

Arctic Railway

Impacts on nature and indigenous people

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1 Introduction

The report is related to the assignment of the ‘Impacts on Nature and Indigenous People’ subgroup of the Arctic Railway cooperation group. According to the assignment, the subgroup has aimed to examine the ways in which the impacts of the Arctic Railway on nature and the indigenous people are evaluated. The report describes Finnish and Norwegian legislation as far as it applies to the impact evaluation in accordance with the subgroup’s assignment, thereby identifying the methods through which the impacts of the Arctic Railway project can be evaluated.

The report has been drafted in two parts. For the Finnish part, the legislation description has been drafted by the Centre for Economic Development, Transport and the Environment in Lapland. The Norwegian legislation description has been drafted by Sturla Alvheim (the Norwegian Railway Directorate), Sindre Torp (Sør-Varanger Municipality), Tiia Kalske (Fylkesmannen i Finnmark – Office of the Finnmark County Governor), Mikkel Kvernstuen (Finnmark County Authority) and Nina Merete Austad (Finnmark County Authority). Other members of the subgroup have also been able to participate in the creation of the report. The negotiations between the Centre for Economic Development, Transport and the Environment in Lapland and the Sámi organisations regarding the assignment of the subgroup was organised on 9 October 2018 in Inari.

The statements by the Sámi Parliament, the Skolt Sámi village meeting, and the Sámi reindeer herders’ association Sámi bálgosat rs on the assignment of the ‘Impacts on Nature and Indigenous People’ subgroup and the declaration of the Sámi Parliamentary Council regarding the Arctic Railway project have been appended to the report. The aspects highlighted in the afore-mentioned documents must be considered in the further actions related to the project. Due to the significance of the impacts of the planned railway project on both the Sámi culture and reindeer herding, allowing the actual participation of the concerned parties in the actions related to the project is vital for ensuring that all views are considered appropriately and as required by legislation.

Securing true interaction and the statutory opportunity to negotiate and participate are essential from the early stages of planning when evaluating the impacts of the Arctic Railway on the indigenous people through various means. The appropriate impact evaluation of the project requires authorities to become familiar with the statutory rights of the indigenous people and to have sufficient expertise on the impacts of the planned actions in the affected region. In order to achieve this, cooperation is required, based on the negotiation obligation defined in Finnish legislation in the Act on the Sami Parliament and the Reindeer Husbandry Act. In Norwegian legislation, the position and negotiation obligation of the indigenous people are secured by the consultation agreement between the Norwegian government and the Sámi Parliament, the Norwegian act on the Sámi, and the Finnmark act.

The subgroup has recognised the statutory actions related to the impact evaluation of the Arctic Railway in both Finland and Norway. The impacts on the environment are evaluated through the evaluation procedure of environmental impacts, as required by the environmental protection legislation (impacts on natural environment and natural diversity), and land use planning procedures, among others. The aim of these procedures is to identify the project’s impacts on the environment and examine the possibilities of mitigating and removing negative environmental impacts with the help of various technical solutions, for example. These procedures must be coordinated as part of the planning of the railway project, in addition to which participation, studies, alternative analysis and scheduling must be arranged in such a way as to result in an adequate overall assessment of the project’s impacts.

In describing the procedures concerning impact assessment, consideration must also be given to the transboundary impacts of the project and international obligations relevant to impact assessment. The procedure defined in the Espoo Convention, allowing parties to an agreement to participate in the evaluation procedure of environmental impacts organised by another party when the negative environmental effects of the project in question are likely to affect the state in question, is applied when projects have cross-boundary environmental impacts.

One of the key objectives of the impact assessment is to describe the change caused by the project relative to the current situation. Impacts can be assessed through various impact mechanisms: impacts on regional development, land use, the natural environment (and its value and conservation areas), water bodies, cultural heritage, the landscape, reindeer management and people's living conditions. Analyses of the current situation and the impact assessment also involve assessing the connections between the railway project and other projects and identifying other operations underway in the project area and its area of influence that can help ensure that the total load on the environment is assessed.

The impacts of the railway project are far-reaching and their adequate assessment requires cooperation between different authorities, actors and interest groups. Additionally, the opportunities of citizens to participate in and influence the related decision-making, which are safeguarded by various regulations, must also be taken into account. In fact, facilitating participation, meaning interaction with the parties potentially affected by the project, is one of the key objectives of statutory assessment procedures. Ways for facilitating this participation include different types of negotiations (including statutory negotiations with the authorities), steering or monitoring group work, small group meetings, public events and circulation procedures.

