

### FORMAT FOR AARHUS CONVENTION IMPLEMENTATION REPORT

The following report is submitted on behalf of Estonia in accordance with decision I/8 and II/10

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Signature:	
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### IMPLEMENTATION REPORT

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## **I. PROCESS BY WHICH THE REPORT HAS BEEN PREPARED**

The questionnaire serving as the basis for the preparation of the report was sent in August 2010 to the agencies of the national and local governments and non-governmental organizations (NGOs) and all other interested parties and also published on the website of the Ministry of the Environment. There were altogether 32 responses received from ministries and their agencies, local government institutions, profit and not for-profit institutions active in the environment sector and NGOs<sup>1</sup>. On the basis of these responses the implementation report of 2007 was completed by the Ministry of the Environment and sent for commenting to all those who had responded. The draft report was also published on the website of the Ministry for commenting and sent to the web list Nature Time. The draft report was amended on the basis of the received comments.

## **II. PARTICULAR CIRCUMSTANCES RELEVANT FOR UNDERSTANDING THE REPORT**

According to the Constitution of the Republic of Estonia, in the case of inconsistency between national legislation and provisions of an international convention, treaty or similar act having legally binding effect, the provisions of the latter prevail. Based on this provision, the Convention is directly applied by courts, namely through the recognition of the right of access to justice of environmental NGOs challenging the acts of public authorities in the public interest.

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<sup>1</sup> The complete list of those who responded is shown in annex.

### **III. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE GENERAL PROVISIONS IN PARAGRAPHS 2, 3, 4, 7 AND 8 OF ARTICLE 3**

(a) The obligation established in the Convention to assist and guide the general public in the application for environmental information and have recourse to the courts regarding these issues has been established in the Public Information Act, Response to Memoranda and Requests for Explanations Act and Administrative Procedure Act in the national legislation of Estonia.

The general obligation of public authorities as the holders of information to assist persons making requests for information has been established in paragraph 9 of the Public Information Act. A more detailed description of the obligations is provided in paragraph 15 of the same Act, according to which the holders of information are required to clearly explain the procedure for, and the conditions and manners of, access to information to requesters; assist them in every way during the application process, and identification of the relevant information and most suitable manner of access thereto; and if necessary, promptly refer requesters to the competent official or employee, or promptly forward the request in writing to the competent official or employee. If a request for information does not indicate the manner in which the requested information is to be provided, the holder of information shall promptly contact the requester in order to clarify the request.

In most State and local government institutions, special training programmes have been carried out to train the officials on communicating with and informing the public.

The websites of State and local government institutions contain information on their areas of work together with the contact details of experts. More and more, environmental information is also published there. Most of the homepages includes an option for submitting requests for information electronically.

According to the Response to Memorandum and Clarification Request Reply Act, a public authority has the obligation to give free of charge explanations on legal acts or projects thereof developed by the public authority, and legal acts forming the basis of its activities and its competence. The Act also establishes the obligation to receive persons.

The explanation obligation of public authority bodies is also established in paragraph 36 of the Administrative Procedure Act, according to which an administrative body is obligated to explain the rights and obligations of parties to the procedure and the order of procedure;

(b) Regulation No. 13 of the Minister of Environment of 17 February 2006 "Conditions and procedure for the evaluation of project applications for funding, criteria for evaluation of applications, decision-making procedure, procedure for exercising control over the performance of the agreement and reporting procedure" is periodically updated in cooperation with the Bureau of Environmental Education of the Ministry of the Environment, the priorities of the environmental awareness of the environmental programme of the EIC and supporting activities are specified in the Regulation. One priority activity line is "Arranging information events and campaigns for increasing environmental awareness for specified target groups" aiming to motivate various organisations active in the field of environment to arrange events for the public for increasing environmental competence.

Besides legislative measures the Ministry of the Environment and its agencies have also applied other measures that assist the public in accessing environmental information. All printed matter published in the Ministry of the Environment and its agencies are recorded in the collection of information of the Ministry and the information regarding their existence and location is available in the web-based integrated library system URRAM (<http://www.lugeja.ee/Avalik/otsing.jsp>)

The Department of Public Relations of the Ministry of the Environment publishes an information booklet "Looduse Hääl" (Voice of Nature) as the additional sheet of the daily Postimees (four issues in 2009, two issues in 2010) and the Russian-language "Vestnik Prirody" as an additional sheet of the newspaper Põhjarannik/SZevernoe Poberezhžje by the project based support of the EIC. The Department of Public Relations of the Ministry of the Environment also arranges training in the field of environmental information to the journalists, incl. with the aim to direct the journalists to use various sources and registries of environmental information in order to add reliability to the media reflections of environmental issues.

A separate position was introduced in the Foreign Financing Department of the Ministry of the Environment for dissemination of information to the public regarding Structural Funds of the EU.

In every two years (2008, 2010) the Ministry of the Environment organises a survey of the environmental awareness of the Estonian population. The survey report is published in the web page of the Ministry at (<http://www.envir.ee/378516>). The survey report is introduced to the public through media and all parties willing besides agencies of the Ministry of the Environment can use it in planning their information activities. Inter alia, the survey reflects the use of media among the population of Estonia and various resources for obtaining environmental information.

The Environmental Board operating in the administrative area of the Ministry of the Environment is a government agency exercising executive power and state supervision and applying enforcement powers of a state on the bases and in the extent provided by law. The area of activity of the Board includes implementation of the policy and programmes and action plans of the state's environmental and nature protection and use and radiation safety. The 18 employees of the Environmental Education Department of the Environmental Board are deployed in all counties. Arising from the bylaws of the Environmental Board the Environmental Education Department arranges and implements among other tasks activities for target and stakeholder groups promoting environmental education and principles of sustainable development. The aim is to inform various target groups (landowners, small and medium-sized enterprises, employees of local governments etc.) of environmental legislation and amendments thereto; national aims regarding nature conservation concerning various stakeholder groups; issues related to environmental permits etc.

During its period of activity the Environmental Board has engaged approximately 40,000 people in various information events. The information activities of the Ministry of the Environment are aimed at the pupils of schools of general education, teachers, undertakings, and land owners and also at all citizens. The information events include information days, training, competitions in the field of environment, thematic exhibitions, educational programmes regarding environment. Educational programmes regarding environment have been developed in almost 100 subjects and their contents are available in the data base of environmental education at

([www.keskkonnaharidus.ee](http://www.keskkonnaharidus.ee)). Educational programmes promote environmental awareness of children and adolescents.

The Environmental Board also comprises information materials which are publicly available at the web page of the Environmental Board at ([www.keskkonnaamet.ee](http://www.keskkonnaamet.ee)). In 2009 the total number of various printed matter reached to 28 with the total circulation of 81,700 copies. 4,000 copies were published in English and 2,000 both in German and Russian. Keskkonnaharidusleht (Environmental education newspaper) reaching all schools in Estonian and in Russian is the printed material with the largest circulation. The aim of the newspaper is to introduce agencies engaged in environmental education, to mediate best practices of schools and kindergartens and to develop systematic cooperation with the actors in the field of environmental education. Most of the publications are available at the web page of the Environmental Board at (<http://www.keskkonnaamet.ee/index.php?id=11071>).

Environmental Board has called roundtables of environmental education at the county level in order to improve the cooperation between the agencies active in the field of environmental education and informing of target groups. More than 400 people all over Estonia have participated in the roundtables. The information regarding roundtables is available at the web page of the Environmental Board at (<http://www.keskkonnaamet.ee/index.php?id=11636>).

In 2002, a foundation Tartu Environmental Education Centre was established. The Centre's main task is to enhance the environmental education and awareness through publications, lectures, excursions and other events. In 2006-2007, the principles of environmental education were elaborated in cooperation with the Ministry of the Environment and the Ministry of Education and Science. The importance of environmental education is emphasized also in the "Development plan of general educational system for 2007-2013" adopted by the Government of the Republic at the beginning of 2007.

In the administrative area of the Ministry of Agriculture the most extensive means for improving EA (environmental awareness) and EE (environmental education) is the Rural Development Plan of Estonia for 2004-2006 and 2007-2013, especially the measure for Axis II, "Improving the Environment and the Countryside". In order to receive benefits, the rural producers have to act in an environmentally friendly manner. One of the requirements for receiving benefits is participation in the mandatory trainings. Within the framework of the measure 1.1. Training and Information Activities of the Rural Development Plan for 2007-2013, 17 training and information activities have been completed since 2008, regarding preservation, improvement or of landscape or environmental protection.

