2012; Badera 2014; Andrews et al. 2017; Kivinen et al. 2020; Weiß et al. 2020) – this could be associated with social opposition or with very high requirements for a potential entrepreneur (Pedro et al. 2017). The modern-day best practices require companies to, for example, identify ways to provide local employment and procurement opportunities, be more financially transparent, and meet community and societal infrastructure and environmental demands. The social sustainability of mining operations and other activities in relation to the different sub-sectors of the raw material value chain is closely related to the local and, where appropriate, regional community involvement and participation in the decisions that will affect them (World Bank 2015). Communities directly affected by mining operations have become crucial governance actors in the context of obtaining SLO. Communities must perceive the project's potential benefits as greater than its risks to accept a mining project. Maintaining a social license and meeting community expectations was rated the number four risk in the mining industry in 2021 (KPMG 2021).

One element to achieve social acceptance – expressed by SLO in the mining industry – can be through education and awareness raising of the society (Nieć and Radwanek-Bąk 2010; Radwanek-Bąk 2018; Kot-Niewiadomska 2022). *In many cases, mining has to face a change in its negative image. The reduction of produced tailings and better tailings management, lower accident rates, proper working conditions, including the elimination of labor exploitation – the improvement of these elements may also affect the acceptance of mining activities* (Moffat and Zhang 2014). This is especially important in underdeveloped countries where mining, although economically important, still remains at a very low technological level. It is also crucial for the implementation of mineral deposit protection standards. It contributes to the social understanding of decisions taken by geological administration

authorities with regards to the protection of mineral deposits. Therefore, public participation in administrative procedures related to the development of a mining project, as well as in those procedures aimed at the protection of deposits, is essential. In this case, these are activities related to spatial planning at the local and/or regional level. General public participation is ensured through public consultations, which are usually regulated by relevant legal acts in each jurisdiction.

It is also important that public participation is proactive (anticipatory), not reactive (post factum). This means that it should be initiated as an integral part of the activities of a modern administration and also of the company planning a project, and not as a “last resort” when stakeholders express their dissatisfaction with the decisions and actions of the deciding party (Woźniczko 2019). In line with this approach, this article addresses the topic of public participation as one of the elements that may affect the effective protection of mineral deposits. The place, scope and role of public participation in the administrative procedures of four countries – Poland, Serbia, Austria, and Sweden – are described. All procedures aimed at the protection of mineral deposits through the proper integration of the mineral deposits policy and the spatial planning policy are analyzed. In addition, the procedures for obtaining exploration and production licenses are also discussed, provided that the national legislation guarantees public participation in those procedures. The observations and conclusions were discussed in the context of the importance of public consultation in obtaining SLO and, in a further step, also ensuring the proper protection of mineral deposits at the national level through spatial policies implemented at the local level.

1. Public participation in administrative procedures – general overview

Over recent decades, public participation has increasingly become a popular mechanism for policy-makers to involve the broader public in decision-making processes (Fernandes-Jesus et al. 2019). The International Association for Public Participation (IAP2) is framing different types of participation based on the level of public impact on a plan or policy. IAP2 spectrum include five types of public participation (or community engagement): inform, consult, involve, collaborate and empower (IAPP2 2016) (Figure 1).

Information does not provide the public with the opportunity to participate. Information aims to inform the public in an appropriate way so that the public fully understands the project but it does not aim to persuade or manipulate the public (Bammer 2019). However, providing thorough information is an important first step in enabling participation and engagement (Gugerell et al. 2019). The goal of a *consulting* process is to obtain public feedback on analysis, alternatives and decisions. In a consulting process, participants contribute their viewpoints and opinions and leaders then use this information in the decision-making process (Nabatchi 2012). At its most effective and beneficial, a consulting process improves the outcomes of a decision-making process by giving policymakers a more accurate understanding of the beliefs, needs, concerns, or priorities of those who will be impacted by their

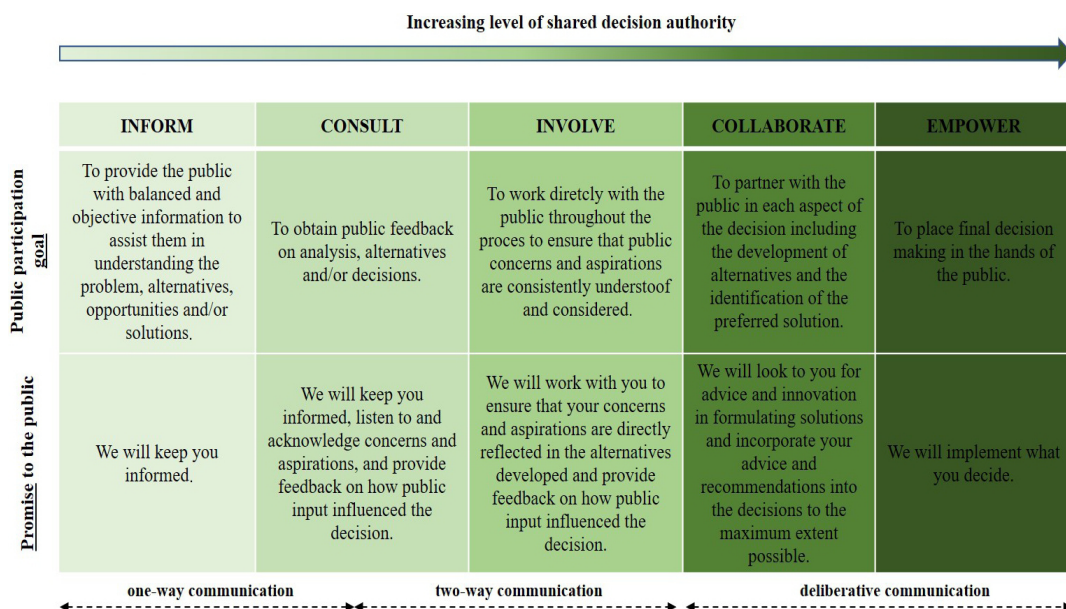


Fig. 1. Spectrum of public participation in decision-making processes; based on: International Association for Public Participation data (IAPP2 2018)

Rys. 1. Spektrum udziału społecznego w procesie decyzyjnym

decisions. At the *involve* level, the community is invited into the process to a greater extent than with consultation. Decisions at this level are still made by the organization or department rather than the public. The *collaborate* level is about partnership and sharing power. While decision-making still lies with the organization or department, there is much greater input from the community (US EPA 2017). The goal of a collaborative process is to partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution. In a collaborative process, leaders work in partnership with members of the public to identify problems and develop solutions (IAPP2 2016; IAP2 2018). The *empower* level places the final decision-making in the hands of the public (IAPP2 2016; US EPA 2017; IAP2 2018). The predominant method of community engagement in infrastructure development projects is consultation (based on the scheme in Figure 1) (Kaehne and Taylor 2016; Senecah 2004; Walsh et al. 2017). Therefore, understanding the stakeholder interactions within consultations is critical to acquiring a SLO. Public participation in the planning process (including spatial planning) and decision-making processes impacts community perceptions of a project in a largely positive manner (Jobert et al. 2007). A consulting process can become problematic though when leaders collect public feedback, but do not take this into consideration. However, a clear distinction should be made between the consultations (or other form of public participation) required by national law and those that are initiated by the entrepreneurs, local authorities or other entities.