2 FINLAND: Statutory environmental procedures in the impact assessment of the Arctic Railway

2.1 Environmental impact assessment procedure

The environmental impact assessment (EIA) procedure based on the Act on Environmental Impact Assessment Procedure (252/2017) is an independent planning procedure, the aim of which is to help mitigate or completely prevent a project's adverse environmental impacts. It is neither a decision-making nor a permit procedure. The purpose of the Act is to promote the assessment of environmental impacts and the standardised consideration of the assessment in planning and decision-making while simultaneously increasing access to information and opportunities for participation (section 1 of the Act on Environmental Impact Assessment Procedure). The Act and the EIA procedure apply to projects and changes thereof that may be expected to have considerable environmental impacts. The projects and changes thereof that are subject to the EIA procedure are listed in Appendix 1 of the Act on Environmental Impact Assessment Procedure (section 3 of the Act). Under section 3 of the Act on Environmental Impact Assessment Procedure, the Arctic Railway project is also subject to the EIA procedure. Section 15 of the EIA Act states that the EIA procedure must be implemented as early as possible to ensure that, with due consideration to other preparations, the relevant options are still open.

Key aspects of the EIA procedure include impact assessment, alternative analysis and interaction with the parties potentially affected by the project. The EIA procedure involves identifying environmental

impacts in a comprehensive manner as well as analysing alternatives to the project and their impacts on the area's ecological, landscape and cultural environment values, among others. Furthermore, the EIA procedure involves assessing the project's impacts on indigenous people and reindeer management.

The EIA procedure begins when the project developer submits an assessment programme, as described in section 16 of the Act on Environmental Impact Assessment Procedure, to the coordination authority, which is the Centre for Economic Development, Transport and the Environment. The assessment programme's content requirements are described in section 3 of the Decree on Environmental Impact Assessment Procedure. The coordination authority then announces the pendency of the assessment programme in the project area, requests the necessary statements and provides an opportunity for presenting opinions on the programme. After this, the authority issues its own statement on the assessment programme, in which it presents its opinion on the scope and adequacy of the programme.

In the next stage, the project developer prepares an EIA report based on the EIA programme and the coordinating authority's statement and in accordance with section 19 of the Act on Environmental Impact Assessment Procedure, in which the project developer presents the specifications and technical solutions of the project and a consistent assessment of the project's environmental impacts. The coordination authority then publicises the EIA report, requests statements and provides an opportunity for presenting opinions, as with the EIA programme. After this, the coordination authority prepares a concluding statement of the project's notable environmental impacts based on statements and opinions received on the EIA report and its own assessment. This concluding statement must be appended to the project's permit application, in addition to which the results of the EIA procedure must be taken into account in the processing of the permit application. The concluding statement is also appended to the general plan prepared in accordance with the Rail Tracks Act.

If the project's EIA procedure and the preparation of the land use plan for the implementation of the project are underway concurrently, the associated hearings can also be carried out concurrently. In such a case, the coordination authority and the authority responsible for land use planning can agree on the coordination of the hearings after consulting the project developer. The Natura assessment and statement procedure can be conducted in the context of the EIA procedure, in which case the ELY Centre statement, as required by the Nature Conservation Act, and the statement of the holder of the conservation area must be included in the justified conclusion.

2.1.1 Transboundary environmental impacts

2.1.1.1 Espoo Convention

In regard to the Arctic Railway, it is also important to recognise the project's transboundary impacts. The assessment of transboundary environmental impacts is regulated by the so-called Espoo Convention (The United Nations Economic Commission for Europe's Convention on Environmental Impact Assessment in a Transboundary Context). Finland ratified the Convention in 1995 and it entered into force in 1997. In Finland, the competent authority referred to in the Espoo Convention is the Ministry of the Environment, which is thus responsible for the duties falling within the scope of the Convention. According to the Convention, an affected Party has the right to participate in the Party of origin's EIA procedure if the project being assessed is likely to cause significant adverse transboundary impact in the affected Party's country. The obligations of the Convention are applied based on each Party's national EIA procedure. In Finland, the Convention's obligations have been implemented with the Act on the Environmental Impact Assessment Procedure's provisions on

international hearings (sections 28–30), the Decree on the Convention on Environmental Impact Assessment in a Transboundary Context (SopS 67/1997) and the Decree on the amendment of the aforementioned Convention (81/2017). Another piece of regulation relevant to the assessment of transboundary environmental impacts is the protocol on strategic environmental impact assessment related to the Espoo Convention (SopS 69/2010).

The criteria by which an international EIA procedure is applicable to a proposed project and the Party of origin is obliged to notify an affected Party are defined in Article 3.1 of the Espoo Convention:

For a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under Article 5, notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity.

2.1.2 Interaction and participation

One important means of promoting interaction between authorities is the preliminary negotiation (section 8 of the Act on the Environmental Impact Assessment Procedure). The Act on the Environmental Impact Assessment Procedure also includes provisions on the hearings and participation related to the EIA procedure. In accordance with sections 17 and 20 of the Act, the coordination authority shall request the necessary statements concerning the EIA programme and the EIA report and provide the opportunity to express opinions on them. In addition to the aforementioned provisions, the project developer and the coordination authority can also agree on the arrangement of other participation opportunities, such as public events.

