

## **EIA and Access to information, participation and justice**

### **Estonia**

*Overview of EIA legislation in Estonia, compiled by Marit Sall and Piret Kuldna, SEI Tallinn*

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#### 1) The year the EIA law was passed

The environmental impact assessment (EIA) in Estonia began in 1992 when “Procedures of environmental impact assessment” was adopted by the Estonian Government regulation no 314, 13.11.1992. The first EIA law was passed in 01.01.2001 by the name Environmental Impact Assessment and Environmental Auditing Act (RT I 2000, 54, 348). Environmental Impact Assessment and Environmental Management System Act (**RT I 2005, 15, 87**) was first passed in 03.04.2005 and last amended by Act in 27.01.2010, which entered into force in 27.02.2010 (**RT I 2010, 8, 37**).

By the EIA law, the objective of EIA is to make, on the basis of the results of environmental impact assessment of proposed activities, a proposal regarding the choice of the most suitable solution for the proposed activities, which makes it possible to prevent or reduce damage to the state of the environment and to promote sustainable development. EIA provides information to the decision-maker on environmental impacts of the proposed activity and its reasonable alternatives, and the possibilities to prevent or minimize negative environmental impact. EIA allows its results to be taken into account in proceedings for issue of development consent.

Since Estonia is a member of the European Union, the EIA law must be in accordance with Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, which was amended by Council Directive 97/11/EC. At the international level, Estonia became party to the Espoo Convention on Environmental Impact Assessment in a Transboundary Context in 2000. The Espoo (EIA) Convention sets out the obligations of Parties to assess the

environmental impact of certain activities at an early stage of planning and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries.

2) The details of the law:

a) Screening

This EIA Act provides legal bases and procedure for assessment of likely environmental impact, organisation of eco-management and audit scheme and legal bases for awarding eco-label in order to prevent environmental damage and establishes liability upon violation of the requirements of this Act.

EIA is compulsory when applying for development consent or for amendment of development consent for the activity which potentially results in significant environmental impact. As well as in case, when activities are proposed which alone or in conjunction with other activities may potentially significantly affect a Natura 2000 site. Environmental impact is significant, if it may potentially exceed the environmental capacity of a site, cause irreversible changes to the environment, endanger human health and well-being, the environment, cultural heritage or property. Activities with significant environmental impact are listed in the §6 (1) and specified by the Government Regulation no 224 (RTI, 08.09.2005, 46, 383), Detailed List of Areas of Activity Requiring Consideration of Need for Initiation of Environmental Impact Assessment. If the EIA is not mandatory by the Act, the discretion must be used. All the activities with the environmental impact must be assessed on the basis of the listed criteria at §6 (3).

During the period of 2001-2004 and I quarter of 2005, 633 EIAs were initiated in Estonia (Figure 1). The number of EIAs has varied greatly throughout the years and reached at its highest peak in 2002 when 238 EIAs were initiated. The number of EIAs has dropped after the new Planning Act entered into force in 01.01.2003. After that, assessments of the potential environmental impacts resulting from the implementation of plans were carried out pursuant to the Planning Act.

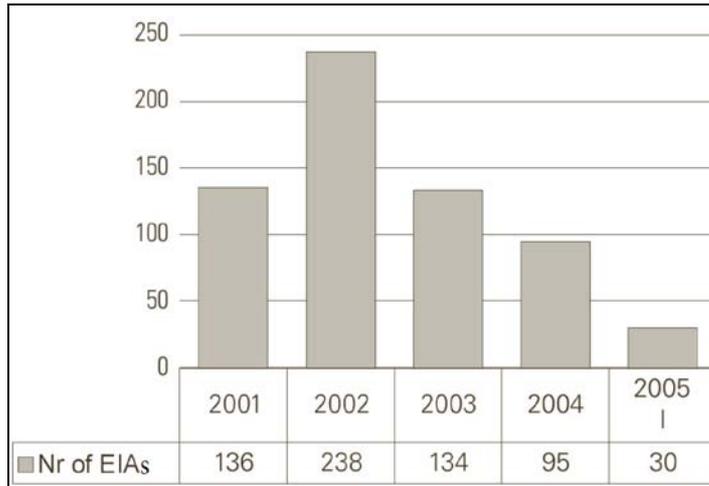


Figure 1. Initiation of EIA proceedings in Estonia in 2001-2004/2005 I quarter (Peterson *et al.*, 2006).