In 2010, there was general contentment with the legal requirements on the establishment and functioning of NGOs, problems arose with the instability of support schemes. Public authorities have more and more included NGOs in the composition of different regular or specific committees, although the possibilities of NGOs to affect decisions are often restricted and vary. Bigger NGOs have received some financial support from the State in recent years which has helped to cover partly the overhead costs. Mutual respect and partnership between the State and NGOs has improved significantly recently; in some cases the representatives of NGOs are included in the delegations for international negotiations. The desire, interest and need for further development of cooperation exist on both sides, with the obstacles laying mainly in shortages of human, financial and time resources. During a couple of last years the arrangement of the legal

side of the operation of the NGOs and foundations has become remarkably less complicated, thanks to the development of digital systems (digital signature, electronic registers).

The main activity of Environmental Investment Centre (hereinafter EIC) is to fund various environmental projects, including projects related to improving environmental education and awareness. The awareness programme of the environmental programme has the most projects and applicants in EIC. In addition, those interested in applying and those having received aid are counselled regarding funding mechanisms and funded activities. During the last year also cooperation with the third sector via various roundtables has gathered momentum. NGOs constitute a relevant group among the applicants of EIC. EIC supports project-based activities (activity featuring a concrete aim and measurable results), and does not cover overhead costs and management costs of organisations.

In 2007 National Foundation of Civil Society was established for the support of civil society which aims actually do not include direct support of environmental operations but support to civil society as a whole. Nevertheless, there have also been environmental projects among the projects funded by the National Foundation of Civil Society.

In the area of government of the Ministry of Economic Affairs and Communications NGOs (incl. environmental organisations) may run for the funding of projects under several support schemes, incl. for the development of organisational capacity. NGOs also provide several public services on the basis of competitions that also support the viability of the NGOs providing the service.

(d) Various ministries have engaged NGOs in the foreign visits of several ministers and international forums. E.g. NGOs participated in the second meeting of contracting parties of Aarhus Convention in Kazakhstan, meeting of the contracting parties of the United Nations Framework Convention on Climate Change in Canada, Kenya, Bali and Denmark. The representatives of NGOs have also been included in several international organisations and networks such as TRINET, BaltCoast, EUROBATs, Copa-Cocega, ECOSOC etc. that improve their speaking rights.

*The NGOs still find that involvement could be more systematic and extensive. NGOs are interested in participation in international cooperation but the prerequisite is covering of the costs incurred by the State as NGOs mainly lack own funds. NGOs also find that the public should be more engaged in the forging of national viewpoints already during the early stages.*

The prohibition established in article 3, paragraph 8, in regard to penalizing, persecuting or harassing persons exercising their rights is first of all contained in paragraph 12 of the Constitution, according to which no one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds. The Penal Code of Estonia establishes that as fit for a State based on the rule of law, no one shall be convicted or punished for an act which was not an offence pursuant to the law applicable at the time of the commission and that a person shall be punished for an act if it comprises the necessary elements of an offence, is unlawful and the person is guilty of the commission of the offence. Pursuant to the responses received from the NGOs in 2010 the prohibition to penalize, persecute or harass persons exercising their rights has not been violated in Estonia.

## **IV - V PRACTICAL APPLICATION OF ARTICLE 3, INCLUDING OBSTACLES TO APPLICATION**

Starting from 2007 ESTONIAN ENVIRONMENTAL LAW CENTER, a non-governmental non-profit organisation is operating in Estonia with the aim to promote the development of environmental law and application thereof.

EELC webpage ([www.k6k.ee](http://www.k6k.ee)) explains in detail the content of various issues of environmental law and legal regulation and links have been provided to respective international, EU and Estonian legislation and other appropriate materials (e.g. analyses regarding application or legislation), and also the content of the rights arising from Århus Convention and the opportunities for the use thereof are explained in detail.

In the period 2008-2010 Estonian Environmental Law Centre implemented the project for addressing and analysing environmental cases. In the framework thereof free legal assistance was provided to the NGOs and individuals in environmental issues, various related licence proceeding and participation in the assessment of environmental impact, but also have recourse to a court of law. SA Estonian Environmental Law Centre has also provided lectures and guidelines regarding engagement of the public and starting from 2009 has published a monthly newsletter of environmental law, besides the representatives of the public officials, experts, judges, lawyers, journalists etc. are among the contracting parties.

## **VI RELEVANT WEBSITES**

Starting from 2000 the Network of Estonian Non-profit Organizations has arranged gauging the sustainability of Estonian associations based on the index of United States Agency for International Development (USAID) that is based on seven dimensions: legal environment, organizational capacity, financial viability, advocacy, public image, service provision, and NGO infrastructure. As similar assessments are made in all Central and Eastern European countries, the results allow us to become acquainted with the situation of the associations in other countries and to compare them with the Estonian situation. Estonia is well-developed; the characterising keywords are co-operation, sound legislative environment, strong infrastructure and positive media coverage. Organisational capability and financial capability need developing.

The survey results are available on the website of Network of Estonian Non-profit Organizations:

(<http://www.ngo.ee/uuringud>, [http://www.usaid.gov/locations/europe\\_eurasia/dem\\_gov/ngoindex/2009/estonia.pdf](http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/estonia.pdf)).

## **VII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO ENVIRONMENTAL INFORMATION IN ARTICLE 4**

The terms set out in **article 2** have been partly defined in national legislation. The term “public authority” is defined in paragraph 8 (1) of the Administrative Procedure Act as “any agency, body or official, which is authorized to perform public administration duties by an Act, a regulation issued on the basis of an Act or a contract under public law”.

The term “environmental information” has not been defined, but paragraph 3 (1) of the Public Information Act defines “public information” as information which is recorded and documented in any manner and on any medium and which is obtained or created upon performance of public duties provided by law or legislation issued on the basis thereof. Thus, the definition of “public information” also includes “environmental information”.

The terms “the public” and “the public concerned” have not been directly defined, but they are, however, used in various environmental legal acts as general terms.

Access to environmental information is guaranteed under paragraphs 9 and 10 of the Public Information Act which requires that holders of information grant access to information in their possession and assist the public in requesting the information. The persons making requests for information do not have to justify their interest or the request for information. The grounds for refusal are exhaustively listed, and relate to format, content, etc. of requests. Requests are refused, inter alia, if the information requested is intended for the internal use of the public authority. Such use includes information on national defence, international relations, industrial solutions, intellectual property rights, inquiries and court proceedings, and sensitive and private personal data.

A request for information shall be complied with promptly, but not later than within five working days. If the request cannot be met within this deadline, the person who made the request shall be notified. The deadline can be extended to a maximum of 15 working days.

Public institutions are obliged to register requests for information (on the basis of the Public Information Act), memoranda and requests for explanations (on the basis of the Memorandum and Clarification Request Reply Act) addressed to them. Memoranda and requests for clarification must be complied with in writing within one month. If additional research is needed, this deadline may be extended to two months.

Generally, requests for information are free of charge. However, a small charge can be levied by a public authority in case of the provision of large numbers of copies.

## **VII – IX PRACTICAL IMPLEMENTATION OF ARTICLE 4, INCLUDING OBSTACLES ENCOUNTERED**

Environmental information in Estonia is held mainly by the MoE, the Environmental Board and Centre of Environmental Information (hereinafter CEI). To a certain extent, requests for information are sent also to other State and local authorities.

Generally, there have been no problems with the term for complying with requests for information. In some cases still problems have occurred with responding within the prescribed term and in some cases requests for information have been left unanswered. One of the reasons for rejecting a request or delay in answering is often the further need to process initial information (the information does not exist in requested form), but also requests that are too general or unclear. Very many requests are sent in by students and schoolchildren.



State and local authorities that have sent their inputs to the report of 2010 have declared that they usually follow the regulation on answering requests for information, although in the case of very many requests some of them are rejected (if the request is not correctly formulated), some are answered with a delay and a few left unanswered. In some cases a prolongation of the deadline has been asked for and/or the response has not contained the essential information requested. In general, the answering to requests for information has become an everyday task and is well rooted.