2.2 Nature Conservation Act

The Arctic Railway project's impacts on the natural environment will be investigated in connection with the assessments based on the Nature Conservation Act (1096/1996) and Decree (160/1997) of the project's impacts on Natura 2000 areas, groundwater areas, sites included in Finland's nature conservation programme (section 7 of the Nature Conservation Act), nature reserves (section 10), protected habitat types (section 29) and protected animal and plant species (possible need to derogate in accordance with sections 48 and 49 of the Nature Conservation Act). Based on impact assessment, the railway route must be planned in such a way as to not deteriorate valued nature sites and landscapes.

The Arctic Railway project's impacts on the Natura 2000 network, which includes, among others, wilderness areas established based on the Wilderness Act, must be appropriately investigated. This Natura assessment is based on sections 65 and 66 of the Nature Conservation Act, which have been issued for the purpose of safeguarding Natura sites. As part of the planning of the Arctic Railway, an examination must be conducted into the possible changes in Natura 2000 sites resulting from the construction and operation of the railway, in addition to which solutions must be proposed for preventing changes that might have adverse effects on the ecological value of said sites.

The project cannot be carried out if the Natura assessment and opinion procedure based on section 65 of the Nature Conservation Act indicates that the project would have significant adverse effects on the ecological value for the protection of which affected sites have been included in, or are intended for inclusion in, the Natura 2000 network. The prohibition on deterioration can only be derogated from based on section 66(2–3) of the Nature Conservation Act. The Natura assessment and opinion procedure also applies to any project outside of a Natura 2000 site which is liable to have a

significantly harmful impact on the site. In accordance with section 66 of the Nature Conservation Act, competent national authorities may only grant a permit for the implementation of a project if the assessment procedure indicates that the project would not have a significant adverse impact on the particular ecological value of the affected Natura 2000 sites.

2.3 Planning

2.3.1 Impact assessment in planning

The Arctic Railway project concerns planning processes on a municipal and regional level. Impact assessment is a vital part of planning based on the Land Use and Building Act (132/1999) as well as the Land Use and Building Decree (895/1999). The purpose of the decree is to steer land use and construction activities in a direction that promotes ecologically, economically, socially and culturally sustainable development. One of the aims is to ensure that everyone has the right to participate in the preparation process, and that planning is high quality and interactive, that expertise is comprehensive and that there is open provision of information on matters being processed (section 1). Nature is one of the values emphasised in the General objective of the Land Use and Building Act (section 1), Objectives in land use planning (section 5) as well as the Required content of plans (sections 28, 39 and 54). The objectives stated above highlight the interaction of the planning and the fact that plans must be based on sufficient impact assessment.

Information on impacts is produced, researched and utilised throughout the planning process in order to assess the impact of the planning decisions in accordance with the the Land Use and Building Act. The options of diminishing the impact caused by the planning through planning regulations and plan notations as well as through the careful placement of operations are surveyed as part of the impact assessment. Preliminary information on the environment is gathered by drafting basic reports and collecting data on the current situation in the initial phase of planning, which will lead to drafting separate impact reports, if necessary. The impact is assessed collectively in the plan draft composed during the preparatory phase, similarly to the plan proposal of the proposal phase. The impact assessment is completed and specified as the reports continue, and the results of this assessment are utilised when the plan is approved.

According to section 26 of the Land Use and Building Act, drawing up a regional plan is the responsibility of the joint municipal board. This means that in Lapland, regional planning is the responsibility of the Regional Council of Lapland. Since 2017, the council has been preparing the regional land use plan of Northern Lapland 2040, which is scheduled for completion by 2020. The alignment of the Arctic Railway is one of the matters discussed in the regional land use plan work of Northern Lapland. An indicative railway alignment in the regional or general land use plan provides the judicial preconditions for planning according to the Act on railways (110/2007). According to section 10 of the Act on railways, the general plan and railway plan related to the construction of a railway must be based on a plan with legal consequences accordant with the Land Use and Building Act, in which the location and relationship of the railway area with the other land use has been examined.

Also any plans with legal consequences located in the area designated for the railway must be observed in connection with the railway project. It must be reviewed whether the railway requires amendments to the plan and whether it is in contradiction with the protected area markings on existing plans or sites for new construction. The impact assessment is completed in accordance with the the Land Use and Building Act in connection with the planning. The impact assessment is described in the plan report, whose required content is specified in sections 10, 17 and 25 of the Land Use and

Building Decree. The above sections work to ensure that reports concerning the impact of the plan, required on the basis of section 1 of the Land Use and Building Decree, contain sufficient information. These reports are primarily environmental reports of various degrees based on terrain visits and inventories, for example.

