AVOSETTA RIGA MEETING

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Topic: "Permit procedures for industrial installations and infrastructure projects Under **Estonian Law**: Assessing integration and speeding up"

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A. Baseline information

I. Industrial Installations

1. Forms and scope of permits

Estonian legislation on environmental related permits is currently fragmented and inconsistent. The relevant substantive and procedural requirements are scattered throughout several acts and regulations. There are several types of permit requirements.

Land use plan and building permit

For the erection of an installation a **building permit** is required. A building permit grants the right to build the construction work that corresponds to the building design documentation on the basis of which the building permit is issued. The competent authority is as a rule **the local government**. The application for building permit and the related documents are submitted to the competent authority electronically via the register of construction works. The competent authority decides on the need to initiate the assessment of environmental impact. According to the law the competent authority issues the building permit within **30** days from the date of submission of the application. This time limit may be extended in reasonable cases. However, in practice it happens very often. Unlike environmental permits the building permit shall be reviewed not in the open proceedings. However, where necessary, the competent authority refers the proposal of the building permit for an opinion to the institutions or persons (most commonly neighbours) whose rights or interests may be affected by the construction work The latter is in fact the main reason for the extension of the above mentioned 30-day time limit.

An application for building permit shall be refused if the building design documentation does not meet the requirements including the detailed spatial **land use plan**. In the latter case the preparation of a new (or amended) spatial plan should be initiated. If an adopted detailed plan is required for the activity allowed with the environmental permit or for the building of constructions, permit shall not be granted before the adoption of such detailed plan.

Certain types of land use plans include legally binding provision which should be taken into account when deciding on administrative matters. What´s more, land use requirements of comprehensive and detailed plans are binding to private entities as well. There is a general legal requirement that building permits may be issued only on the basis of valid land use plan. But

depending on the nature and extent of the activity, environmental permits may be dependent on the land use plan too.

Fundamental principle of the planning law is public participation in open planning proceedings. Planning activities are public. Public disclosure is mandatory in order to ensure the involvement of all interested persons and the timely provision of information to such persons and to enable such persons to defend their interests in the process of planning.

As for the duration of the planning procedure, there are no specific deadlines. In practice - depending on the type of the land use plan the duration of the proceedings may be very different and take from a **few months to several years**

Planning law is the only area of law in Estonian legal system under **which *actio popularis*** is prescribed. According to the Planning Act anyone who finds that the decision by which the comprehensive or detailed plan is adopted is contrary to public interest **or** infringes his or her rights or impinges on his or her freedoms has the right to contest the decision in court within 30 days from the day on which he or she became or should have become aware of the adoption of the plan. Consequently, the contestation of the plan in court may prolong the whole planning procedure considerably.

Environmental permits

An installation which simultaneously affects the environment in various ways (uses water, pollutes the air, produces waste, etc.) must have multiple **environmental permits,** with all of them having been applied for and issued in different procedures. In addition, not infrequently the permit requirements are too burdensome for both - operators and administrative authorities. For instance, an ambient air pollution permit is also required for activities that probably do not have any noteworthy impact on the state of the environment, such as boiler plants with the capacity of 0.3 MW – what is from environmental protection point of view quite ridiculous

Under current law the following basic types of environmental permits are in use in Estonia: the integrated pollution permit (hereinafter IPPC permit), sectorial permits and temporal permits

IPPC permit is required under the Industrial Emissions Act. The latter is the instrument of implementation of Directive on Industrial Emissions (2010/75/EU). IPPC permit replaces other environmental permits and is granted for simultaneous emission of pollutants into ambient air, body of water, soil or groundwater layer and waste handling.

Sectorial permits are required by various environmental acts. Such permit is granted for exploitation of a specific natural resource, for emitting pollutants into the specific sector of the environment or waste handling. More specifically: The Ambient Air Protection Act sets out the obligation to obtain ambient **air pollution permit** for emission of pollutants into ambient air from stationary sources of pollution. The Water Act establishes the duty to obtain **permit for the special use of water. Waste permit** is required under the Waste Act, for instance, for disposal of waste, waste recovery, collection or transport of hazardous waste etc. The Earth's Crust Act

defines requirements for permits, which are needed for **geological investigation, geological exploration, and extraction of mineral resources.**[1]

Special (temporary) permit grants special conditions for polluting activity, which exceed the environmental limits established in the basic permit. Pursuant to the Water Act the special permit could be granted if prevention of pollution is impossible pursuant to a basic permit. A special ambient air pollution permit, pursuant to the Ambient Air Protection, can be issued in case if the technology of the production process or the plant leads to the emission limit value of a pollutant permitted by a basic permit being exceeded.

