

# Regulation of EIA Procedures

*Survey made in Member States on how the national laws comply with the requirements of the revised EIA Directive*

National Summary – Estonia

***Justice and Environment 2016***

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## **National Summary – Estonia**

### **I. Introduction**

Justice and Environment has been for long time working on the issues of EIA. Recently and currently the most important in this area has been the amendment of the EIA directive which was approved on 16 April 2014 through the Directive of the European Parliament and Council no. 2014/52/EU, which amends Directive of the European Parliament and Council no. 2011/92/EU, on the assessment of the effects of certain public and private projects on the environment. It represents an essential amendment to the EIA directive which modifies its wording in a quite considerable manner and introduces new obligations for Member States.

Given the fact that the obligation to implement the modifications stemming from the amended EIA directive is to be complies with before 16 May 2017, currently the legislative works relative to this obligation are in process in majority of the Member States. This represents an opportunity to amend also other provisions relative to EIA at the national level of the Member States.

At this occasion Justice and Environment has prepared a collection of so-called examples of good practices which will be published on its website [www.justiceandenvironment.org](http://www.justiceandenvironment.org) and freely distributable. Our intention was to share these examples of good legislative practice from various Member States with other Member States and inspire them during their legislative works. The collection of good practices contains 4 examples from 4 Member States – Slovakia, Czech Republic, Austria and Slovenia and they were prepared by partner organizations of the Justice and Environment.

### **II. Good practice in Estonia**

National summary: Estonia

Respondents: two representatives from official authorities  
three representatives from EIA expert assessors,  
three representatives from public concerned

Period: July – August 2016

The survey was sent to 28 different experts and stakeholders from Estonia. This includes people working in NGO's, Environmental Board, Local governments and environmental assessors. Altogether we received answers from 8 people whom 2 were officials, 3 were experts and 3 worked in different NGO's. Most of them found the questionnaire interesting only one of them pointed out that the questionnaire was a bit too vague.

One of the survey receiver didn't understand the point of this survey and after an explanation still decided not to answer the survey.

## 1. Protection of cultural Landscapes and natural habitats

### Questions

To experts:

- According your experience, is the protection of cultural heritage and natural habitats and species protected under the Habitats Directive, provided by national EIA legislation, adequate?

Estonian law requires to evaluate the effects on cultural heritage but there isn't anywhere mentioned the need to also evaluate visual effects. In practice the effects are assessed quite slightly. But it can't be said that it has been ignored completely. With cultural heritage they mainly value the cultural heritage and cultural heritage sites. As a rule, all considerations made during a site visit are also written down in the EIA report. Landscape impacts and mitigation options in essence are not assessed and if they mention somewhere cultural heritage they usually talk about the effects on protected objects of cultural heritage. It was also brought out by one expert that they also take into account valuable landscapes and any other appropriate and uniformly defined values. The evaluation is usually done taking into account how valuable the landscapes are according to previous plans, protection rules etc.

What concerns natural habitats the situation is much better. Natura assessment is part of overall EIA and in practice a lot of attention is put to the impact of protected natural objects. It was also said by one expert that it is taking precedence over other matters.

In Estonia there isn't a complete data available that covers Estonian-wide biodiversity. This can bring up problems with restrictions made in order to protect the nature in Estonia. There is a belief that what has once been put to the Natura lists is correct. This currently brings up a lot of issues where experts need to solve problems that appear due to this rigidity.

One expert found that EIA legislation has no effect on cultural heritage and natural habitats and species protection because the info in EIAs is only for decision-makers to consider not to follow. It is up to them to use the info. Only protection can come from legal acts and their application. It is also necessary to regularly monitor cultural heritage, natural habitats and species that are already under protection.

Comments from stakeholders:

One stakeholder agreed that landscape and cultural heritage preservation and their impact assessment is one of the weakest parts in Estonia's EIA's. Natural habitats and species protection is in general regulated well and their assessment also well performed.

It was also brought out by another stakeholder that whether the impact is assessed or not also depends on the object. Generally the protection of habitats is recognized in assessments. If needed there are also additional fieldworks done.

