

REPORT ON ESTONIA

Legal Framework

1. The EIA Directive is transposed in Estonia through the following acts:
 - a. „Keskkonnamõju hindamise ja keskkonnajuhtimissüsteemi seadus“ (Environmental Impact Assessment and Environmental Management System Act (EIA Act))
 - b. „Tegevusvaldkondade, mille korral tuleb anda keskkonnamõju hindamise vajalikkuse eelhindang, täpsustatud loetelu“ (Detailed List of Areas of Activity Requiring Consideration of Need for Initiation of Environmental Impact Assessment), Government of the Republic Regulation No. 224 of 29 August 2005
2. No, the IPPC Directive (Directive 2008/1/EC) was transposed through a separate act – „Saastuse kompleksse vältimise ja kontrollimise seadus“ (Integrated Pollution Prevention and Control Act) –, and that continues with the new Industrial Emissions Directive (Directive 2010/75/EU), which is transposed through „Tööstusheite seadus“ (Industrial Emissions Act).
3. There is a case by case examination, but the criteria for this assessment are listed in the EIA Act (§ 6(3)).

EIA Procedural Provisions

4. The EIA procedure is not considered a separate administrative procedure – according to the case law of the Supreme Court of Estonia, EIA is part of the development consent procedure.¹ Still, the EIA needs to be approved by a different authority – the supervisor of EIA (normally the Environmental Board, in some more important cases the Ministry of the Environment) –, and only then can the competent authority give the development consent (§§ 10 and 22 of the EIA Act).
5. Yes, the EIA process is part of the permitting procedure. According to § 24 of the EIA Act, upon making a decision to issue or refuse issue of a development consent, the decision-maker shall take account of the results of EIA and the environmental requirements appended to the report; for failure to do so, a reasoned justification has to be given. Throughout the whole development consent procedure, including the EIA process, the results of the consultations with environmental authorities and the public have to be taken into consideration. For instance, the supervisor of EIA shall not approve the EIA report, if refusal to take account proposals and objections submitted regarding the report is not sufficiently justified (§ 22(3)(6) of the EIA Act). According to the case law of the Supreme Court of Estonia, insufficient consultation with members of the public normally causes the annulment of the permit.²
6. –
7. The authority responsible for granting or refusing a development consent depends on the type and importance of the project – building permits are normally given by the local government, environmental permits by central authorities (The Environmental Board or, in some cases, the Ministry of the Environment). The competent authority decides

¹ Judgement of the Administrative Law Chamber of the Supreme Court of Estonia in the case No 3-3-1-35-13 of 15 October 2013 (p 22).

² Judgement of the Administrative Law Chamber of the Supreme Court of Estonia in the case No 3-3-1-35-13 of 15 October 2013 (p 27–28).

- whether to initiate the EIA (§ 11 of the EIA Act), but both the EIA programme and the EIA report need to be approved by the supervisor of EIA (§§ 18 and 22 of the EIA Act).
8. Yes, the approval of the EIA report is a pre-condition to grant development consent (§ 24(1) of the EIA Act).
 9. According to § 11(7) of the EIA Act, if an application for two or more development consents necessary for proposed activities is submitted to one decision-maker, the decision-maker may join the proceedings regarding EIA (only with the consent of the developer and unless this violates the rights of third parties). Also, only one EIA procedure can be initiated during a development consent procedure (§ 11(7¹) of the EIA Act). List of directives covered:
 - a. Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora
 - b. Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants
 - c. Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports
 - d. Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006
 - e. Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds
 - f. Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)
 10. Yes, according to § 11(7¹) of the EIA Act, only one EIA procedure can be initiated during a development consent procedure, so if assessment is necessary both on the basis of the EIA Directive and the Habitats or Birds directive, the assessment is carried out in a joint procedure. Special rules for EIA of activities affecting a Natura 2000 site can be found in § 29 of the EIA Act.
 11. Estonia has joined the Espoo convention on Environmental Impact Assessment in a Transboundary Context, and has concluded bilateral environmental protection agreements with all of its neighbouring countries (Latvia, Finland and Russia), as well as other multi- and bilateral agreements. In addition, the EIA procedure in transboundary context is regulated in § 30 of the EIA Act. Communication with the affected state is coordinated by the Ministry of the Environment.