Applications for environmental permits are processed by the Environmental Board. Only in exceptional cases the Ministry of Environment or local government is the competent authority. For instance, the Ministry issues a permit for special use of water at the sea.

Environmental permit is public. The permit is issued in open proceedings (see point B). The public is notified electronically and occasionally also in local or national media. In open proceedings not only those persons whose rights may be affected by a permit but all persons have the right, within a designated term, to submit to the administrative authority conducting the proceedings proposals and objections concerning the draft permit.

Estonia has developed the electronic permit information system. The Information System for Environmental Permits holds digital data about 6 major fields: water, waste, mining, air, complex and climate. Website for public use shows all environmental permits, licenses or registrations that are currently issued[2]:

Coordination of different permits

As mentioned above an operator of an installation which simultaneously affects the environment in various ways must have multiple environmental permits The procedures and substantive conditions of these various permits are **not coordinated** and do not guarantee integrated control of the environmental effects of industrial operations and accordingly, at least in theory, tend to be ineffective from the integrated environmental protection point of view. Positions on this issue, however, are different. Often, it is on the contrary argued that a full transition to substantively integrated permit also leads to an excessive administrative burden and entail the necessity of thorough reorganization of administrative/ IT structures and procedures. Despite these misgivings, however, it is in plans to carry out an environmental permitting reform in Estonia, which foundations will be described below (point B)

In principle the emission allowed with environmental permits to several polluters should be determined so as to ensure that the environment quality limit value will not be exceeded.

[1] In addition to these major permits, the permit system exists also in areas of introduction of genetically modified organisms into the environment or placing them on the market, radiation protection, fisheries and hunting and nature conservation

[2] https://eteenus.keskkonnaamet.ee/?page=avalik_stat_koond&act=avalik_info

However, in practice such system does not work. Emission allowances of pollutants are not calculated in a way which shall not cause the overshoot of limit values outside the production area of particular installations.

Environmental Impact assessment

Permit and land use planning procedures may entail initiation of an environmental impact assessment. EIA is carried out according to the EIA Act. The act is modelled after respective EU directives. Environmental impact is assessed upon applying for development consent or for amending development consent whereby the proposed activity potentially results in significant environmental impact. The typical development consents in this context are building permits, environmental permits and natural resource extraction permits. However, the development consent is, in principle, any document that permits an activity with potentially significant environmental impact.

In cases when development consent, or amendment of it, is applied for, the competent authority issuer of the consent has first to decide whether to initiate environmental impact assessment proceedings. This decision should be based on the results of **screening** procedure The issuer of the consent has to initiate the proceedings if the proposed activity may result in significant environmental impacts. The issuer of consent has to assume that the impact of the proposed activity is significant if the proposed activity is specifically listed in Article 6(1) of the EIA Act[3]. The list includes various activities, such as incineration of hazardous waste and installation of wind farms in water bodies. In other instances, the issuer of the consent has to decide case-by-case whether the impact of the proposed activity may be significant. Article 6(3) of the EIA Act sets out several criteria for the preliminary estimate on the significance of the potential impacts, such as the environmental conditions of the site of the activity and the possibility that emergency situations result from the activities. After making a decision to **initiate** the environmental impact assessment of a proposed activity, the expert jointly with the developer, prepare an environmental impact assessment **programme**. (**scoping**) After the public consultation of an environmental impact assessment **report**, the developer will submit the report to the decision-maker for verification of the compliance with the requirements and acceptance of the report.
If the EIA proceedings are initiated, processing of an application for a development consent is suspended until approval of an EIA report. There are no fixed time limits for the entire EIA procedure. But there are time limits as regards certain procedural acts, for instance duration of public display (no less than 14 days) or opinion of the local government (up to 30 days)

Wide access to justice.

In Estonia opportunities to challenge the administrative act (Land use plan, EIA report, environmental or building permit) are wide and this significantly influences the permit systems. According to Estonian law **any person who considers that his or her rights** have been harmed by the issuance of environmental permit (as well as by EIA decision) may submit a challenge to the administrative authority or submit a claim to an administrative court. If an **environmental**

[3] This list largely corresponds to Annex I of the EIA directive

organisation challenges an administrative act (permit) then that environmental organisation shall be assumed to have a justified interest or to have its rights violated if the challenged administrative act or action is related to the environmental protection objectives or past environmental protection activities of the organisation.