The fact that the average response time to a request has become shorter was noted as a positive development: the cases when an answer to the request for information is received within a couple of days are quite frequent. The cases when the deadline for responding to the request, i.e. 5 business days, has not been met are few. The submission of requests and answering thereto has been also made less complicated by the development of electronic document management in agencies. One NGO reported that they have had no need to submit requests for information as the necessary information is available without that.

Pursuant to the responses to the questionnaire distributed for the preparation of the report 2010 there are only two known cases when a fee was charged for the performance of a request for information as in these cases extremely large data volumes were concerned. A fee is also charged for such requests for information asking for extracts of registers or other information where the obligation payment arises from law (e.g. in case of an issue of a plan of a cadastral unit approved by the cadastral registrar or a cadastral report).

## **X. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 4**

## **XI. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON THE COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION IN ARTICLE 5**

The general disclosure of information is addressed in the Public Information Act. The following information is to be published on the website of the public authority (mandatory), and, if necessary, in public broadcasting or printed press, local government institution or public library, official publication or in any other manner prescribed by legal acts:

- (a) Information on life-threatening dangers, or risks to health and property of persons;
- (b) Information concerning the state of the environment, environmental damage and hazardous environmental impacts;
- (c) Other information and documents that must be disclosed under an international agreement, Act or legislation passed on the basis thereof, or which the holder of information deems necessary to disclose.

Legal acts, international agreements, reasoned rulings of the Supreme Court, announcements and other documents of the Republic of Estonia are published in accordance with the State Gazette Act in the official publication Riigi Teataja (State Gazette). The term of enforcement of the acts,

decisions etc. published and requiring enforcement is in most cases linked to publication in Riigi Teataja (a law enters into force on the tenth day pursuant to § 108 of the Constitution and a regulation of the Government of the Republic or a minister enters into force on the third day following publication in Riigi Teataja pursuant to the Administrative Procedure Act).

Pursuant to § 12 (4<sup>1</sup>) of the Public Information Act access to electronic documents registered in the document register and contained in the document management system of the agency, access to which is not restricted, shall be granted through the document register starting from 1 January 2009 by the government agencies. This means that the document register must provide an opportunity to examine the documents. The document register must also be equipped with the search engine providing an opportunity to seek for documents through various details. The registrars of document registers shall grant access to the document registers, shall create indexes and instructions in order to facilitate the finding of documents and enable finding of documents by a global search through a computer search system from metadata or public view of the register. The holder of information shall register all created and received documents while performing its tasks. The form of creation, receipt or sending of the document or the information carrier cannot serve as a basis for denying registration of the document. Documents received by the agency and documents released by the agency shall be registered not later than on the working day following the day on which the documents are received or released; legislation prepared and signed in the agency, on the date of signature thereof or the working day after such date and contracts entered into on the day after the date of signature thereof.

The requirements for the document register are established in § 12 of the Public Information Act, under which the following is obligatory:

- 1) the existence of document register;
- 2) unavailability of the document register to the Internet search engines (e.g. Neti, Google, Yahoo);
- 3) the availability of a user manual;
- 4) the existence of a general text search covering the public view of the document register;
- 5) display of correspondence documents within the time limits of preservation;
- 6) entering directives into the document register;
- 7) correct wording of documents subject to restrictions on access so that the content of the documents can be guessed;
- 8) in case of series containing documents to which access is restricted, the AK -note (for internal use) or the user guide must be accompanied by an explanation that the note does not interfere with the submitting of an information request.

The collection, processing, storing and disclosing of environmental information are addressed in practically all national environmental acts (Environmental Register Act, Environmental Impact Assessment and Environmental Auditing Act, Environmental Monitoring Act, Integrated Pollution Prevention and Control Act, Planning Act, Water Act, Forest Act, Earth's Crust Act, the Release of Genetically Modified Organisms into the Environment Act, Waste Act, Chemicals Act, Radiation Act and Nature Protection Act). On the basis of these, environmental information is divided between over 40 different data sets.

In order to consolidate, link and simplify public access to the environmental information, the Environmental Register (<http://register.keskkonnainfo.ee/>) was established; the Centre of Environmental Centre is the authorised processor of the register, regarding the list of mineral deposits the Land Board. Beside that all are entitled to submit a

written request in order to receive public data from the Environmental Register free of charge (§ 43 (1) and (2) of the Environmental Register Act). By way of an exception information shall be denied only if falling in a list of exemptions, in case disclosure could result in danger to public safety or in environmental damage or inadmissible disturbance to protected species in their permanent habitats as dangers to public safety, the environment, protected species, intellectual property rights and confidential commercial information, the data is not final and, as such, does not enable a correct evaluation of the situation to be made; the data contains or concerns business, industrial or intellectual property secrets.

Information regarding nature conservation (protected natural objects, protected species and introduced species, hunting districts, key biotopes, game trophies, international areas, eligible areas etc.) is assembled, checked and entered by CEI Estonian Nature Information System (EELIS, available at the address <http://loodus.keskkonnainfo.ee/>). EELIS includes also information regarding these natural values that are not included in the environmental register such as data of the Estonian book of ancient natural objects and objects of heritage culture. Through EELIS the data reach the public service of Environmental Register, the service of the Land Board, State Forest Management Centre and other clients.

The Environmental Board issues prospecting permits, geological investigation permits, waste permits, integrated environmental permits, ambient air pollution permits, special use of water permits, mineral extraction permits etc. The permits are entered in the Information system of environmental permits (<http://klis.envir.ee/klis/>) and through this they become available to the public. This is an Internet-based system of document management aiming at ensuring integrated processing of environmental permits while allowing examining and analysing the use of environment on the basis of the valid environmental permits. Issue of and changes in the permits are generally reflected in real time in the system.

Pursuant to the bylaws of CEI one of the main tasks of the Centre is the administration and development of the environmental information network and collection, analysing, processing, publishing and preservation of environmental information. The environmental information compiled on the basis of the data collected by CEI is made available to the public mainly on the web page of CEI ([www.keskkonnainfo.ee](http://www.keskkonnainfo.ee)), through the Environmental Register and the public service of the forest register. The collection and processing of data in CEI generally takes place in close cooperation with the Environmental Board, Ministry of the Environment, Statistics Estonia and other partners, incl. NGOs. The procedure and time intervals for forwarding information are mainly established in laws, international obligations or agreements between agencies. Both general information regarding environmental situation in Estonia (based on environmental indicators) and biodiversity as well as specific data through the public service of Environmental Register and Forest Register is available on the web site of CEI and its subpages.

CEI comprises and publishes regular publications both electronically and on paper. These include "Environmental review", a summary based on environmental indicators, annual monitoring publication "Environmental monitoring", yearbook "Forest", yearbook "Estonian forests" concerning national forest resources and sectoral reviews. Besides regular publications CEI has published environmental information in various forms, e.g. DVD "Estonian Forestry 2009" and "Protection of Estonian nature in 2007". According to plans the latter will be published on a regular basis.

Besides analyses of the collected data and publication of the results through printed matter, web page and other channels CEI compiles and forwards a lot of reports regarding environmental sector to the European Environment Agency, European Commission, OECD, secretariats of international conventions and other organisations. As a rule, Estonian public has access to the reports through the CEI web page.

Once in four years the consolidated report of the programmes of environmental monitoring is disclosed.

In 2003, Estonia, together with other countries, signed the Protocol on Pollutant Release and Transfer Registers (PRTRs), which should be ratified either in 2005 or 2006. The protocol was accepted by Estonia in August 2007.

Information concerning factors that may be hazardous to human health or the environment must be disclosed immediately. Such provisions are included in the Environmental Register Act, the Environmental Impact Assessment (EIA) and the Environmental Auditing Act, the Environmental Monitoring Act, the Ambient Air Protection Act and the Release of Genetically Modified Organisms into the Environment Act.

Constant monitoring of the environmental condition and the aspects having an impact thereon is regulated by the Environmental Monitoring Act. Pursuant to § 8 (1) of the Environmental Monitoring Act data from environmental monitoring shall be accessed, released and published pursuant to the procedure provided for in the Environmental Register Act. Pursuant to § 42 of the Environmental Register Act the data of the environmental monitoring performed on the basis of a monitoring programme of the national and local governments and in the amount determined by the natural resources exploitation or pollution permit are published on the web page of the national programme of environmental monitoring (<http://eelis.ic.envir.ee:88/seireveeb/>) and in the amount determined by the KKM in the form of general periodical publications.

