

J&E Workplan 2007: SEA infrastructure
NATIONAL CASE STUDY
ESTONIA

Liis Keerberg, November 2007

- 1. Title of planning case:** Fixed Link of Saaremaa
- 2. Matter of case:** Finding the most suitable traffic-connection over the Big Strait connecting Estonian mainland and the island of Saaremaa
- 3. Country:** Estonia
- 4. Location:** West-Estonia (Saare and Lääne Counties and Väinameri (Strait-sea))
- 5. Geographic dimension: (local, regional, national, EU, international - (especially, is the plan (shall it be) part of Trans-European Transport Network?))**

National.

Currently, the plan is not a part of TEN-T, but the Ministry of Economic Affairs and Communications (hereof: MEAC) has informed the NGO-s, that it would take 1-3 years of negotiations to add it to TEN-T. It is not known to us, if these negotiations have already begun, or if there is a decision to start the negotiations.

6. Initiator of SEA/competent authority:

Ministry of Economic Affairs and Communications (MEAC)

7. Participants involved:

Estonian Government

Ministry of Economic Affairs and Communications

Saaremaa Fixed Link commission of experts

Estonian National Road Administration

Estonian Waterway Administration

Ministry of Environment

Local regions of National Nature Protection Centre

Saare County Government

Lääne County Government

Muhu municipality

Hanila municipality

Council of Estonian Non-governmental Environmental Organizations

8. Other interested parties and/or stakeholders:

Fishermen of the area affected

Minor seaports and seafarer

Inhabitants and landowners of the area

Enterprisers of the area

Tourists and tourism organizers

9. Background facts:

9.1. **Account of facts** (short summary of the planning case)

Currently, the connection between main land of Estonia and Saaremaa island is provided via ferries (it takes about 30 minutes to cross the sea by ferry). However, for years there have been plans to create a 'fixed' link between the island and main land.

In 1997, Saare County Government compiled a commission with a task to find out the possibilities of construction of a Fixed Link over the Big Strait between mainland and Saaremaa. In cooperation with Finnish and Norwegian experts, the first feasibility study was carried out which showed that according to traffic prognosis, construction possibilities and restrictions of the time construction of a bridge or tunnel to cross over the Big Strait is economically feasible in 2000.

In 2003 Estonian Government established a commission of specialists from Parliament, different bureaus and organizations, for handling the topic of Fixed Link.

On first of May 2004 Estonia became a member of European Union and submitted a list of sites of future Natura 2000 network to European Commission. The list contained also Special Protection Areas (SPA-s) and proposed Sites of Community Interest (pSCI-s) which would be directly affected by proposed Saaremaa Fixed Link project. On the one hand, membership in European Union opened unprecedented possibilities of financial aid, but on the other hand it enacted environmental restrictions arising from Birds and Habitats Directives.

In 2005 Danish company Ramboll Danmark A/S in cooperation with two other Danish consultation firms - Sund & Belt Partner Ltd and Deloitte - compiled (with financial support from EU ISPA Technical Aid) economical and environmental analysis, in which among other things the needs for additional studies were found out and alternative tracks and types for Fixed Link were proposed.

Initially Ministry of Economic Affairs and Communications was at a standpoint that Estonian Government shall make the principal decision about the establishment of Saaremaa Fixed Link on ground of studies of Danish experts. That approach was sharply criticized by the Council of Estonian Non-governmental Environmental Organizations who saw in it the threat of opaque decisions and repulsion of public from decision-making (as the public had had no opportunity to participate).

NGO-s submitted their standpoints to MEAC in September 2005. After that, government changed its position and in March 2006 Government initiated a strategic development plan and its SEA, in course of which all alternatives of traffic over the Big Strait shall presumably be considered. It should be added, that with preliminary construction costs estimated to be at least EUR 300 million, the Saaremaa bridge project would be the largest investment ever carried out in Estonia and would be feasible for the government only if large amounts of EU co-financing should materialise.

9.2. Description of the project and its main environmental impacts

9.2.1. General description of the project

(kind of the plan, its main goal, basic proportions, land-use requirements, etc.)

The plan included in the case study is called "The Plan of long-term arrangement of transportation of passengers and transported items (goods) over the Suur väin strait", which covers long-term opportunities for the connection of traffic between continental Estonia and the nation's biggest island, Saaremaa (hereinafter: the Plan).

The goal of the Plan is to:

- compare different means of traffic over the strait of Suur Väin;
- evaluate their economical, social, cultural and environmental impacts;

- and finally to identify the best mean of traffic.

The Plan focuses on the analysis of 3 means of traffic. These are:

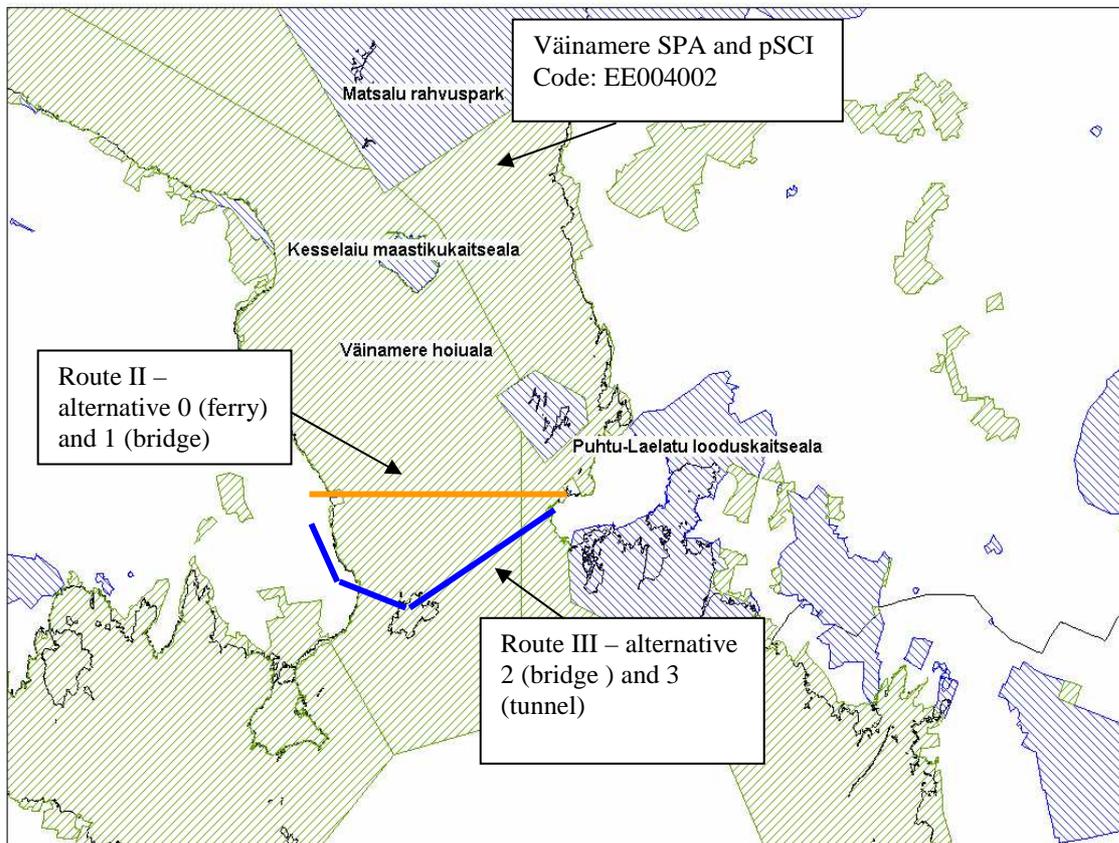
- the promotion of the ferry traffic, which is the only mean of traffic to the date;
- the establishment of the Fixed Link between Saaremaa and continental Estonia with construction of the bridge;
- the establishment of the Fixed Link between Saaremaa and continental Estonia with construction of an under-strait tunnel.

Land-use requirements: The options of constructing the bridge and constructing the tunnel require reservation of land according to routes in the comprehensive plans of Muhu and Hanila rural municipalities. As inland maritime waters and the territorial sea are both the property of the Estonian Republic (according to the Water Act of Estonia), the fulfillment of the variants of bridge and tunnel would additionally require modifications in the national spatial plan, because one of the main goals of the national spatial plan is the designation of the nation-wide transport network and canalization of the development of technical infrastructure. The right to prepare and commence the modifications in the national spatial plan belongs to the Government of Estonia.

Proportions: In 1999 the technical center of the Road Administration presented a study named “The permanent connection of Saaremaa. Feasibility (profitability) study”, where the proposed length of the bridge is, depending on the choice of the routes, between 6065- 10 875 m. The shortest possible length of the tunnel in the study is 6515 m. Also, the possibilities to enhance ferry traffic are analysed and described.

9.2.2. Description of the affected area

- *general characteristics (scope, character of land, density and kind of settlement...)*
- *most important environmental characteristics, e.g. quality of air, water resources, protected areas, fauna, flora, important cultural sites... ; if possible, map of the area or sketch map of the project)*
- *overall evaluation of quality of environment in the affected area before realization of the project, extent of its “environmental burden”*



Green part in the water and costal area is SPA and pSCI of Väinamere (code: EE004002). Areas lined with blue color are Puhtu-Laelatu Nature protection area, Matsalu National Park and Kesselaiu landscape protection area, likely to be affected by the Fixed Link project.

Saaremaa is situated in the Gulf of Riga and is the second biggest island in the Baltic Sea. It is separated from the continental Estonia by the straits of Suur Väin and Väike Väin.¹ Saaremaa is the biggest island in Estonia, its area is 2673 km² and population density 30 p/km². There are approx. 600 small islands in the coastal waters of Saaremaa. The Saaremaa and Muhu island (which are connected by road and are part of the same county) have altogether 35 076 inhabitants. Saaremaa and Muhu are visited by 300 000 tourists annually. The main fields of economy are agriculture, fishing, food processing and tourism. Urbanization is a growing tendency and in 2005, for example, 41 % of the inhabitants lived in Kuressaare, the county capital.

In addition to Saaremaa, the planned permanent connection will, regardless of the specific option, affect the Virtsu village in continental Estonia and the villages of Võiküla, Kuivastu and Liiva on Muhu island. The Virtsu village is the site of the continental port. In addition to port, the other noted economical activity is fishing industry. There are 906 inhabitants. The surrounding rural municipality of Hanila is sparsely populated - 8,8 in /km². There are 3 national protected areas in the Hanila rural municipality – Puhtu-Laelatu nature protected area, Nehatu landscape protected area and Tuhu landscape protected area.

¹ Next to Saaremaa is situated the island of Muhu, the 3rd largest island of Estonia. The Muhu island and Saaremaa are divided by the Väike Väin strait. They are connected by a road-dam, which is 3,8 km long. Muhu island is separated from the continental Estonia by the Suur Väin strait. It is 7,1 km long and currently they are connected by ferry traffic.

The coastal waters surrounding Saaremaa and Muhu islands are generally shallow and contain many rocks and shoal. The waters are important places of spawn for the fish.

The state of air quality is good. The indicators of pollutive substances are very low and there are few sources of pollution.

The flora of Saaremaa is rich in species. Many alvars, coastal meadows, wooded meadows and broad-leaved forests, which are rich in species, have been taken under protection. The juniper forests are very typical and relatively many oak forests have been taken under protection.

Several rare species dwell in the area, for example ringed seals and porpoises. Saaremaa, as other islands in western Estonia, is situated on the migratory route of water-birds, which connects North-East Europe and the Arctic, so hundreds of thousands of birds visit the island annually, many of them belonging to protected species. Besides bigger protected areas, Saaremaa has over 200 individual protected natural objects. These include parks, big trees, high bank-coasts, unique marshes, glacial boulders, the Kaali group of astroblemes.