This work focuses on public participation to meet legal requirements. Voluntary activities following, for example e.g. Corporate Social Responsibility (CSR) principles or procedures not mandatory in Europe, such as Social Impact Assessments (SIA) are not the subject of analysis.

Public consultations may be conducted at various levels of government, from local to central. They can also be conducted by actors of public life other than public administration (e.g. enterprises) in matters that have a direct or indirect impact on citizens (Woźniczko 2019). However, each case is based on the belief that those who are affected by the decision have a right to be involved in the decision-making process. The main objective of the consultations is to obtain the public's opinion on the proposed changes (the shape and directions of public policies and the methods of their implementation) by the state administration. The indirect goal is to improve the legislative process and the quality of public services provided, and to ensure greater support for the proposed changes on the part of society (Figure 2).

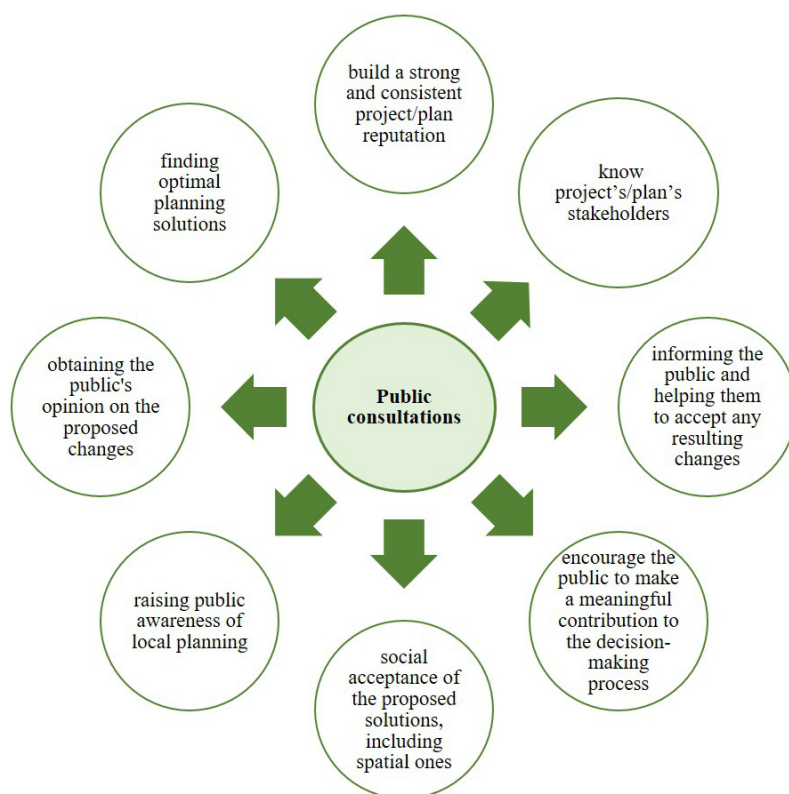


Fig. 2. Expected effects and benefits of public consultations (own study)

Rys. 2. Spodziewane efekty i korzyści konsultacji społecznych

2. Materials and methods

The article characterizes the place and scope of public participation in the administrative procedures of three EU countries (Poland, Austria and Sweden) and Serbia. The countries analyzed in the above scope constitute the consortium of the project entitled “Mineral deposits safeguarding as a basis of Europe’s mineral raw materials safety” funded by the Polish National Agency for Academic Exchange. The project leader was the Mineral and Energy Economy Research Institute of the Polish Academy of Sciences, and the other partners were representatives of the following research centers: the University of Belgrade (Serbia), Luleå University of Technology (Sweden) and the University of Leoben (Austria). The project was implemented from January 2020 to September 2022.

The article analyzed public participation in the process of spatial planning systems as well as in the process of environmental impact assessment in the safeguarding of mineral deposits. Social involvement in each country was assessed in relation to the spectrum of public participation in decision-making processes, based on the scheme proposed by the International Association for Public Participation. The basis of consideration was the legal framework of each country related to spatial planning systems, environmental protection and mining activities. An important element of analysis was legal conditions in the subject of Environmental Impact Assessment (EIA). An important source of data was also studies that were developed as part of the MINALND project implemented in the years 2017–2019 as a part of Horyzont 2020 program.

3. Results

3.1. Poland

There are a number of institutional tools for the participation of citizens in decision-making processes related to the sphere of public life in Poland. Most of these are deliberative (Patyra 2014; Woźniczko 2019). They are used not only to comment on draft laws and administrative decisions, negotiate provisions and solutions but also to legitimize the adopted regulations. The above-mentioned purposes are served, inter alia, by public consultation. The principles of public participation in administrative procedures – related to the broadly understood issue of mineral deposit management – are regulated in Poland by:

- ◆ the act of 3 October 2008 on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment (Journal of Laws 2008 No. 199, Item 1227; EIA Act 2008) together with the act of 30 March 2021 on the amendment to the act of 3 October 2008 on Providing Information on the Environment and Environmental Protection, Public

Participation in Environmental Protection and on Environmental Impact Assessment and some other acts ([Journal of Laws 2021, Item 784; EIA Act 2021](#));

- ◆ the act of 27 March 2003 on Spatial Planning and Development ([Journal of Laws 2003 No 80, Item 717; SPD Act 2003](#));
- ◆ indirectly by the act of 9 June 2011 – Geological and Mining Law ([GML Act 2011](#)).

The EIA act (2008) regulates the general principles of public participation in environmental protection. One of these is obtaining an environmental decision, which is a mandatory stage in the procedure for obtaining exploration and mining license and it is an obligatory annex to the said license applications ([GML Act 2011](#)) (Figure 3). An environmental approval must be obtained for all projects (for those likely to have a significant impact on the environment: always significantly or potentially significantly), but only certain projects need to undergo an Environmental Impact Assessment procedure in order to obtain one. For example, if an entrepreneur submits an application for a mining license, and the competent authority issuing the environmental decision (commune head/town mayor/city mayor) finds that it is possible to issue it without the Environmental Impact Assessment procedure, public participation is omitted. The same rule applies to an exploration license.