From the end of 2014 Estonian General Part of Environmental Code Act (hereinafter GPECA) prescribes substantive environmental right – **namely right to live in an environment adequate to health and well-being.** Under it every person shall have the right to an environment adequate to his or her health and well-being, if having a significant exposure to that environment. A person is deemed to have a significant exposure to an affected environment if being often present in the affected environment, using often the affected natural resource, or having a special relation with the affected environment by some other reason. In order to protect this right an administrative authority may be requested to sustain the environment and to take reasonable measures for ensuring the adequacy of the environment to health and well-being. This right significantly expands the access to justice and may lead to considerable prolongation of the whole permitting procedure

2. Procedures

2.1. Short case study:

"Waste disposal installations for the incineration or chemical treatment as defined in Annex I to Directive 2008/98/EC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day" (Annex I, pt. 10 EIA Directive).

Permit procedure is **public** and consists of the following steps

I – Application
Installation should obtain IPPC permit Under Industrial Emissions Act. IPPC permits are issued by the Environmental Board. If possible, the application shall be submitted in digital format and it shall be digitally signed. A set of documents shall be appended to the application: for example such as - an environmental impact assessment statement, a short description of the main alternatives to the proposed technology, techniques and measures, if such alternatives have been studied etc.
II – Acceptance of application for processing
Environmental Board shall verity the conformity of an application for an integrated permit within 21 days as of the receipt thereof.
III – Opinion of local government

Environmental Board shall immediately forward an application for permit after the acceptance of the application to the local government of the installation site for an **opinion**. A local government shall submit a written opinion within 30 days as of the receipt of the application. Submission of an opinion shall not limit the right of the local government to submit additional positions in the course of further procedure. Negative opinion is not among the grounds for refusal of the permit

IV – Public notice

A) Environmental Board shall **publish a notice** concerning **acceptance of an application** for permit for processing in the official publication *Ametlikud Teadaanded* within seven days as of the acceptance of the application for the integrated permit for processing. In addition, Environmental Board shall also notify the public of the acceptance of an application for a permit for processing in a local or county newspaper of the site of the installation at the expense of the applicant. If the activities permitted by an integrated permit may result in significant negative impacts on the environment, human health and well-being, property and cultural heritage at a regional or national level, the notice shall be published in at least one national newspaper.

B) Public **notice** concerning **completion of draft integrated permit** in the official publication *Ametlikud Teadaanded* and on its website. The aforementioned notice shall be accessible on the website until the end of the processing of the application for the integrated permit. Environmental Board shall also notify, at the expense of the person applying for an integrated permit, of the completion of the draft integrated permit in the newspaper which published the notice concerning the acceptance of the application for the integrated permit for processing.

V – Positions of the public

Everyone (without any further standing requirements) has the right to submit positions and questions to the issuer of permits concerning an application for an integrated permit and a draft permit. A written position shall set out the name and contact details of the person who submitted it and the reasons for the position

VI - Public consultation

Environmental Board shall organise a **public consultation** at the request of the person applying for a permit or an interested person or on its own initiative, if this is necessary for the just adjudication of the matter. In the case the environmental impact is assessed, organisation of a public consultation is mandatory in the processing An application for an integrated permit and a draft permit can be examined and positions and questions on them can be submitted within at least 21 days as of the beginning of the public display of an integrated permit.

VII – Processing of the application and ground for refusal

Environmental Board shall decide on **issue** of an integrated permit within 180 days as of the acceptance of an application for processing. If the making of a decision takes more time due to technical complexity of an installation, the issuer of permits may extend the term for the

processing but not for a longer period than **one year** as of the acceptance of the application for processing. The applicant for an integrated permit and other parties to the processing shall be notified in writing of the extension of the term, the reasons thereof and the proposed term for the making of the decision.

Environmental Board may refuse to issue an integrated permit, if:
1) the operation in a specific category of activity or subcategory thereof for which the integrated permit is applied for **does not comply with the requirements** provided by legislation;
2) the proposed activities of the installation do not comply with the **best available techniques** ;
3) it may be concluded on the basis of the information presented in the application for an integrated permit that the activities for which the integrated permit is applied for do not allow compliance with the **environmental quality standards**;
4) **false information** has been submitted in the application for an integrated permit or during the processing thereof.

VIII – Public notice concerning issue of or refusal to issue integrated permit

Environmental Board shall disclose the issue of a permit or refusal to issue it in the official publication *Ametlikud Teadaanded* within **seven days** as of the issue of the permit or refusal to issue it.
A notice concerning the issue or refusal to issue of an integrated permit, the integrated permit and the decision on the issue of the integrated permit shall be immediately forwarded to the **rural municipality or city government** of the location of the installation and disclosed on the website of the Environmental Board within **seven days** as of the issue of the integrated permit.