Access to information regarding goods and services offered on the commodities market is regulated primarily under the Consumer Protection Act adopted in 1993 and enforced in 1994. Product safety and the related provision of information to consumers is regulated under the Product Safety Act; obtaining relevant and correct information on goods and services offered to make a conscious choice is one of the fundamental rights of consumers. The consumer has the right to obtain the necessary information on safety, protection of health, property and economic interests related to goods or services offered.

The Environmental Management System Act establishes in accordance with Regulation (EEC) No. 761/2001 of 19 March 2001 allowing voluntary participation by organizations in a European Community eco-management and audit scheme (EMAS) the rights and obligations of respective institutions in Estonia. In accordance with its paragraph 50, the MoE must prepare a strategy and plan of activities for promoting environmental management and auditing systems for promoting the European Unions environmental management and auditing system and for organizing the necessary information campaigns and training. The strategy is approved by the Government of the Republic. The same act also establishes the national provisions detailing the application of the voluntary eco-label of the European Union. Regulation (EC) No. 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme which is directly applicable also in Estonia, establishes in Article 10 the obligation of the Member States and the Commission of the European Communities to promote the use of eco-

label by performing information campaigns for consumers, producers, merchants, distributors and the public.

The MoE has since the end of the 1990s concluded several free-will agreements with enterprises, whose activities have a significant impact on the environment (available to the public on the website of the MoE), with them aim of mutual cooperation to improve environmental conditions. This cooperation consists on the one hand in the Ministry providing information on future changes in environment-related legal acts and involving representatives of the enterprises in the development of legal acts, and on the other the enterprises assuming additional obligations that are not directly mandatory under the applicable law but considerably improve environmental conditions, such as the implementation of International Standardization Organization (ISO) 1400-compliant environmental management systems, informing the public of their activities influencing the environment and carrying out additional scientific research. Such agreements have been concluded with the Estonian Association of Mining Enterprises, Estonian Association of Environmental Management, Association of Fishermen of the Lake Peipus, Association of Fishermen of the Sub-basin of the Lake Peipus, Federation of the Estonian Chemical Industry, OÜ Eesti Pandipakend and AS Nordic Kunda Tsement, .

## **XII-XII PRACTICAL APPLICATION AND OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 5**

Relevant publications providing substantial and statistical information on the county are issued by some counties. Several booklets have been prepared on various environmental issues.

Measures for promoting environmental education and environmental awareness in the society:

- Information days, seminars, environmental awareness promotion campaigns and other events promoting awareness are organized for the leaders of local governments and environmental specialists, educational workers etc;
- Participation in the arrangements of campaigns targeting arising environmental awareness in the counties - nature protection month, forest week, campaigns for collection of scrap paper etc.
- Environmental events are organised for various target groups: students, entrepreneurs, the public (environmental camps, quizzes, thematic days).

For each year, special programme objectives are agreed.

NGOs have pointed out the following problems in the implementation of article 5 of the Convention:

- (a) Irregular disclosure of the progress in planning and EIA procedures;
- (
- (d) There is a need for more active dissemination of information by the environmental services and local authorities.

According to the study mentioned in paragraph 29 above, published by the Estonian Institute for Sustainable Development (EISD) in January 2005 regarding access to environmental information and possibilities of participating in decision-making in Estonia, the information forwarded to the

public is timely, regular and of good quality. As negative aspects, the study states that the confidentiality requirements to environmental information have not been clearly defined, the circle of persons receiving information is limited and the information searched for is often not available on the Internet. On the basis of the cases analysed, the study has reached the conclusion that the coverage of emergency situations in the mass media has been good, but the public authorities' initiative to release information needs to be improved: although the law prescribes the obligation to prepare information during emergency situations and environmental accidents, the order and procedure of notification has not been clearly defined.

The environmental monitoring situation is considered good in the study: air monitoring in particular is regular and thorough and information is of good quality, timely and accessible to the public. The level of accessibility of information is, however, uneven among departments, as no uniform procedures have been developed. The study considers the accessibility of national reports on the environmental condition to be good, the annual publication *Keskkond* (Environment) issued (since 1999) by the Statistical Office is thorough, of good quality and easily found on the Internet. However, according to the study more information materials on environmental statistics should be issued for specific target groups.

Local government authorities operate registers and databases with information regarding their own territories. Also NGOs and profit organizations collect and disseminate information related to their activities regarding environment. State authorities collect and disseminate environmental information according to requirements set out in legal acts and keep and develop relevant databases. More and more environmental information is available through the Internet, printed publications are prepared for specific target groups. Tartu Environmental Education Centre has set a target to collect and store a copy of all materials regarding environment printed in Estonia.

The State Audit completed an audit on organization of environmental monitoring in 2007. The audit report indicated the need for further analyses of characteristics and amount of data collected in the course of environmental monitoring, and publication of results and organization of environmental monitoring, as well as the deficits regarding the transfer of monitoring data to the environmental register. At this moment a national system of environmental monitoring data is being developed with the support of the structural funds of the EU in order to eliminate the shortcomings. The comments of the State Audit have been also taken into account while drawing up the draft General Part of the Environmental Code Act.

One of the problems remain with the possibility of an individual to get information on the quality of environment and processes and activities affecting the environment around his/her home. The implementation of the EU INSPIRE regulation will serve towards this objective by gradual introduction of cross-use of different databases of spatial data

The public can access information on the existing spatial data and services at the geoportal of the Land Board (<http://geoportaal.maaamet.ee/>). Map applications allow examining and making inquiries from different thematic layers (e.g. cadastral units, roads, soil map, geology, deposits, cultural monuments etc.) that, inter alia, help to improve public awareness of the environmental condition and sites of interesting natural objects. Geoportal discloses meta data of all data collected and services offered by the Land Board, but also the total balance of mineral reserves and the reports pertaining to INSPIRE Directive.

The Environmental Inspectorate has prepared the yearbooks reflecting the organisation, exercise and results of environmental supervision in the form of printed matter, these are also available at the web page of the Inspectorate at [www.kki.ee](http://www.kki.ee). The yearbooks contain information regarding environmental situation and changes thereto (mainly in the form of general estimations). The printed issue is distributed to other agencies and NGOs free of charge. The results of analyses ordered by KKI within the process of environmental supervision are also available from the web page of KKI.

The bureau of fuel quality of OÜ Eesti Keskkonnauuringute Keskus (Estonian Environmental Research Centre) prepares and submits annual reports to the Ministry of the Environment regarding the quality of fuels for forwarding to the European Commission. The reports and results of the monitoring of fuel quality are publicly available in the Internet through the Fuel monitoring data base (<https://kytus.keskkonnainfo.ee/>), of the Environmental Information Centre where data are entered by the OÜ Eesti Keskkonnauuringute Keskus, Tax and Customs Board and other institutions.

Air quality management system of Estonia ([www.klab.ee/ohuseire](http://www.klab.ee/ohuseire)) collects data and measuring results from continuous monitoring stations making them also accessible for the public.

#### **XIV RELEVANT WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 5**

#### **XV LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES IN ARTICLE 6**

The specific activities provided for in article 6 of the Convention have been regulated in national legislation through the issuing of authorizations and EIAs. In the course of issuing an operating permit, an EIA is performed on the basis of the presumed environmental impact of the planned activity either as a compulsory procedure or on the basis of the relevant decision of the issuer of the authorization. The Environmental Impact Assessment and Environmental Auditing Act has been passed in 2005.

Authorizations upon the issuing of which environmental impacts are assessed are, inter alia:

- (a) Building permits or permits for the use of construction works (procedure based on the Building Act);
- (b) Integrated environmental permits (on the basis of the Integrated Pollution Prevention and Control Act), permits for the special use of water (on the basis of the Water Act), ambient air pollution permits (on the basis of the Ambient Air Protection Act), waste permits and hazardous waste handling licences (on the basis of the Waste Act) and radiation practice licences (on the basis of the Radiation Act);
- (c) Extraction permits, permits for geological research and permits for general geological research (on the basis of the Earth's Crust Act);
- (d) Any other document permitting to carry out activities that are likely to have a significant environmental impact.

According to paragraph 3 of the Environmental Impact Assessment and Environmental Management System Act, an assessment of environmental impacts is mandatory in the following cases:

- upon application for or application for amendment of a development consent if the proposed activity which is the basis for application for or amendment of the development consent potentially results in significant environmental impact;
- the activity would result in a significant environmental impact or affect the area of the Natura 2000 network.