EIA Content

12. The developer is obliged to describe and consider reasonable alternatives to the proposed project (§ 20(1) of the EIA Act), including comparison of the proposed activities with different reasonable alternatives and giving a ranking list on the basis of environmental impact and benefits (§ 20(1)(9) of the EIA Act).
13. No, the decision-maker (in consultation with the supervisor of EIA and other relevant agencies) will only give the opinion on the scope of information to be provided on request of the developer.
14. Environmental impact can only be assessed by a licensed expert or an expert group led by a licensed expert (§ 14 of the EIA Act). The EIA report has to be approved by the supervisor of EIA who inspects the quality of the report (§ 22 of the EIA Act).

15. Assessment of the combined impact with other types of activity is a mandatory part of the EIA report (§ 20(1)(6) of the EIA Act). There is no case law of the Supreme Court of Estonia on this topic, but the Supreme Court recently did not accept an appeal in a case where the courts of first and second instance thoroughly analysed whether the EIA report had enough information on the cumulative impact of the proposed project (they found the assessment to be sufficient).³
16. § 6(1)(35) of the EIA Act defines as activities with significant environmental impact, *inter alia*, any changes to or expansions or reconstructions of activities or installations specified in § 6 of the act, if the activity or installation as a whole meets the thresholds set out in § 6 of the act, as a result of the changes. The author is not aware of any case law concerning the 'salami slicing' of projects.
17. The screening decision can always be contested together with the final decision on development consent, and if the screening decision was incorrect, this results in the annulment of the development consent. The appeal can be lodged by a person for the protection of his or her rights⁴ or (as a special rule in environmental matters) a person having sufficient interest.⁵ In the case of non-governmental environmental organisations, it is to be assumed that they have a legitimate interest in the matter or that their rights have been infringed, provided the contested administrative act or measure is related to the environmental organisation's environment protection aims or to its hitherto sphere of activity in the protection of the environment.⁶

A negative screening decision (no EIA necessary) can also be appealed directly (before the end of the development consent procedure), but only if the person lodging the appeal has sufficient interest and if the screening decision was manifestly incorrect – i.e. if EIA was mandatory according to law (the competent authority had no discretionary power).⁷
18. There is no set time limit for the validity of the EIA-decision and the development consent. The development consent is normally given for unlimited time, but can also have a time limit in some cases.⁸ It is possible to change the conditions of the development consent in cases of development of the best available technique or changes of the environmental risk, if the public interest outweighs the developer's legitimate expectation of the continued validity of the consent.⁹

Access to Information Provisions

19. The decision to initiate or not to initiate EIA is published in "Ametlikud Teadaanded" (Official Notices), a web site where all public notices are available for free. If the development consent procedure is public (which is usually the case), a notice about the start of the procedure is also published in the Official Notices, as well as in a local or regional newspaper. The notice must contain, *inter alia*, a short description of the project, the proposed location of the activity, the address of the web page where the application of the developer can be viewed, and information on the possibilities of the members of the public to participate in the procedure. All that information is also accessible on the web site of the competent authority, as well as on the web site of the local government, and persons who have notified the competent authority of their interest in the procedure

³ Judgement of the Tallinn Circuit Court in the case No 3-12-2312 of 7 April 2014.

⁴ § 44(1) of the Code of Administrative Court Procedure ("Halduskohtumenetluse seadustik").

⁵ Case law of the Administrative Law Chamber of the Supreme Court of Estonia, most recently judgement in the case No 3-3-1-87-11 of 19 March 2012 (p 17).

⁶ § 30(2) of the General Part of the Environmental Code Act ("Keskkonnaseadustiku üldosa seadus").

⁷ Judgements of the Administrative Law Chamber of the Supreme Court of Estonia in the case No 3-3-1-101-09 of 18 June 2010 (p 10–15) and the case No 3-3-1-64-11 of 17 November 2011 (p 9–15).

⁸ § 53(2) of the General Part of the Environmental Code Act.