Regulation of the Council of Ministers of 10 September 2019 ([Regulation 2019](#)) on projects likely to have a significant impact on the environment, clearly indicates which projects must undergo an EIA procedure. These are always projects that can have a significant impact on the environment. In the context of managing the mineral deposits, these are ([Regulation 2019](#)):

- ◆ extraction from the deposit, including but not limited to the drilling method, or processing of:
 - ◆ natural gas at an amount greater than 500,000 m³ per day;
 - ◆ crude oil or its natural derivatives at an amount greater than 500 t per day;
 - ◆ crude oil, its natural derivatives and/or natural gas in the maritime areas of the Republic of Poland;
- ◆ extraction of minerals from the deposit by the following method:
 - ◆ opencast mining with the surface of the mining area not smaller than 25 ha;
 - ◆ underground mining with the extraction of the mineral not less than 100,000³ per year.

Other exploration and exploitation activities are classified as projects with potentially significant effects on the environment. For these, it is the competent authority that decides on the need for an EIA procedure and thus on public participation. If the environmental impact assessment for the project has not been carried out, the competent authority states in the decision on environmental conditions that there is no need to conduct an EIA for the project. It follows from the quoted provisions of the regulation that works aimed at the prospecting, exploration and exploitation of mineral deposits may take place (under specific conditions) without public consultation.

The procedure for obtaining a mining license in Poland provides for the possibility of two-fold public participation through the public consultation of local planning documents

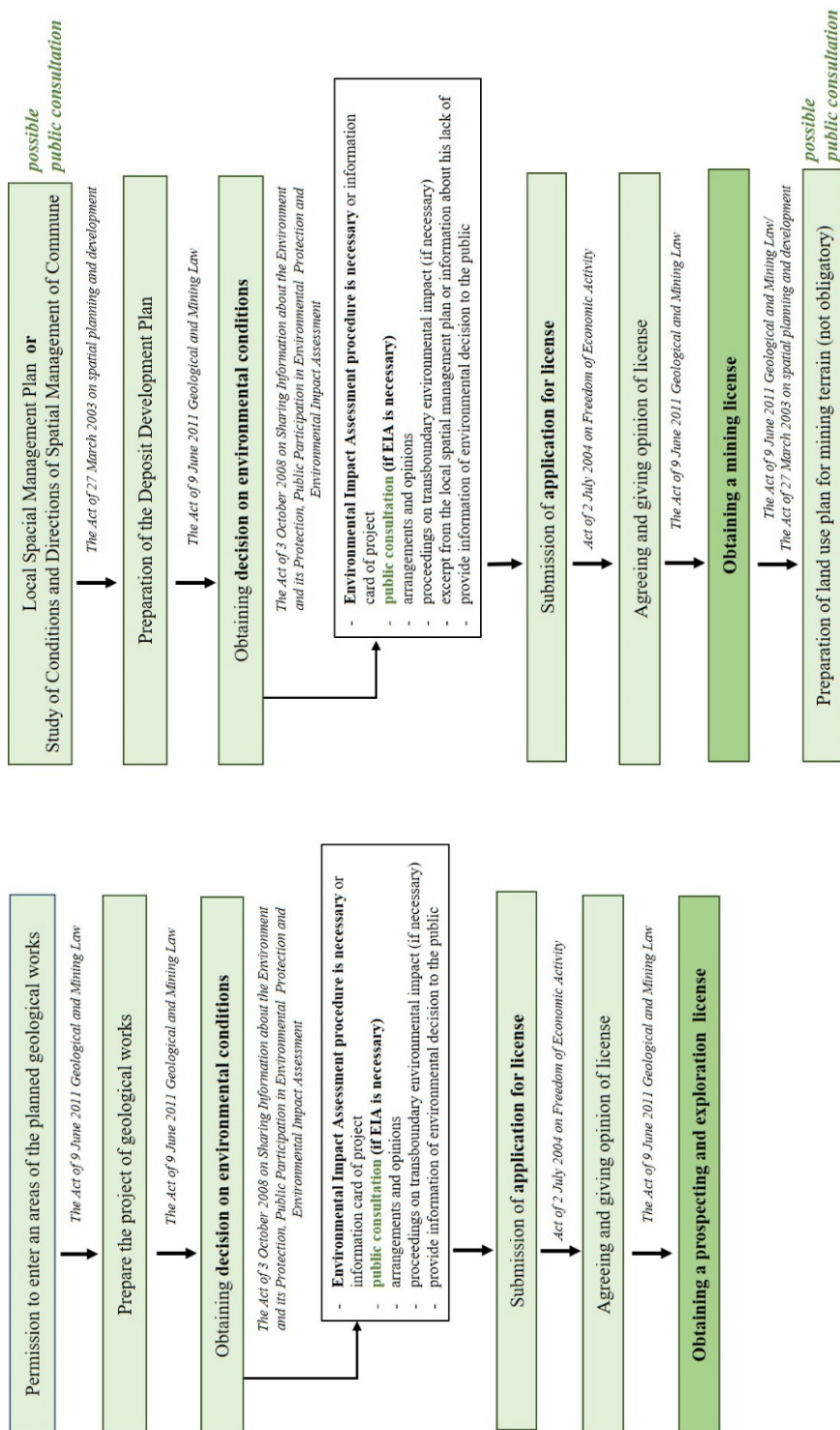


Fig. 3. A simplified schema of permitting procedures in Poland – prospecting and exploration license and mining license (based on: [EIA Act 2008](#); [SPD Act 2003](#); [GML Act 2011](#))

Rys. 3. Uproszczony schemat procedury uzyskania koncesji poszukiwawczej/rozpoznawczej oraz koncesji górniczej w Polsce

and of environmental approval (if applicable). Successfully obtaining a mining license for extraction of minerals as well as other activities specified in Geological and Mining Law depends, inter alia, on specific clauses included in spatial planning documents prepared by municipalities – Local Spatial Development Plan (LSDP) of commune or Study of Conditions and Directions of Spatial Development (SCDSD). These documents are created within a consistent Polish spatial planning system ([SPD Act 2003](#)). The primary instruments of the spatial policy in Poland, are the Local Spatial Development Plans, drawn up and adopted only at the commune level. The LSDP is an act of local law, unlike the SCDSD. The criterion for assessing the location of the project is that the intended use of the property, specified in the local spatial development plan, is not affected by the intended activity (according to the EIA Act, article 80). In the absence of LSDP, taking up and conducting the mining activity is permissible only when it will not violate the manner of property use set forth in the Study of Conditions and Directions of Spatial Development of a commune and in separate provisions. This is especially important for the procedure of obtaining a mining concession in Poland. The application for a license should therefore include information on the purpose of land plots within the boundaries of which the activity will be conducted specified in the Local Spatial Development Plan and in separate provisions. If the LSDP or (in the lack of thereof) the SCDSD does not include mining activity within the specific area, obtaining the exploitation rights must be preceded by the procedure of land conversion.