Environmental impact is significant if it may exceed the environmental capacity of a site, cause irreversible changes to the environment, or endanger cultural heritage, human health, well-being or property. The Act specifies a list of the fields of activity (projects, sites) for which the assessment of the environmental impact is mandatory. For most fields of activity, a characteristic threshold value has been provided, upon the exceeding of which the EIA requirement is applicable.

In August 2008 an amendment to § 16 of the Environmental Impact Assessment and Environmental Management Act was enforced. Pursuant to this notification of the public display of a KMH (Environmental Impact Assessment) programme must be made to *Ametlikud Teadaanded* (Official Notices) and a newspaper and in at least one public building or place of the site of the proposed activities (e.g. shop, library, school, bus stop).

Upon the issuing of permits, the provisions on open proceedings provided for in the Administrative Procedure Act are applied. These open proceedings mean that, as a rule, public participation in the procedures have been foreseen and are obligatory.

Public participation in decisions on the intentional release of genetically modified organisms (GMOs) into the environment is regulated by the Release of Genetically Modified Organisms into the Environment Act. GMOs may be released into the environment only with the written authorization of the Minister of the Environment. For this purpose, a relevant application is submitted to the MoE, and notifications published in the official publication *Ametlikud Teadaanded* (Official Notice); within seven days from the receipt of the application and the issuing of the permit, open proceedings are undertaken.

## **XVI-XVII PRACTIAL APPLICATION OF ARTICLE 6, INCLUDING OBSTACLES ENCOUNTERED**

Environmental Impact Assessment and Environmental Management Act obligates to make notification of initiation and refusal to initiate environmental impact assessment broadly – through the official publication *Ametlikud Teadaanded* and newspapers. Also the appropriate agencies and persons etc. must be notified in writing. Based on the Administrative Procedure Act public display shall last at least 14 days, during that period persons can submit proposals and objections. The public display of the impact assessment programme and report shall last at least 14 days (in case of a report of strategic assessment of environmental impact at least 21 days). In general these terms are reasonable, while often the large volume of documentation and the complicated nature of the planned activity is not taken into account while assessing environmental impact – regardless of the volume of the report a tendency is to set the limits according to the minimum term allowed by law. During the process of the assessment of the



impact all persons can examine the materials, submit proposals and objections regarding the programme and the report on the basis of which the programme and the report are improved if possible. As a rule, the persons submitting proposals receive feedback on whether the proposals were taken into account or not. During the processing of the plans engagement of the public takes place already in the initiation stage of the plan and later in the stage of disclosing the plan. The public's proposals and objections are often based on the emotional reaction that the activity should not be carried out in anyone's "back yard" may very well be caused by lack of knowledge. NGOs consider that the State should make efforts to educate the public concerned with regard to participation in the decision-making process. The objections and proposals prepared by NGOs are better worded and reasoned.

In 2010, there was a general understanding that involvement of the public and interested parties has remarkably improved and in general this can be considered as efficient and sufficient – it is possible to take part in the decision-making process for those who so wish. Often the interest in participation is lower in early phases of decision-making process. Most of the information is available electronically, new initiatives are announced through the mass media and local advertisements and by ordinary mail. The deadlines are usually met, the participation is not limited and the results of participation (remarks, proposals) are taken into account. Authors of remarks and proposals get feedback in writing. However, the following problems were indicated:

- (a) In case of environmental permits the information does not often reach affected persons – also the Estonian National (Supreme) Court has indicated that an administrative body has to guarantee efficient informing, even if this would require more intense measures than those foreseen by the law;
- (b) Although the deadlines for public participation foreseen by the law are usually sufficient it may still not be enough in case of more complicated cases;
- (c) Sometimes the participation of the public may be formal and does not take into account the internal objectives of the participation;
- (f) Decisions on the initiation or non-initiation of EIA are communicated too late, at the end of the process, which is not sufficient;
- (g) Those who have made proposals in the course of public participation are not always answered regarding whether and how their proposals have been taken into account;
- (e) NGOs claim that there have been cases when the public is not engaged in the decision-making process in the sufficiently earlier stage and the form of engagement is not efficient enough;
- (f) In real life the content of notices is not always inspiring but rather technical and formal and therefore in case of newspaper announcements the appropriate persons may not become aware of the importance of the issue;
- (h) Electronic means could be more applied for the engagement of the public in the future (besides already existing means). E. g. automated electronic message system would be suitable for more efficient notification. The system would allow for the registration of the participants and to notify what are the activities and/or locations of the activities they would like to receive information.

## **XVIII WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6**

**XIX-XX PRACTICAL AND/OR OTHER PROVISIONS MADE FOR THE PUBLIC TO PARTICIPATE DURING THE PREPARATION OF PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT PURSUANT TO ARTICLE 7**

Paragraph 31 of the new EIA and Environmental Management System Act defines a strategic planning document as a national, county, comprehensive or detailed plan, strategic development plan or other plan, programme or strategy linked to the State budget and established in a legal act of the Riigikogu, the Government, a government institution, a county governor or a local government body. According to the law, the open procedure provisions of the Administrative Procedure Act apply to public participation in the preparation of these documents. On the basis of the applicable law, this has been done for instance in the strategic environmental impact assessment (SEA) of the “Sustainable Estonia 21” strategy, the Estonian National Development Plan and the revision of the Estonian environmental strategy. Public participation was also organized in the preparation of the Forestry Development Plan. The documents are accessible to the public for at least two weeks in the disclosure and SEA process, after which time an open meeting is organized for asking questions and expressing opinions; proposals are expected in writing. The large number of participants has sometimes been a problem, and at the same time the interests of the various interest groups are different and often contradictory, which has made taking the proposals into consideration very difficult.

The waste management plans of local governments prepared on the basis of the Waste Act are public documents, and a disclosure process must be completed upon the preparation thereof. The public is informed of the initiation and public display of the national waste management plan, as well as relevant public sessions, through notices published in the *Ametlikud Teadaanded*, on the Ministry’s homepage and in a national newspaper (county plans are not prepared any more). Practice has shown so far that people are very interested in this kind of disclosure process and take an active part in it. The opinions of the public differ – there are hasty and poorly considered conclusions but also constructive proposals are often made that can be taken into account while preparing the waste management plan. Generally speaking, public participation in the process has still a positive effect and helps to reduce occurrence of problems and errors at the later stages.

The public is informed of the submission of applications for a waste permit and hazardous waste handling licence issued on the basis of the Waste Act in the *Ametlikud Teadaanded*. The data contained in the notice such as the business name of the applicant, registry code and location, the planned location of Activity, short description of the location of activity and information regarding how and when the application for the waste permit and the draft waste permit can be examined and proposals and comments submitted. Depending on the planned activity public interest in this process has generally been very passive.

Public participation in the preparation of plans is regulated by the Planning Act, according to which the public is informed of the intended plans through publication of a notice either in the *Riigi Teataja* or in newspapers. The ministry, county governor or local government administering the preparation of the plan provide the main characteristics and time frame of the process. The completed plans are put on public display either in the local government or county centre. Everyone has the right to present proposals and objections concerning a plan during the duration of public display. The local government or county governor administering the

preparation of the plan must inform persons who have sent proposals and objections by post or electronic mail during the time the plan is on display of their opinion on such proposals and objections, and specify the time and place of the public discussion within two weeks from the end of the public display of the plan. On the basis of the outcome of the public display and discussion, the local government or county governor make the necessary amendments to the plan.

## **XXI-XXII PRACTICAL APPLICATION OF ARTICLE 7, OBSTACLES INCLUDED**

The following strategic documents of the Ministry of the Environment have been available to the public for comments in the participation web ([www.osale.ee](http://www.osale.ee)):

- Development Plan of Recreational Fishing 2009-2013
- Nature Protection Development up to year 2020
- National development plan for the use of natural building materials 2010-2020
- Bases for the use and protection of the earth's crust
- Development Plan for Forestry 2011-2020
- Action Plan for Pandivere and Adavere-Põltsamaa nitrite-sensitive area for 2009-2011
- Environmental strategy up to 2030 and its application plan, Environment Action Plan 2007-2013, Development plan for the use of Oil-shale, Development plan of radiation safety and others have been available to the public at the web page of the Ministry of the Environment.

