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"Promoting Spatial Development by Creating COMmon MINdscapes - COMMIN"

ESTONIA

English language version

I. Constitution, government, and administration of Estonia

1. Constitutional System

1.1 General description and key data of the constitutional system

According to the Constitution, Estonia is an independent and sovereign democratic republic wherein the supreme power of the state is vested in the people. The people exercise their supreme power of the state on the elections of the Riigikogu (The Parliament of the Republic of Estonia) through citizens who have the right to vote and through a referendum.

The Constitution (*Eesti Vabariigi Põhiseadus*) in force was adopted by the people of Estonia, on the basis of § 1 of the Constitution, which entered into force in 1938, and by a referendum held on 28 June 1992.

The Constitution could be amended by an Act which has been passed by:

1) a referendum;
2) two successive memberships of the Riigikogu;
3) the Riigikogu, as a matter of urgency.

The Constitution says that the state authority shall be exercised solely pursuant to the Constitution and laws which are in conformity therewith. Generally recognised principles and rules of international law are an inseparable part of the Estonian legal system. Laws shall be passed in accordance with the Constitution. The following have the right to initiate laws:

1) a member of the Riigikogu;
2) a faction of the Riigikogu;
3) a committee of the Riigikogu;
4) the Government of the Republic;
5) the President of the Republic, for amendment of the Constitution.

The Constitution defines following institutions as the constitutional parts of the Republic of Estonia:

- The Riigikogu
- The President of the Republic
- The Government of the Republic
- The Bank of Estonia
- The State Audit Office
- The Chancellor of Justice
- The Courts
- Local Governments

1.2 History of the constitutional system

The independence of the Republic of Estonia was proclaimed on February 24, 1918, in Tallinn. The Provisional Government of the Republic of Estonia was formed. This was followed by the German occupation. In November 1918 the War of Independence against the Soviet Russia broke out. The peace treaty with Russia was concluded on February 2, 1920.

The first general elections in the Republic of Estonia took place on April 5-7, 1919, when the people elected the Constituent Assembly. The principal task of the Constituent Assembly was to draft and adopt the Constitution.

According to the Constitution of 1920, the supreme body of the Republic of Estonia was parliament, the Riigikogu. The Riigikogu was one-chambered and consisted of 100 members elected for a term of three years. Elections were to be organized on a population basis with the participation of elective citizens. The members of the Riigikogu were to be elected by universal, uniform, direct, and secret voting.

The Constitution reflected Rousseau's principle of national sovereignty. In accordance with the ideas of Montesquieu, power was split between the legislative, executive and judicial functions. Nevertheless, the relationship of these powers was misbalanced, the single-chamber Riigikogu, of 100 members, exercising total control over executive and judicial power, whereas it should only have exercised a legislative function. As the government did not enjoy independent, executive authority, it was subordinate to the Riigikogu.

This imbalance of power had serious consequences for Estonia, which began to manifest in the form of political instability, and there was frequent change of government. As the Justices of the Supreme Court were appointed by the Riigikogu, questions also arose as to the independence of judicial power. The Constitution did not provide for a Presidential role. A particular feature of the state order of Estonia was the extensive attribution of power to its citizens. The Constitution allowed for public initiative and for referenda, an uncommon constitutional arrangement in Europe at the time when it was enunciated. It might even be claimed that the state order of Estonia, as reflected in the 1920 Constitution, which combined parliamentary-dependent authority with the direct power of its populace, represented the most democratic order anywhere in the world. Unfortunately, however, its democratic provisions prevented government from properly functioning. Instead of taking initiatives, the government was almost permanently in a state of defence.

The Estonian form of democracy was proving to be unworkable, and Estonian citizens were becoming increasingly dismayed by the democratic process. At the same time, the authority of the Riigikogu was declining rapidly. As a reaction to these developments, popular support for "firm hand" theories and movements, which advocated authoritarian governance, was increasing. In 1932 referenda were held to consider two draft Constitutions which aimed to restrict the power of popular representation, increase the power of government, and establish the role of head of state. As it turned out, both draft Constitutions were rejected when put to referenda. Nevertheless, in a third referendum, in 1933, a further, draft Constitution put forward by the League of Veterans of the Estonian War of Independence was accepted and came into force on 24th January 1934.

This, second Constitution of the Republic of Estonia laid the foundations for the establishment of an authoritarian state order in Estonia. Membership of the Riigikogu was reduced to 50, and its powers became more formal than real. A new institution was introduced into government of the state, namely the Head of State. That Head of State, to be elected every five years, was given the right of suspensive veto over Riigikogu decisions. As the Head of State's function was to exercise supreme power over the governance of the state, and that as the representative of the people, the holder would also control executive power within government. The Head of State was granted the right to govern by decree, which would assume the force of law, although the Riigikogu maintained the right to amend or repeal decrees introduced in this way.

On 12th March 1934, the then Head of State, Konstatin Päts, carried out a bloodless coup d'etat, to prevent the League of Veterans of the Estonian War of Independence from establishing an authoritarian state. Though Päts did not repeal the existing Constitution he at times violated it through the exercise of excessively authoritarian rule. During most of the time when the Constitution was in force the Riigikogu was not convened, and Estonia became a single-party state. In due course, and recognising the risk to the democratic process which were inherent in the Constitution, the Head of State initiated preparation of a third Constitution of the Republic of Estonia.

The third Constitution of the Republic of Estonia entered into force on 1st January 1938. It remained in force, de facto, until 16th June 1940, when the Soviet Union occupied Estonia and, de jure, until 28th June 1992 when the fourth Constitution of the Republic of Estonia was adopted by referendum. In reality, however, the 1938 Constitution did not reduce the degree of authoritarianism. It even incorporated additional restrictions on the democratic process, thereby formalising some of the violations which had occurred since the 1934 Constitution was adopted. The Riigikogu became bicameral, consisting of a lower chamber, or State Council, and a newly created upper chamber, or State Board. Appointment to the latter had no democratic basis, and its members consisted of high officials, representatives of chambers and local government, and persons appointed by the Head of State at his or her discretion. The most important power of the State Board was its ability to reject resolutions passed by the State Council. It never had occasion to exercise that power, however, as restrictions on the formation of political parties resulted in the creation of a compliant State Council, and an obedient, puppet parliament. The direct power previously accorded to the state's citizens was renounced, public initiative was no longer allowed, and the holding of referenda was left at the discretion of the Head of State.

One significant difference between the second and third Constitutions, however, was the clear introduction of a corporative state in 1938. In addition to the existing, local and cultural governments, a third form of local government was factored in from the professional local bodies or Chambers. These Chambers were given the right to issue mandatory orders, and to collect taxes from their members.

On 16th June 1940, and taking advantage of West European countries' distraction by matters elsewhere during the Second World War, the Red Army of the Soviet Union invaded Estonia and occupied it. On 21st July 1940, the existing state order was replaced by Soviet order and, on 6th August 1940, Estonia was annexed by the Soviet Union. Later, from the summer of 1941 until the autumn of 1944, Estonia was under

German occupation and, as a general commissariat, belonged to the greater Ostland commissariat. Unlike Slovakia, Croatia or Bohemia and Moravia, Estonia was neither a puppet state nor a protectorate. A second, Soviet occupation terminated the German occupation, and Soviet annexation was restored, an occupation and annexation which lasted until the autumn of 1991.

Although Soviet-type, state order remained in effect until the summer of 1992, in its later stages, it faced many challenges. On 16th November 1988, for example, the Supreme Council of the Estonian Soviet Socialist Republic (ESSR), which was the territorial, legislative body of the constituent, Soviet republic of the Soviet Union, approved a constitutional amendment, which declared the primacy of ESSR legislation over the laws of the Soviet Union. In March 1990, the Supreme Council went further, confirming the course which it had already taken and setting itself the goal of terminating Estonia's annexation by the Soviet Union and restoring Estonia's status as an independent republic. On 20th August 1991, taking advantage of the opportunity afforded by the failed coup d'état in the Soviet Union, the Supreme Council passed a resolution declaring the restoration of Estonian independence on the basis of historical continuity, a declaration which received immediate international recognition. De jure, the 1938 Constitution was restored but, de facto, the Soviet state order remained in force, even though Estonia was outside the jurisdiction of the Soviet Union. This legal conundrum was solved when the fourth Constitution was approved by referendum on 28th June 1992.

The 1992 Constitution incorporates many elements of the earlier Constitutions, and particularly those of 1920 and 1938. It declares the legal identity of the Estonian state, and its continuity with the state which was annexed by the Soviet Union in 1940. It also emphasises the restitutive basis of the restoration of Estonia's independence, returning to the state order which was in force before 1940. Given that two, markedly different state orders were in force in Estonia between 1920 and 1940, the fourth Constitution represents an attempt to find a middle way, avoiding the weaknesses of the 1920 parliamentary democracy and the authoritarianism of 1934 and 1938.

Following enactment of the 1992 Constitution, Estonia has enjoyed considerable, political stability. Extraordinary elections have proven not to be necessary, and governments have been relatively stable. This suggests that a reasonable balance has been established between the legislative and the executive functions. Proposals for amending the Constitution have been aired from time to time, many of these concerning the procedures to be followed in presidential elections. A number of political groups favour the election of the President by direct, universal suffrage. Others fear that this may disturb the existing, balance of power amongst the state's institutions, and may even pose the threat of a return to authoritarian governance.