Every documented mineral deposit should be taken into account in the aforementioned local documents. This issue is crucial for mineral deposit safeguarding in Poland. According to the Geological and Mining Law: *documented mineral deposits (...) shall, for protection purposes, be disclosed in Studies of Conditions and Directions for the Spatial Development of a commune, Local Spatial Development Plans and province Spatial Development Plans*. Within two years of the geological documentation being approved (or 6 months for hydrocarbon deposits) by the competent geological administration authority, the area of a documented deposit must be entered into the Study of Conditions and Directions of Spatial Development of a commune. Public participation in the adoption of new planning documents and amendments to existing documents is guaranteed by the above-mentioned act of 27 March 2003 on Spatial Planning and Development. Moreover, each spatial planning document (also on a local level) is subject to the Strategic Environmental Assessment (SEA). Public participation is an integral part of the SEA based on EU's Strategic Environmental Assessment Directive ([SEAD; Directive 2001/42/EC](#)).

3.2. Serbia

Mineral ownership is an important issue for the complete legislative process because permitting procedures are usually different for state-owned/state-controlled mineral resources and for land owned ([MinPol and partners 2017](#)). All mineral commodities in Serbia are the public property of the state and, therefore, permitting for geological exploration and mining

has a very precise and strict timetable with all necessary documents also being prescribed by the state authorities. Geological exploration and mining are under the jurisdiction of the Ministry of Mining and Energy and the mineral resources permitting regime is a mixed one, although predominantly based on a one-stop-shop¹, as most permits are issued by the same ministry (Simić et al. 2019). The approvals and permits are issued by the Ministry of Mining and Energy, while all approvals and permits for the territory of the Autonomous Province of Vojvodina are issued by the Regional Secretariat for Energy and Mineral Resources. In each case, the necessary documents are the same.

Geological exploration in Serbia is formally divided into basic geological exploration (financed by the state and performed by the Geological Survey of Serbia) and applied geological exploration, financed by private companies. A similar division also occurs in Poland. Basic geological explorations are approved by the Ministry and performed according to the legislation (Law on Mining and geological exploration, 2021) and are not subject to any public consultations or the involvement of possibly interested stakeholders. Applied geological explorations are also approved by the Ministry of Mining and Energy, and in the exploration process, no public consultations on any issue are foreseen (Figure 4).

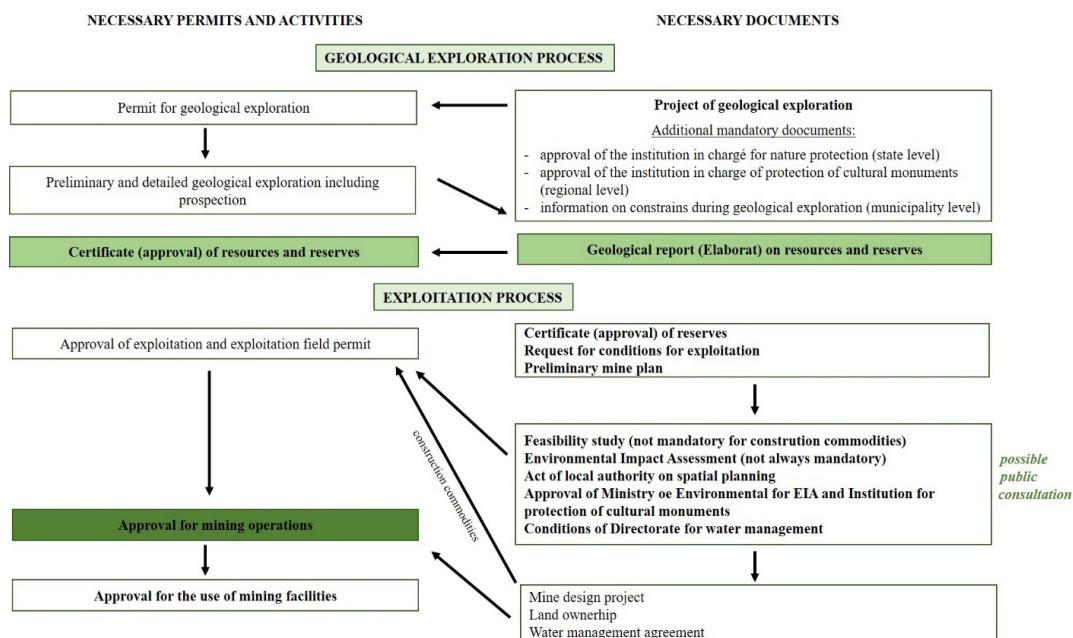


Fig. 4. A simplified schema of the procedure for geological exploration and exploitation of mineral deposits in Serbia (based on: Simić et al. 2019, 2021)

Rys. 4. Uproszczony schemat procedury poszukiwawczej i eksploatacyjnej dla złóż kopalin w Serbii

¹ If all documents necessary for permitting are issued by one institution, it is called one-stop-shop regime, otherwise it is a mixed regime, when other institutions are included in permit issues.

Spatial planning in Serbia includes three levels (national, regional, and municipal) and the most important for the mining sector is the municipal level of spatial planning (Perić and Miljuš 2017). However, it is not mandatory to consult a municipal spatial plan to approve the exploration process. To obtain the exploration permit, it is mandatory to have approval from the institution in charge of nature protection and the institution in charge of the protection of cultural monuments. At the municipal level, only information on constraints during geological exploration is issued. Sometimes, the municipal authorities may ask for a detailed regulation plan, particularly if the exploration target is close to some category of protected area or vulnerable area (water courses and vicinity of populated areas).

Public participation in the mining legislation procedure in Serbia is provided only for exploitation process, specifically for Environmental Impact Assessment, as seen in Figure 4. In the case of metallic mineral resources, industrial minerals and coal EIA is always mandatory, while in the case of construction mineral commodities, it may be omitted for deposits which are less than 10 ha and when no blasting is used for extraction.