According to the information received from NGOs they have been engaged in the process of preparation of almost all strategies, national development plans and also some draft acts in the area of administration of the Ministry of the Environment. The proposals submitted by NGOs have been analysed and used for the improvement of documents. As a result of involvement the needs of (protection of) environment have gained increased reflection in the development plans in some cases. Still, examples were provided in case of which the involvement of the public and the stakeholders has not been sufficient according to NGOs.

Among the documents developed by the Ministry of Agriculture two main strategic documents related to the environment have been "Estonian Rural Development Strategy 2007-2013" and "Estonian Rural Development Plan 2007-2013" based thereon. The 2nd axis of the Rural Development Plan ("Improving the environment and the countryside" covering 39% of the means of the development plan) is directly linked to securing sound environmental situation in the rural areas mainly through the promotion of environmentally-friendly management. Also the activities of the 1st and 3rd axes of the development plan are indirectly related to the environment. From 2004 all related stakeholder groups, agricultural producers, environmental organisations (incl. The Association of Estonian Environmental Organisations), representatives of other undertakings and stakeholders have been engaged in the preparation of both documents. Besides, there are such organisations related to environment among our partner organisations whose direct aim is not protection of environment as such but development of environmentally friendly agricultural production (Centre of Ecological Technologies, Cooperation Group of Organic Farming, Estonian Association of Organic Farmers, and Estonian Foundation of Organic Farming). In the opinion of the Ministry of Agriculture the impact of the engagement has been productive and positive. During the cooperation with the environmental NGOs the measures of the 2nd axis of the Rural Development Plan are mainly developed, several proposals submitted by them have been integrated in the conditions of the measures.

The competence area of the Ministry of Economic Affairs and Communications comprises "National Development Plan of Energy Sector up to 2020" approved in 2009 and the "Development Plan of Estonian Energy Sector up to 2018", both of which are closely related to the environment. As the Ministry of Economic Affairs and Communications applied various methods in case of the said development plans, making use of extensive engagement, the number of proposals received from the public was high. E.g. four forums on energy issues were arranged with the number of audience of up to 200, reports on various visions of energy sector were presented by the representatives of energy companies, science institutions and organisations. An energy forum blog was created in order to obtain extensive reflection. The proposals worded during the forum were applied during the improvement of the draft development plans. Also the principal proposals of the expert of strategic assessment of environmental impacts were taken into account for improving development plans. According to the Ministry of Economic Affairs and Communications engagement may be considered a success as beside the specific proposals made this made possible extensive introduction and discussion of issues of energy sector among the general public.

NGOs have pointed out that the deadline of two weeks for disclosure of plans may be too short. They refer to their experience that sometimes they do not receive any feedback on proposals and objections submitted by them in respect of national and local strategies and action plans.

By 2010 the involvement of the public in the development of strategic documents has remarkably increased and the public participation phase is foreseen for all more important documents prepared in state and local authorities. The principles or good practice of involvement of the public have been elaborated by the State Chancellery, to be followed by all public authorities. Similar principles have been adopted in many State authorities as well. The impact of public participation is usually valued as positive, necessary and informative by both the public and authorities. However, often the limitation of resources may also limit the effect of public participation (in the case of voluminous documents, there is not enough capacity for adequate elaboration) and all proposals made in respect of documents can not be taken into account (due to conflicting interests). Some shortcomings have been indicated in responding to proposals as well as reasoning of rejected proposals. Still, NGOs have reported cases where their involvement in the preparation process of strategic documents prepared by local governments has not been sufficient. Disclosure process meets the requirements set out in law, but no efforts are made to ensure that the information reaches stakeholders. The notice regarding public discussion may be published in a national newspaper and the web page of the municipality, but in case these sources are not constantly followed, no information is received

### **XXIII WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 7**

### **XXIV EFFORTS MADE TO PROMOTE EFFECTIVE PUBLIC PARTICIPATION DURING THE PREPARATION BY PUBLIC AUTHORITIES OF EXECUTIVE REGULATIONS AND OTHER GENERALLY APPLICABLE LEGALLY BINDING RULES THAT MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT PURSUANT TO ARTICLE 8**

In accordance with article 28, paragraphs (1)-(17), of the Public Information Act, the following documents must be disclosed:

- (a) Draft Acts prepared by ministries and draft Government regulations, together with explanatory memoranda, when such drafts are sent for approval or presentation to the Government;
- (b) Draft regulations of ministers and local governments together with explanatory memoranda before such drafts are presented for adoption;
- (c) Draft concepts, development plans, programmes and other projects of general importance before such drafts are presented to the competent bodies for approval, and the corresponding approved or adopted documents.

The disclosure of legal acts is regulated in the draft legislative act approval information system. For approval, draft decisions of the Riigikogu, draft regulations of the Government and draft regulations of ministers together with all annexes are made available in the draft legislative act approval information system managed by the Ministry of Justice. The ministries and the State Chancellery will post a link to the Internet location of the draft legislative act approval information system on their websites. The documents entered into the draft processing information system are public. The public has the possibility to submit proposals in regards to draft legal acts during the duration of the display.

In accordance with the rules and regulations of the Government, drafts or other documents, except for draft acts, draft decisions of the Riigikogu and draft regulations forwarded to the Government by a ministry or the State Chancellery, can be classified as information intended for internal use either by the minister or the State Chancellor, respectively, on the grounds and in the order established in the Public Information Act, until the adoption of a decision by the Government or for another term prescribed by law. The Ministry and State Chancellor must not release or publish the drafts and documents annexed thereto submitted to the Government and classified as information intended for internal use until the adoption of a decision by the Government or until the end of another term of restriction on access.

During the preparation of draft legal acts for the MoE, drafts are also sent to relevant NGOs and professional unions and other interested persons. The rules of engagement of the public have been brought into conformity with the Ministry's internal procedure for preparing legal acts. Proposals submitted in regard to legal acts are taken into account to the extent possible.

## **XXV – XXVI OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 8**

NGOs have pointed out the following problems in respect of the implementation of article 8:

- (a) They are not involved enough in the early phases of drafting of legislation;
- (b) The practice of involving NGOs is not systematic;
- (c) Access to information could be better.

General principles for involvement of the public have been adopted in several ministries and the State Chancellery, such principles are usually followed, in particular in case of more important draft legal acts. The results of involvement of the public are valued by drafters of acts as very positive, however, the representatives of the public and authors of amending proposals are not so content. According to the latter the deficits in planning (not enough resources, including time), reaction to proposals made and the low level of acceptance are still problematic. The public is

often disregarded in the development of many legal acts, especially in the case of amending legal acts in force.

## **XXVII WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 8**

## **XXVIII LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO JUSTICE IN ARTICLE 9<sup>2</sup>**

The proceedings available in respect of a public authority are as set out in the following paragraphs:

### *Challenge proceedings*

Challenge proceedings are regulated under the Administrative Procedure Act. Their aim is on the one hand to allow for inexpensive and prompt review of decisions, and on the other to give the administrative system a chance to correct its mistakes. Challenge proceedings are free of charge for persons. Currently, as a rule they are not mandatory (except the mandatory challenge procedure foreseen in the Environmental Charges Act and the Environmental Liability Act) and the relevant person may turn directly to the court. A challenge may be filed by a person who finds that his or her rights have been violated or freedoms restricted by an administrative act or in the course of administrative proceedings (para. 71). However, a challenge cannot be filed against an act or measure of an administrative authority over which the Government exercises supervisory control.

A challenge concerning an administrative act or measure shall generally be filed within 30 days. Execution of the administrative act may be suspended for the duration of adjudication. A challenge is generally adjudicated within 10 days, but the term of review may be extended for additional investigation by up to 30 days.

A decision on a challenge must be in writing and, upon dismissal of a challenge, must be reasoned and contain an explanation concerning the filing of an action before an administrative court. A person whose challenge is dismissed or whose rights are violated in challenge proceedings has the right to file an action before an administrative court.

In general, challenge proceedings are considered as a positive and good opportunity for a administrative body to correct its mistakes quickly and efficiently. However, the negative side of the proceeding is that the authority may not see its own mistakes and also the impartiality and independence of the decision on challenge are not guaranteed. As there is also a not very expensive alternative to challenge a decision in an administrative court (if the fee of legal aid is not taken into account), the challenge proceedings are not used very often.

### *Supervisory control proceedings*

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<sup>2</sup>Analysis of implementation of Article 9 of the Convention is based on the material prepared in the framework of the Danish-Estonian cooperation project on the access to justice in environmental matters by Hannes Veinla and Kaarel Relve. The material is available on the MoE website.