In accordance with the sections mentioned above, the plan report must contain the following:

- 1) an account of circumstances in the area, its environmental features and changes in them, and other information on the area to be planned that is essential for investigating and assessing the plan's impact
- 2) starting point of planning, aims and proposed options
- 3) a summary of investigations carried out to assess the plan's impact
- 4) the plan's impact on the structure of the area and community, the built environment, nature, landscape, arrangement of traffic and technical services, economy, health, social circumstances and culture, and any other significant impacts
- 5) an account of the plan's relationship to national land use objectives, the regional scheme and development programmes, the current regional plan, regional planning of areas adjacent to the plan area, and the local authorities' other planning
- 6) stages of planning, including participation and interaction procedures and a summary of comments expressed at the various stages of the planning process
- 7) the key content and principles of the selected planning option and an account of how the results of impact assessment and the comments expressed have been taken into account, as well as an analysis on the actions taken to prevent the negative environmental impacts that may possibly arise from the execution of the plan.

2.3.2 Transboundary environmental impacts

Sections 206 a through 206 c of the Land Use and Building Act regulate notification and negotiation procedures regarding plans made for Finnish areas in case the implementation of the plans being drafted is likely to have a significant impact on areas of another state.

2.3.3 Interaction and participation

The planning procedure in accordance with the Land Use and Building Act requires an open course of action and genuine opportunities for interaction and participation, which in part ensure the right of the individual to participate in and influence the development of society and his or her living conditions, as decreed in section 2 of the Constitution of Finland. The interaction and communications on the various stages of planning required by the Land Use and Building Act increase data exchange on a broad basis. In the planning procedure, the implementation of participation is planned based on the participation and assessment scheme in accordance with section 63 of the Land Use and Building Act.

The participation and assessment scheme for the regional land use plan of Northern Lapland 2040 is dated 16 April 2018. The sections concerning participation and participants state that the participation of authorities and other similar parties covers comments on the objectives and the preparatory material as well as the draft in the preparatory phase, negotiations on objectives, participation in seminars, the negotiations between authorities in accordance with the Land Use and Building Act and

statements in the preparatory and proposal phases as well as other forms of cooperation between authorities. The impact of the implementation of the regional land use plan is assessed based on forms of land use, notations and regulations as well as regions, if necessary. The impact of the implementation of the plan is also assessed as a whole. Impact assessment must be observed and completed throughout the planning process. The impact assessment methods used include expert assessments based on planning materials, workshops as well as independent reports and data gathered from the EIA procedure.

2.3.4 Government Decision on Finland's National Land Use Guidelines (of 14 December 2017)

The assignments of the national land use objectives include ensuring the implementation of nationally significant matters in land use and its planning, affecting solutions related to land use at a sufficiently early stage, and promoting proactive and interactive authority cooperation. When carried out, the land use objectives improve the predictability of land use, which in turn produces sustainable land use solutions.

According to section 24 of the Land Use and Building Act, government authorities must take national land use objectives into account, promote their implementation and assess the impact of their actions on local structure and land use. National land use guidelines focus on five themes: well-functioning communities and sustainable mobility, an efficient transport system, a safe and healthy living environment, vibrant natural and cultural environments and natural resources as well as an energy supply capable of renewal. In terms of the impact of the railway project, it is vital to assess the impact in relation to vibrant natural and cultural environments as well as land use objectives concerning natural resources.

Vibrant natural and cultural environments and natural resources

Take care of safeguarding the nationally valuable cultural environments and natural heritage values.

Promote the preservation of areas and ecological connectivities that are valuable for biodiversity.

Take care of the sufficiency of areas suitable for recreational use and the continuity of the green area network.

Create capacities for the bioeconomy and circular economy and promote the sustainable utilisation of natural resources.

Ensure the preservation of contiguous farmland and forest areas that are important for agriculture and forestry and of areas that are important for Sámi culture and livelihoods.

3 FINLAND: Indigenous people and reindeer management

3.1 National legislation

The Arctic Railway would impact Sámi culture and livelihoods in various ways. The railway project would impact reindeer management by affecting reindeer pasturage and reindeer pastures as well as the structures of reindeer management. The operating conditions of reindeer management and the status of the Sámi people as an indigenous people are decreed in numerous acts, which requires that

the project be assessed from the point of view of both reindeer management and indigenous people. Assessing the impact of the Arctic Railway requires cooperation with the Sámi Parliament, the Skolt Sámi village meeting and reindeer herding cooperatives.

The right of the Sámi to maintain and develop their language and culture are secured in the Constitution of Finland (731/1999). The Skolt Act (253/1995) ensures the maintenance and promotion of Skolt culture. Section 9 of the Act on the Sami Parliament (974/1995) requires authorities to negotiate with the Sámi Parliament in all far-reaching and important measures which may directly and in a specific way affect the status of the Sámi as an indigenous people and which concern community planning, and the management, use, leasing and assignment of state lands, conservation areas and wilderness areas in the Sámi homeland, among other things.

One precondition for the maintenance of the Sámi culture is reindeer husbandry. The Reindeer Husbandry Act (848/1990) regulates the carrying out of reindeer husbandry within the area of reindeer husbandry. Section 2 of the Act defines the reindeer herding area and the area specifically intended for reindeer herding. Section 2 also states that land in this area may not be used in a manner that may significantly hinder reindeer herding. The right to practice reindeer herding is secured in section 3 of the Act, and the consulting obligation in section 53.