⁹ § 59(1)(3) of the General Part of the Environmental Code Act.

receive all subsequent notifications per e-mail or post. The application of the developer and the draft of the permit can also be accessed for a limited time period (also published in the notice) in a public building in the area of the proposed activity (public display). When ready, the EIA programme and later the EIA report are also published in the manner described above; in addition, the notice has to be published in a public building (e.g. library, shop, bus stop) in the location of the proposed activity. Everyone has the right to access the EIA programme/report and other relevant documents at the time of the public display of and the public consultation regarding the programme/report, submit proposals, objections and questions regarding the programme and obtain responses thereto.

20. See previous answer. The provision of information has become more and more user-friendly and is free of charge.

Public Participation Provisions

21. Everyone can participate in an EIA procedure (see answer to question 19). In addition to informing the public, the environmental NGO-s are informed through organisations uniting them and the owners of the area of the proposed activities and the neighbouring immovables are notified personally.

Administrative and Judicial Review & Enforcement Provisions

22. The decisions of the authority responsible for making decisions on EIA cannot be appealed directly. Decisions on EIA can be contested together with the final decision on development consent.

23. On screening decisions, see answer to question 17. The same is true for other decisions made in EIA procedures – they can always be contested together with the final decision on development consent. Direct judicial review of procedural decisions (before the end of the development consent procedure) is limited to cases where there are no more efficient remedies for protecting the applicant's rights – the decision needs to infringe the applicant's non-procedural rights independently of the final decision on development consent, or the unlawfulness of the procedural decision needs to inevitably lead to the issue of an unlawful final decision which infringes the applicant's rights.¹⁰

The court can annul the decision on development consent, if the EIA decision is unlawful and the breach is serious enough that, as a result, the unlawfulness of the final decision cannot be excluded.¹¹ As a result of the direct judicial review of procedural decisions, the court can only declare the unlawfulness of the contested decision and, in some cases, order the authority to make a new decision. Since EIA decisions are usually discretionary, the court cannot prescribe the contents of the new decision.¹²

24. The decisions can only be contested by persons for the protection of their rights¹³ or (as a special rule in environmental matters) by persons having sufficient interest.¹⁴ The last criteria means that the decision could have a significant and real impact on the person, even if it does not infringe his or her rights.

In the case of non-governmental environmental organisations, it is to be assumed that they have a legitimate interest in the matter or that their rights have been infringed, provided

¹⁰ § 45(2)–(3) of the Code of Administrative Court Procedure.

¹¹ See, for instance, judgement of the Administrative Law Chamber of the Supreme Court of Estonia in the case No 3-3-1-35-13 of 15 October 2013 (p 22–28).

¹² § 158(3) of the Code of Administrative Court Procedure.

¹³ § 44(1) of the Code of Administrative Court Procedure.

¹⁴ Case law of the Administrative Law Chamber of the Supreme Court of Estonia, most recently judgement in the case No 3-3-1-87-11 of 19 March 2012 (p 17).

the contested administrative act or measure is related to the environmental organisation's environment protection aims or to its hitherto sphere of activity in the protection of the environment.¹⁵ In addition to non-profit associations or foundations (legal persons), the definition of environmental NGO encompasses associations of persons which do not possess legal personality and which, pursuant to a written agreement between their members, promote protection of the environment and represent the views of a significant proportion of the local population.¹⁶