Supervisory control consists in the internal control of administrative activities and aims to ensure the legality and purposefulness of administrative activities. A person cannot demand that supervisory control be exercised, but he or she can draw the attention of the administrative body exercising supervisory control to circumstances that demand its exercise. Supervisory control is not exercised in matters related to (State) supervision measures and acts, e.g. it is not exercised over the precepts of the Minister of the Environment.

A person exercising supervisory control has the right to:

- (a) Issue an order for the elimination of the deficiencies in a legal instrument or act;
- (b) Suspend the performance of an act or validity of a legal instrument;
- (c) Invalidate a legal instrument.

#### *Administrative court proceedings*

Only a person who considers that his or her rights have been violated or freedoms restricted by an administrative act or measure has the right to file an action with an administrative court. An action for the establishment of the existence or absence of a public law relationship, or the unlawfulness of an administrative act or measure, may be filed by a person who has a legitimate interest in the matter.

Three conditions are applicable in determining the existence of a right to file an action:

- (a) The relevant environmental legal standard has to give rise to a legal public right;
- (b) This right must be held by the person filing an action, i.e. there must be a personal connection;
- (c) A causal connection must exist between the administrative activities and the violation of the rights.

In case of legitimate interest, there are two main conditions applicable to the right to file an action:

- (a) The person filing an action must have a certain personal connection to the case;
- (b) The person filing an action must demonstrate the need to determine the unlawfulness.

An administrative court has the right:

- (a) To annul an unlawful administrative act in its entirety or partially;
- (b) To issue an order to execute an unlawfully suspended administrative act, to issue an administrative act that has not been issued or to adopt a measure that has not been adopted;
- (c) To declare an administrative act or measure unlawful. An administrative court shall verify both the procedural and the substantive lawfulness of administrative activities.

The administrative court proceedings are based on the “violation of rights” rather than on the objective control of administrative activities. The courts’ rather limiting interpretation of the standards for the right to file an action so far may pose a significant impediment to the implementation of the Convention. Until now, there haven’t been any special conditions for the right of NGOs to file an action. In practice, the courts, including the Supreme Court, have applied the Convention directly and on several occasions have recognized the right of NGOs to

file an action. At the same time, there is no common court practice in respect of the recognition of the right to initiate proceedings (in some cases, the courts have not recognized the right of the NGOs when in fact they should have). The need for criteria is supported by the fact that this excludes the *locus standi* for groups with strictly limited interests as well as the need for the court to interpret and apply directly the Convention.

The draft Administrative Procedure Act prepared by the working group convened by the Ministry of Justice passed the first reading in the Riigikogu (Parliament) containing a separate implementing provision regarding the right of appeal in environmental issues. One of the reasons for the draft is to end the infringement proceedings initiated by the European Commission against the Republic of Estonia regarding the assessment of environmental impact Directive (Council Directive 85/337/EEC, amended by the Council Directives 97/11/EC and 2003/35/EC) and Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (IPPC).

The right of appeal of the non-governmental environmental organisations has been regulated in the draft General Part of the Environmental Code Act proceeded by the Riigikogu but the scheduled term for enforcement thereof is 01/01/13 that is not satisfactory taking into account the stage of infringement procedure.

Due to the infringement proceedings the right of appeal regarding environmental issues has been provided for in the Code of Administrative Court Procedure until the enforcement of the General Part of the Environmental Code Act.

Proceeding from the judicial practice and Environmental Liability Act the definition of an environmental organisation provided in the draft is broad. This is an important improvement as the valid law does not comprise the general definition of a non-governmental environmental organisation. Pursuant to the draft a non-profit organisation or a foundation promoting environmental protection having operated a year before the challenging the administrative act or act but also an association of persons who are not legal persons in case such an association represents the opinions of the relevant part of the local population may be an environmental organisation. As said before, the aim of the requirement for one activity year of the environmental organisation is to exclude the appeals of *ad hoc* groups of random character representing the interests of small circles.

Based on the Convention, courts in Estonia have been liberal in recognising the environmental organisations. The appeals of several NGOs, the right of appeal of a foundation and also the right of appeal of a partnership have been accepted. The draft prescribes specifications of the right of appeal of the environmental organisations regarding challenges of the rulings made in environmental cases – the justified interest of the environmental organisations or infringement of rights in case of challenging such rulings are assumed in case the subject-matter is related to the present activities or area of activity of the environmental organisation.

*Supervisory proceedings carried out by the*

*Data Protection Inspectorate*



The Public Information Act is the main national legal act implementing the requirements of article 4 of the Convention (access to environmental information). According to its paragraph 46, a challenge may be filed with the Data Protection Inspectorate in case of a violation of the Public Information Act. The Data Protection Inspectorate (hereinafter the Inspectorate) is a government institution whose main function is State supervision over the processing of personal data, maintaining of databases and access to public information. The proceedings conducted by the Inspectorate are challenge proceedings of a certain specific nature. The Inspectorate has the right to issue orders upon the holders of information to comply with the law and take the necessary measures within five working days. In the case that the holder of information neglects to fulfil the order issued by the Inspectorate, and does not challenge it in the administrative court, the Inspectorate will initiate misdemeanour proceedings or turn to the superior institution or body of the holder of information in order to perform supervisory control. However, problems might arise in ensuring the implementation of the orders issued by the Inspectorate.

#### *Supervisory proceedings carried out by the Chancellor of Justice*

The main duties of the Chancellor of Justice include reviewing the legislation of general application of the legislative and executive powers and of local governments for conformity with the Constitution and legal acts of the Republic of Estonia. In addition, paragraph 19 of the Chancellor of Justice Act establishes that everyone has the right of recourse to the Chancellor of Justice in order to control the activities of governmental authorities, including the guarantee of constitutional rights and freedoms. As the independence of the Chancellor of Justice is stressed in Chapter XII of the Constitution, the Chancellor can doubtlessly be considered an independent body in the meaning of article 9, paragraph 1, of the Convention. The proceedings carried out by the Chancellor are free of charge for the person who made the recourse. The Chancellor does not have sufficient means to ensure the efficient execution of his or her functions, and neither have definite proceeding deadlines been established. Therefore, the review and supervision carried out by the Chancellor of Justice is not appropriate for implementing the requirements of the Convention, but the proceedings may have a supportive role.

The following are relevant in respect of private persons:

#### *Environmental supervision*

In accordance with paragraph 22 of the Environmental Supervision Act, an activity damaging to the environment may be suspended if:

- (a) It is not in compliance with an environmental standard or with the standards determined in the environmental permit;
- (b) It is performed on the basis of an environmental permit but endangers the life, health or property of persons and such danger cannot be immediately eliminated;
- (c) It is permitted only on the basis of an environmental permit which does not exist, has not been submitted, has been issued by a person who has no authority to do so or has been issued without considering the environmental protection requirements established in the law;
- (d) It is permitted only during a certain period of time or under certain conditions and does not comply with the time or conditions permitted for such activity.

An environmental supervision authority may also take other measures in order to bring an activity damaging to the environment into conformity with the requirements.

### *Criminal proceedings*

Paragraph 6 of the Code of Criminal Procedure establishes that investigative bodies and Prosecutors' Offices are required to conduct criminal proceedings upon the appearance of facts referring to a criminal offence unless there exist circumstances which preclude criminal procedure or the grounds to terminate criminal proceedings for reasons of expediency.

### *Neighbourhood rights*

According to paragraphs 143 and 144 of the Law of Property Act, the owner of an unmovable property does not have the right to prohibit the spread of gas, smoke, steam, odour, soot, heat, noise, vibrations and other such nuisances emanating from another unmovable property unless this significantly damages the use of the owner's property or is contrary to environmental protection requirements. The intentional direction of nuisances to a neighbouring unmovable property is prohibited.

The owner of an unmovable property has the right to demand that a construction or installation be not erected or preserved on a neighbouring property if there is reason to presume that it will cause or causes a prohibited nuisance to the owner's property.

### *Compensation for unlawfully caused damages*

The relevant applicable provisions are paragraphs 133, 1056 and 1058 of the Law of Obligations Act. If damage is caused by environmentally hazardous activities, damage related to deterioration of the environment shall also be compensated for in addition to the damage caused to persons or the property thereof. Expenses relating to the prevention of an increase in the damage, reasonable measures for mitigating the consequences of the damage and the damage arising from the application of such measures shall also be compensated for.