Because of the supervisory competence lies with the environmental authority, the impact assessments for protected natural objects and Natura values have been exaggerated and unbalanced. Natural values can't always prevail others (i.e. public health).

To stakeholders:

- Seeing the proceedings in your country, do you think, that the changes in the EIA directive were necessary? Will it be necessary, to incorporate these parts of the amended Directive 2011/92/EU into national legislation? If so, what would be the most appropriate way?

One stakeholder found that the changes were necessary and they should be complemented accordingly.

Another stakeholder found that the extension of EIA scope isn't reasonable because it will put too much pressure and expectations on the EIA expert. It will be more than enough if the visual effect will be evaluated firstly by architects and heritage protection. There is no need to put EIA on the higher level than them.

2. Exceptional circumstances, when the provisions of the EIA Directive will not apply  
Questions

To experts:

- Has there ever been, on the basis of your experience, a necessity, or a case where it would have been advisable to omit the EIA process due to exceptional circumstances? Is it essential that national legislation would establish such an exception?

In general responders couldn't recall any cases where it would have been advisable to omit the EIA process. Exception was one responder who brought out that there has been a case where they wanted to omit the EIA process due to a national defense object.

Problems with EIA start from the directive where the exceptions are named too vaguely and regarding directive art 2, para 5 the European Commission can be informed after application. It makes it possible to wrongly apply the exception.

As to propositions to make the system better responders found that the directive exceptions have to be brought into national legislation to avoid conflicts. In certain cases it would also be necessary to not have EIA process. Those cases are so called mandatory cases where there area in question (or near the area) has gone through EIA process before and there isn't any new info to discover with the new EIA.

To stakeholders:

- If so, in which situations would it be appropriate and how could it be ensured, that the purpose of the EIA Directive is not undermined in such cases? How could the risk of possible misuses of exceptions be prevented? Do you see an increased risk of political influence and/or pressure for EIA omissions in case of controversial projects?

Stakeholders found that the EIA process shouldn't be applied in civil emergencies and on national defense cases. It is also important to actually imply this opportunity. In other cases there has to be time and measures to go through with the EIA process.

### 3. Conflict of Interests

#### Questions

To experts:

- Based on your experience, are there legitimate concerns about possible conflicts of interest of staff of the competent authorities in the area of EIA?

Every responder found that there are some conflicts of interest within staff of the competent authorities in the area of EIA. It was brought out that main conflicts occur in situations where the same institution is the developer, license giver and leads EIA process. For example, for country road construction project all processes are all led by road administration and the same goes for all local government funded construction projects. It was also brought out that there can be conflicts of interests on cases where the local government officers have participation in firms that operate at the same local government jurisdiction.

It was found to be an increasing problem because there has already been or is right now going on a process where different roles concerning environmental assessments, studies and monitoring are being concentrated in some state institutions.

It was also found by one responder that environmental permits are helping to relieve that problem because there is a new institution (i.e. environment administration) added to the process. Directive should ensure that things really are equitable. In case of a conflict there should be appointed certain additional measures to give over the decision making to another institution.

It was also pointed out that the problems start from state authorities who don't follow environmental management system. I.e. when one ministry or its department is for developing renewable energy and transport infrastructure in one area and another state administration unit designates this area as a protected area. State administration units work against each-other and EIA process hasn't got anything to do with it.

Comments from stakeholders:

One stakeholder points out that due to the fact that environment administration isn't no longer responsible of the EIA supervision, the developer and the decision maker have become the same institution. But there were already problems in cases where Natura and nature protection (because environment administration was responsible of the topics) was more thoroughly processed in the EIA than social and economic matters.

Due to the fact that most of Estonia's administrative workers and experts have the same educational alma mater it is nearly impossible to rule out the conflict of interest matter and it's questionable how important the matter even is.

To stakeholders:

- How should these obligations transposed into national legislation?  
Conflict of interests is a problem which was foreseeable and it's unknown why the legislator decided to go with this option (giving the permitting authority also the leasing role in EIA procedures). Conflict can be avoided when there would be much less pointless decision makings and regulations for the program/report wouldn't make experts produce "windy" texts. Only then can there be put more effort into problematic cases.

Another option pointed out is to establish that the developer and the decision maker can't be the same institution. Decision-making power should be delegated to another institution. Questions to whom and how still needs an answer on this matter.