Questions have also been raised about the need for Estonia to amend its Constitution to take account of European Union membership. As yet, no definitive decision has been made on whether the existing, constitutional provision relating to the independence and sovereignty of Estonia is compatible with membership status of the European Union, which presumes the delegation of a certain amount of power to the European Union's central institutions. Adoption of the European, single currency, the euro, also presumes a modification to the function of the Bank of Estonia as the bank of issue. Further, as membership of the European Union precludes the classification of

citizens from other member states as aliens, another modification to the Constitution is called for.

[The report uses extensively the materials from the web page http://www.estonica.org/eng/lugu.html?menyy_id=1142&kateg=43&alam=80&leht=6]

1.3 Main specifics of the constitutional system

Estonia is a parliamentary state. Although, the President of the Republic is the head of state of Estonia, the Riigikogu and the Government of the Republic possess most of the legislative and executive power. Legislative power is vested in The Riigikogu and executive power in The Government of the Republic in Estonia. The functions of executive power are divided into areas of government managed by ministries. The Government of the Republic exercises executive power either directly or through government agencies. The responsibility for provision of support services to the Government and the Prime Minister is assigned to the State Chancellery – a government agency within the Government of the Republic.

Chapter XIII of the Constitution of the Republic Estonia provides the basis for court administration. It says that justice shall be administered solely by the courts. Estonia has a three-level court system. County and city courts and administrative courts adjudicate matters in the first instance. The majority of courts of first instance are situated in county centres. Appeals against decisions of courts of first instance shall be heard by courts of second instance. Courts of appeal are courts of second instance - circuit courts. The courts of appeal are situated in Jõhvi, Tartu and Tallinn. The Supreme Court, situated in Tartu, is the court of the highest instance. According to the Constitution, the Supreme Court shall declare invalid any law or other legislation that is in conflict with the provisions and spirit of the Constitution.

Estonia does not have a state church, religious freedom is guaranteed by the constitution.

1.4 Fundamental principles, division and interlinkage of the political and the administrative system

The Constitution guarantees the independence of legislative, executive and judiciary power - the activities of the Riigikogu, the President of the Republic, the Government of the Republic, and the courts shall be organised on the principle of separation and balance of powers. The institutions of different powers are related to each other through elections and rules of appointment. Thus, the Chief Justice of the Supreme Court are appointed to office by the Riigikogu, on the proposal of the President of the Republic. Justices of the Supreme Court are appointed to office by the Riigikogu, on the proposal of the Chief Justice of the Supreme Court. Other judges are appointed to office by the President of the Republic, on the proposal of the Supreme Court (for more relations between the president, the parliament and the government see sections 2 & 3 below).

Politics of Estonia takes place in a framework of a pluriform multi-party system and of a parliamentary representative democratic republic, whereby the Prime Minister of Estonia is the head of government. The parliamentary coalition forms the state government and the coalition treaty is one of the most important documents directing the activities of the government. At a personal level, the political and administrative systems are intertwined in the ministries. The ministers – the politicians and members of the state government – are the heads of the ministries as administrative government agencies.

Government of the Republic Act classifies the agencies of executive power in a following manner:

1) government agencies;
2) state agencies administered by government agencies;
3) the Defence Forces of Estonia.

Government agencies are administrative agencies - ministries, the State Chancellery and county governments, as well as executive agencies and inspectorates, and their regional offices with authority to exercise executive power. Government agencies are financed from the state budget and whose main function granted by law or pursuant to law is to exercise executive power.

Table 1. The division of legislative, executive and judiciary power in Estonia

Type of power **Territorial level**	***Legislative power***	***Executive power***	***Judiciary power***
National level	The Parliament/ Riigikogu	The State Government and governmental agencies	The Supreme Court
Regional level		Regional govenmental agencies, incl. county governors	Circuit courts; County and city courts and administrative courts
Local level		Local councils and governments	

Estonia is a unitary state. There are no autonomous regions in Estonia. According to the Territory of Estonia Administrative Division Act the territory of Estonia is divided administratively into counties, rural municipalities and towns. 194 rural municipalities and 33 cites are divided into 15 counties. The Constitution precludes both the establishment of an autonomous region within Estonia, with a legal order different from that in force elsewhere in Estonia, or the creation of a federal, Estonian state.

The Constitution prescribes that all local issues shall be resolved and managed by local governments. Local governments in Estonia are rural municipalities and cities. Local governments shall operate independently pursuant to law. Duties may be imposed on a local government only pursuant to law or by agreement with the local government.

2. Political System

2.1 General description, history, and key data of the political system

The main actors in Estonian political system are political parties. The Political Parties Act defines political party as a voluntary political non-profit association of Estonian citizens the objective of which is to express the political interests of its members and supporters and to exercise state and local government authority. The means for achieving the objectives of a political party are:

1) the presentation of candidates and conduct of election campaigns of the political party in elections to the Riigikogu and the European Parliament and local government council elections;
2) the participation of the political party in the activities of the Riigikogu through members of the political party elected to the Riigikogu; in the activities of the European Parliament through members of the political party elected to the European Parliament; in the activities of local government councils through members of the political party elected to local government councils; in the election of the President of the Republic, the formation of the Government of the Republic and the executive body of local government councils through members of the political party elected to the Riigikogu and to the local government council, respectively; and in international co-operation with political parties of foreign states.

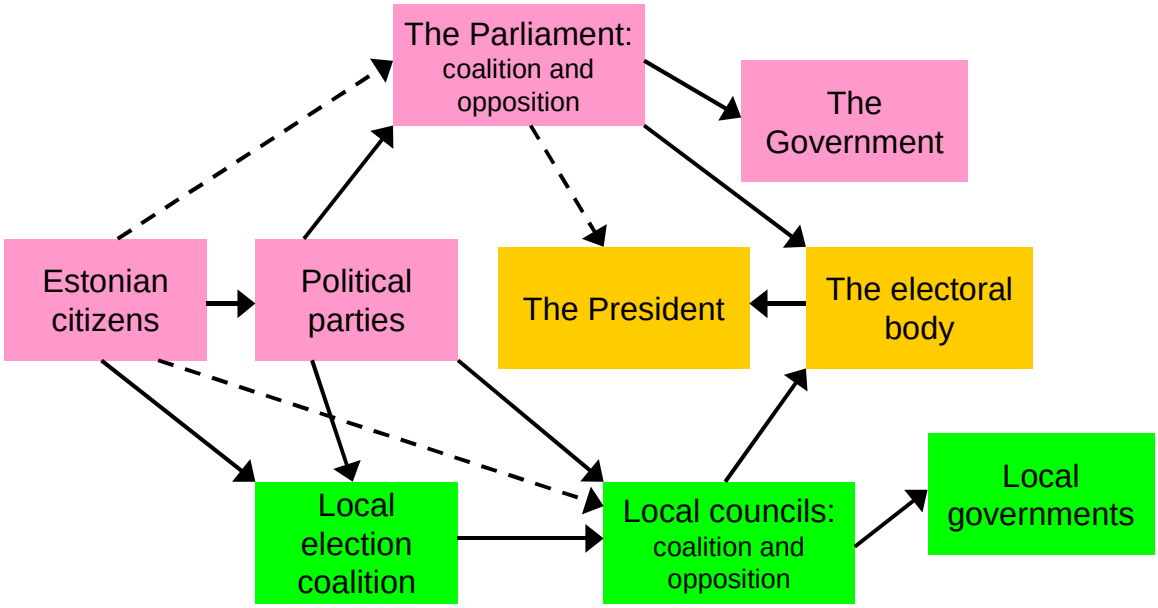

Figure 1. The outlines of Estonian political system

The political power at a national level is concentrated in 6 parliamentary parties – Estonian Reform Party, Estonian Centre Party, Estonian People's Union (since 2005 these three parties form the governing coalition), Res Publica, Pro Patria Union (these two are in the middle of unification process into a conservative party) and Social Democratic Party. All political parties are quite young, established in 1990s. The contemporary landscape of political parties is the result of many splits and mergers during the last 15 years.

The coalition parties execute political power through the state government. During the most of the post-Soviet period the Estonian governments have been majority governments. The recent practice is that the coalition parties tend to operate quite independently (but within the limits of coalition treaty, which also includes the distribution of ministerial positions) in their governmental responsibility areas. The decisions are made if the consensus between the coalition parties is achieved.

The function of the president as the head of the state is more or less ceremonial. His/her significance is more conspicuous in the fields of defence and foreign policy. According to the Constitution, he/she is the supreme commander of the national defence of Estonia and represents the Republic of Estonia in international relations. He/she also appoints several high rank governmental officials. His/her role in relation to legislative power is confined to the right of refusing (with constitutional arguments) the proclamation of laws – in that case the parliament should discuss the bills once more.

The moderate position of the president is in accordance with the fact that the president does not have a direct mandate from the people but is elected by the parliament or electoral body, formed by the members of the parliament and the elected

representatives of local municipalities. In reality, as long as the procedure prescribes that at least 2/3 of parliament members should vote for one candidate for an election, all presidents elected after the restitution of the Republic are elected by the election body, where only simple majority is required.

The regional level of the Estonian political system is very shallow. There is no representative body elected in/for counties. In parliamentary elections the county borders are taken into account – one election district usually contains 2 or more counties. The major political parties have regional, county-based councils and small administrations.

The role of political parties at the local level is significant but somewhat less dominant than at the national level. Although in bigger cities and in many other municipalities the political parties dominate in the election and work of local councils, in some others local election coalitions (some of what are coalitions of political parties, while others coalitions of people not belonging to any political party) have taken the leading position. The local governments (with approx. 3-7 members) formed by the local councils are most often recruited by local politicians. These persons are the political and administrative figures at the same time. In some (smaller) cases, also non-political officials are included to the local government.