25. The administrative appeal or application for judicial review does not have suspensive effect on the decision, but in both cases, the court may, on the basis of an application of the applicant, or of its own motion, enter a ruling ordering a measure of interim relief to give provisional protection to the applicant's rights if, in the contrary case the protection of the applicant's rights by the judgment may be rendered significantly more difficult or impossible. In the case of a person who by virtue of the law enjoys the right to bring an action in the administrative courts on grounds other than the protection of his or her own rights, interim relief measures may be applied provided that, in the contrary case, attainment of the aim of the action by means of the judgment may be rendered significantly more difficult or impossible. The court has to consider public interest and the rights of the persons affected, as well as conduct an assessment of the prospects of the action and the foreseeable consequences of the ruling for interim relief.¹⁷ Interim relief measures include suspension of the validity or enforcement of the administrative act contested, prohibition of the issue of the contested administrative act or the taking of the contested measure and ordering the authority to issue the administrative act, take the administrative measure applied for or to discontinue a measure which is in progress.¹⁸
26. No, the court may not engage in an exercise of the discretionary power in the place of the administrative authority (see also answer to question 23).¹⁹
27. According to § 20(1)(7²) of the EIA Act, the EIA report contains a reasoned proposal for the establishment of the conditions of environmental monitoring on the basis of the results of EIA of the proposed activities and reasonable alternatives. The supervisor of EIA shall carry out the *ex post* evaluation of EIA on the basis of the results of environmental monitoring (§ 25(1) of the EIA Act) and, if the results of monitoring do not comply with the requirements provided for in legislation or the development consent, the decision-maker shall amend the conditions of the development consent on the basis of a proposal of the supervisor of EIA (§ 25(3) of the EIA Act).
All results of monitoring are entered into the environmental register, the contents of which are public (except for some special cases). Everyone has the right to examine public data in the environmental register free of charge and to make extracts thereof.²⁰
28. As written in answer to the question 27, the supervisor of EIA (normally the Environmental Board) carries out *ex post* evaluation of EIA on the basis of the results of environmental monitoring. In addition to that, environmental supervision is executed by the Environmental Inspectorate (Keskkonnainspektsioon) and local government bodies and agencies.²¹ Since the environmental requirements determined after the approval of the EIA report are included in the development consent, non-compliance with these requirements is also a violation of the conditions of the permit. Therefore, most of the sanctions are prescribed in the specific laws concerning different environmental permits. Inspections

¹⁵ § 30(2) of the General Part of the Environmental Code Act.

¹⁶ § 31(1) of the General Part of the Environmental Code Act.

¹⁷ § 249 of the Code of Administrative Court Procedure.

¹⁸ § 251(1) of the Code of Administrative Court Procedure.

¹⁹ § 158(3) of the Code of Administrative Court Procedure.

²⁰ §§ 29, 42 and 43 of the Environmental Register Act ("Keskkonnaregistri seadus").

²¹ § 3(1) of the Environmental Supervision Act ("Keskkonnajärelevalve seadus").

take place according to annually elaborated work schedules as well as in reaction to incoming messages and environmental complaints. The author is not aware of the enforcement policy of the Environmental Inspectorate. Statistics on the results of inspections are available on the web site of the Environmental Inspectorate.²² After the entry into force of the final decision in a case, the data collected for the case becomes public and is also available on the web site.

29. See answer to question 28. Both administrative sanctions and fines for misdemeanour can be imposed by the Environmental Inspectorate. The Environmental Inspectorate is also the investigative body in criminal matters concerning the environment, but for criminal offences, punishments can only be imposed by the court.

a. Administrative sanctions: The inspectorate can issue a precept and determine a penalty payment to pay upon failure to comply with the precept.

b. Criminal sanctions: The inspectorate can impose a fine of up to 32 000 € depending on the type of permit and the seriousness of the violation (misdemeanour). In addition, according to § 363 of the Penal Code ("Karistusseadustik"), acting without a natural resource utilisation permit or pollution permit where such permit is required, or violation of the requirements set forth in the permit can be punishable by a pecuniary punishment of up to 16 000 000 € depending on the average daily income of the person.

Administrative and criminal sanctions can be applied at the same time. All of these sanctions can also be applied on legal persons. The sanctions might be considered effective, since environmental violations' statistics show a downward trend since 2003,²³ but the author does not have specific information on the topic.

30. § 53 of the EIA Act prescribes a pecuniary punishment of up to 3 200 € for the violation of a requirement for EIA. Otherwise, the sanctions for starting an activity without the required permit are the same as described in answers to questions 28–29.

31. See answers to questions 28–30.

All Estonian legislation can be accessed on the web site of the official journal, Riigi Teataja: <https://www.riigiteataja.ee/index.html>. Most of the legislation is translated into English and the (unofficial) translations are available either on the aforementioned web site or on the following site: <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022>.

²² <http://www.kki.ee/est/?part=html&id=19>; a summary in English: <http://www.kki.ee/eng/?part=html&id=19>.

²³ <http://www.kki.ee/eng/?part=html&id=19>.