#### 4. Expertise and quality of the EIA documentation

##### Questions

To experts:

- Based on your experience, what do you think about quality and expertise of outcomes from the EIA process (assessment reports, expert opinion) in your current legal situation?

In general it was pointed out that the work is as good as smart the client is. If the initial tasks (EIA screening decisions, decision to initiate and tender documents) have low quality the results will be in low quality as well. In the tender process it is hard for an expert to see what the client is asking for. That's why good experts don't usually win complex tenders because they know what needs to be done and the budget is set high. Developer only needs a permit and will go for a formal file. The quality doesn't matter.

And this brings us to another problem which was pointed out by another expert. There are too many EIA's done for even the simplest projects that don't really need one. For one solution the expert recommends the program and the assessment to be divided into separate phases. Then EIA offer would be made to an approved program.

Lack of ex-post evaluations shows that decision-makers don't use the info from the EIA's. Because of this the quality of experts work has no impact on the results. This makes the quality of the experts work questionable and it also can't be proven because the lack of ex-post evaluations.

So the main effort in this question is to put emphasis on making the ex-post evaluation more relevant in this process. Even with the best EIA, if the follow-up actions are in low quality it can ruin the whole process.

It was also brought out by one expert that the decision to take away the right to perform ex-post evaluation from the environmental board and the ministry of environment was a wrong idea. It gives no value to raising the quality of EIA's but rather makes it even harder to ensure it. Another expert found that it is rather good because before there wasn't a need for an environmental permit licensing officer to participate in EIA process and so they didn't.

Comments from stakeholders:

EIA process quality is in some way guaranteed by the head expert license requirement. By comparison, strategic environmental assessment reports and screening decisions are usually compiled by clearly less competent experts.

To stakeholders:

- How should these obligations be reflected in national legislation, so they will meet with the objective pursued by the EIA Directive? Is it possible to achieve a better quality of the EIA process, without rupturing (especially financial) ties of assessors to investors?

For one formal option there could be a minimum education level requirement to be involved in the decision making (i.e. master's degree). It is questionable if it would have any effect because right now almost everybody working on the field has that requirement established.

Another option would be to tighten the quality control and ex-post evaluation system to give the license owners real responsibility.

The best solution in one stakeholder's opinion would be to move money on the way from developers to funds to EIA process conductors. Another stakeholder on the contrary finds that the experts aren't dependent on investor's funds. Experts will never evaluate unrealistic plans and it shouldn't be taxpayer's obligation to fund the evaluations.

There could also be an upper limit of the report volume that would exclude trivial conclusions and elementary suggestions. Those have no value for the report. This isn't a problem that experts need to deal with but there should be a change in the system that would allow experts to make more quality decisions. There should be at least on the guide level instructions what needs to be done in the EIA process and what not.

## 5. Mandatory assessment pursuant to other Directives

### Questions

To experts:

- What are your experiences with the fact, that there are a number of separate "assessments" which can overlap and there are also obligations, which require the investors to carry out various overlapping assessments?

In Estonia all Natura-evaluations are conducted in EIA form. Experience shows that connecting procedures can be a waste of resources because it would mean that EIA's should be executed on even the smallest projects that can have an impact on Natura-areas. In practice this could mean that they rather would not do a Natura-assessment because it is overly burdensome.

It was also brought out by one expert that there really aren't a lot of big projects that need EIA's. Usually there is only one option where to do the project to and there aren't any alternative locations. Our country doesn't favor EIA's. The place is usually decided and you can't make any alternative assessments based on that and it is not up to experts to give other solutions if the location is already put to place.

One of the experts didn't rule out the possibility of different evaluations but this needs a unified system so you could compare the results. Natura-assessment could happen even without impact assessment because it already has a set of rules. If the project has passed the Natura-evaluation you can always do an EIA. Practice shows that if you don't pass Natura-evaluation there is no need for an EIA anyways.

In one experts opinion it would also be wise not to make it experts fault if there are shortcomings from the procedure before. Everybody should know the imposed environmental requirements and there is no need for a thick EIA folder to repeat them. Expert reviews and screening decisions should also be more used in order to avoid unnecessary questions that are already answered in the EIA folder.