Compared to other areas in Estonia, Saaremaa has quite many Medieval churches, there are also a lot of manor houses with noteworthy architecture. Saaremaa and Muhu islands are one of the most rich areas in Estonia in terms of traditional culture and protected area farmhouse architecture. The area is noted for its windmills, stone-fences and lighthouses.

Along the islands of Hiiumaa, Muhu, Vormsi, and the waters and small islands surrounding them, the island of Saaremaa belongs to the Biosphere Protected area of the West-Estonian Archipelago. Suur Väin strait is part of the Väinameri bird area and Väinameri nature area (code EE004002). All the routes, regardless of the alternative, are situated in major part in the Natura areas. The area affected by the Fixed Link is also Väike väin nature area (code EE 0040486).

9.2.3. Description of the main impacts of the project

according to the kind of the plan - mainly climate change, emissions, noise, nuisances, conflicts with special protection areas, changing characteristic of the landscape...)

Impacts of the bridge-alternative to the quality of sea-water

Construction of the bridge would have an impact on the quality of the sea water, regardless of which of the specific routes is proposed. The instauration of the tunnel would not affect the quality of the sea water so greatly, except in the part between Viirelaid and the Muhu island, where building of a bridge and dams is planned as part of the tunnel project. The upper strata of the sea bottom of the "Strait sea" are mainly made up of soft clay and mud. For this reason, the instauration of the substructions of the bridge would create a lot of floating material from the sea bottom during different construction works. The high concentration of the floating material affects movement of the fish and the nutrition of seabirds. In case of the long-term impact, the floating material affects negatively the communities of the sea bottom vegetation, because of deterioration of the light conditions. This, in turn, may diminish the spawning territories of the fish and enhance the erosion of the shore. When the floating material has silted on the sea bottom, it may destroy the communities of the bottom-fauna, which are important for securing the quality of the sea water and which form a substantial part of the food of the seabirds in the Väinameri sea area.

The Suur Väin Strait is rather shallow and the bridge could disturb the strait's tidal flows. The bridges and dams would not affect only the Suur väin strait, but the whole exchange of waters of the Sea of Väinameri. If the exchange of waters reduces permanently by 10-20%, it may enhance the eutrophication of the gulfs of Matsalu and Haapsalu on coast of the main land. The strait is famous

for seals, especially the ringed seal (*Phoca hispida*) but could also be home to the harbour porpoise (*Phocaena phocaena*) which is not yet very well studied.

Impacts of the tunnel-alternative to the quality of sea-water

Construction of the tunnel would probably not affect the exchange of waters of the Suur väin strait, because the tunnel would not have a direct contact with the sea environment - but in case of an short tunnel, the problem would occur, when the dregs pile around road-dams, which extend to the sea. No changes in the exchange of waters are to be expected in case of the continued ferry traffic, because possible extentions of ports would not affect it.

Impacts of the ferry-alternative to the quality of air

The main impact area of the ferry traffic would be the port-areas of Virtsu and Kuivastu. Also, there would be motorways on both sides of the strait, by which the vehicles would arrive to and depart from the ports. The latter impact should especially be considered during summer period, when long waitinglines occur and cause air pollution and contamination of the sides of the roads. During winter period, there lies a problem in cars, which do not turn off the engine because of cold weather. The preliminary environmental study of the Fixed Link has pointed out, that in case of the fixed link, even in case of the significant increase of road traffic, the emission of the greenhouse gases would be reduced, compared to the emission caused by the current ferry traffic. This would still be the case, when modern ferries would be used. At the same time, the Danish consultants have not taken into account the whole amount of the emission during the construction of the Fixed Link, and for this reason the comparison with the permanent car and ferry traffic already in place, does not express the air pollution as a whole. It is important to notice, that the planned Fixed Link can not be used by pedestrians and bicycles, and in certain times of the year, the Fixed Link might be closed because of unfavourable climate conditions.

Impact of the bridge-alternative to fauna and humans

The instauration of the bridge, regardles of the route, may affect the population of ringed seals. Considering the behaviour and the biology of reproduction of this species, the instauration of the bridge may cause irreversible negative effect. In case the animals will feel fear for the construction of the bridge and the bridge itself, the worst scenario would be the extinction of the whole ringed seals' population of the Väinameri sea. Concerning the other species of seals represented, the grey seal, the effects of the construction of the bridge would not be so crucial, but the scientists feel that there are still effects that must be considered.

The site of the potential bridge lies inside the large Väinameri Important Bird Area (IBA). The west coast of Estonia is a very unique bird area as it lies in the centre of an important migration path. Just 10 kilometres north of the proposed bridge site lies Matsalu national park (a Ramsar site since 1976) and just about the entire coastal sea area between the mainland and the large islands of Saaremaa and Hiiumaa has been designated to Natura 2000 network.

During the migration period, more than 2 million birds fly over the Suur Väin Strait, and the bridge would be a serious obstacle with a positioning that cuts across the bird migration route. As visibility is often bad during the migration season due to low clouds and fog, the bridge might pose a significant threat for birds, especially in darkness.

The Fixed Link may also have impacts on humans, specifically the effects of noise, air quality, sea water quality. In case of unfavourable winds, the floatating material, which has been created by the

construction works might be drifted to many beaches of the Baltic Sea, included the ones used by humans in the summer time. The bridge may diminish the quality of life of the nearby inhabitants through the occurring noise.

- possible cumulative effects with other projects

Connected to the construction of deep-sea port to North-Eastern coast of Saaremaa island for short cruise ship visits, the Fixed Link will enormously increase volume of visitors, causing absorption problems for islands' vulnerable nature and unique cultural heritage.

9.3. Important interrelated aspects - transboundary impacts of the plan, relation to national and EU infrastructure (transport) development plans, EU funds etc.