3.3. Austria

The federal state of Austria has three levels of government: national, federal states (nine provinces) and the municipal level. While the Federal Constitutional Law determines mineral resources and mining as a national duty (BVG Art. 10 (1) Z10), certain environmental aspects are considered the duty of federal states (see below) and the municipalities are responsible for spatial planning on a local level (BVG Art. 118 (3) Z9). Mining is regulated at the national level in the ‘Mineralrohstoffgesetz’ (MinRoG 1999) and it includes different requirements and procedures for mining (‘free to mine’ and state owned minerals) and quarrying (land owner owned minerals) (Tiess 2011).

Similar to the other EU countries analysed in this study (Poland and Sweden), public participation related to mines and quarries is based on the requirements derived from the EU’s Strategic Environmental Assessment Directive (SEAD Directive 2001/42/EC) and the Environmental Impact Assessment Directive (EIA Directive 85/337/EEC). Whilst in Austria, the transposition of the latter is done at the national level (UVP-G 2000), the transposition of the former is done at both the national and the federal state level and is therefore not uniform but varies in the different federal states. To show an example in one of the federal states, Figure 5 presents the situation in the province of Tyrol. Here, there is a single act, where the SEA is legislated in the ‘Tiroler Umweltprüfungsgesetz’ (TUP 2005). Figure 5 provides an overview of the legal situation in the Tyrol including all requirements related to mining ‘free to mine’ and state owned minerals. Public consultation is required at various stages of these processes, including for regional spatial plans, which include provisions for safeguarding mineral raw materials in protected zones, following TROG §9 (TROG 2022). All programs and plans with significant environmental impact according to TUP §6 and the permitting of mines or quarries that fulfill criteria concerning, for example, size, location,

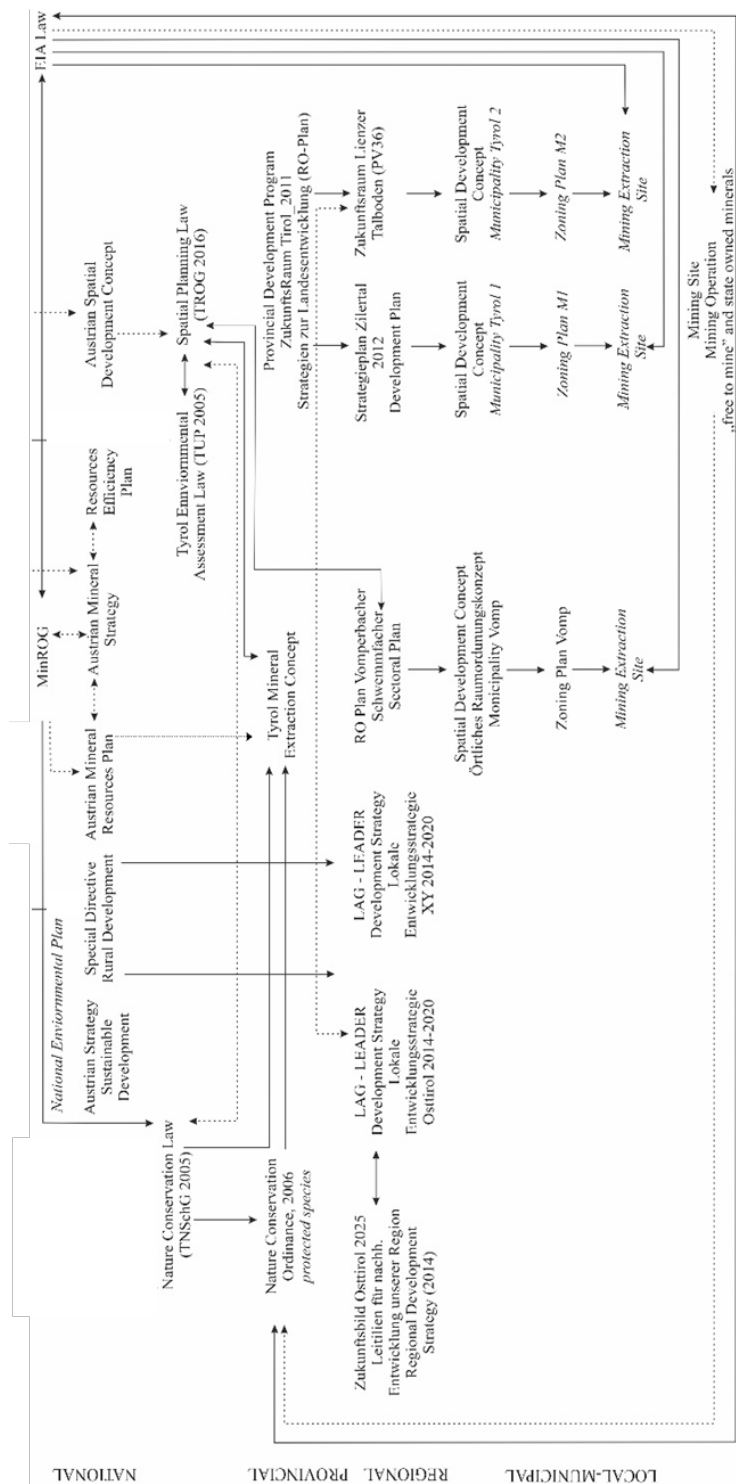


Fig. 5. Legal requirements for mining in the Austrian federal state of Tyrol (source: Minland 2019a)

Rys. 5. Wymagania prawne dotyczące górnictwa w kraju związkowym Tyrol (Austria)

open pit or underground and other process criteria as listed in Appendix 1 of the Austrian environmental impact assessment law UVP-G 2000, also require public consultation. In these processes, public consultation is indeed consultation as per the spectrum of Figure 1 as it usually means that relevant documents are made available to the public, people can comment on them, and the comments need to be discussed (which does not necessarily mean considered) in the process. In the verbal proceedings of an EIA, neighbors (those directly affected by the action considered in the process), parties to be considered according to other relevant legislation (e.g. forest law), the environmental lawyer ('Umweltanwalt') of the province, the water authority, the municipality, citizen initiatives, registered NGOs and the site lawyer ('Standortanwalt') are parties to the proceedings. In the case of significant differences of opinion, a mediation process can be installed on the request of the entrepreneur and the results of this process may be submitted to the authorities to be considered in a final decision (§16 UVP-G 2000).

In the context of safeguarding mineral resources, the Austrian Mineral Resources Plan ([Geologische Bundesanstalt 2012](#)) needs to be mentioned, since it has been considered a good practice example on how to safeguard mineral resources within the European Union. Published in 2012, its main objective was the documentation of so-called 'conflict free' raw-material deposits, which are minable deposits that are not conflicting with other land-use priorities, such as nature conservation or settlement developments. Whilst this documentation of 'conflict free' deposits can indeed be considered as good practice (also including the participation of invited stakeholders with a range of backgrounds ranging from industry to academia in the whole process), further analysis of the case in the EU project Minland showed that the consideration of these deposits in land use and spatial planning in the nine Austrian provinces and affected municipalities was only partially done across Austria due to a lack of mandatory requirements ([Minland 2019a](#)).