2.2 What are the main characteristics of the applicable permit procedure or procedures?

- The competent authority is Environmental Board. The Environmental Board falls within the area of governance of the Ministry of the Environment. One of its main functions is issuance of permits in environmental area

- **EIA is a separate/autonomous** procedure and directly not integrated into the permit procedure. The issue of the permit should decide whether or not to initiate EIA procedure after the acceptance of the permit application. When EIA has been initiated the permit procedure suspends. An environmental permit shall not be granted before the approval of the report of assessment of environmental impacts if an assessment. Only one environmental impact assessment is initiated in the proceedings of an application for the same development consent (permit) If an application for two or more permits required for the proposed activity is submitted to one decision-maker, the decision-maker may join the proceedings regarding environmental impact assessment of the proposed activity with the consent of the developer, unless this violates the rights of third parties
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- In principle if the **threshold** established by law are exceeded the permit shall be required. There is no possibility to exclude particular installation. In certain cases, prescribed by

law, when an installation does not exceed the permit threshold **registration** with the Environmental Board may be required. Registration is a simplified form of development consent – less information required from the applicant, no public procedure, limited ground for refusal, narrower room for discretion in determining conditions

- All Environmental permits are issued by competent environmental authority – **Environmental Board**.

- All principal environmental permit procedures are **public** and embody public notices, public consultations (public display, public hearing). As a rule **everyone** has the right to submit positions and questions to the issuer of permits concerning an application for an integrated permit and a draft permit.

- In most cases (water, air, waste) there are **no fixed time limits** for the entire procedure. IPPC permit is exception in this respect and as a rule permit should be issued as a rule within 180 days. More frequently there are time limits as regards certain procedural acts , for instance duration of public display (no less than 14 days), opinion of the local government (21-30 days) etc.

- **Any person** who considers that his or her rights have been harmed, including the above mentioned right to environment adequate to health and well-being, may submit a challenge to the administrative authority (in 30 days) or submit directly a claim to an administrative court (in 30 days) If an environmental organisation challenges an administrative act or a performed action then that environmental organisation shall be assumed to have a justified interest or to have its rights violated

II. Infrastructural Projects

Construction of a highway of the type indicated in Annex I, point 7, (b), of the EIA Directive

1. Is there a need to draw up a plan or to review a plan in the sense of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment?

For the erection of a highway a building permit is required, the permit should be issued by the local government(s) The permit should be in conformity with the land use plan. If the land use plan does not presume building of a highway the preparation of a new (or amended) spatial plan should be initiated. Such highway should be subject to a **county-wide land** use plan. The most significant stages of the procedure are as follows:

- A county-wide spatial plan is prepared in cooperation with the ministries, the local authorities within the planning area and the government agencies in whose area of government the questions dealt with in the plan fall, and with the governors of the counties that border on the planning area. The preparation of a county-wide spatial plan and the

conduct of **the strategic environmental assessment** is initiated by order of the county governor.

- The authority arranging the preparation of county-wide spatial plan transmits the initial **planning outline** of the county-wide spatial plan and the memorandum of intention to conduct strategic environmental assessment of the plan to the concerned persons and bodies inviting those bodies and persons to present proposals in regard to these documents and sets a time-limit that may not be shorter than 30 days for the presentation of the proposals.

- The authority arranging the preparation of the county-wide spatial plan arranges **the public display** of the plan and of the strategic environmental assessment report. The public display is held at least in the administrative centre of the county on whose territory the planning area is located.

- A **public discussion of** the results of the public display of the proposed county-wide spatial plan and strategic environmental assessment report is held within 45 days from the end of the public display. The public discussion is held at least in the administrative centre of the county in whose territory the planning area is situated.

- If **written opinions** are received during the public display of the proposed county-wide spatial plan and strategic environmental assessment report, the information concerning the results of the public display is published in the county newspaper or in one newspaper of nation-wide circulation and in the local newspaper of each local authority situated in the planning area within 30 days from the date on which the public discussion was held.

- When the results of the strategic environmental assessment report **are incorporated in the county-wide spatial plan**, the authority arranging the preparation of the plan makes the decision on accepting the county-wide spatial plan.

- After it has accepted the county-wide spatial plan, the authority arranging the preparation of the plan arranges the **public display of the plan.** The public display is held at least in the administrative centre of the county in whose territory the planning area is situated.

