



Law and self-regulation – Substitutes or complements in gaining social acceptance?



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ARTICLE INFO

Article history:

Received 16 November 2014

Received in revised form

22 February 2015

Accepted 23 February 2015

Available online 11 April 2015

JEL Classification:

M14

N54

D22

Keywords:

Mining industry

Social license to cooperate

Self-regulation

Industrial standards

Legal pluralism

ABSTRACT

Mining industry needs a social license to operate (SLO) on local, national and global levels. In this research we study six companies in three different countries in the Kolarctic Area. All except one company seem to focus on getting the social license at the local level with agreements with other land users and local communities. For new companies a local social license seems to be more difficult to earn, but the old ones have gained it with their earlier behavior. In Sweden and Finland companies also focus on global standards, mostly because of the pressure from financiers. In the mining branch, endusers are not yet interested in social responsibility of the companies. Globally functioning multinationals have, however, been alerted to develop industrial standards under the pressure of NGOs. In some mining sectors such as gold mining, international standards already play a significant role. In gaining the social license, the involvement of NGOs, which now is rather modest, might be one way to develop global standards and improve reputation. Companies, which are successfully focusing on the local level, might also gain from NGO cooperation on the national level, where the reputation of the mining industry in Sweden and especially in Finland has suffered from sporadic bad performers. Russian companies have their own challenges because of the weak formal institutions of the country. There both good national relations with the power structures and a strong role in developing the surrounding areas are fundamental.

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Introduction: self-regulation as a means for global acceptance

Mining industry has faced an increasing amount of criticism on environmental impacts and social disruption from civil society. Mining often conflicts with interests of other users of land or natural resources in their operation area. Mining industry has itself tried to answer these increasing demands by improving their social and environmental performance (Sethi, 2005; Brereton, 2002; Dashwood, 2014). Since mining companies often function globally, they meet with differing national legislations. Coping only with them does not seem to satisfy the critics, especially when it comes to legislation of developing countries. Companies seem to have a need to prove that they take their responsibility seriously and at the global scale. Especially globally operating companies have developed own strategies with own firm-based globally functioning codes of conduct, application of which they adjust to local circumstances. Furthermore, the industry has developed different sets of own principles of conduct (industrial self-regulation), which companies can adopt or which their financiers may impose on them. The whole industry seems to need a social license to operate in order to avoid costly conflicts and social risks (Bridge, 2004). A social

license (SLO) exists when a mining project is seen as having the broad, ongoing approval and acceptance of society to conduct its activities (Prno and Slocombe, 2012).

Globalization of regulation has evoked a discussion on new global legal pluralism (Teubner, 1992; 2004; Berman, 2002), referring to either a diminishing role of nation state legislation compared to global standards (Teubner, 1997) or at least the rise of other sources of regulation beside national legislation (Berman, 2002). The state legal systems are not as sovereign and solid as it traditionally has been understood, but function together with global and local regulations, which can be either public or private (Teubner, 2004).

The increasing role of private regulation has also been recognized or even emphasized in regulation theory (e.g. Cunningham, 2009; Braithwaite and Drahos, 2000; Cunningham and Sinclair, 1999; Wood, 2006). The more global companies develop, the more they have to cope with different sets of rules, which may even contradict each other. Local circumstances and institutional settings limit the options and tools in the search for the social license (Campbell, 2007). The institutional setting develops in interplay between formal and informal rules of the game which locally, nationally and globally active interest groups play (North, 2005; 1990). The complexity of institutional settings and growing globalization together increase transaction

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costs, but can also become a competitive advantage for companies, which are capable of choosing the best alternatives for themselves (Zumbansen, 2009).

Research questions

In this article we study how self-regulation operates in the mining industry in differing circumstances in the Northern parts of Sweden, Finland and Russia, in an area which is also called the Kolarctic Area.¹ This is done applying the case study method with two companies in each of these three countries as cases. Firstly we are to find out what kind of self-regulation; company based or industry based is applied, and why the company has chosen to apply this type of self-regulation and not any other kind. Secondly we aim to find out, how the companies see the role of self-regulation in relation to national legislation; whether it is complementing or substituting national legislation. Thirdly we aim to find out, how local stakeholders have understood the role of self-regulation and how it has or has not effected on gaining the social license for mining in the eyes of the local stakeholders.