- *TEN-T?*
- *National transport programme*
- *EIB-funded?*

The construction of the Fixed Link has no presumptive significant transboundary impact.

Officially, the permanent connection between Saaremaa island and main land shall not be part of TEN-T, and there is no information, if connecting with TEN-T is planned in the future. There have, however, been discussions that the project might become a TEN-T corridor. (see p. 5).

The Fixed Link is one of the priorities in the Estonian Development Plan for Transport 2006-2013, prepared by MEAC.

Initial background studies have been carried out with the support of ISPA-funded Technical Assistance. The compilation of current Plan is, to our knowledge, accomplished through the finances of Estonia. For the instauration of the Fixed Link, applications for co-funding from EU structural funds and European Fund for Regional Development shall be submitted.

10. Applicable articles of SEA Directive, relationship to EIA Directive, Habitats and Bird Directives

The **SEA Directive** is not applicable in this case because there are no legislative, regulatory or administrative provisions which would require the compilation of such development plan in the field of transport. According to the implementation instructions of SEA Directive, such provisions are necessary in order to make SEA mandatory:

"Another important qualification for a plan or programme to be subject to the Directive is that it must be required by legislative, regulatory or administrative provisions. If these conditions are not met, the Directive does not apply."

At the same time it does not mean that there is no SEA obligation at all, because the national EIA Act is wider than directive as it requires SEA for plans which are „enacted with administrative act” and not „which establishment request comes from the law”. It guarantees that SEA will be carried out also for plans, compilation of which is not a requirement of law.

The proposed activity belongs to the activity listed in Annex II of **EIA Directive** by which the need for EIA must be decided by the member state by following the procedure provided in EIA Directive. According to the Estonian EIA Act, the obligation of EIA in case of establishment of the Fixed Link comes for example from following general provisions:

- According to Section 3 2), EIA is obligatory when the proposed activity may individually or together with other activities presumably significantly affect a Natura 2000 site.
- According to Section 6(1)34), EIA is obligatory when proposed activity is activity, by which the EIA obligation is determined in the strategic planning document which creates a basis for that activity.

As the Fixed Link project may have significant negative affect to the Natura 2000 network areas submitted to European Commission, **articles of 6.3., 6.4. and 7 of Habitats Directive** are applicable.

11. Applicable national laws:

Classification of strategic development plans and the provisions of their compilation, amendment, implementation, evaluation and accountancy.

Regulation No 302 of the Government of 13 December 2005

Thematic development plans are composed by relevant ministries and they create a basis for State Budget. Such development plans are adopted by governmental decision. Procedural requirements for such plans are regulated with this regulation.

Environmental Impact Assessment and Environmental Management Systems Act (new EIA act) (in force since 3 April of 2005)

The new EIA act establishes the obligation cases of SEA for strategic planning documents. Special provisions of Natura-assessment are foreseen in SEA proceeding in case the strategic planning document in question is likely to have significant effect on the Natura 2000 network site.

Nature Protection Act (in force since 10 May 2004)

Nature Protection Act (NPA) is a basic regulation for all types of protected areas. It gives the definition for term „Natura 2000 network site” and its protection purpose. Amended version of NPA defines also the concept of compensatory measures of the Habitats directive art 6.3.

Administrative Proceedings Act (in force since 01.01.2002)

Administrative Proceedings Act (APA) is a general regulation for all administrative proceedings. It also contains provisions about “public proceeding” which foresee the basic rules for public displays and hearings of administrative proceedings with public participation.

List of sites of Natura 2000 network to be submitted to the European Commission – (Governments regulation No 615-k from 5 August 2004)

The list contains SPA-s and pSCI-s sent to European Commission in April 2004.

Government of the Republic Act (in force since 01.01.1996)

Designates the preparation of the development plans in transport sector as the competence of MEAC.

12. Legal framework of SEA-proceeding:

- *Position in legal system*
- *Administrative proceeding?*
- *particular planning proceeding?*
- *legal form of decision*
- *legal form of plan*

- *possibility to appeal against SEA decision and plan?*

SEA is an administrative proceeding, which is mainly regulated by the Environmental Impact Assessment and Environmental Management Systems Act (the EIA Act). The SEA procedure has to be carried out parallelly with the procedure of the strategic planning document.

When the preparation of the strategic planning document is initiated, the necessity of SEA must be decided. The results of public participation in the SEA procedure have to be taken into account in the preparation of the strategic planning document. The SEA report is formally part of the strategic planning document.

The SEA report separately is not an administrative act, the courts have generally looked on it as an procedural act. Procedural acts can be generally appealed only together with the final administrative act - however, the Supreme Court has noted, that because of the specific nature of the environment sector, the right of appeal should be wider, and the persons concerned should have the possibility in this kind of procedures to challenge the procedural acts separately from the final administrative acts (see p 19).

In the current case, the strategic planning document itself is to be adopted with the order of the Government of Estonia. It is an administrative act and a discretionary decision in its nature. As an administrative act according to the Administrative Procedures Act, it can be challenged in the administrative court.

13. SEA/planning procedural history/timeline:

- *information on formal proceeding (initiation of SEA, PP, decision etc)*

The decision to initiate the preparation of the Plan was made by the Government of Estonia on March 10th, 2006.

The SEA procedure was initiated by MEAC on September 4th, 2006.

Public was informed of the initiation of SEA on 22 September 2006 on the the web site of the Official Notices² and in the nation-wide newspaper Eesti Päevaleht. Public was informed of the public display of the SEA programme and the terms of reference (hereof: ToR) on 4 January 2007 on website for Official Notices and on 8 January 2007 in Eesti Päevaleht.

The SEA programme was approved by the Ministry of Environment (hereof: MoE) on 8 March 2007.