Consideration must be given to the provisions on the right of the Sámi to use the Sámi language before the authorities which are laid down in the Sámi Language Act (1086/2003).

3.2 International agreements and their objectives

3.2.1 The Convention on Biological Diversity (CBD)

Article 8 (j)

Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

Article 8 (j) has been enacted in Finland with the strategy and action plan for the conservation and sustainable use of biodiversity for 2012–2020 ('Saving Nature for People'). One of the five strategic goals of the action plan concerns the Sámi:

Goal 5. Enhance implementation of the conservation and sustainable use of biodiversity through participatory planning, knowledge management and capacity building.

The goal is further specified in its subsection target number 18:

Target 18. The traditional knowledge, innovations and practices of the indigenous Sámi community relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, restored and conserved, subject to national legislation and relevant international obligations, by developing legislation and administrative procedures related to the protection of this traditional knowledge. Finland's implementation of

the CBD allows for the full and effective participation of the Sámi community at all relevant levels in line with decisions set out in the CBD and by Conventions of Parties (COP).

The The Conference of the Parties (COP) has approved the voluntary Akwé: Kon Guidelines that were drafted to secure the conservation of biodiversity and to preserve the relationships between the cultures of indigenous people, nature and the related traditional knowledge. The guidelines are intended for observation in national legislation and utilisation in the Sámi Homeland, in the assessment of cultural, environmental and social impacts of such projects and plans that might have an effect on the Sámi culture, livelihoods and cultural heritage.

3.2.2 International Covenant on Civil and Political Rights (ICCPR)

27 article

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

3.2.3 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

19 article

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

32 article

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

4 NORWAY: Relevant legislation

4.1 Indigenous peoples

4.1.1 Consultation agreement between Norwegian State and Sami Parliament

The Consultation agreement between State Authorities and the Sami Parliament in Norway asserts a right for the Sami people in Norway to be consulted in matters that may affect them directly. In order to ensure that work on matters that may directly affect the Sami is carried out in a satisfactory manner, the Government and the Sami Parliament have agreed that consultations between State authorities and the Sami Parliament shall be conducted in accordance to the procedural guidelines in the Consultation agreement.

The objective of the Consultation agreement is to contribute to the implementation of the State's obligations to consult indigenous peoples under international law. The parties shall seek to achieve agreement whenever consideration is being given to legislative or administrative measures that may directly affect Sami interests. The agreement shall also contribute to facilitating the development of a partnership perspective between State authorities and the Sami Parliament that contributes to the strengthening of Sami culture and society. Finally, the agreement shall facilitate the development of a common understanding of the situation and developmental needs of the Sami society.

The Consultation procedures in their present form apply to the Government and its ministries, directorates and other subordinate State agencies or activities.

<https://www.sametinget.no/Om-Sametinget/Bakgrunn/Konsultasjonsavtalen>

<https://www.regjeringen.no/no/tema/urfolk-og-minoriteter/samepolitikk/midtpalte/konsultasjonsplikt-i-samiske-saker/id86931/>

4.1.2 The Sami Act

The Sami Act: LOV-1987-06-12-56

The purpose of the Act is to enable the Sami people in Norway to safeguard and develop their language, culture and way of life. The Act contains provisions on the Sami Parliament and the financial liability of the State, among other things.

The Norwegian Government has proposed to make consultations part of Norwegian legislation through the adding of a chapter on the duty to consult into the Sami Act (Prop. 116 L (2017-2018)). According to the proposed amendment, public authorities (including the regional and municipal levels) will be obligated by law to consult with the Sami people in matters that may affect them.

Whether or not the proposed amendment of the Sami Act is adopted, it is recommended to start a dialogue with the Sami Parliament at an early stage, to ensure that Sami viewpoints are heard from the outset.

The Sami Act: <https://lovdata.no/dokument/NL/lov/1987-06-12-56>

<https://www.regjeringen.no/no/dokumenter/prop.-116-l-20172018/id2610753/>

4.1.3 The Finnmark Act

The Finnmark Act: LOV-2005-06-17-85

The Finnmark Act transferred about 96 per cent of the area in Finnmark county to the inhabitants of Finnmark. This area is managed by the Finnmark Estate agency. A board of directors with six members manages the Finnmark Estate. Three members are appointed by the Sami Parliament of Norway, and three by the Finnmark County Council.

The background for the Finnmark Act is the Sami people's struggle for recognition of their rights to manage their land and culture. In 1978, there was a big controversy surrounding the plan to construct a dam and hydroelectric power plant that would inundate the Sami village of Máze, resulting in the so-called Alta controversy. As a result of the controversy, the Norwegian government held meetings with Sami representatives. The meetings resulted in the establishment of the Sami Rights Committee addressing Sami legal relations, proposing the establishment of the Sami Parliament and the adoption of the Finnmark Act in 2005.

The Finnmark Act attempts to strengthen Sami rights by giving the *entire* population of Finnmark greater influence of land in the county. The act does not apply to fishing rights in saltwater, mining, or oil rights.