3.4. Sweden

The principal laws that regulates the mining industry in Sweden are the Minerals Act ([MA 1991](#)), which governs the procedure for acquiring exploration permits and exploitation commissions, and the Mineral Ordinance ([MO 1992](#)), which provides more detailed provisions of the application process and associated fees ([Tiess 2011](#)). The regulatory body that handles and decides on these permits is the Mining Inspectorate. Another important law that works in parallel to the Minerals Act and Ordinance is the Environmental Code ([Environmental Code 1998](#)), which is relevant to grant a mining concession an environmental impact assessment (EIA) must be conducted. The EIA Directive in the EU thus comes into force in the Environmental Code in Sweden, and it is in the EIA where public consultation is a legal requirement. The regulatory bodies that handle these permits are the County Administrative Board and the Land and Environmental Court, which are both able to grant different permits under the Environmental Code. A permit for exploitation thus always has to be granted

under both the Minerals Act and the Environmental Code – this process is illustrated in Figure 6 below.

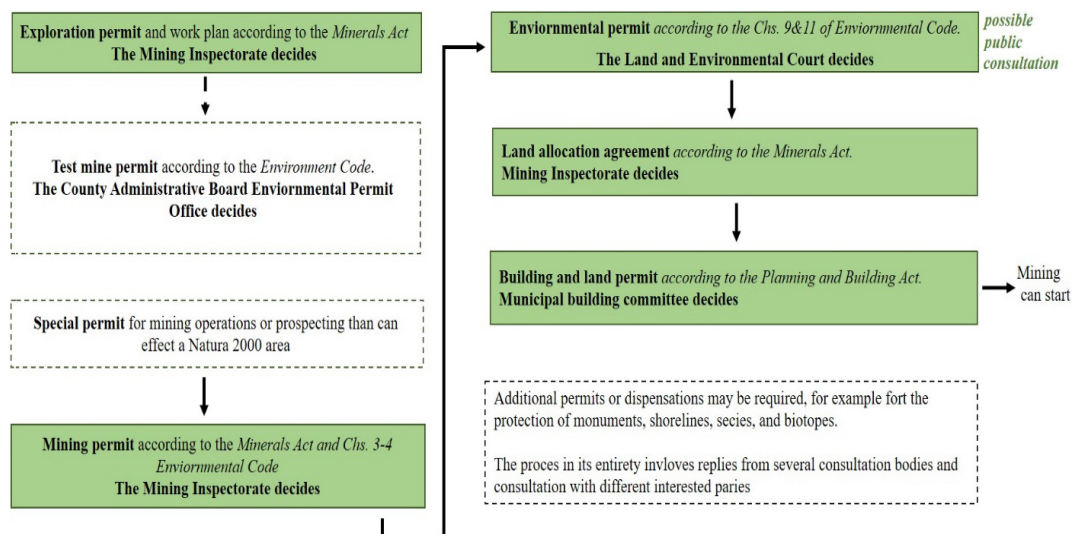


Fig. 6. A simplified scheme of permitting procedures in Sweden; based on MA 1991 and Environmental Code 1998
Source: [Swedish Geological Surveys 2022](#)

Rys. 6. Uproszczony schemat procedury wydawnia koncesji poszukiwawczej i górnictwej w Szwecji

In order to acquire a mining permit, the first step involves consultation between the company that seeks the permit and the parties that are affected by the operations, as well as agencies and organizations concerned with the environmental impact of the operation. These public consultations serve as a basis to identify all relevant parties and their interests for the preparation and finalization of the EIA. An application for an environmental permit according to the Environmental Code can after the consultations and finalizing of the EIA be submitted to the Land and Environment Court, who decides on whether this information is detailed enough. During this phase of the proceedings, supplements to the application can be sent by any of the affected stakeholders, who will also be sent the complete information in order to review and provide comments. Additionally, the applicant will also have the opportunity to address any comment made during the consultation process. The process of obtaining a permit under the Environmental Code often takes many years. In summary, the public consultation is part of the permit process related to the Environmental Code (1998:808), where it is stated that those who are affected should have an opportunity to express their interest and opinion on an application for mining.

Hedlund and Kjellander ([Hedlund and Kjellander 2007](#)) note that the methods used to communicate with different stakeholders including the public in EIA are public hearings and written communication. They further comment that public consultation is an important tool

to ensure the quality of the EIA, but there are no regulations regarding how the consultation should be carried out. The form of the consultation is rather decided by the nature, type and scope of the suggested mining project. In the EIA, it should be stated how the consultations were carried out, where they took place, what information was discussed, and also which opinions were raised. One important aspect regarding public involvement in Swedish EIA is that it is the company that applies for the permits that to some extent is in charge of the EIA, and thus also the public consultations.

Public consultation occurs also in the spatial planning that the municipalities are responsible for. This is also when the public can have an opinion regarding different national interests (especially if they overlap). However, there is no public consultation in the process of defining areas or deposits as of national interest. This is done by the appointed state authority, and the relevant County Administrative Board is also involved.

Research on the impact of public participation on the support for mining developments in the northern parts of Sweden identifies that the perceived public participation does affect the propensity to support mining developments (Jagers et al. 2018). In Nenasheva et al. (Nenasheva et al. 2015) it is noted that in Sweden, control of public participation is to some extent left to the company that is in charge of the EIA.

4. Discussion

The launch of a mine is always associated with a difficult formal path, regardless of the country in which it takes place. In Poland, Serbia, Sweden and Austria, legislation allows the public to participate in selected procedures, which may bring you closer to obtaining SLO:

- 1) in the process of spatial planning,
- 2) in the process of environmental impact assessment.

In each analyzed country, the scope of this participation is limited to consultations, according to Figure 1 and the spectrum of public participation in decision-making processes (based on the International Association for Public Participation).

During the consultation processes the participants contribute their viewpoints and opinions, leaders then use this information in the decision-making process. Unfortunately, in these countries, there is no single legal act that would precisely regulate all issues relating to the institutions of public consultations. They are scattered throughout many legal acts. It should be mentioned that in Poland, Sweden, Austria and Serbia, the executive body must ensure the necessary (organizational and technical) conditions for conducting public consultations. Their costs are always borne by the commune office (or other unit but at the local level). In these countries, public consultations are conducted in order to obtain opinions and obtain suggestions and comments from residents on matters important for the local community. The results of public consultations in these countries are not binding on the decision-making bodies, all comments should be discussed but not necessarily considered. The consultation process is important regardless of the number of participants. Public con-

sultations with local government units guarantee that members of the local community can actively participate in managing public affairs (Romaniuk 2021). Unfortunately, in Serbia nowadays, spatial planning is mainly conducted without considering the arguments of experts and/or citizens. The equality between representatives of social action is still missing (Perić and Miljuš 2017).