- *information on other relevant planning (political decision for the plan, start of internal planning, scheduled construction start)*

On the initiative of Saare County government, a commission was formed in 1997 in order to identify the possibilities of creating a fixed link over the Suur väin strait. In 2000, a preliminary feasibility study, made in cooperation with Finnish and Norwegian specialists, was ready. It showed, that based on the estimations of future traffic and possibilities and restrictions of

² Official Notices - www.ametlikudteadaanded.ee - is an internet-based official electronical edition, managed by Ministry of Justice. In Official Notices are publicised notices, calls and announcements, which must be publicised according to the law, government regulation or minister's regulation, but which will be not publicated in State Gazette where laws, regulations and orders of Government of the Republic etc. are made public. Official Notices are updated constantly – so that new notices are added in every working day.

construction on that time, an instauration of a bridge or an tunnel over the Suur Väin strait is economically feasible. On 12 September 2003, the Government of Estonia ordered a formation of a Commission of Experts (hereof: the Commission), objective of which was to make proposals to the Government of Estonia concerning the problems of the instauration of the Saaremaa fixed link (bridge or tunnel), which need more work, including:

- 1) the decisions, that must be taken concerning the questions of preparation of the instauration of the Fixed Link;
- 2) planning of the necessary activities concerning Saaremaa Fixed Link;
- 3) the elaboration of the criterias of financing.

The members of the Commission have changed every year. In 2006, a representative of the Estonian Council of Environmental NGOs was appointed to the Commission.

On 12 December 2006, the Commission decided to make a proposal to the Minister of Environment for excluding the route of the Fixed Link from the Natura areas in the Väinameri sea. The similar proposals have been made to the Minister of Environment by the governors of Saare and Lääne counties. The Minister of Environment has answered, that no areas can be excluded because of socio-economic reasons, besides, the lists have been sent to the European Commission already by May 1st 2004.

In the programme of the current governing coalition in Estonia which inaugurated in April 2007 there is a promise that the government shall finish the profitability and environmental impact assessments of the Fixed Link and start its instauration with the goal of having it ready by 2015. The matter of the Fixed Link is one of the priorities in the Development Plan for Transport 2006-2013, prepared by MEAC.

- information on time between SEA and formal adoption of the plan

The Plan will be presented to the Government of Estonia (to be imposed by its order) after the acceptance of the SEA by the Minister of Environment and its approval by the administrator of the Natura area.

- information on scheduled timeframe between adoption of plan and (EIA)-permit proceeding and scheduled construction start

The officials of MEAC currently hope that they can initiate the preparation of the Plan and the SEA report in January 2008. The estimated duration of the preparation of the Plan and the SEA procedure is 14 months. At earliest, the Plan might reach the Government of Estonia in April 2009. After the acceptance of the Plan by the Government of Estonia, an implementation plan of the Plan has to be prepared, which shall be presented to the Government of Estonia by MEAC in no longer than 3 months after the acceptance of the Plan. The implementation plan has to be approved by the decision of the Government of Estonia.

According to the SEA programme after accepting the SEA and enacting the Plan the following action in case of the 1st or the 2nd alternative (bridge on route II or III) would be the procedure of the preliminary design documentation, which includes an EIA procedure (on basis of the Roads Act). The preliminary design documentation shall designate the location of the road. The Plan, accepted by the Government of Estonia, designates the directions of development of the national spatial plan and county plans of Saare and Lääne counties. After the preliminary design documentation is completed, the spatial planning procedure will start, including SEA (on basis the Planning Act). As we do not know which alternative shall be chosen and therefore which procedures must be carried out, it is impossible to give even a very general estimate concerning the

start and permit procedures and construction. It can only be said that the Plan may be accepted by April 2009 at earliest.

14. Relationship to EIA

Please explain the relationship of EIA and SEA in the legal system and planning/project practice in particular with problems indicated in J&E Workplan 2006 on EIA/infrastructure

Both proceedings – EIA and SEA – have a supportive function for another proceeding. EIA belongs to the permit proceeding and its purpose is to make proposals for the selection of the best alternative from the environmental point of view and to give to decisionmaker an expert-level information about proposed activity, impact of real alternatives and mitigation measures. SEA belongs to the proceeding of strategic planning document, which according to the EIA Act may be a spatial plan of different levels, strategic development plan in the meaning of State budget law or plan, programme or strategy, which will be established by Parliament, Government, governing institution, head of the county or local municipality with its legal acts. The goal of SEA is to consider environmental considerations by compilation and establishment of strategic planning documents, to guarantee a high-level environmental protection and to promote sustainable development.

According to the EIA Act, when the proposed activity has presumably significant environmental impact, decisionmakers may also decide not to initiate EIA in that part, in which the impact is already assessed during SEA or during EIA proceeding of another environmental permit, if decisionmaker has enough information for giving out the permit. So – if the decisionmaker decides that such SEA or EIA are giving enough information about the impact, there is the possibility not to initiate EIA at all or initiate it, but carry it out in diminished scope.

EIA must be initiated when such obligation is foreseen in the strategic planning document as a basis for this activity. And on the other hand SEA must be carried out if the strategic planning document is compiled for the activity where EIA is obligatory.

15. Description of “significant effects” in environmental report (Article 5/1, Annex I (f))

- *How does the environmental report deal with “significant effects” as compared to other parts of the report (Does elaboration of “significant effects” have a high priority in environmental report)?*
- *Does the report and to what extent analyze the issues mentioned in Annex I f (biodiversity, climate, air, soil, interrelationships..)?*
- *Does and to what extent the environmental report cover with regard to significant effects*
 - *cumulative, secondary and synergetic effects?*
 - *short-term, long-term, permanent and temporary effects?*
 - *positive and negative effects related to environment?*

The preparation of SEA report has not started, as of September 2007, therefore these questions can not yet be answered.