An important element of the act is the discussion and recognition of existing rights of use and ownership of land. For this purpose, a commission and tribunal have been set up, working their way through zones across Finnmark.

The Finnmark Act: <https://lovdata.no/dokument/NL/lov/2005-06-17-85>

4.1.4 The Planning and Building Act

The Planning and Building Act: LOV-1985-06-14-77 with amendments LOV-2018-04-20-12

The Planning and Building Act contains several provisions pertaining to the interests of the Sami population:

§ 3-1 c) safeguard the natural basis for Sami culture, subsistence activities/business and community life.¹

The Sami Parliament has a right of opposition according to § 5-4 third paragraph, against municipal land-use plans and zoning plans which overrule or do not safeguard interests of important significance to Sami culture or subsistence activities/business:

§ 5-4 Third paragraph: The Sami Parliament may promote opposition against plans in cases of considerable importance for Sami culture or subsistence activities/business.²

Furthermore, according to § 8-4, the Sami Parliament may demand a regional plan to be presented to the ministry if important Sami interests are not sufficiently safeguarded.

The Sami Parliament has its own guidelines for planning procedures, *Sametingets planveileder*, which should be taken into account in all planning procedures.

¹ Unofficial translation of excerpts from the Norwegian Planning and Building Act.

² Unofficial translation of excerpts from the Norwegian Planning and Building Act.

The Sami Parliament's guidelines for planning procedures / Sametingets planveileder: <https://www.sametinget.no/Soek?search=sametingets+planveileder>

The Planning and Building Act: <https://lovdata.no/dokument/NL/lov/2008-06-27-71>

4.1.5 International Covenant on Civil and Political Rights (ICCPR)

Article 27

The ICCPR was signed by Norway in 1968 and ratified in 1972. Article 27 pertains to minorities:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

International Covenant on Civil and Political Rights:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

4.1.6 The Indigenous and Tribal Peoples Convention (ILO 169)

The Indigenous and Tribal Peoples Convention (ILO-convention 169) is the major binding international convention concerning indigenous peoples. The main principle in the convention is the right of indigenous peoples to further develop their culture, and the authorities' obligation to initiate measures to support this work. The convention also contains provisions on land rights. Norway ratified the convention in 1990.

The Indigenous and Tribal Peoples Convention:

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312314

4.1.7 Declaration on the Rights of Indigenous Peoples (UNDRIP)

The UNDRIP is an international instrument adopted by the United Nations on September 13, 2007, enshrining the rights that "constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world." The UNDRIP protects collective rights that may not be addressed in other human rights charters that emphasize individual rights, and it also safeguards the individual rights of indigenous people. Norway voted in favour of adopting the declaration in 2007.

The Declaration on the Rights of Indigenous Peoples:

<https://zhengchunjanet.tk/pokahzgtqsfndjiecwxwulmryavb5f3afaf155.pdf>

4.1.8 The Alta Outcome Document

The Alta Outcome Document is a document containing indigenous peoples' recommendations for a high-level plenary meeting of the General Assembly also known as the World Conference on Indigenous Peoples in 2014. Its key topics are indigenous peoples' lands, territories and resources, the principles of free, prior and informed consent, and the relationship between governments,

indigenous peoples and extractive industries regarding participation, access to decision-making and distribution of income.

The Alta Outcome Document:

<http://unsr.jamesanaya.org/docs/data/Alta-outcome-document-june-2013.pdf>

4.1.9 Some points needing further consideration

Theoretical foundation

- International legal framework concerning indigenous peoples' right to land as well as principles for meaningful involvement of indigenous peoples (treaty bodies, case law, the principles of *Free, Prior and Informed Consent* (FPIC)). In Norway, many aspects of these are adopted into Norwegian legislation such as the Norwegian Constitution, the Human Rights Act, the Planning and Building Act.

Stakeholder involvement

- In addition to the Sami Parliament, identify Sami communities or stakeholders who should be heard in the process.
- Determine how meaningful involvement with relevant stakeholders, as well as consultations, may be carried out. This must be done together with the stakeholders themselves, taking into consideration the Consultation agreement and principles of Free, Prior and Informed Consent.
- Further steps towards investigating and evaluating impacts on indigenous peoples should only be carried out in understanding and cooperation with the stakeholders themselves, or their chosen representatives.

Together with Sami communities/organizations/stakeholders

- Impacts on indigenous peoples may only be properly evaluated together with the indigenous peoples themselves.
- Indigenous groups, organizations and communities should be meaningfully involved in the process.
- Work to identify possible impacts on indigenous culture, livelihoods, use of and access to land and renewable resources, economy, socio-economic conditions, and community life.
- As nature constitutes the material basis for indigenous culture, impacts on nature should be properly evaluated, to provide a full picture of the impact on indigenous peoples.
- Any land claims in the area in question should be identified at an early stage.
- Investigate whether or not potential impacts are acceptable to the indigenous peoples, or whether or not there are benefit agreements that may ameliorate potential impacts. If applicable, this may be done through consultations.
- Further recommendations may be drawn up before starting a consultation process.