In Poland, the commune council defines the rules and procedure for consultations during the administrative procedures but cannot determine the group of entities that may participate in them. In practice, both citizens and non-governmental organizations and entrepreneurs have the right to take part in the consultations process. This applies both to consultations at the stage of spatial planning and during environmental impact assessment (if present). All groups have the same rights and may submit comments in writing, orally (for minutes) and electronically. It is almost the same in Serbia. In Austria, the neighbors (as defined in legislation), registered citizen initiatives and NGOs have additional rights, i.e. they can participate in verbal proceedings as described in Section 3.3. It should be mentioned that in Sweden, it is the company that applies for a permit that to some extent is responsible for the consultations required in the EIA (detailed in the discussion section).

Understanding the factors that shape a community's perception towards proposed mines is critical for countries where stakeholder relations can often be strained. In Poland, greater focus is placed on reducing direct opposition to proposed projects than on truly engaging with communities throughout the lifecycle of the project. While, the mineral exploration is a first stage of the mining value chain. Its goal is to find economically viable mineral deposits to be later exploited by mining. Therefore, it is a fundamental activity for the mining industry and society's raw materials supply. A lack of public consultation at this stage may have further consequences. The assessment and stakeholder engagement should begin as early as possible in the exploration phase and continue into the post-closure period (Tost et al. 2021). The only way to inform the public about such activities is its participation in the environmental proceedings, provided that the scale of the planned exploration works identifies the project as potentially having a significant impact on the environment (in which case, the EIA is obligatory). In practice, public participation requirements at the stage of exploration are also absent in Serbia, Sweden and Austria. Polish legislation prescribes the EIA procedure (and thus public consultations) only in a few cases that are practically non-existent in Poland (e.g. the exploration of radioactive element ores or drilling for holes deeper than 1000 m in protected areas). In Sweden, an exploration permit requires that affected stakeholders be informed about the activities, and the County Administrative Board always have the right to give comments to such permit. As in Poland – only in special circumstances (such as exploration activities that have a significant impact on the environment) are consultations specified in the EIA in the Environmental Code required.

It should be mentioned that their absence may reduce the risk of conflicts and guarantees a smooth transition through the recognition and exploration stages. During consultation processes, the project gets 'publicly exposed', most likely for the very first time, and public

engagement entails an interchange with interlocutors that do not necessarily endorse the project (Sidore 2021). However, this makes it impossible for the local community to get acquainted with a given problem at an early stage. The is all the more so as the positive result of the exploration will also probably result in applying for a extraction license. In this case, consultation of the entity carrying out the work with local stakeholders is extremely important. Such consultations would also highlight the potential benefits of a given project.

Public consultations in Poland, Sweden, and Austria are obligatory and necessary in the process of local spatial planning because social and investor acceptance of the proposed planning solutions is very important. In Poland and Austria, the current interest of public consultations in the preparation of draft local spatial planning documents is usually negligible. This is due to several reasons: low awareness and knowledge of citizens about spatial planning; a lack of development of means of information and communication with the society; a lack of interest of municipal authorities in the broad participation of society in the creation of local law (Czekiel-Świtalska 2012). A common feature for Poland, Sweden and Austria is fact that public consultation in the land-use planning process is an important aspect, as municipalities are required to undertake extensive consultations with the public affected by the plans as they have the right to express their views. In Serbia, spatial planning is characterized by non-transparent procedures, a lack of public participation and alack of expert skills and knowledge (Perić and Miljuš 2017). In some cases, even the existing quarries are excluded from the actual spatial planning documents. However, if the mining project is accepted after public discussion on EIA, in general, the procedure for land-use changes is not complicated and it does not include public participation.

Entrepreneurs or other entities that intend to conduct mining activities should also actively participate in social consultations of planning documents. Consultations make it possible to introduce solutions in planning documents that will bring entrepreneurs closer to starting a business. Unfortunately, it should be noted that in Poland, Austria and Sweden, public consultations are a ‘soft’ tool because the positions obtained are not binding on public authorities. In the mentioned countries, comments received during consultation become part of the decision making process and can be taken into consideration by authorities. Therefore, the comments submitted in the course of public consultations may be taken into account in full or in part, or not taken into account at all. Taking into account the fact that spatial planning is the most important tool of mineral deposit safeguarding, appropriate public engagement may be crucial for its effectiveness.

Social engagement in the form of public consultations is also included in the procedure of strategic environmental assessment as well as environmental impact assessment. This was described for all analyzed countries. Not all projects require an EIA as part of project planning and approval. An EIA is more likely necessary for a large-scale project with diverse and significant environmental and social impacts. Smaller-scale projects (definition varied in different countries) may find that they are exempt from regulatory requirements for an EIA.

Polish and Serbian legal regulations in the field of environmental proceedings ensure the active participation of the public at all of its stages. The administration authorities competent to issue an environmental decision are obliged to ensure that the public can actively participate in environmental proceedings. The EIA act grants representatives of the public general the authority to submit comments and proposals in the course of the proceedings. In Poland, where the environmental impact assessment has been carried out for a project, the competent authority shall issue a decision on the environmental conditions, taking into account the results of the public participation procedure (EIA Act 2008). In Austria, the process is similar as described above. However, citizen initiatives are a formal party in the process, i.e. the verbal proceedings. In the case of conflicts of interest, a formal mediation process could be initialized and the results could be submitted to the authorities to be considered in the decision making process (§16 UVP-G 2000). Additionally, in Sweden, the process is similar to that described above as public consultation is required as an important part of the EIA. However, it is the company or developer that applies for a permit who is responsible for the EIA, and thus to some extent, also the public consultations. The authorities that decides on the permit can though control if these public consultations have been conducted sufficiently. The importance of public consultation has increased lately in Sweden. In fact, in a recent case, the large mining company, LKAB, was denied a renewed environmental permit for expanding their Kiruna mine, as their dialogue with the public was deemed as insufficient. The court stated that it was not enough to only inform the public of the plans. In Serbia, the process is very similar to Poland. In Serbia, public consultations are not currently popular as opponents to exploration and mining do not wish to take part in the official process.