The principles of fairness and equity (including non-discrimination and proportionality), as well as the independence and integrity of the courts and Chancellor of Justice, are set forth in the Constitution.

Administrative courts should generally discuss cases within two months from receiving an action. However, in reality, administrative courts are often overburdened (particularly the Tallinn Administrative Court) and the overall term for review is therefore exceeded in many cases.

Extra-judicial proceedings are in principle free of charge, and charges in administrative court proceedings are low except in cases related to compensation for damages in which the fee consists in 5% of the claim for damages. At the same time, procedural expenses are not limited only to fees charged by the reviewing body, but include also other charges such as legal aid and expert expenses, as well as compensation of the defendant for expenses upon losing the case. Expenses are obviously highest in court cases. The court can reduce the legal aid expenses the defendant has to be compensated for, and in certain cases decide not to charge these altogether. It may also decide that the legal aid expenses of an insolvent natural person will be covered by the State. An attempt to provide a more comprehensive solution to providing free legal aid to

insolvent natural persons as well as to environmental NGOs acting in the public interest has been made in the State Legal Aid Act. The Memorandum and Clarification Request Reply Act obliges administrative bodies to provide free legal aid to a limited extent. However, most of the NGOs are of the opinion that in financial terms the court proceeding may prove to be too expensive and hence this can be an obstacle for challenging administrative decisions. However, the general opinion was that most of the problems find solutions without the court and the court is seen as an ultimate measure.

The written form of decisions is a requirement clearly established in basic proceedings and can be presumed in other proceedings such as the review proceedings carried out by the Chancellor of Justice. The public accessibility of decisions is a more sensitive question. All court rulings are in principle accessible on the Internet since October 2001. Decisions taken in other proceedings are also accessible to the public. Administrative bodies are obligated to maintain a document register which is in principle publicly available and accessible on the Internet. In some cases, such as the supervision proceedings carried out by the Data Protection Inspectorate, the administrative bodies must disclose the results of proceedings on their websites.

### **XXIX. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 9**

Everyone's right of recourse to court is established in the Constitution. However, the public is obviously not equally well informed of exactly how to go to court and of the alternatives to court proceedings. The website of the Ministry of Justice contains a separate section on "assistance to persons going to court", which unfortunately only addresses recourse to civil court and not to administrative court. The website of the MoE introduces the principles of the Convention and contains relevant materials that can be helpful to the public in learning of possibilities of access.

NGOs have pointed out the following problems in the implementation of article 9:

- (a) Internal challenging proceedings are ineffective, as in most cases the authority will not amend its earlier decision;
- (b) A possible ruling of the court regarding payment of the winner's court costs may prove to be an obstacle to filing the claim.
- (3) It is suggested that establishment of specific provisions in the proceedings of environmental cases regarding coverage of legal costs.

However, NGOs also mentioned some positive aspects:

- (a) The National Court has not ruled for the compensation of court costs regarding natural persons in administrative cases;
- (b) The provision of the Planning Act allowing for *actio popularis* is adequate, necessary and does not conflict with the Administrative Court Proceeding Act.

In addition, some general problems have been identified by NGOs in respect of the Convention's implementation;

- (a) There is no reference to the right to a clean environment at the constitutional level;
- (b) The Estonian translation of the Convention is deficient and not in full compliance with the English version.

## **XXX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 9**

### **XXXIII LEGAL AND OTHER MEASURES FOR APPLICATION OF CONVENTION ARTICLES 6BIS AND ANNEX I BIS**

In Estonia release of GMOs into the environment and marketing is subject to the Deliberate Release into the Environment of Genetically Modified Organisms Act that also contains provisions regarding engagement and participation of public in the decision process regarding release of GMOs into the environment and marketing.

Based on Article 5 of the Act the Gene Technology Committee has been established in the administrative area of the Ministry of the Environment that inter alia provides assessments regarding the applications for licences to release GMOs in the environment and marketing. Besides government agencies and universities the committee also includes representatives of environmental organisations who have through the committee a direct access to the information contained in the licence application and the right to submit additional questions and comments. The committee assesses the licence applications submitted both in Estonia and through any other EU Member State (only regarding marketing).

The act comprises several clauses on disclosure related to the licence application: e.g. based on § 8 and § 23 the Ministry of the Environment must notify the public in at least one newspaper of national circulation, if new data have become available during the processing of the licence or after the granting of the licence regarding the hazards to human health or environment related to the release into the environment or marketing. The content of the information to be disclosed is established in the Resolution of the Minister of the Environment No. 68 of 8 June 2004 "Information submitted and disclosed for the hazard having become known related to the release of GMO into the environment or marketing of a product containing or composed of genetically modified organisms".

Article 10 of the Act establishes the procedure for the disclosure of the application for the licence to release GMOs into the environment and marketing and the issued licence. Under this Article the Ministry of the Environment must inform the public of the initiation of the proceeding of the licence and later also of the granting of the licence in *Ametlikud Teadaanded*. Pursuant to the amendment to the act that is being proceeded in the *Riigikogu* at the moment the Ministry of the Environment must do it also in a newspaper of a national circulation. The content of the notice provides information regarding the applicant, the content of the application, the site of release of the GMOs into the environment and examination of the application. In the respective notice, the period of time when the public can give their opinion shall be designated. This period cannot be shorter than 30 days or longer than 60 days. The Ministry of the Environment must respond to the comments of the public within the period of two weeks after their receipt.

Any already marketed GMO must be labelled so that the consumer is able to choose whether he or she wants to buy a product containing or composed of GMOs (§ 24). The labelling obligation stems directly from the Regulation (EC) No. 1830/2003 of the European Parliament and of the Council concerning the labelling of genetically modified organisms.

Any information contained in the application for the licence and the data of the valid licence are public and they are maintained in the Environmental Register (§ 29). Any relevant information regarding the owner of the licence, GMOs, the acceptable environment and allowed manners of use shall be entered into the permit (§ 12 (5) and § 22 (5)).

In case the applicant for the licence wishes to keep some of the data as business secret, the respective decision shall be made by the Minister of the Environment. The following data must not be considered as a business secret: the description of GMOs, the name and address of the applicant, the aim, site and time of release of GMOs into the environment, and the intended method of use, the planned monitoring method and plan, the results of risk analysis and action plan in case of an accident.

The requirements established in the law meet the requirements of the Cartagena Protocol and facilitate the performance of the aims of the Protocol.

#### **XXXIV-XXXV - PRACTICAL APPLICATION OF ARTICLE 6BIS, INCLUDING OBSTACLES TO APPLICATION**

No licences for release into environment or marketing of GMOs have been issued in Estonia. Therefore it is impossible to speak of obstacles or experiences in this area. Still, the representatives of NGOs participate in the Gene Technology Committee where the EU applications for the marketing permits are assessed. Annually, approximately twenty applications for licences are assessed.

## **Annex**

### **LIST OF PUBLIC AUTHORITIES AND ORGANIZATIONS THAT RESPONDED TO THE QUESTIONNAIRE CIRCULATED IN THE PREPARATION OF THE REPORT**

1. Estonian Society for Nature Conservation
2. Estonian Association of Deposits
3. Foundation Tartu Environmental Education Centre
4. Estonian Fund for Nature
5. EC Estonia
6. SEI Tallinn
7. Estonian Environmental Law Centre

#### **LOCAL GOVERNMENT AUTHORITIES**

- 8..Association of Estonian Cities
9. Maardu City Council
10. Jõgeva City council
11. Tõrva City Council
12. Paide City Council
13. Jõhvi Rural Municipality Government
14. Tartu City Government
15. Järvakandi Rural Municipality Government
16. Tallinn City Government
17. Sillamäe City Government

#### **PROFIT ORGANIZATIONS**

18. State Forest Management Centre
19. Estonian Environmental Research Centre

#### **STATE AUTHORITIES**

20. Ministry of Education and Science
21. Ministry of Justice
22. Ministry of Economy and Communications
23. Ministry of Agriculture
24. Ministry of the Interior
25. Ministry of Social Affairs
26. Ministry of the Environment
27. Environmental Inspectorate
28. Environmental Board
29. Estonian Meteorological and Hydrological Institute
30. Environmental Information Centre of the Ministry of the Environment
31. Land Board
32. Centre of Environmental Investments