The direct participation of people in forming political decisions is more like a theoretical/legislative option than an actual practice. Every Estonian citizen and citizen of the European Union (if he or she satisfies some other conditions) may stand as a candidate in parliamentary or local elections. In practice, only at a local level there has been and are examples of persons elected to respective representative body.

The Constitution provides the possibility for the exercising the supreme power of state by the people through a referendum. It has been used twice since regaining independence – while adopting the present Constitution and while voting for joining European Union. At a local level, 1% of all electorate may initiate the discussion of local issues in a local council. The regulations of local ballots should be determined by local councils and the results of such ballots are only recommendatory.

2.2 National level of the political system

2.2.1 Organs at national level

The main organs of the Estonian political system are the President of the Republic, The Riigikogu and the Government of the Republic.

The President of the Republic

The regular **election** of the President of the Republic shall be held not earlier than sixty and not later than ten days before the end of the term of office of the President of the Republic. An Estonian citizen by birth who has attained forty years of age may be nominated as a candidate for President of the Republic. The President of the Republic

shall be elected for a term of five years. No one shall be elected to the office of President of the Republic for more than two consecutive terms. The right to nominate a candidate for President of the Republic rests with not less than one-fifth of the membership of the Riigikogu. According to Section 79 of the Constitution of the Republic of Estonia, the President of the Republic shall be elected by the Riigikogu by secret ballot. A candidate in favour of whom a two-thirds majority of the membership of the Riigikogu votes shall be considered elected. If no candidate receives the required majority, a new round of voting shall be held on the next day. If the President of the Republic is not elected in the third round of voting, the Chairman of the Riigikogu shall, within one month, convene an electoral body to elect the President of the Republic.

The electoral body shall be comprised of members of the Riigikogu and representatives of the local government councils. Each local government council shall elect at least one representative, who must be an Estonian citizen, to the electoral body. The Riigikogu shall present the two candidates who receive the greatest number of votes in the Riigikogu to the electoral body as candidates for President. The right to nominate a candidate for President also rests with not less than twenty-one members of the electoral body. The electoral body shall elect the President of the Republic by a majority of the voting electoral body members. If no candidate is elected in the first round, a second round of voting shall be held on the same day between the two candidates who receive the greatest number of votes. In September 2006 Mr. Toomas Henrik Ilves was elected by the electoral body the fourth President of the Republic.

Upon assuming office, the authority and duties of the President of the Republic in all elected and appointed offices shall terminate, and he or she shall suspend his membership in political parties for the duration of his term of office. The President of the Republic enjoys immunity in accordance with Section 85 of the Constitution. Criminal charges may be brought against the President of the Republic only on the proposal of the Legal Chancellor, and with the consent of the majority of the membership of the Riigikogu. This issue is more specifically regulated by the Institution of Court Proceedings against the President of the Republic and Members of the Government Act. The powers of the President of the Republic shall be suspended when criminal charges are brought against him.

The powers of the President of the Republic shall terminate upon his resignation from office (not applicable during a state of emergency or a state of war), the entry into force of a conviction by a court against him or her, his or her death, and the assumption of office of the new President of the Republic. If the President of the Republic is unable to perform his official duties for longer than three consecutive months, or if his powers terminate prematurely, the Riigikogu shall elect a new President of the Republic within fourteen days.

The President of the Republic has the **Chancellery** of the President, which includes several political/policy counsellors and 8 administrative departments. In addition, there are number of **presidential institutions** helping The President of the Republic in serving the country - The Academic Council, The Presidential Roundtable on National

Minorities, The Presidential Roundtable on Local Government and Regional Development, The Cultural Foundation, The Public Understanding Foundation.

The Riigikogu (The Parliament of Estonia)

Riigikogu is **elected** for four-year period. All Estonian citizens, incl. those residing permanently or temporarily abroad, who have attained eighteen years of age, who have not been divested of active legal capacity by a court or convicted of a criminal offence and who are not serving a prison term have the right to vote. Estonian citizens with the right to vote who have attained twenty-one years of age by the last day of registration of candidates may run as candidates for member of the Riigikogu. Candidates can be nominated as candidate lists of political parties or as independent candidates.

With the objective of obtaining results in the election to the Riigikogu, eleven electoral districts have been formed in Estonia. The borders of electoral districts coincide with those of counties, however, an electoral district may also include several counties. In Tallinn, three electoral districts have been formed. Each electoral district is divided into polling divisions. Political parties nominate their candidates in electoral districts and present also a national list of candidates. A candidate may be nominated in only one district.

An elector votes in the polling division of his or her residence, in which he or she is entered in the polling list. On advance poll days, an elector may vote outside the polling division of his or her residence. Counting of votes in a polling division is performed immediately after closing the division at 20 in the evening of the election day. In the electoral committees of the 15 counties and in the city electoral committees of Tallinn and Tartu the results of counting of votes in polling divisions are checked. In the National Electoral Committee, national voting results are verified. The election results are determined proceeding from the principle of proportionality: each political party must get the number of seats in the Riigikogu, which is proportional to the number of votes cast in favour of the candidates of the party. As a result, 101 members of the parliament are elected.

The National Electoral Committee registers the elected members of the Riigikogu by its decision after the election day when the time limit for submission of complaints to the National Electoral Committee and the Supreme Court has expired or final decisions have been made about the submitted complaints. The election results are deemed to be declared on the date following publication of the decision of the National Electoral Committee in the State Gazette. The President of the Republic convenes the new Riigikogu for its first sitting on the tenth day after declaration of election results, at the latest. The authority of the members of the Riigikogu commences on the day the results of the elections are announced. The authority of the members of the preceding Riigikogu terminates on the same day.

A member of the Riigikogu is not bound by his/her mandate or be held legally responsible for votes cast or political statements made by him/her in the Riigikogu or in any of its bodies. A member of the Riigikogu may not hold any other state office. A

member of the Riigikogu has the right to initiate draft legislation and the right to submit motions to amend the draft legislation during their legislative proceeding.

Estonian citizens elected X Riigikogu on March 2, 2003. Riigikogu was elected by 500 686 citizens out of 859 714 eligible voters, which is 58,24%. 963 persons ran as candidates in the Riigikogu elections. In the 11 nominated parties lists 952 persons ran as party nominated candidates and 16 persons ran as independent candidates. Pursuant to the Riigikogu Election Act, a required 5% threshold was exceeded by six political parties: Estonian Centre Party, Res Publica, Estonian Reform Party, Estonian People´s Union, Pro Patria Union and Social Democratic Party (formly People´s Party Mõõdukad).

The Board of the Riigikogu is a body directing the work of the Riigikogu and consists of the Chairman and two Deputy Chairmen elected from among its members. The Board of the Riigikogu directs the work of the Riigikogu in accordance with the Riigikogu Procedure Act and the Riigikogu Administration Act. The Board of the Riigikogu is elected for one year. After that the members of the Riigikogu elect a new board. The Chairman of the Riigikogu presides the sessions of the Riigikogu, convenes the meeting of the Board of the Riigikogu, submits the draft agenda for the meeting and presides at the meeting. The Board arranges the representation of the Riigikogu, divides the places in the committees, approves the composition of the committees, registers factions, drafts the agenda of the session and submits it for approval to the Riigikogu, appoints the leading committees for the draft laws processed by the Riigikogu.

Factions can be formed by and must consist of not less than five members of the Riigikogu elected from the same list of candidates. Members of the Riigikogu of one list of candidates can form only one faction. Factions are groups through which a large part of the work of the parliament is done. In factions political decisions are agreed upon; the decisions form the basis for expressing one's opinion in a committee, at the sittings of the plenary assembly of the Riigikogu or in public. A faction is a place for making political agreements. Factions, like members of the Riigikogu and committees, have the right to initiate draft legislation. This ensures the opposition factions an opportunity to prepare and defend their own draft legislation in the Riigikogu.

In autumn 2006 there are 6 factions in the Riigikogu:

- Estonian Centre Party faction - 21 members
- Estonian People's Union faction - 13 members
- Estonian Reform Party faction - 19 members
- Faction of the Social Democratic Party - 6 members
- Pro Patria Union faction - 7 members
- Res Publica Faction - 25 members

10 Members of the Parliament don’t belong to any faction

The main work with the drafts of the legal acts is done in the **committees.** Each committee deals with a different field of life. A member of the Riigikogu belongs to one standing committee and may, on the basis of the decision of the faction, be a deputy

member in other standing committees. The work of the committee is directed by the chairman of the committee or, in his absence, the deputy chairman. A committee is competent to pass resolutions if at least one third of the members of the committee are present at its regular session. The committee passes resolutions by majority vote. According to the Constitution, committees have the right to initiate laws. As generally all factions are represented in each committee, the members of the Riigikogu can get information and have the possibility to co-ordinate their points of view through the member of their faction. Each committee has officials whose task is advising the committee, register documents, etc.

X Riigikogu has 11 permanent committees:

- Constitutional Committee
- Cultural Affairs Committee
- Economic Affairs Committee
- Environment Committee
- European Union Affairs Committee
- Finance Committee
- Foreign Affairs Committee
- Legal Affairs Committee
- National Defence Committee
- Rural Affairs Committee
- Social Affairs Committee

The Chancellery of the Riigikogu was established by the Riigikogu resolution of October 5, 1992. The task of the Riigikogu Chancellery is to create the organisational and economic conditions for the successful work of the Board, members, committees and factions of the Riigikogu. The Chancellery assists the Riigikogu in preparing draft legislation by providing necessary legal advice and obtaining economic, sociological and other information. The legal acts to be adopted are edited and given their final form in the Chancellery. The Chancellery also informs the public of the activities of the Riigikogu and takes care of the appropriate use of the state assets belonging to the Riigikogu. The work of the Chancellery is directed by the Secretary general of the Chancellery who is appointed by the Board of the Riigikogu after public competition. The Chancellery fulfils its tasks through departments and services.