- A **public discussion** of the results of the public display of the county-wide spatial plan is held within 45 days from the end of the public display. The public display is held at least in the administrative centre of the county in whose territory the planning area is situated.

- The county-wide spatial plan is submitted for **ratification** to the minister responsible for the field.

- The county-wide spatial plan that has been ratified by the minister responsible for the field is **adopted** by order of the county governor.

County-wide land use plan cannot be contested in the court by private entities.

2. Would there be a need to obtain one or more permits to construct and operate the highway mentioned under point II? Is an EIA necessary?...

See part A of the questionnaire.

B. Describing and evaluating integration and speed up legislation

New General Part of Environmental Code Act (GPECA) contains also a chapter on the new, reformed environmental permit procedure. The purpose of the reform of environmental permit system in GPECA is to provide for uniform permit procedures and permit basic conditions for different sectors of environmental law. One of the main goals of the reform is simplification and possible speeding up of the permit procedures and reduction (or at least coordinating) of parallel procedures. However, permits chapter of the GPECA in not in force yet, and at the moment is very hard to predict when it could happen.

The new permit system aims at **integrating environmental permit procedure** rather than the substance of the permits, i.e. the environmental permit is not an integrated permit in the meaning of the IPPC Directive. It is possible, however, that in in the practice the combined effect of different environmental impacts will be considered. The GPECA governs environmental permits (except of IPPC permit) issued as a result of integrated procedure. An environmental permit grants the right to at least one of the following activities - use of water, air pollution from stationary sources, handling of waste, extraction of mineral resources, Radiation practice.

The essence of the new permit procedure is - if any of above–mentioned activities are spatially or technologically related to each other, a **single environmental permit** shall be granted for these activities. A single request for environmental permit has to state all intended activities for which an environmental permit is required and consequently a single permit (not multiple permits as now) will be issued for all activities. The specific requirements and the form of requests for environmental permits, and also the form of requests for amending an environmental permit shall be specified by the Minister of Environment with a regulation.

Similar to the current system environmental permits will be processed in open proceedings, except in cases prescribed in law, e.g. amending of an environmental permit if such amendment does not affect the level of environmental risk and there is no other significant public interest towards conducting open proceedings;

The GPECA provides that the granting of an environmental permit has to be decided within **90** days after receiving the request conforming to the relevant requirements, unless prescribed otherwise in the law. In case environmental impact assessment will be carried out, the above-mentioned deadline must be respectively extended.

For the purpose of introducing more flexibility into the permitting procedure GPECA makes it possible to determine certain circumstances significant for granting an environmental permit, before granting the permit. Upon request of the applicant or at own initiative, the entity granting environmental permits may **determine in a binding manner the circumstances having significance** for final deciding of the matter before granting or refusing to grant the environmental

permit, including determining the lack of grounds for refusal to grant an environmental This opportunity provides applicant with more certainty about possible result (positive or negative) of permit proceedings and in turn, more certainty regarding preparation to planned activities. Upon request of the applicant for an environmental permit, the issuer of permits may, before deciding the matter of the application for environmental permit as a whole, **grant partial permit -** the environmental permit for some of the activities stated in the application if there are no grounds for refusing the allowing of such an activity, or refuse to grant the environmental permit for some of the activities stated in the application if an environmental permit must not be granted for such an activity.

My understanding is that the reform could lead to three most important positive consequences

- The situation will become **easier for the operator.** Instead of current multiple open permit procedures there will be only one single procedure (one consultation with the public, one EIA etc.)

- From environmental protection point of view more effective – though not directly required, such system will make it possible in the practice to consider the combined effect of different environmental impacts and so contribute to the **integrated protection** of the environment

- For the general public and directly affected persons integrated procedure will prevent effect of "salami slicing" and gives **better overview** of cumulative effects of the planned activity and thereby better opportunities for the **protection of their environmental related rights.**

C. Locus standi for a local government within the permitting procedure

Estonian environmental acts the issuer of permits is obliged to forward the application for environmental permit to the local government of its region for an **opinion** immediately after determining the compliance of the permit application with the relevant requirements. Within **one month** after the receipt of an application for a permit, the local government shall present its opinion to the issuer of permits in writing. The presenting of an opinion shall not limit the right of the local government to issue additional opinions in the course of further proceedings.

Under the Administrative Court Procedure Act the local government may bring an action against another public authority (e.g. Permit authority) for the purpose of protection of its rights, including the right of ownership and any rights arising from public law contracts. A local government may also bring an action if an administrative act or measure of another public authority significantly hinders or complicates the performance of the duties of the local authority.