Comments from stakeholders:

One stakeholder found it would be better to consolidate assessments because then the parties concerned and interest groups will have a better understanding and an opportunity to have a say at the matter. It will help to avoid any misunderstandings of the process.

To stakeholders:

- Do you think, there is a better solution, to cover all kinds of assessment and evaluation of environmental impact under one roof (EIA), or is it better to leave them as separate processes? Please also indicate the reasons.

In general the stakeholders found it would be wise to separate Natura-assessment from EIA process. It will help to save resources and would take the conducting of Natura-assessment in line with the directive and the national law. This would make the less harmful options, mitigation and compensatory disappear from the preliminary assessments which are currently put there to make Natura effects as small as possible in order to not to start an EIA. To ensure practicality it can in some cases be a part from an EIA but it could exist as a separate evaluation as well. Right now the main problem is that the system doesn't favor opinions that rule out the clear need for an impact assessment. That's why double impact assessments are conducted.

## 6. Sanctions

### Questions

To experts:

- What is your vision of introducing sanctions in national legislation? What do you think, will the introduction of sanctions in EIA Act contribute to meeting the objectives and purpose of the EIA Directive?

There were different options pointed out by experts. The first one was to punish the experts who give out false ratings with misdemeanor procedure. But the more effective way was found by many experts to take away those experts licenses who give out false ratings. It is also important to build cooperation between all interested parties. Experts don't make the decisions but give out info to make a decision. It would be an option to also educate people in order to have better skills to gather info and give out correct opinions. In order to take away licenses it is important to do ex-post evaluations. If the findings of those evaluations are taken into account more it can also be used to take away experts licenses who don't do a good job.

One expert found the options to be unnecessary because it won't get us anywhere because the EIA procedure has already become very abominable and unprofitable. The number of experts is already decreasing and it would make the situation even worse.

Comments from stakeholders:

It might be difficult to give base for the punishment. If the expert gives out the evaluation in best knowledge and in later process the contractor makes a mistake and there is an environmental damage it would be questionable if the expert should be punished. Right now the only punishment that works with the experts is the reliability decrease which needs to be brought out in making a decision on who to choose for the expert position.

To stakeholders:

- Which breach of the EIA procedure should be punishable? Which entities should be subject to sanctions? What kind or form of penalties would you propose?

Conscious, important and directed usage of false information should be punished with at least a fine. It should also be punishable with a fine to violate EIA requirements (Environmental Impact Assessment and Environmental Management System Act § 531). An even more realistic idea is to develop an early warning system in order to call experts to order.

EIA experts are not the decision makers and it would be unrighteous to punish all workgroup members for making an incorrect assessment.

## 7. The screening procedure

### Questions

To experts:

- What is the importance of screening in the actual national legislation in relation to the purpose and objectives of the EIA process?

The experts didn't see a problem in being able to use the screening procedure. EIA screening procedure in general is quite thoroughly adjusted. The problem that was brought out is the timing of the screening because currently the law allows the decision not to initiate an EIA procedure to be made until authorization. The new directive gives a solution (decision must be made on the first chance) to this problem which must be taken over to Estonian law.

It was also brought out by another expert that screening is an important part of the process that shows what might have an important impact on the environment but in order to be sure it must be explored and evaluated. So screening should be used in order to find out what are projects that have an important effect. Projects that don't have an important effect should be sent to usual permitting procedure.

Comments from stakeholders:

One stakeholder agreed that screening procedure is in Estonia well used. The only problem is the quality of the screenings which can be quite unsteady. The consulting method (same screenings must be viewed by environment agency many times) which is used in Estonia is also ungainly and magnifies the bureaucracy.

To stakeholders:

- Will it be necessary, to make fundamental changes in the actual rules of screening procedures to fulfil the requirements of the amended Directive 2011/92/EU?

It was brought out that the timing of screenings must be more precisely established. Also the criteria for the screening procedure is very ambiguous. The criteria must be adjusted to our circumstances and rule out unnecessary weighing. It must be clearly set out on what projects the weighing process should be done on. Today there are too much screenings done that interferes with the actual need of EIA's.

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