The Government of the Republic

The Government of the Republic exercises executive power pursuant to the Constitution and the laws of the Republic of Estonia. The President of the Republic shall, within fourteen days after the resignation of the Government of the Republic, **designate a candidate for Prime Minister** to whom the President of the Republic shall assign the task of forming a new government. The candidate for Prime Minister shall, within fourteen days after receiving the task of forming a new government,

present the bases for the formation of the forthcoming government to the Riigikogu, after which the Riigikogu shall decide, without debate and by an open vote, whether to authorise the candidate for Prime Minister to form a government. The candidate for Prime Minister who is authorised by the Riigikogu to form a government shall, within seven days, present the membership of the government to the President of the Republic, who shall appoint the government to office within three days.

If the candidate for Prime Minister designated by the President of the Republic does not receive a majority of votes in favour from the Riigikogu, or is unable or declines to form a government, the President of the Republic has the right to present a second candidate for Prime Minister within seven days. If the President of the Republic does not present a second candidate for Prime Minister within seven days or declines to do so, or if the second candidate is unable to obtain authority from the Riigikogu under the conditions and time restraints in paragraphs two and three of this section, or is unable or declines to form a government, then the right to nominate a candidate for Prime Minister shall transfer to the Riigikogu. The Riigikogu shall nominate a candidate for Prime Minister who shall present the membership of a government to the President of the Republic. If the membership of a government is not presented to the President of the Republic within fourteen days after the transfer to the Riigikogu of the right to nominate a candidate for Prime Minister, the President of the Republic shall declare extraordinary elections to the Riigikogu.

The Government lead by Prime Minister Andrus Ansip assumed office on 13 April 2005. The other ministers in the Government of the Republic are the Minister of Education and Research, the Minister of Justice, the Minister of the Environment, the Minister of Culture, the Minister of Economic Affairs and Communications, the Minister of Foreign Affairs, the Minister of Defence, the Minister of Agriculture, the Minister of Finance, the Minister of Interior, the Minister of Regional Affairs, the Minister of Social Affairs, the Minister of Population and Ethnic Affairs.

2.2.2 Authority / function and tasks at national level

The President

The powers of the President of the Republic as the Head of State are established in Section 78 of the Constitution and more specifically in the President of the Republic Working Procedures Act and other specific laws.

The President of the Republic **represents the Republic of Estonia in international relations.** Proceeding from the fact that the Government of the Republic organises relations with other states, the President of the Republic co-ordinates his activities with the Government. The President of the Republic has both active and passive right of embassy. He or she shall appoint and recall diplomatic agents of the Republic of Estonia, on the proposal of the Government of the Republic, and receive the credentials of diplomatic agents accredited to Estonia. In concluding international treaties, it is the competence of the President of the Republic to ratify or denounce treaties.

President of the Republic is **the supreme commander of national defence.** He has the specific task to make the proposal to the Riigikogu to declare a state of war,

mobilisation and demobilisation, as well as to end the state of war. In enacting his competence in national defence, the President is assisted by the National Defence Council, which acts as an advisory body to the President and consists, as provided by law, of the Chairman of the Riigikogu, the Prime Minister, the Chairman of the National Defence Committee of the Riigikogu, the Minister of Internal Affairs, the Minister of Foreign Affairs and the Commander (in wartime the Commander-in-Chief) of the defence forces. The President of the Republic shall, on the proposal of the Government of the Republic and the Commander of the defence forces, appoint and release from office the leadership of the defence forces consisting of the Commander of the General Staff of the Defence Forces, the commander of the Defence League and the commanders of air, land and naval forces.

The President and the Riigikogu are connected by several formal and substantive powers of the President. The President of the Republic declares the regular elections to the Riigikogu, convenes and opens the first session of the new membership of the Riigikogu. The President has the right to convene additional and extraordinary sessions of the Riigikogu in cases as stated by law. In cases provided in the Constitution, the President of the Republic shall dissolve the Riigikogu and declare the extraordinary elections of the Riigikogu.

President of the Republic **designates the Prime Minister candidate**, to whom he assigns the task of forming the Government. The Prime Minister candidate, who has been authorised by the Riigikogu to form the Government, presents the membership of the government to the president of the Republic, who shall appoint the government to office. The President shall make changes to the appointed membership of the Government of the Republic i.e. release and appoint ministers, on the proposal of the Prime Minister.

The President of the Republic shall **proclaim the laws passed in the Riigikogu**. This is the sole competence of the President of the Republic in which no other constitutional institution is involved. The President of the Republic may also refuse to proclaim a law passed by the Riigikogu and return it together with his reasoned resolution to the Riigikogu for a new debate and decision. The President has the right to control both the provisions of substantive and procedural law. If the Riigikogu again passes the law, which is returned to it by the President of the Republic, unamended, the President of the Republic shall proclaim the law or shall propose to the Supreme Court to declare the law unconstitutional. If the Supreme Court declares the law constitutional, the President of the Republic shall proclaim the law. If the Riigikogu is unable to convene in a situation of emergency, the President of the Republic may, in matters of urgent state need, issue decrees which have the force of law, and which shall bear the counter-signatures of the Chairman of the Riigikogu and the Prime Minister. These decrees can not be used to amend the Constitution or the so-called constitutional laws. The Riigikogu shall pass a law for the confirmation or repeal of these decrees on the next meeting. Thus, the decrees are a specific measure for maintaining governmental order, and in this case the President is acting as the guarantor of the rule of law in the state. According to the Constitution, President of the Republic does not have the right to initiate laws, with the exception of amendments of the Constitution.

The Head of State **appoints and releases** members of the Government on the proposal of the Prime Minister, the President of the Bank of Estonia on the proposal of the Board of the Bank of Estonia, county and city justices, administrative justices and circuit justices on the proposal of the Supreme Court, and the leadership of the defence forces on the proposal of the Government and the Commander of the defence forces. The President shall make proposals to the Riigikogu for the appointment of the following senior public servants: Chief Justice of the Supreme Court, Chairman of the Board of the Bank of Estonia, Auditor General, Legal Chancellor, and Commander or (in wartime) Commander-in-Chief of the Defence Forces.

Conferring state decorations is the sole competence of the President of the Republic, and he is assisted by the Committee of Decorations as an advisory body. It is a common practice in the world that the Head of State confers state decorations.

The President has the sole right to release or grant commutation to convicted offenders at their request by way of **clemency**. Clemency presumes that the court has already pronounced the convicting sentence and the individual in question has been transferred to the hands of executive bodies for the enactment of penalty. It is an international tradition that the Head of State may use his free will to enact justice after the court has guaranteed the enactment of law.

The President makes **the proposal to bring criminal charges** against the legal chancellor. The President shall make the proposal to the Riigikogu on the application of the public prosecutor. He or she has the right to study the documents relevant to the case.

The Riigikogu (The Parliament of Estonia)

The most important task of the Riigikogu is **legislation**. The Riigikogu shall proceed and pass laws. After Estonia's accession to the European Union some of the legislative functions were lost by the Riigikogu and shifted to the EU level, where Estonia is presented by the Members of the Government of the Republic. In order to compensate for such transfer of legislative power, the Riigikogu adopted Amendment to the Riigikogu Rules of Procedure Act in March 2004. The amendments gave the parliament means to exercise parliamentary scrutiny of the actions of the executive on the EU level. It also provided for the inclusion of the legislative power into the EU decision-making process and internal EU co-ordination system of Estonia.

Riigikogu influences the governing of the state primarily by determining the income and the expenses of the state (**establishing taxes and adopting the budget**). The state budget is the authorization granted by the Riigikogu (Estonian Parliament) to the government for the use of the people's money. Each year, the Riigikogu approves the draft budget submitted by the government, thereby allowing the government to use the money

The Riigikogu **elects and appoints several high officials of the state**, including the President of the Republic (Riigikogu shares this function with the electoral body, see above). In addition to that, the Riigikogu appoints, on the proposal of the President of the Republic, the Chairman of the National Court, the Chairman of the Board of the

Bank of Estonia, the Auditor General, the Legal Chancellor and the Commander or the Commander-in-Chief of the Defence Forces. The Riigikogu also has the right to present statements, declarations and appeals to the people of Estonia, other states and international organisations.

A member of the Riigikogu has the right to demand explanations from the Government of the Republic and its members, the Chairman of the Board of the Bank of Estonia, the President of the Bank of Estonia, the Auditor General, the Legal Chancellor and the Commander or the Commander-in-Chief of the Defence Forces. This enables the members of the parliament to observe the activities of the executive power (government) and the abovementioned high officials of the state.

The Government of the Republic

The responsibilities and procedures of the Government of the Republic are regulated by the Constitution of the Republic of Estonia, Government of the Republic Act, and Rules of the Government of the Republic. § 87 of the Constitution lists the tasks for the government. The Government of the Republic shall:

1) execute the domestic and foreign policies of the state;
2) direct and co-ordinate the activities of government agencies;
3) administer the implementation of laws, resolutions of the Riigikogu, and legislation of the President of the Republic;
4) introduce bills, and submit international treaties to the Riigikogu for ratification and denunciation;
5) prepare the draft of the state budget and submit it to the Riigikogu, administer the implementation of the state budget and present a report on the implementation of the state budget to the Riigikogu;
6) issue regulations and orders on the basis of and for the implementation of law;
7) manage relations with other states;
8) declare an emergency situation throughout the state or in a part thereof, in the case of a natural disaster or a catastrophe, or to prevent the spread of an infectious disease;
9) perform other duties which the Constitution and the laws vest in the Government of the Republic.