4.2 Planning and building legislation

Lov om planlegging og byggesaksbehandling (plan- og bygningsloven - pbl): LOV-2008-06-27-71
<https://lovdata.no/dokument/NL/lov/2008-06-27-71> (English translation:
<https://www.regjeringen.no/en/dokumenter/planning-building-act/id570450/>)

Planning and Building Act: this law sets the form of how the process is to be carried out, alert the start-up, planning program, hearing and consulting procedures etc. It is assumed that a future planning process is likely to be conducted as a centrally prepared (state-sponsored) plan (pbl § 6-4), as the

project is likely to be considered of national significance. Additionally, the Norwegian government has stated the intention to increase the use of this instrument in large infrastructure projects, as it allows for shorter/more efficient planning processes and for settling conflicting priorities between local, regional or national government agencies.

An example of a centrally prepared plan:

A centrally prepared plan for the E10 road construction project, spanning seven municipalities and two counties, was expected to save two years through efficiencies of scale and scope, thereby cutting the planning time in half when compared with regular planning conducted at municipal level. However, the procedural efficiencies that can be achieved from using centrally prepared plans as opposed to municipally or regionally prepared plans are not be realized through reduced stakeholder involvement. The same principles for stakeholder involvement, impact assessments, hearings/consultations etc apply for centrally prepared plans, but as the planning is conducted on an aggregate level fewer iterations of these activities are necessary.

4.3 Environmental Impact Assessment (EIA) legislation

Forskrift om konsekvensutredninger: FOR-2017-06-21-854

<https://lovdata.no/dokument/SF/forskrift/2017-06-21-854>

The Regulation on Impact Assessments (in some jurisdictions referred to as sustainability appraisals) regulates when and how assessments of the impact of a planned development on the environment and society is to be carried out. In an appendix to the regulation a number of projects that require mandatory EIAs are listed, and railway lines for long distance traffic are among the projects listed (Appendix 1, 7a). Such projects also require public notification and planning programme.

The developer (i.e. the entity responsible for the project) is responsible for public notification of the start of planning and for drawing up a planning programme. The planning programme “*shall give an account of the purpose of the planning work, the planning process with time limits and participants, arrangements for public participation, particularly in relation to groups presumed to be particularly affected, the alternatives that will be considered and the need for assessments*” (pbl § 4-1, second paragraph). When giving public notice, outlining the need for assessments, relevant stakeholders may give input on the scope of planned assessments in order to ensure that all aspects of a project’s impact are covered.

Chapter 5 in the regulation provides detailed requirements for the contents of EIAs, whereas chapter 6 regulates the appraisal of the assessment(s). Chapter 8 in the regulation is also relevant for the Arctic Railway project, as it states that the Norwegian Environmental Agency (Miljødirektoratet) serves as a national contact point for planning processes with cross-border impacts and implications. Similarly, the NEA is to be notified of foreign plans and projects that may impact environment and society in Norway.

<https://www.regjeringen.no/no/tema/klima-og-miljo/innsiktsartikler-klima-miljo/konsekvensutredninger/id2076809/>

4.4 Biodiversity Act

Lov om forvaltning av naturens mangfold (naturmangfoldloven) (nml): LOV-2009-06-12-100
<https://lovdata.no/dokument/NL/lov/2009-06-19-100?q=naturmangfoldloven>

The purpose of the Act is to preserve nature with its biological, landscape and geological diversity and ecological processes through sustainable use and protection, so that it provides the basis for human activity, culture, health and well-being, now and in the future, also as a basis for Sami culture.

4.5 Water Framework Directive (WFD)

Forskrift om rammer for vannforvaltningen (vannforskriften): FOR-2006-12-15-11446/ FOR-2018-06-28-1082: <https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446?q=vannforskriften>

The Water Framework Directive is an EU directive which commits member states to protect and improve the ecological and chemical status of our water bodies (rivers, lakes, groundwater and coastal waters). For natural water bodies, the goal is to obtain both good ecological and chemical status. The state of the individual water bodies must be evaluated after specific criteria and quality elements:

- Biological quality (e.g. fish, benthic invertebrates, aquatic flora)
- Hydro-morphological quality (e.g. river substrate, river continuity)
- Physical-chemical quality (e.g. temperature, nutrient conditions, oxygenation)
- Chemical quality (pollutants)

It is important to notice that the WFD in Norway works on the one-out all-out policy, meaning that if an individual quality element does not achieve good status for a particular watercourse, the entire water body could be classified as failing. Such policies could make it more challenging for the Arctic Railway project to fulfil all the requirements and environmental objectives given in the WFD.