Method

Since there is very little empirical data on how companies cope with contemporary legal pluralism, we aim to provide with more data from companies. Case study is often presented as a research strategy, which focuses on understanding the dynamics present within single settings (Eisenhardt, 1989, 534). Case studies can involve either single or multiple cases, and numerous levels of analysis (Yin, 1984). We chose 6 more typical cases, which reflect different circumstances and should be able to depict a more nuanced view of self-regulation in practice (Gerring, 2007). The results of case studies increase our knowledge of how some companies try to earn a social license, but they cannot be generalized too far. In Sweden we chose LKAB (www.lkab.com), which was founded already in 1890, became fully state owned in 1976 and whose iron ore mining has had an immense influence in the whole Swedish economy, especially in its operation area in Northern Sweden. Northland Mines, on the other hand, is a new company, which was run by a daughter company of an international company Northland Resources (www.northland.eu) with headquarters in Luxembourg since 2010. The origin of the company is, however in North America, where the company originally was listed in 1997 as North American Gold Inc. Swedish mining industry is dominated by two domestic companies Boliden and LKAB. LKAB operates in Norrland, where Boliden only has one iron ore mine Aitik. International companies are newcomers holding new concession licenses or exploration permits. Of these companies only Northland Resources (NR) has actually started mining in Norrland.

In Finland mining in the Northern parts of the country stopped during the 1990s economic crisis when domestic companies moved to other industry sectors, and mining industry has only recently started again with international companies entering the mining sector. Northland Mines in Kolari was run by a daughter company of the same Northland Resources, which operated on the

Swedish side of the border. This makes it possible to compare differences inside one company operating in the two countries. The other case in Finland is a Canadian multinational company Agnico-Eagle (www.agnicoeagle.com), which is specialized in mining gold. The Kittilä mine was the first European mine for the company, which is mostly operating in the North American continent. There are two gold mines operating in the Finnish Lapland, namely Suurikuusikko/Kittilä (Agnico-Eagle) and Kevitsa/Sodankylä producing also copper, nickel and platinum group of metals operated by First Quantum Minerals.² The only Finnish company operating in Lapland is Outokumpu mining in Kemi, the only chrome mine in Europe. Agnico-Eagle (AE) was chosen as a case company, because it is one of the gold mines and as a Canadian multinational company has actively participated in developing global industrial standards.

The Russian Kola Peninsula in the Murmansk region is known for its rich mineral resources and strong mining industry from the Soviet times. The first Russian case company is an old company Apatit (www.phosagro.com) with a long tradition in operating in the area since 1929. It mines on Khibiny mountains and supports towns called Apatity and Kirovsk. Nowadays it is a private open (public) joint stock company (OAO) and a part of the Russian PhosAgro group (www.phosagro.com), the world's largest producer of phosphate rock and Europe's largest producer of phosphate fertilizers. The second Russian case company is North-West Phosphorous Company (www.szfk.ru).³ The SZFK, is a newcomer in the Kola Peninsula. It is a company, which was established in 2005 by a vertically integrated group Acron, which was formed from two privatized soviet-time fertilizer production units Acron (in Velikiy Novgorod) and Dorogobuzh (in Smolensk Region) (www.acron.ru). Acron group's markets are mostly in Russia, China and other Asian countries, but also in Europe and Americas. It has established a company in China (Hongri Acron) and has joint venture mining potash in Saskatchewan, Canada with Rio Tinto. Most of the mines in the Kola Peninsula are mining phosphor. Among those we chose one old local company and a newcomer, which both mine on the Khibiny mountains. There are also two iron ore mines; one operated by Kovdorsky GOK (EuroChem Group) in Kovdor and also mining phosphor as well as brasilit, another operated by Olenogorsk GOK (SeverStal Group) in Olenogorsk. Kola Mining is a subsidiary of Norilsk Nickel mining sulphidic copper–nickel in Pechenga. The sixth company operating in the area is Lovozersk GOK mining rare metals in Revda, Lovozero district.

Map

All the six case companies, which can be located from the map (Fig. 1) of the area above, are studied through their webpages and annual reports to find out, how the companies themselves present their self-regulation to the public audience. This overview is then complemented with a couple of qualitative semi-structured interviews of company managers in Finland and in Sweden. The Russian companies did not give interviews, or actually they claimed for applying permissions, which in practice made interviews too difficult to run. There the data is gathered from interviews of municipality representatives and newspaper articles with interviews of company management. In every country we complemented the interviews of company management with interviews of some NGO representatives as well as interviews, which the researchers of the Sumilcere Project gathered from local

¹ The Kolarctic Area contains Nordland, Troms and Finnmark counties in Norway, Norbotten in Sweden, Lapland in Finland, Murmansk and Arkhangelsk regions and Nenets Autonomous area in Russia. The definition is somewhat artificial, because it is derived from the European Union Kolarctic ENPI Program area. Barents Area, which is used more widely and often as a synonym to Kolarctic, also came to use as a name of an EU program. As a program area, the Barents Area is wider (www.kolarctic.enpi.info). Our empirical research includes only the Kolarctic Area in Finland, Sweden and Russia, because we have no case companies from Norway.

² A third one Pahtavaara/Sodankylä was operated by a new Swedish company, which soon bankrupted.

³ In Russian: ZAO Severo-Zapadnaya Fosfornaya Kompanya. ZAO means a closed joint stock company.

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