The Government prepares the state budget. The state budget is a plan based on which the government uses the state's money. The state budget shows how to distribute the money – how many kroons can be given for providing many public services, including among others education, medicine, police, military, and fire fighting. Therefore, the budget is one of the most important measures for running the country.

The state budget is also a plan for the government's revenues. In the state budget, the government forecasts how much money should be received by the state treasury, how much will come from income tax paid by the people, how much from social tax, how

much from excise tax, and other sources of revenue. Taxes are the government's primary source of revenue.

2.3 Regional level of the political system

2.3.1 Organs at regional level

The only regional political organs at regional level are the county councils of the major political parties, which have quite limited authority in the Estonian political system. In some cases, the appointment of county governors is also the result of political agreements and the governors are also the members of political parties.

2.4 *Local level of the political system*

2.4.1 Organs at local level

The organs of the political system at local level are local councils and local municipalities. Both are considered to be parts of the executive power of the Republic. The most important legal acts regulating the formation of local political organs and their activities are Local Government Council Election Act and Local Government Organisation Act.

Local councils

Estonian citizens and citizens of the European Union who have attained 18 years of age by election day and whose permanent residence, i.e. residence the address details of which have been entered in the Estonian population register, is located in the corresponding rural municipality or city have the right to vote in **local elections**. Also, an alien has the right to vote if he or she resides in Estonia on the basis of a permanent residence permit and has, by election day, legally resided in the corresponding rural municipality or city for at least the last five years. Political parties, election coalitions and individual candidates may participate in council elections. Since the elections in 2005 local councils are elected for four years, before that for three years.

Local governments

A local council elects the head of local government, confirms and dismisses the members of local governments. A local council also decides the number of the members in local government and its structure.

2.4.2 Authority / function and tasks at local level

Local councils

Local councils have an exclusive mandate to decide following questions:

1) adopting and changing local budget
2) establishing, changing and annulling local taxes
3) taking loans and other financial obligations
4) adopting the regulations
5) accepting and changing the strategic development plan of a city or a rural municipality
6) designating the representatives of a city or a rural municipality in the county association of local governments
7) deciding the establishment of municipal enterprises and foundations, and the participation in business enterprises, foundations, NGO's
8) establishing, reorganising and finishing the activities of municipal agencies and organisations
9) adopting, changing and annulling the building regulation and other regulations
10) initiation, adoption and changing of the comprehensive plan
11) annulling detailed plans and adoption of detail plans in case the surveillance over the planning procedures is mandatory

Local councils elect the head of local government – a mayor, decide the number of the members in local government and its structure, and confirm and dismiss the members of local governments.

Although local councils may establish local taxes, the proportion of local taxes in local budgets is minimal. Most of the tax revenues come from state/nation-wide taxes – residential revenue tax and land tax. Tax revenues form less than half of the total amount of Estonian local budgets. The other bigger sources of revenues are different kind of state subsidies and revenues from the local services and municipal assets. Thus, the financial autonomy is of an average local municipality is quite weak – the local councils do not control most of the municipal revenues.

Local councils may delegate the fulfilment/execution of the tasks to local governments.

Local governments

Local governments prepare the questions discussed in local councils. They decide and organise the questions of local community, which are designated by councils' regulations and decisions, or which are designated as a task of the local government by the statute of a city or a rural municipality. Local governments deal also with the questions delegated to them by local councils.

3. Administrative System

3.1 General description, history, and key data of the administrative system

The administrative system of Estonia has been developing parallel to the political system. Some of the structures were/are inherited from the Soviet administrative system, while others were restituted from the period of pre-WW independent Republic. At present, the administrative system has three and half levels:

- National level with state chancellery, ministries, executive agencies and inspectorates and other governmental agencies
- Regional level, which is administered either on:
  - district level (i.e. within the borders of districts covering more than one county) – most often 4-6 districts are formed, or on
  - county level – there are 15 counties in Estonia,

  depending on the particular administrative field.
- Local level – the administrative apparatus of 227 local governments.

The district level is the uncoordinated result of recent developments in the administrative system aimed at more economic and professional administration and public services.

3.2 National level of the administrative system: institutions, their authority, function and tasks

3.2.1 The State Chancellery

The State Chancellery, directed by the State Secretary, is within the Government of the Republic. The State Secretary shall be appointed to and released from office by the Prime Minister. The State Secretary shall participate in sessions of the Government with the right to speak. The State Secretary, as the director of the State Chancellery, has the same rights which are granted by law to a minister in directing a ministry.

The management of the State Chancellery includes the State Secretary, the director general of the State Chancellery and advisers and assistants directly subordinate to them. The State Chancellery has several offices and other administrative units:

- The Prime Minister's Office
- The Government Communication Office
- The European Union Secretariat
- The Department of Government Sessions
- The Department of Legislative Drafting
- The Office of the National Security Coordinator

- The Office of the Minister of Population and Ethnic Affairs
- The Department of Information Systems and Document Management
- The Department of Personnel of the State Chancellery
- The Maintenance Department
- The Accounting Department
- The Department of Internal Audit
- The Department of Public Service
- The Department of Document Management
- The Department of Insignia

The National Archives is a system of archives administered by the State Chancellery which comprises the Historical Archives, the State Archives, the Film Archives and 10 county archives. The National Archives acquire and preserve the records documenting the historical, cultural, state and societal facts about Estonia irrespective of time, place and nature of the creation of the informational units.

The Riigi Teataja Publishing House, a state agency administered by the State Chancellery, edits and publishes the Riigi Teataja, **the state gazette** of the Republic of Estonia.

3.2.2 The Ministries

The Estonian administrative system has 11 ministries, headed by the 12 ministers (the Ministry of Interior has two ministers - the Minister of Internal Affairs and the Minister of Regional Affairs). The Government of the Republic Act provides the possibility that the staff of a ministry may include the position of (one) assistant minister. Today 4 ministries have used the possibility – the Ministry of Education and Research, the Ministry of the Environment, the Ministry of Agriculture and the Ministry of Social Affairs. Every minister has political councillors working at the ministries.

The secretary general directs the administrative organisation of a ministry. The Government of the Republic Act says that the secretary general of a ministry shall direct the work of the structural units of the ministry, co-ordinate the activities of state agencies within the area of government of the ministry and organise the operations of the ministry. The secretary general has the right to control the budget funds of the ministry on the basis of the budget approved by the minister. The secretary general prepares the draft annual budget of the ministry and, where necessary, proposals concerning a supplementary budget. The secretary general makes proposals to the minister for the appointment to and release from service of a deputy secretary general and heads of departments of the ministry; in the Ministry of Foreign Affairs, of directors general, and in the Ministry of the Environment, also of heads of environmental authorities. The secretary general appoints to and releases from office officials and other employees who are on the staff of the ministry, except those who are appointed to and released from office by the minister.

Every ministry has several departments and other administrative units co-ordinated by the deputy secretary-generals. The Government of the Republic Act establishes the areas of government of the ministries. The Act also specifies the executive agencies and inspectorates – which have a directing function, exercise state supervision and apply enforcement powers of the state - that shall be within the area of government of the ministries.

The Ministry of Education and Research

The area of government of the Ministry includes the planning of state education, science, youth and language policy and in relation to that organisation of the fields of pre-school, basic, general secondary, secondary vocational, higher, hobby and adult education, research and development, youth work and special youth work, and the preparation of corresponding draft legislation. The Language Inspectorate shall be within the area of government of the Ministry of Education and Research.

The Ministry of Education and Research is the only ministry working outside the capital Tallinn. The Ministry of Education with a transformed structure commenced its work in Tartu on 1 July 2001. To implement the policy developed by the Ministry, an Education System Management Centre has been founded in Tallinn with the State Assets Administration Bureau and the State Schools Network Bureau as its core units. Since 1 January 2003 the Ministry of Education changes he´s name to Ministry of Education and Research.

The Ministry of Justice

The area of government of the Ministry includes the co-ordination of legislative drafting, the systematisation of legislation, the management of the professional activities of the courts of first and second instance, the Prosecutor's Office, prisons, and of legal assistance, and legislative drafting according to the competence of the ministry, and deciding the extradition of a citizen of a foreign state or a stateless person to a foreign state.

The Ministry of Defence

The area of government of the Ministry includes the organisation of national defence and, in this regard, the making of proposals for the planning of national defence policy, the implementation of national defence, the co-ordination of international defence co-operation, the preparation and carrying out of mobilisation, the call-up of persons eligible to be drafted for compulsory military service, the organisation of the registration and training of the Defence Forces reserves, the financing and supply of the Defence Forces and the National Defence League, the development of the defence industry, the supervision of the activities of the Defence Forces and the National Defence League and the preparation of corresponding draft legislation. The Defence Forces, the National Defence League, the Information Board and the Defence Resources Agency are in the area of government of the Ministry of Defence.

The Ministry of the Environment

The area of government of the Ministry includes the management of national environmental and nature protection, the performance of tasks relating to land and databases containing spatial data, the management of the use, protection, recycling and registration of natural resources, the radiation protection, the environmental supervision, the management of meteorological observation, nature and marine research, geological, cartographic and geodetic operations, the maintenance of the land cadastre and water cadastre, and the preparation of corresponding draft legislation.