4.5.1 Further investigation and possible impacts

Possible impacts on water bodies can occur in all areas that are in close relation to railroad tracks and other facilities linked to the Arctic Railway project. Since the WFD aims to reach good ecological and chemical status of all our water bodies, further investigation and evaluation of impacts should be done at a more detailed level when we have more knowledge from other sub-groups and when designated routes/corridors are suggested. This will however be a requirement through the planning and building act and environmental impact assessment. The WFD also requires that all water bodies affected by a new activity must be considered specifically according to section 12 in the WFD.

The Arctic Railway project is in an early stage, but on a general basis we can assume some challenges and mitigation measures that may be of relevance:

- Physical structures such as roads and railway tracks may function as a migration barrier restricting the upstream and/or downstream movement of fish. Fish passage may be limited by large drops, high water velocities, low water depths and the presence of physical barriers. Mitigation measures that obtain water flow, continuity and natural conditions will be necessary in this context (e.g. large culverts or bridges).

- Runoff from railroad tracks, construction and pesticides may cause pollution of nearby water bodies. This impact may be solved through environmental plans for construction and operation.
- Railway tracks may function as a physical structure that can change the natural runoff regime and distribution of water. This impact will depend on the specific route/corridor.

4.5.2 Relevant information and databases

- [Norwegian water information system](#) – information about status and environmental targets
- [Joint water management plan of the Finnish-Norwegian river basin district \(2016-2021\)](#)
- [Management plan of the Norwegian part of the Finnish-Norwegian river basin district \(2016-2021\)](#)

4.6 Espoo Convention

Konvensjon om konsekvenser for tiltak som kan ha grenseoverskridende miljøvirkninger (Espoo konvensjonen): TRA-2001-02-27-46/ TRA-2004-06-04-119

<https://lovdata.no/dokument/TRAKTAT/traktat/1991-02-25-1?q= espoo konvensjonen>

Environmental threats do not respect national borders. Governments have realized that to avert this danger they must notify and consult each other on all major projects under consideration that might have adverse environmental impact across borders. The Espoo Convention is a key step to bringing together all stakeholders to prevent environmental damage before it occurs. The Convention entered into force in 1997.

The Espoo (EIA) Convention sets out the obligations of Parties to assess the environmental impact of certain activities at an early stage of planning. It also lays down the general obligation of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries.

Norwegian Environment Agency (NEA/ miljødirektoratet) is the national contact authority for single cases to be handled in accordance with the convention/ protocol. The procedure is written in the chapter 8 of the national legislation (forskrift). More about this issue on the web site to NEA: <https://www.miljodirektoratet.no/no/Horinger/Grensekryssende/>

Read more about the convention:

<https://www.unece.org/env/eia/eia.html>

https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-4&chapter=27&clang=en

4.7 Legislation concerning outdoor life

Lov om friluftslivet (friluftsløven): LOV-2017-05-11-26

<https://lovdata.no/dokument/NL/lov/1957-06-28-16>

The consequences for outdoors activity must be mapped according to the environmental impact assessment and the standards given in the guidance from the environmental agency, «Kartlegging og verdsetting av friluftsområder».

Sør-Varanger municipality has conducted a evaluation of their outdoor areas, which should be used as a basis for possible impacts on outdoor areas/recreation. If the evaluation of outdoor areas does not cover the area where designated railway tracks/corridors are planned, this must be completed before the impact assessments survey.

4.8 Legislation concerning Cultural heritage

Lov om kulturminner (kulturminnevernloven): LOV2018-06-22-82

<https://lovdata.no/dokument/NL/lov/1978-06-09-50>

The Cultural Heritage Act (Lov om Kulturminner). According to the act it is a national responsibility to safeguard archaeological and architectural monuments and sites and cultural environments «as part of our cultural heritage and identity and as an element in the overall environment and resource management». Finnmark County Authority and the Sami Parliament are the agencies responsible for day-to-day management of cultural heritage monuments in accordance with the Cultural Heritage Act in Finnmark County. Both carry out surveys and ensure that protected monuments are taken into account in the planning processes at county and municipality levels. They also coordinate with Tromsø Museum, the agency responsible for excavations, and the Directorate for Cultural Heritage which ensures that cultural heritage considerations are taken into account in all planning processes and that the interests of cultural heritage are taken into safeguarded at all levels.

In Norway various registers that contain information on the cultural heritage and the environment have been integrated into one database, Askeladden. Information concerning known cultural heritage monuments is relatively scarce in the border areas between Finland and Norway. There have been few – and in some areas no – surveys, and there are only some cultural heritage monuments that have been reported. However, experience drawn from a LiDAR (laserscanning) survey in the Pasvik valley suggests there is a high potential for hunting related cultural heritage monuments, for example hunting pits. Information gathered from informants in the Neiden area in Norway suggest that there is also a potential for house grounds and other heritage monuments connected to primarily hunting, reindeer husbandry and old trade routes.

4.8.1 Relevant information (English)

<https://www.riksantikvaren.no/en/About-Us/Legislation>

<https://www.riksantikvaren.no/en/About-Us/Cultural-Heritage-Management-at-County-Level>

<https://www.riksantikvaren.no/en/Topics/Archaeological-monuments>