16. Assessment of “reasonable alternatives” (Article 5/1, Annex I (h))

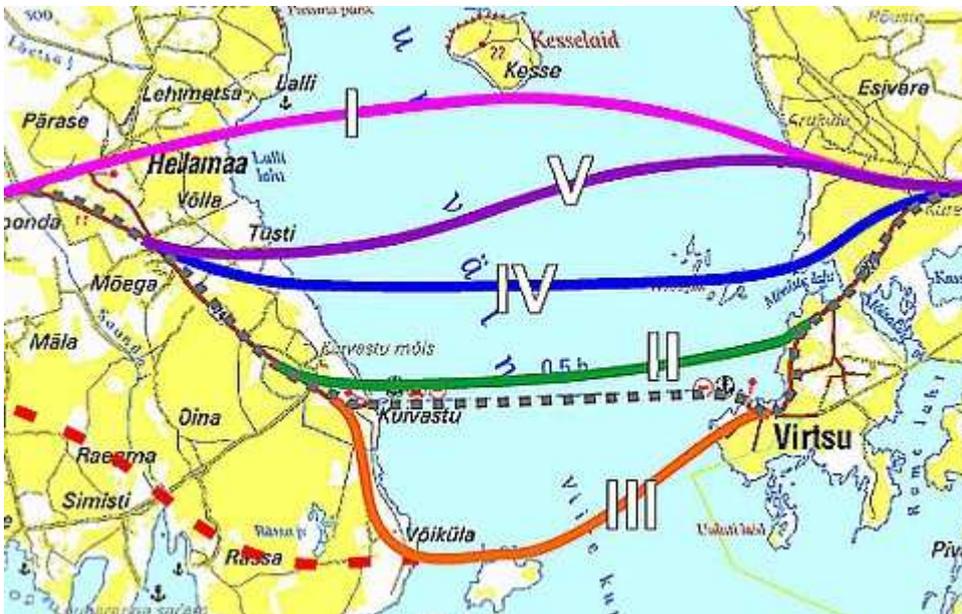
- *what kind of alternatives are covered, for example different locations, different means of transport (like railways, motorways, water-ways)*
- *Are respective alternatives analyzed in a “reasonable” and serious way?*
- *Does and to what extent the report cover the significant effects of alternatives?*

The Plan and its SEA will focus on different possibilities to cross the Suur Väin strait: a ferry, a bridge, a tunnel. The Plan focuses on comparing the ferry link and the Fixed Link (bridge or tunnel

connection). The included alternatives are based on the suggestions of the feasibility study of Saaremaa fixed link in 2005:

- the ferry connection with its possible developments (0+ alternative)
- bridge between Virtsu and Kuivastu parallelly with the ferry link (route II) (alternative 1)
- bridge from Virtsu to Võiküla with new parts of highway (route III) (alternative 2)
- tunnel from Virtsu to Võiküla with new parts of highway (route III / III T) (alternative 3)

Since the SEA of the Plan has only gone through the phase of accepting of the programme and its end is estimated to occur in April 2009, we can not comment at this point how the alternatives are covered in the SEA report. However, in the SEA programme three main alternatives for assessment – bridge, tunnel and ferry – are foreseen.



* Routes I, IV and V are already excluded from alternatives as the most harmful to environment.

17. Early and effective public participation (Article 6 and 7)

- How was the public informed on SEA?

Public was informed of the initiation of SEA, the public display and consultations of the SEA programme in the website of Official Notices and in the nationwide newspaper Eesti Päevaleht. The SEA programme and the ToR of the Plan were displayed from 8 January to 5 February 2007 electronically on the Website of the Estonian National Road Administration (ENRA) and on paper in the offices of the ENRA, governments of Hanila and Muhu rural municipalities and in SEA experts office. According to the final version of the programme, 19 companies and organizations were notified in writing of the public display of the SEA programme.

- At what stage in planning procedure does PP take place?

The ToR of the Plan which should be basis for its preparation did not consider the contributions of the public at all. In the timetable of the SEA programme it is stated that the public display of the SEA report and the Plan should lasts at least 4 weeks. Also the public consultations of the both documents shall be united.

However, it is not mentioned in the timetable whether besides the amendment of the SEA report and responding to the submitted comments a similar procedure will take place concerning the Plan.

Art. 37 of the EIA Act, according to which the publication of the SEA report takes place, prescribes that the public must have a possibility to access the strategic planning document, but the regulation of possibilities for commenting concerns strictly the SEA report. Therefore it is not clear if it is possible at all to submit legally binding (comments that must be answered) proposals to the Plan.

Also the other acts do not provide any such obligation. The Plan is not a spatial plan according to the Planning Act, so the PP provisions for spacial plans are not implemented here. Therefore, the PP of the Plan is poorly regulated and as poorly planned and it is impossible to say, in which phase of the Plan procedure will be a stage where the public can submit objections and proposals and to get responses (see also J&E 2007 SEA analysis Estonia, p. 3.A.i)

- At what stage in SEA procedure does PP take place?

The PP usually takes place in two phases – the public display and consultation of the SEA programme and the public display and consultation of the SEA report. It must be noted, that although it is not obligatory according to the EIA Act, the Council of Estonian Non-governmental Environmental Organizations was included to the preparation of the SEA programme ca 2 months before the official publication of the SEA programme (their position was asked about the contents of SEA programme).

- Did the SEA provide for early and effective PP at a planning stage when all options are open (in theory and effectively)?

Currently, the project has been restricted to three options: the promotion of the ferry traffic, construction of the bridge and of the tunnel. It must be noted, that the preliminary work of choosing the routes of the bridge and tunnel is already done and the options of routes are only the ones suggested in the feasibility study of the Saaremaa Fixed Link, which was compiled in 2005. This analysis was not part of the administrative procedure and included no PP. Therefore, in this sense, not all options were open when PP was first enabled.

- Has the SEA provided for sufficient time frame and arrangements to guarantee fair and effective PP?