The Ministry of the Environment is present in every part of Estonia. While the centre of the Ministry is located in Tallinn, the environmental authorities of the ministry are present in 15 counties. The Land Board, the Environmental Inspectorate, the Centre of Forest Protection and Silviculture, the Estonian Environment Information Centre, the Estonian Institute for Meteorology and Hydrology, the Estonian Radiation Protection Centre, the State Forest Management Centre, the Geological Survey of Estonia, the Estonian Map Centre, the Estonian Environmental Research Centre, Tartu Environmental Research, Tartu Nursery, Põlula Fish Farm, the Estonian Museum of Natural History, national parks, ecological reserves and landscape conservation areas all belong to the Ministry's area of government.

The Ministry of Culture

The area of government of the Ministry includes the management of work in the fields of national culture, physical fitness, sports, and heritage conservation, the promotion of the arts, participation in the planning of state media activities, and the preparation of corresponding draft legislation. The National Heritage Board is within the area of government of the Ministry of Culture.

A large part of state support to the field of culture is channelled through state cultural institutions as, for example, with the Estonian National Opera, the National Library of Estonia, the Estonian Art Museum, the Estonian National Museum, state theatres, Estonian Radio, and Estonian Television. The second main financing body is the Cultural Endowment of Estonia, whose purpose is to support arts, folk culture, physical fitness and sports by the purposeful accumulation and distribution of funds in the form of grants. Resources come from a percentage of the state budget, annually collected alcohol and tobacco excise tax, gambling tax and the Endowment's own activities. The Endowment creates an opportunity to also support cultural activities outside state cultural organisations, giving support to private bodies, NGOs and individual artists and projects.

The Estonian Ministry of Culture has cultural attachés in Brussels and in Berlin. The Estonian Institute, a non-profit organisation whose task is to spread information about Estonian society, culture and education both at home and abroad acts together with specific cultural fields' information centres (e.g. music, literature, contemporary arts, theatre and dance) to promote Estonian culture abroad and enhance cultural co-operation between Estonia and other countries. The Estonian Institute has branch

offices in Finland, Hungary, Sweden and France. Almost 100 cultural institutions are members of European and worldwide professional cultural networks.

The Ministry of Economic Affairs and Communications

The area of government of the Ministry includes the development and implementation of the national economic policy and state economic plans with regard to industry, trade, energy, housing, construction, transport (including transport infrastructure, shipping, transit, logistics and public transport), traffic control (including traffic on railways, roads and streets, waterway and air traffic), the improvement of traffic safety, the reduction of environmental damage caused by vehicles, informatics, telecommunications, postal services and tourism; the co-ordination of the work of the state information systems; technological development and innovation policy; the organisation of weights and measures, standardisation, certification, accreditation, licensing, registration, industrial property protection, supervision of competition, consumer protection, export development and trade protective measures; issues concerning the regional development of enterprise and investments, the administration of compulsory minimum stocks of liquid fuel and the preparation of corresponding draft legislation. The following executive agencies and inspectorates shall be within the area of government of the Ministry of Economic Affairs and Communications:

- The Competition Board;
- The Civil Aviation Administration;
- The Road Administration;
- The Patent Office;
- The Communications Board;
- The Consumer Protection Board;
- The Maritime Administration;
- The Energy Market Inspectorate;
- The Technical Inspectorate;
- The Railway Inspectorate.

The Ministry of Agriculture

The area of government of the Ministry includes the planning and implementation of rural development policy, agricultural policy, the part of the fisheries policy concerning fishing industry and the agricultural products trade policy, the organisation of ensuring food safety and conformity, the co-ordination of activities relating to animal health and protection and plant health and protection, the organisation of agricultural research and development and agricultural education, and the preparation of corresponding draft legislation. The following executive agencies and inspectorates are within the area of government of the Ministry of Agriculture:

- The Veterinary and Food Board;

- The Plant Production Inspectorate;
- Agricultural Registers and Information Board.

The Ministry of Finance

The area of government of the Ministry includes co-ordination and implementation of the planning of the financial and resource management policies of the Government and the budgetary policies of the state, planning and implementation of taxation and customs policies, economic analyses and forecasts, proceedings concerning applications for permission to grant state aid and exercise of supervision over the legality and use of state aid, public procurement activities, official statistics, co-ordination of the implementation of the internal control system of the Government and the organisation of internal audit, state accounting, administration of the financial assets and liabilities of the state, foreign aid and loans granted to the state, and preparation of corresponding draft legislation. The following executive agencies and inspectorates shall be within the area of government of the Ministry of Finance:

- Tax and Customs Board;
- Public Procurement Office;
- Statistical Office.

The Ministry of Internal Affairs

The area of government of the Ministry includes the guarantee of the internal security of the state and the protection of public order, the guarding and protection of the state border and the guarantee of the border regime, and the management of issues relating to crisis management, state operation stockpiles, fire fighting and rescue works, citizenship and immigration, and churches and congregations, the planning and co-ordination of local government, regional administration and regional development, including the co-ordination of the development and implementation of regional planning, local government and regional development, and issues related to data protection and vital statistics, and the preparation of corresponding draft legislation. The following executive agencies and inspectorates shall be within the area of government of the Ministry of Internal Affairs:

- The Security Police Board;
- Citizenship and Migration Board;
- The Border Guard Administration;
- The Police Board;
- The Rescue Board;
- The Data Protection Inspectorate.

The area of government of the Ministry of Internal Affairs includes county governments.

The Ministry of Social Affairs

The area of government of the Ministry includes the drafting and implementation of plans to resolve state social issues, the management of public health protection and medical care, employment, the labour market and working environment, social security, social insurance and social welfare, promotion of the equality of men and women and co-ordination of activities in this field, and the preparation of corresponding draft legislation. The following executive agencies and inspectorates shall be within the area of government of the Ministry of Social Affairs:

- Agency of Medicines;
- Social Insurance Board;
- Labour Market Board;
- Health Care Board;
- Health Protection Inspectorate;
- Labour Inspectorate.

The Ministry of Foreign Affairs

The area of government of the Ministry includes the making of proposals for planning the foreign policy of the state, resolution of issues relating to international agreements and foreign trade, securing that the positions of Estonia in the Permanent Representatives' Committee of the Council of the European Union and in court proceedings in the European Court of Justice and in the court of first instance are being defended, management of the relations of the Republic of Estonia with foreign states and international organisations, management of internal protocol and protocol abroad in the event of national holidays being celebrated, foreign visits of national importance being conducted and eminent guests being received, protection of the interests of the Estonian state and Estonian citizens abroad, administration of the provision of international development assistance and humanitarian aid, promotion of Estonia, and preparation of corresponding draft legislation.

3.2.3 Independent state authorities

The State Audit Office

The State Audit Office is an independent state body responsible for economic control. The State Audit Office is directed by the Auditor General who is appointed to and released from office by the Riigikogu, on the proposal of the President of the Republic. The Auditor General may participate in sessions of the Government of the Republic in which issues related to his or her duties are discussed, with the right to speak. The Auditor General, as the director of his or her office, has the same rights which are

granted by law to a minister in directing a ministry. The term of office of the Auditor General is five years.

The State Audit Office audits:

1) the economic activities of state agencies, state enterprises and other state organisations;
2) the use and preservation of state assets;
3) the use and disposal of state assets which have been transferred into the control of local governments;
4) the economic activities of enterprises in which the state holds more than one-half of the votes by way of parts or shares, or whose loans or contractual obligations are guaranteed by the state.

The Auditor General present to the Riigikogu an overview on the use and preservation of state assets during the preceding budgetary year at the same time as the report on the implementation of the state budget is debated in the Riigikogu.

The Chancellor of Justice

The Chancellor of Justice is an independent official who reviews the legislation of the legislative and executive powers and of local governments for conformity with the Constitution and the laws. The Chancellor of Justice may participate in sessions of the Riigikogu and of the Government of the Republic with the right to speak. The Chancellor of Justice, in directing his or her office, has the same rights which are granted by law to a minister in directing a ministry.

The Chancellor of Justice analyses proposals made to him or her concerning the amendment of laws, the passage of new laws, and the activities of state agencies, and, if necessary, presents a report to the Riigikogu. If the Chancellor of Justice finds that legislation passed by the legislative or executive powers or by a local government is in conflict with the Constitution or a law, he or she shall propose to the body which passed the legislation to bring the legislation into conformity with the Constitution or the law within twenty days. If the legislation is not brought into conformity with the Constitution or the law within twenty days, the Chancellor of Justice shall propose to the Supreme Court to declare the legislation invalid.

The Chancellor of Justice is appointed to office by the Riigikogu, on the proposal of the President of the Republic, for a term of seven years. The Chancellor of Justice may be removed from office only by a court judgment.

The Bank of Estonia

The Bank of Estonia has the sole right to issue Estonian currency. The Bank of Estonia regulates currency circulation, upholds the stability of the national currency and ensures price stability in Estonia

For this purpose, Eesti Pank has the following core tasks:

- participating in the economic policy of Estonia via pursuing an independent monetary policy, consulting the government, and continuing international cooperation;
- maintaining financial stability in Estonia by shaping financial sector policy and sustaining reliable and well-functioning payment systems;
- arranging cash circulation in Estonia;
- preparing for equal partnership with the other central banks of the euro area in developing a common economic and single monetary policy.

3.3 *Regional level of the administrative system: institutions, their authority, function and tasks*

The regional level of the Estonian administrative system consists of:

- county governors and governments
- the regional offices of the number of executive agencies, inspectorates and other governmental agencies
- county associations of local governments.