Conclusions

The problem of social acceptance for new mines is very broad and remains relevant. European experience in this field shows that, despite the necessity to extract raw materials, it is becoming more and more difficult to gain public support. However, this support should be provided at a very early stage. This includes the civil society early on in mining operations which can mitigate potential land-use conflicts and ensure practices that are more considerate of local needs and knowledge (Minland 2019b). In the analyzed context, this is already necessary at the moment of implementing the rules for the safeguarding of mineral deposits. Deposit safeguarding is understood here as the appropriate (not limiting access) development of the area above the deposit. Understanding and acceptance at the stage of spatial development planning can open the way to the quick and conflict-free obtaining of a mining license. Of course, there remains no guarantee that this approval will also be maintained in the environmental procedure that accompanies the obtaining of the license. Relations between the community and the mine as well as local attitudes are shaped by complex interactions of positive and negative factors, influenced by both the mining company and the

local government (Plank et al. 2016). Meaningful community participation in the planning and development process is likely to enhance transparency and trust, and thereby acceptance (Brereton and Forbes 2004; Walker et al. 2010).

Public consultation is widely regarded as an important, effective and efficient means of public participation (Kaehne and Taylor 2016; Senecah 2004; Walsh et al. 2017). They can have different levels, ranging from basic and informative, to a full codecision for the final shape of a given act or project. In the analyzed countries, they should be placed at the ‘consult’ level, where there is mainly a one-way exchange of information (from the public to the administration) (IAP2 2018). Consultations are of an opinion-forming nature and do not create a law. The environmental impact assessment procedure already enters the ‘involve’ level. Social consultations at this stage are already two-way in nature. Public consultations, apart from the fact that they actually involve people, give them influence on what concerns them, raise their knowledge and awareness in the field of public affairs, and also serve to legitimize. This is a very important function, but its fulfillment must always be the reliable and transparent conducting of the full consultation process. In the community dimension, those who are most interested in and affected by a project should be able to effectively influence the project throughout the entire lifecycle, from pre-exploration to closure, rehabilitation and beyond (Tost et al. 2021).

Public engagement does entail some risks that, if not appropriately managed, can turn into a systematic lack of social endorsement and financial risk for the project development (Sidore 2021). At the same time, mining projects have their own specificity. They are characterized by a very long investment phase, which in fact begins at the administrative stage related to the effective protection of a given deposit in spatial planning, which guarantees access to it. In a context where arguably any project has direct or indirect social implications, it makes perfect sense to keep the public well engaged and informed. Furthermore, early input coming straight from the public as ‘final users’, could represent a crucial source of data for effective project design. This kind of input can be particularly enriching considering that among the community members, we can find individuals with a deep and well-informed understanding of the local context, or even subject-matter experts, such as academics and local entrepreneurs. A great weakness of all the states analyzed in the article is the low level of public interest in the planning process and active participation in it (precisely through public consultations). This is important because in these countries, planning systems award-substantial power over land-use planning at the local level.

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PUBLIC PARTICIPATION AS AN ELEMENT OF A MINERAL DEPOSIT SAFEGUARDING SYSTEM – INTERNATIONAL EXPERIENCES

Keywords

community engagement, public consultation, administrative procedures,
mineral deposit safeguarding, social license to operate

Abstract

Every social group exhibits a need to make decisions that are binding for all its members and the participation of various interest groups in decision-making today is an integral part of modern political and legal thought as well as administrative processes. Recently, increased community engagement and greater awareness of the society with regard to the possibility of influencing the development on a microregion (commune) scale have also been observed. This often translates into problems in obtaining a social license for a given project, which is particularly visible in mining activities. However, obtaining such a license requires the involvement and awareness of many stakeholder groups on which a project will have a direct impact. It should be ensured that this engagement takes place at a very early

stage of a given project. In the case of mining activity, which is possible only after obtaining appropriate licenses (exploration or exploitation), this involvement takes the form of public consultation. This is due to the legal conditions presented in the following article for 3 EU countries (Poland, Austria, Sweden) and Serbia. The analysis showed that participation is mainly at the level of consultation in all countries and is an important element of the environmental impact assessment (EIA) procedure of the mining project, which is an important stage in obtaining a mining (less frequently exploration) license. Public consultations at the stage of spatial planning are also present and have a diverse scope. However, special attention should be paid to these as they are crucial for proper mineral deposit safeguarding. Stakeholders' awareness of planning decisions taken by local authorities can be crucial for the fast path to obtaining both formal and informal concessions, which takes the form of social license to operate (SLO).

PARTYCYPACJA SPOŁECZNA JAKO ELEMENT SYSTEMU OCHRONY ZŁÓŻ KOPALIN – DOŚWIADCZENIA MIĘDZYNARODOWE

Słowa kluczowe

zaangażowanie społeczne, konsultacje społeczne, procedury administracyjne,
ochrona złóż kopalin, licencja społeczna

Streszczenie

Każda grupa społeczna przejawia potrzebę podejmowania decyzji, które są wiążące dla wszystkich jej członków, a udział różnych grup interesariuszy w podejmowaniu decyzji jest dziś integralną częścią nowoczesnej myśli politycznej i prawnej, jak również procesów administracyjnych. W ostatnim czasie obserwowane jest również zwiększone zaangażowanie społeczne i większa świadomość społeczeństwa co do możliwości wpływania na rozwój w skali mikroregionu (gminy). Niejednokrotnie przekłada się to na problemy w uzyskaniu społecznej licencji na dany projekt, co jest szczególnie widoczne w działalności górniczej. Uzyskanie takiej licencji wymaga zaangażowania oraz świadomości wielu grup interesariuszy, na których dany projekt będzie bezpośrednio oddziaływał. Należy zadbać, aby to zaangażowanie odbyło się już na bardzo wczesnym etapie danego projektu. W przypadku działalności górniczej, która możliwa jest tylko po uzyskaniu właściwych koncesji (poszukiwawczych lub wydobywczych), to zaangażowanie przybiera formę konsultacji społecznych. Wynika to z uwarunkowań prawnych, które w poniższym artykule przedstawione zostały dla trzech krajów UE (Polska, Austria, Szwecja) oraz Serbii. Konsultacje społeczne w analizowanych krajach są ważnym elementem procedury oddziaływania na środowisko projektu górniczego, która z kolei stanowi istotny etap w uzyskaniu koncesji wydobywczej (rzadziej poszukiwawczej). Udział społeczeństwa jest zapewniony również na etapie planowania przestrzennego. Na te ostatnie należy zwrócić szczególną uwagę, gdyż one są kluczowe dla właściwej ochrony złóż kopalin. Świadomość interesariuszy co do podejmowanych przez władze lokalne decyzji planistycznych może być kluczowa dla szybkiej ścieżki uzyskania zarówno formalnej, jak i nieformalnej koncesji, która przybiera formę społecznej akceptacji.