The majority of initiations of EIA were compulsory by the Act during the period 2001-2004/2005 I quarter. Research has shown that only around 10% of reasons for initiating EIA were discretionary decisions (Figure 2).

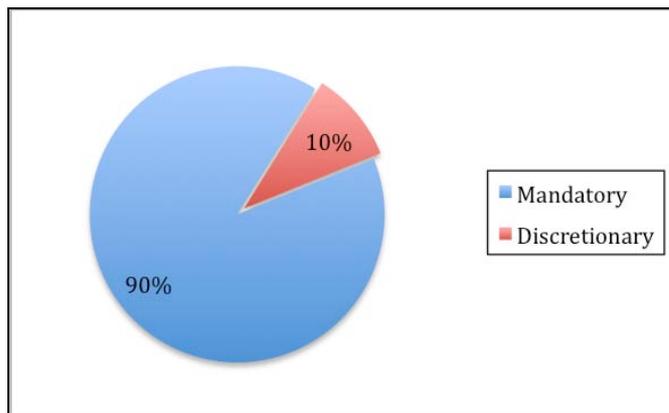


Figure 2. Reasons for initiating EIA – mandatory or discretionary decision. Estonia, 2001-2004/2005 I quarter (Peterson *et al.*, 2006).

#### b) Participation design

The five participating parties in the EIA are:

1. Developer – a person who proposes an activity and intends to carry it out. The developer will organise environmental impact assessment and has to cover the expenses as well.

2. Decision-maker – the issuer of development consent. Decision-makers decide to initiate or refuse to initiate the environmental impact assessment of proposed activities.
3. Expert – EIA must be assessed or directed by a natural person who holds a license for environmental impact assessment, or a legal person through an employee holding a relevant license.
4. Supervisor of the EIA – Ministry of the Environment or Environmental Board.
5. Interested parties/public – people, organisations, associations or groups interested in the activity.

The initiation of EIA comes from the developer, who will submit an application for development consent to the decision-maker. The decision-maker reviews the application and will make a decision to initiate or refuse to initiate environmental impact assessment of proposed activities. EIA will be initiated when environmental impact is significant. Research carried out in 2006 shows that the main decision-makers were local authorities, who initiated 60% of EIAs, 20% were initiated by county environmental boards and 18% by the Minister of the Environment. The results are shown in Table 1.

Table 1. Initiation of EIAs by decision-makers in Estonia in 2001-2004/2005 I quarter (Peterson *et al.*, 2006).

<b>No</b>	<b>Decision-maker</b>	<b>No of EIAs</b>	<b>%</b>
<b>1</b>	Local authorities	360	60.4
<b>2</b>	County Environmental Boards	117	19.6
<b>3</b>	Ministry of the Environment	107	17.9
<b>4</b>	Road Administration	6	1
<b>5</b>	Land Improvement Bureau	4	0.7
<b>6</b>	Estonian Railway Inspectorate	1	0.2
<b>7</b>	Radiation Safety Department	1	0.2
	<b>TOTAL</b>	<b>596</b>	100

The decision-maker has to notify participants in proceedings of initiation of EIA by sending an unregistered letter or a registered letter and at the expense of the developer in the official publication *Ametlikud Teadaanded* within fourteen days after the decision to initiate environmental impact assessment is made.

The bases of the successful public consultations are intensive preparations. In order to avoid the public hearing turn into formality, the notification of the public display must be carried out on schedule, using appropriate means of communication and including all stakeholders. The notification of the public display of the programme (i.e. Terms of Reference for assessment) or report (i.e. Environmental Impact Statement) must be given at least in the official publication *Ametlikud Teadaanded* and in one national newspaper or one local or county newspaper and in at least one public building or place of the location of the proposed activities (§16 (2)). The EIA programme and report must also be published on decision-maker`s webpage, to ensure to the public the possibility to examine them at least until the end of the term for submission of proposals, objections and questions.