3.3.1 County governors and governments

County governors are appointed to office for a term of five years by the Government of the Republic on the proposal of the Minister of Regional Affairs. The competencies of county governors are listed in § 84 of the Government of the Republic Act. Among other duties, county governors shall:

- represent the interests of the state in the county and care for the comprehensive and balanced development of the county;
- direct the work of the county government;
- report to the Minister of Regional Affairs and the Government of the Republic on his or her activities;<0}
- co-ordinate the co-operation of regional offices of ministries and other agencies of executive power and local governments in the county;
- give his or her opinion on the appointment to and release from office of the heads of regional offices of ministries and other agencies of executive power located in the county;
- inform the Government of the Republic, the Minister of Regional Affairs and local governments on regional policy and other issues concerning relations between executive power and the local governments;
- make proposals through the Minister of Regional Affairs to the Government of the Republic and ministries for the management of the work of local administrative agencies of government agencies and other state agencies located in the county;

- possess, use and dispose of state assets within the scope of his or her authority pursuant to law;
- conclude, by authorisation of the Government of the Republic, administration contracts with local governments for performance of state obligations by them;
- monitor the activities of local governments and perform functions of supervisory control;
- guide and co-ordinate the activities of state agencies administered by the county government;
- represent the state in court in court actions arising from performance of the duties of the county governor and organise the collection and communication of information concerning such court actions.

A county government is a government agency which provides services to the county governor and is directed by the county governor. There are 15 county governors and county governments in Estonia.

3.3.2 Regional governmental offices

Regional governmental offices operate both within county and district boundaries, depending on the particular administrative field. Some of the agencies and inspectorates do not have regional offices, departments, etc., due to the nature of their functions. Following governmental agencies and inspectorates have regional agencies, departments or other units in all 15 counties:

- Estonian Land Board – 16 cadastral bureaus (counties, + Tallinn)
- National Heritage Board – 15 senior inspectors
- Estonian Agricultural Registers and Information Board – 15 bureaus
- Consumer Protection Board - 15 services
- Veterinary And Food Administration – 15 agencies
- Labour Market Board – 15 departments
- Veterinary And Food Administration – 15 veterinary centres
- Plant Production Inspectorate – 15 surveillance bureaus
- National Labour Inspectorate – 15 centres

The territorial organisation of these governmental agencies and inspectorates has formed the specific administrative districts:

- Security Police Board – 7 regional departments
- Defence Resources Agency – 2 departments dealing with registration of persons liable to service in the Defence Forces
- Citizenship and Migration Board – 4 departments
- National Road Administration – 1 regional office and 5 subordinate agencies

- Estonian Tax and Customs Board – 4 tax and custom centres
- National Board of Border Guard – 5 border districts
- National Police Board – 4 prefectures
- Rescue Board - 4 rescue centres and 15 departments of rescue centres
- National Communications Board – 3 representative offices
- Social Insurance Board – 4 Pension Boards
- Estonian National Maritime Board – 5 divisions of navigational marking
- Language Inspectorate – 5 surveillance divisions
- Environmental Inspectorate – 7 departments, + 8 bureaus of departments
- Health Protection Inspectorate – 4 divisions
- The Prosecutor's Office – 4 circuit prosecutor's offices

3.3.3 County associations of local municipalities

Local governments in a county may form a county association of local governments. A county association may be founded jointly by more than one half of the local governments in that county. There is no obligation to join the county association of local governments.

Such association is a non-profit association, which has also some administrative functions – both local government and state functions. The functions should be performed in accordance with the norms prescribed in the Local Government Associations Act. An association shall perform those functions of a local government which the general meeting has decided should be performed jointly through the association. Functions which require the exercise of powers of public authority shall be transferred to an association for performance only if corresponding authorisation provided by law has been granted. An association shall perform also state functions assigned to it by law or on the basis thereof. An association may enter into a contract with a governmental authority by which the association undertakes to perform a state function. An association may undertake to perform a state function provided that none of the local governments which are members of the association are against it.

In a more general terms, the objectives of a county association are, through the joint activity of the local governments in the county, to foster the balanced and sustainable development of the county, to preserve and promote the cultural traditions of the county, to represent the county and the members of the association, to protect the common interests of its members, to promote co-operation between the local governments in the county and to create possibilities for improved performance of the functions of its members as prescribed by law.

3.4 *Local level of the administrative system: institutions, their authority, function and tasks*

Each local government of 227 cities and rural municipalities has administrative apparatus which provides services to the local government and to the local people. The size of administrative staff varies a lot, depending on the size of the local municipality – from over thousand administrative officials in Tallinn to less than five in very small local municipalities. The bigger administrative organisations have also more complicated administrative structures with offices, departments, divisions and bureaus.

[The report relies on the official translations of legal acts and on the materials presented in the English versions of web pages published by state authorities; The presentation of the history of the constitutional system uses the resources from web page http://www.estonica.org/eng/lugu.html?menyy_id=1142&kateg=43&alam=80&leht=6]

II Planning System of Estonia

1. The Overview of the Planning System

1.1 The History of the Planning System

The first Estonian legal act on spatial planning came into force in 1939. It was the Building Act, regulating city planning only. The Act remained effective for mere two years until Estonia was occupied by the Soviet Union during the summer of 1940. Yet the systematic planning of cities in Estonia began significantly earlier, during the time before the First World War when the rapid urbanisation and changes in economic life took place. The year of 1913 was a momentous landmark – comprehensive plan competition was held for Greater-Tallinn, won by the Finnish architect Eliel Saarinen. It was the first contemporary approach to a city's long term spatial planning in Estonia, and served as an example for all urban planning between the two wars, during Estonia's first independence. Within this period, only a few comprehensive plans for cities or city districts were prepared. The majority of planning efforts were focused on detailed planning, as it would be expressed in present-day terminology. In the mid-30ies, the projects dealing with spatial impact of major streets and squares in Tallinn were initiated. Their objective was to draft the aligned design of Tallinn's street and square front for the renovation of the streets and squares of the city centre. Content wise, these projects were similar to today's detailed plans. During the period of Estonia's first independence, quite a number of architectural competitions were held for planning and building new complete housing complexes. There were attempts to construct several of these complexes to set good examples to others.

During the occupation years, planning was carried out according to the rules that were in force in the Soviet Union. Although there was no Planning Act in the Soviet Union, the rules and regulations were in place, providing instructions for the content and organisation of the preparation of plans. Mostly densely populated areas were planned, for which the general plans of cities and towns, projects for rural settlements planning and housing, project plans for industrial zones, schemes of general plans for groups of enterprises and projects of detailed plans were prepared. At the end of the Soviet era, various regional plans as well as those for the whole Estonian territory were prepared. However, these plans remained mostly academic exercise in their nature and never influenced the development of the actual settlement. The preparation of plans was centralised and carried out by the State Institutes for Design and Engineering. The role of local authorities was to implement the confirmed plans, while having little say in the development of their content. Local governments as defined by the western world were nonexistent. The state was the sole owner of the land. Planning documents were kept in secrecy or for official use. Making plans public was not provided by the norms, however towards the end of the period it was gaining increasingly wider practice. Looking back, it may be concluded that during the years before Estonia regained its independence, the level of the content of plans was fairly good and balanced, and comparable to the level of planning in other European countries of that time.

The preparations for the modern Planning and Building Act began already before Estonia became independent on August 20th, 1991. The Planning and Building

Act (PBA) came into force on July 22nd1995 and remained in effect without major amendments for more than 7 years. During that time, National Spatial Plan Estonia 2010 (adopted in September 2000), county plans dealing with general territorial-economic development in all counties (adopted during the period 1998 - 2002) and a number of comprehensive plans and detailed plans of rural municipalities and cities were prepared. The preparation of the thematic county plan 'Environmental Preconditions for Settlement and Land Use' reached its final stage. The experience gained from the preparation of the aforementioned plans, planning debates and court judgements brought forth several shortcomings of the PBA and the necessity to specify and amend it.

The new Planning Act (PLA) that came into force on January 1st 2003 retained the structure and terminology of the previous Planning and Building Act as much as it was reasonable to ensure the continuity between the two acts. Amendments and supplements were introduced only if they were unavoidable. The most radical amendment compared to the PBA lies in dividing it into two separate acts: the Planning Act (issues related to planning) and the Building Act (issues pertaining to building and engineering). Both came into force on the same date. The main reason behind the separation was the transfer of building from the area of government of the Ministry of the Environment to that of the Ministry of Economic Affairs and Communication.

There has been hardly any further research into the history of planning in Estonia, therefore also the current attempt remains brief.

1.2 Main Principles

1.2.1 The planning system is hierarchical and interactive at the same time

There are four types of plans in the Estonian planning system: national spatial plan, county plan, comprehensive plan (of a rural municipality or a city) and detailed plan.

On one hand, the planning system is hierarchical. It means that a less general plan should be compliant with the more general plan in order to ensure the continuity of spatial development. On the other hand, **during the preparation of a less general plan, it is relatively easy to amend the more general plan in order to ensure timely reaction to changing needs**. While saying this, it should be clarified that a proposal to amend can be made only for the plan that is more general by one level, i.e. with a detailed plan a proposal could be made to amend a comprehensive plan, but not a county plan. The Planning Act has also been reproached for providing the possibility to amend a more general plan with a plan that is less general, saying that it makes it too easy for local governments to amend their comprehensive plans with detailed plans. However, the deployment of strict hierarchical locks would make the system too rigid and exclude the necessary and justified amendments, for example those proposed by detailed plans to comprehensive plans. The suggestions to 'lock' the system are the results of a few unjustified and inappropriate decisions by local governments, whereby public interests stated in comprehensive plans have been disregarded for meeting narrow private interests. It is not possible to prohibit inappropriate decisions by law. At the same time, 'locking' the system is likely to

impede necessary and justified decisions. Inappropriate decisions can be avoided by thorough consideration and wider involvement of public in the consideration process.