As mentioned above, approx 2 months before the official publication of the SEA report the official opinion of the Council of Estonian Non-governmental Environmental Organizations (hereof: EKO) was asked. In the same timeframe, several governmental departments and concerned local governments were given possibility to provide comments. The public was given 4 weeks to read the SEA report and submit comments. which is twice as much as the minimal time period set in the EIA Act (14 days). The public consultation of the SEA programme is taking place in 3 places – rural municipalities of Muhu and Hanila, and city of Tallinn. It can be therefore concluded, that the time frame and arrangements have been sufficient so far, in the stage of SEA programme.

The timetable of the SEA programme has presumed, that the public display of the report will last at least 4 weeks. It is unknown, how much time will the experts and developers have for responding the proposals and objections..4 weeks of public display is probably sufficient, the minimal time period in the EIA Act is 3 weeks.

Concerning the arrangement and efficiency of the PP, it has to be said, that the proposal made by EKO “not to arrange the public consultations of the SEA report during the time period, which is most popular for going to vacations” was overruled with the justification, that the experts have no reason to presume, that people who want to participate in the public consultations would choose to do it outside of their vacation periods. The experts found, that during a vacation, a person has

considerably more time for social activities. At the same time, they did agree with EKO's proposal to give at least 4 weeks to the public for reading up on the Plan and the SEA report.

- Is the information provided for consultation sufficient to assess the plan?

The draft of the SEA programme and the ToR of the Plan were provided to NGO-s and other involved parties for comments. One deficiency of the information provided in this draft, was that treatment of the essence of the assessed Plan was not consistent and it remained unclear, what kind of document the Plan should actually be. The Plan was several times referred as a "thematic plan" or "project", which is not legally correct.

There was no information on which should be the legal nature and consequences of the Plan. There was no hierarchy given about the decision process, which would have shown, what is the place of the Plan in the wider scale and and what decisions can be influenced in the later stages.

The draft of the SEA programme had consistent problems with "equal approach" with regard to the alternatives - on numerous occasions, the instauration of the Fixed Link (bridge and tunnel) was mentioned as the planned activity and on some cases the assessment of the impacts of the Fixed Link was planned even on the level of a project (construction materials, need for mining).

Considering the aspects above, it may be said, that the information provided for the first consultations was not really sufficient or exact for the evaluation of the plans. However, the SEA programme was amended considerably according to the comments made by various involved persons. The version of SEA programme that was presented to the official PP, consisted of considerably more accurate and complete information. But still it was unclear, what will happen after the enacting of the Plan, and in case the alternative of the bridge is chosen, how is the location of the road chosen in the stage of design documentation.

- In case of transboundary SEA

- When and how was the public of the other country informed on SEA?

- What information was provided for consultations?

- Were SEA documents translated?

There were also no transparent reasons for the shift of opinion concerning the trans-boundary effects. While the first draft of SEA programme did not close out the trans-boundary impact, the later version stated that the state institutions have found no presumable significant transboundary effect, but there were no specific explanations.

18. Consideration of SEA in planning decision (Article 8, Article 9)

18.1. Information and form of decision

- In what form is the plan adopted?

- How was the public informed on the adoption and results of SEA?

The Plan is not accepted by the Government of Estonia yet. As of September 2007, the preparation of the Plan and the SEA is still in the first stages.

18.2. Integration and consideration of SEA in decision

*- Did (and to what extent) the published statement summarizing SEA (Article 9/1/b) explain how **environmental considerations** have been integrated into the plan, in particular how*

- the environmental report with regard to "significant effects" and

*- the opinions of the public were **taken into account** in accordance with Article 8?*

- Was SEA taken into account effectively?

As of September 2007, the preparation of the Plan and the SEA is still in the first stages, so these questions can not be answered yet.

18.3. Reasoning for alternative chosen

- *Did the decision statement clearly state the reasons for choosing the plan adopted, by the light of other reasonable alternatives dealt with?*

- *Is the reasoning understandable and clear with regard to environmental impacts?*

As of September 2007, the decision has not been made yet.

18.4. Arrangement of Monitoring

- *Did the decision statement name the decided measures concerning monitoring of significant environmental effects in order to identify early stage unforeseen adverse effects in accordance with Article 10?*

As of September 2007, the decision has not been made yet.

18.5. Was there any other particular problem with regard to decision making?

The legal regulation about compilation of strategic development plans or spatial plans of large infrastructure objects is deficient. Laws do not in general foresee the obligation of compilation of thematic development plans in transport sector. In the Roads Act one can find provisions about road conservation plans, which are compiled by MEAC for 4 years. Road conservation as a concept includes proposal, engineering, construction, repair, overhaul of the road etc. This plan should contain the list of construction objects. But it is clearly not the plan which can be a basis for realization of mega-projects like Saaremaa fixed link. It seems to be rather internal workplan as the Roads Act does not give any provisions of public participation.

Public Transport Act states that public transport is evolved on the basis of long-term national development plan, confirmed by Government and this is the only law which literally states that such a transport development plan must exist. Although there is obligation for SEA according to national law, it does not solve the problem of decision-making procedure of national plans.

There are gaps in legislation also on the level of spatial planning of large objects. National spatial plan which designs the statewide transport network and directs the development of technical infrastructures, is according to the Planning Act compiled without public participation. The main positions of the national plan will be described in the newspaper, but the plan itself is published only after approval. At the same time SEA is obligatory for the national plan and that means that public still has the possibility of participation in certain boundaries. But as it is not literally stated in EIA law that during SEA proceeding one can submit proposals also to the strategic planning document, itself (and not only to SEA programme or report), it means by current Plan that if the fixed link will be first affirmed in the statewide plan and some interest group disagrees with it, the only participation possibility which creates legal consequences is the court action, because public participation is not obligatory by statewide level of planning.

The location of the fixed link as a road could be appointed also with a county plan, but in case of the line-constructions, the administrative unit of planning is a single county. Although Planning Act states that county plan may be compiled according to the county governments agreement for several counties, there are no provisions regulating the proceeding for such cases.