In addition to that, the decision-maker has to give notification of the public display of the EIA programme and report to:

- 1) The county governments and local governments into the territory of which environmental impact of the proposed activities may extend;
- 2) Supervisor of environmental impact assessment;
- 3) The Environmental Inspectorate;
- 4) The administrator of the protected natural feature which is potentially significantly affected by the proposed activities;
- 5) Environmental NGO's;
- 6) The owner of the area of the proposed activities and the neighbouring owners;
- 7) Other participants in proceedings.

c) Public hearing process

There are two public hearings required within the EIA. The first is the publication of EIA programme, which will be preceded by the publication of EIA report. The objective of the public hearing of the programme is to introduce administrative proceedings of the EIA, describe the main known significant impacts on environment and the method of their identification and analysis, offer alternatives, review the extent of the affected area and involve participants' choices. The developer wishes to exploit the common environment in order to achieve his/her objectives and therefore needs the agreement of the rest of the community or general public. As a result of the public hearing, the participating parties are expected to have reached common understanding in the main impacts, methodology of the analysis, relevance of the alternatives and additional stakeholders to be engaged in the EIA process.

At the time of the public display, everyone has the right to access an environmental impact assessment programme and report and other relevant documents of the public consultation, submit proposals, objections and questions regarding the programme and obtain responses (§16 (5)). The publication of the EIA programme and EIA report must be organised by the decision-maker with the duration not less than 14 days.

The expert together with the developer has to make, on the basis of the proposals and objections submitted regarding the programme and the report during the public display, the necessary amendments to the programme and the report and explain why proposals and objections are taken account of or justify why they are not taken account of and respond to the questions (§17 (2)).

In 2006, 21 EIA reports were examined to assess compliance of EIA proceedings with the requirements of legislation. In Table 2, the results of compliance of selected proceeding stages to the legislation requirements is shown (yes, no, partly or lack of information). The most problematic aspects in EIA proceedings were the content of notification of the EIA initiation and notification of publication of the EIA programme.

Table 2. Compliance of EIA proceedings with the requirements of legislation  
(Peterson *et al.*, 2006).

No	Compliance of proceedings with the requirements of legislation	Yes	No	Partly	Lack of information in the report
1	Initiation of EIA	15	3	0	3
2	Content of notification of the EIA initiation	6	15	0	0
4	Notification of publication of the EIA programme	10	11	0	0
3	Notification of publication of the EIA report	21	0	0	0
5	Duration of public display of the EIA programme	12	9	0	0
6	Duration of public display of the EIA report*	16	6	0	0
7	Conducting public hearings of the EIA programme and report	18	3	0	0
8	Involvement of interested parties to public display and hearing of the EIA programme	12	9	0	0
9	Involvement of interested parties to public display of the EIA report for submission of proposals, objections and questions	15	4	2	0
10	Amendments to the EIA programme on the basis of submitted proposals	21	0	0	0

\* In one of the proceedings two public displays were organised, therefore the total number of analysed proceedings were 22.

d) Type of appeals process

The provisions of the General Part of the Penal Code and of the Code of Misdemeanour Procedure apply to proceedings regarding the misdemeanours in violation of requirement for environmental impact assessment and strategic environmental assessment (§ 53, [RT I 2010, 8, 37](#)). The Environmental Inspectorate will conduct extra-judicial proceedings in the matters of these misdemeanours.

Before court proceedings, it is possible to dispute an administrative act in the challenge proceedings, regulated by the Administrative Procedure Act.

e) Major exemptions

If the developer applies for development consent, upon application for which the building design documentation must be submitted, and environmental impact of proposed activities has been assessed in the course of preparation of the building design documentation, the decision-maker will not initiate EIA if he/she has sufficient information for issue of the development consent. If proposed activities potentially result in a significant environmental impact, the decision-maker may refuse to initiate EIA of proposed activities in the part, in which the environmental impact has already been assessed in the course of strategic environmental assessment.

References

Environmental Impact Assessment and Environmental Management System Act, [RT I 2010, 8, 37](#).

Environmental Impact Assessment and Environmental Auditing Act, [RT I 2000, 54, 348](#).

Peterson, K., Kuldna, P., Poltimäe, H., Uustal, M. 2006. Ülevaade keskkonnamõju hindamise praktikast Eestis. [*Overview of EIA practice in Estonia*]. SEI publication no 9, Tallinn.