The Planning Act also consists the concept of objects having significant spatial impact, but as the appointment of location of such object should be made with comprehensive plan (municipality

level), another restriction occurs, in case the object should be established for one or several counties. Another problem is here that the list of objects having significant spatial impact is exhaustive so it could possibly not contain every object with significant spatial impact that would need site selection process.

The SEA programme of the analyzed Plan reflects the absence of decisionmaking rules of large objects as it states that after the establishment of the Plan in case the selected alternative is bridge, at first preliminary design documentation of the road with EIA will be compiled and in that documentation the location of the road will be appointed. After that follows the proceeding of spatial planning with SEA. It is unclear, what kind of role the spatial planning would have (if the location is selected already by some project documentation)

If the location of the bridge will be appointed with preliminary design documentation, a problem with public participation arises as the Roads Act does foresee public participation with particular rights and obligations. It states only that during the compilation of preliminary design documentation, the owner of the road must ask opinion and objections of the persons concerned, and those standpoints will be taken into consideration, if possible.

19. Remedies taken:

Is there a legal possibility to appeal against SEA decision?

Formally, the approval of the SEA report of the strategic planning document is a procedural act carried out within the procedure of the planning document.

The Estonian Supreme Court has noted, that generally the procedural violations can only be challenged in court together with the final administrative act.³

However, the Supreme Court has mentioned in another decision⁴, that in case of decisions, which have considerable environmental impact, the administrative procedure itself has crucial importance. In such cases, it is generally unacceptable to decide, that regardless of the deficiencies of the administrative procedure, the final administrative act is legitimate. The legitimacy of the accepted decision can only be presumed, if the preceding administrative procedure has been carried out in conformity with the legal acts and principles of administrative procedure. The person possessing the right to challenge must have, considering the speciality of this sphere, a wider legal opportunity to challenge the procedural acts made in this procedure and before the final administrative act. While deciding, whether to admit the challenging of the procedural act, the importance of the alleged violation and the importance of the concerned procedural act must be considered.

This interpretation of the Supreme Court can be implemented on all procedural acts in the administrative procedure, including the approval of the SEA report. Therefore, challenging the SEA report is possible separately, as well as together with the decision of adopting the strategic planning document (see also Estonian SEA Analysis p. 4.d).

20. Judicial procedural history/timeline (if relevant):

No court procedures have been initiated.

21. Outcome of the actions:

³ Decision of Supreme Court from February 18th, 2002. a in case no 3-3-1-8-02
<http://www.nc.ee/?id=11&indeks=0,3,50,1048&tekst=RK/3-3-1-8-02>

⁴ Decision of Supreme Court from in case no 3-3-1-86-06
<http://www.nc.ee/?id=11&indeks=0,3,50,1048&tekst=222497382>

In June 2005, the MEAC stated clearly that the decision on the question of whether to instaurate the Fixed Link or not shall be made by the Government of Estonia based on the feasibility studies and only after that the planning procedures and SEA procedure would be accomplished. After the well-reasoned protest of Council of Estonian Environmental NGO-s (EKO), the Government changed its opinion in September 2005 and agreed to prepare a strategic Plan, which would include a SEA comparing the alternatives. During the preparations of the SEA programme, 21 of the 23 proposals made by EKO were taken into account, and the SEA programme was amended accordingly. This amendment included the improvement of the arrangement and efficiency of public participation.

22. Current status of planning case:

After the approval of the SEA programme on 8 March 2005, a public tender was proclaimed to prepare the Plan and the SEA report. The first public tender failed, because only one offer was submitted and the price doubled the presumed price. The commission of the public tender, together with MEAC, decided to proclaim a new tender, but this time a “negotiated tendering procedure with prior publication of a tender notice”. 6 bids were submitted to the new tender. As of 11 September 2007, the process of qualifying the bidders is going on.

23. Follow-up actions planned and their timeline

The participation is planned in the PP of the SEA report and the Plan, which will take place in the second quarter of 2009 at earliest.

EKO is continuing its participation in the Commission of Experts of the Saaremaa Fixed Link, the next meeting will probably be held in April 2008.

24. Conclusions:

Political will shapes Estonian environmental politics to a large extent. The Ministry of Environment is an institution lead by a politician minister who has in current case expressed its affirmative attitude to establishment of Fixed Link. In the proceeding of SEA, MoE as a supervisor has quite wide discretion. At the moment it seems that the governing coalition and most of the members of the Saaremaa Fixed Link commission of experts consider the compilation of Plan and SEA and possible obligation to ask consent from European Commission as a sequence of formalities which should be passed through for establishment of the Fixed Link.

The situation is more complicated because of deficient legislation that does not foresee systematic decision-making rules for such development plans and large objects. Especially problematic by the Fixed Link Plan is the stage where the results of SEA should be integrated to the Plan. Generally the draft plan and SEA report will be submitted to the public display together at the same time, but after the consultation with public, there is no requirement of new display of amended versions. Also the rules of making proposals and giving feedback are not regulated by such development plans.

There are many examples in practice, where the proceedings of thematic development plan and its SEA are not in temporal unison and important proceeding stages are passed through without knowing the results of SEA or without integrating of them into the plan. As described in p. 18, the legislation is deficient also in the part which concerns the appointment of location of the large objects. Thus, the present legal situation predisposes decisionmaking amongst politicians, authorities and experts in the way which is opaque for public and excludes them from it.

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List of the main abbreviations:

APA – Administrative Proceedings Act

EIA – Environmental Impact Assessment

EIA act - Environmental Impact Assessment and Environmental Management Systems Act

EKO - Council of Estonian Non-governmental Environmental Organizations

MEAC – Ministry of Economic Affairs and Communications

MoE – Ministry of Environment

NGO - Non-Governmental Organization

NPA – Nature Protection Act

pSCI – proposed Site of Community Interest

PP – public participation

SEA – Strategic Environmental Impact Assessment

SPA – Special Protection Area

TEN-T – Trans-European Transport Network

ToR – Terms of Reference