1.2.2 The Choices for the Type of Plan and the Size of Planned Territories are Very Flexible

The law does not draw a very clear line between different types of plans. For example, for a territory that is comprised of several rural municipalities, it is possible to prepare a common comprehensive plan or a county plan for the respective part of the county. Also, it is possible to have two different kinds of plans for a smaller part of a city – it may be a comprehensive plan of a part of the city or a detailed plan. In such cases, the choice between the types of plans is determined by the objectives or legal aims that the plan is expected to achieve. If it is desired to establish binding conditions of land use and building for the owners of immovables in the areas where detailed planning is not mandatory, a common comprehensive plan for rural municipalities or the parts of several rural municipalities should be prepared. If the aim is to define common strategic objectives for the spatial development of several rural municipalities or parts thereof, it is more appropriate to prepare a county plan for that part of the county.

1.2.3 There are Two Clearly Distinguishable Boundaries in the Planning System

There are **two clearly distinguishable boundaries between different types of plans** – **a detailed plan is the only plan that deals with plots/registered immovables** and **a county plan is the last plan on the level of generalisation that deals with land use planning**. A national spatial plan is no more a classical land use plan; it sets the country's spatial development strategy. In detailed plans and comprehensive plans the land use plan on a map is the most important part of the plan; the text of the plan is the explanation of the map. In national spatial plan, the text carries the most important message, and the drawings are for its illustration.

1.2.4 Public Disclosure of Planning

The main task of planning is to reach the agreement regarding the principles and conditions of the development of the planning area. In the planning process, every time a smaller or greater primary contradiction has to be solved between preserving and changing – most of the disputes in planning concern the questions of what and how much to change or preserve. In order to ensure as wide and as balanced social agreement as possible, planning activities have to be public according to the Planning Act. *Public disclosure is mandatory in order to ensure the involvement of all interested persons and the timely provision of information to such persons and to enable such persons to defend their interests in the process of planning.*

1.2.5 The Allocation of Roles in the Preparation of Plans

The preparation of plan is initiated and organised and plans are adopted by the administration of the respective administrative unit, i.e. for the territory of the whole country it is done by the Government of the Republic, for a county – the county

governor, and for the territory of a local government – the local government. Supervision of county plans, comprehensive plans and on certain conditions also of the preparation of detailed plans is mandatory before their adoption. The supervision of the preparation of county plans is carried out by the Ministry of Internal Affairs, while the county governor supervises the preparation of comprehensive plans and detailed plans.
Hereby it should be reminded that **in Estonia there is no regional local government and that the county governor is the representative of state in the county**.

1.2.6 For an Owner of Immovable, Only One Plan is Legally Binding

For an owner of immovable, **the most detailed plan that is mandatory to be prepared for a particular area is legally binding**, i.e. an adopted detailed plan is legally binding for an owner of immovable in an area and in cases where detailed planning is mandatory; adopted comprehensive plan is legally binding in those areas and cases where detailed planning is not mandatory.

1.2.7 Local Government May Not Delegate Carrying Out Proceedings

According to the Planning Act, **all proceedings during the preparation of a plan have to be carried out by the local government, county governor or the ministry**; they cannot be carried out by a consultant who may assist them in the preparation of a plan. As a rule, the appropriate state institutions prepare national spatial plan or county plan themselves, local governments, however, often order the preparation of plans from planning companies. **The aforementioned statement expresses one of the most important ground principles of the Planning Act – a local government that organises the planning is fully responsible for the content of the plan, the proceedings and planning decisions**. The institution adopting a plan has to make a well-considered decision that takes into account all information gathered during the preparation of the decision. Local governments can have such information only if they themselves are involved in the proceedings and presenting and defending the plan in different institutions and in front of the public. Carrying out proceedings also ensures greater continuity and professionalism in local governments. It is emphasised in the PLA that **even if a local government enables an interested person to order the preparation of detailed plan, the local authority remains the organiser of the preparation of the plan and the one who carries out all proceedings**.

1.2.8 The Requirements for the Proceedings of Detailed Plans are More Strict in Certain Cases

The requirements for the proceedings of detailed plan are more stringent in four cases:

- In case the detailed plan is prepared for areas which are of significant public/general interest and value (areas under conservation or areas concerning which a corresponding proposal has been made, regions of significant urban development potential);
- In case the detailed plan is prepared for such area where the general development

principles and interests are not defined with a comprehensive plan (in cities with official city districts, with a comprehensive plan of the city district);
- In case the detailed plan is intended to amend the basic content of the comprehensive plan;
- In case there are unsolved objections.

The requirements are more stringent in order to ensure a better balance of different interests – especially public/general and private interests and values – in the development of a certain area. The existence of significant public interest/significant value in the planning area:
- Elicits the need for more extensive disclosure during the preparation of the plan (§ 16 subsection 3),
- Excludes the possibility to make an exception to the requirement to prepare a detailed plan (§ 9 subsection 10),
- Excludes the possibility to enter into a contract for the preparation of a detailed plan with a person in private law interested in the preparation of a plan (§ 10 subsection 6).

The absence of comprehensive plan or the proposal to amend it:
- Elicits the obligation to present the detailed plan to the supervisor (§ 23 subsection 2),
- Excludes the possibility to enter into a contract for the preparation of a detailed plan with a person in private law interested in the preparation of a plan (§ 10 subsection 6).

The clearer and stricter presentation of these requirements serve the purpose of emphasising the importance to follow the general development principles of a city/rural municipality and take into account general public interest and values.

1.2.9 The Obligation of Discretion During the Preparation of a Plan

The experience gathered by the time of preparing the PLA made it necessary to put **stronger emphasis on the discretionary nature** of planning. Therefore, in various provisions the expression *'in the event of justified need'* is used in the PLA to communicate the requirement of clarifying the reasons why certain decisions have been made in or about a plan and what is intended to be achieved by such decisions. By the time of preparing the PLA, many significant decisions of the Supreme Court regarding discretion had not been made yet. Based on these decisions and further experience until now, the PLA is likely to need further amendments so that the discretionary nature of planning would be highlighted and reflected more accurately.
Sufficient and reasoned **discretion of the content of the plan ensures also the assessment of the likely effects of the implementation of the plan**, which is required by the respective Act and the Euro-directive. This helps to **extend the constricted requirement of the Directive that provides the assessment of environmental impact to assessing the impact on all components of the environment** listed in the European Spatial Planning Charter.

1.2.10 The Obligation to Inform Personally is Rather Limited

The PLA stipulates personal notification, by way of registered letter, to the owners of immovables related to the preparation of plan only on three occasions:

1. If at the initiation or preparation of a plan it is known that there might be a need for the transfer of immovables as a result of the implementation of the plan (§ 12 subsection 4, § 18 subsection 5).
2. If a temporary building ban has been established for the time of the preparation of the plan (§ 15 subsections 4 and 5).
3. If a person has submitted proposals or objections during the time the plan has been on display (§ 20 subsection 2, § 23 subsection 4, § 25 subsection 7).

It can be concluded that **there is the obligation to give personal notification only in those cases where the plan decisions affect personal property rights or if a person has expressed her/his views about the plan during the public display of the plan.** There are two aspects which provide the basis for such arrangement. The preparation of the Act has followed the understanding that participating in the public processes of the preparation of plans is not merely a right of a citizen; instead, the participation in community life and in the planning of the physical and social environment is the responsibility of a citizen. Therefore, it is citizens' duty to follow what is happening in this field and express their opinion when it is necessary. In order to have people receiving timely information, the law provides how and when the notifying should take place. Secondly, the expediency and the administrative capability of the local governments have been taken into account. Based on the abovementioned first or second occasion, the need for personal informing is relatively small; for the majority of the plans, such need will not occur. Most of the personal notifications are sent as replies to the proposals or objections that have been received during the time of public displays of the plans. At the same time, it should be stressed that **the Act has to be interpreted as the minimum standard for (mandatory) informing, which means that during preparation of every plan local governments should consider how much communication and informing they should provide additionally to minimum requirements in order to ensure that *the interests of interested persons are taken into consideration in a balanced manner, which is a prerequisite for adoption of a plan* (§ 4 subsection 2)**.

1.3 The Scope of Application and Purpose of the Planning Act

PLA regulates the relations between the state, local governments and other persons in the preparation of plans. The purpose of this act is to ensure conditions which take into account the needs and interests of the widest possible range of members of society for balanced and sustainable spatial development, spatial planning, land use and building. The Planning Act defines *spatial planning as democratic and functional long-term planning for spatial development which co-ordinates and integrates the development plans of various fields and which, in a balanced manner, takes into account the long-term directions in and needs for the development of the economic, social, cultural and natural environment (§1 subsection 3).* The definition is based on that of the European Regional/Spatial Planning Charter, adopted in 1983.

1.4 The Importance of International and Cross-border Aspects

Estonia is a small country. Therefore, the success of Estonia's integration with Europe and its economic cooperation within the EU is significantly more dependent on the success of spatial integration than it is in bigger countries. That is why in the national spatial plan Estonia 2010 great attention is paid to Estonia's better spatial integration with the rest of Europe. One of the five main objectives of Estonia 2010 has been worded as follows:
'Balanced and solid binding of Estonia through transport connections and power networks both to Eastern and Western Europe will improve the position of Estonia in the international employment system and speed up economic growth. Good physical connections will support and accelerate economic and social integration into the European Union'.
In order to ensure that Estonia's spatial development needs are taken into account in international context, Estonia is actively participating in spatial planning related cooperation within the European Union as well as Baltic Sea countries.

1.5 Necessary Amendments and Tasks in the Near Future

As the PLA came into force only a few years ago, there is no need for large-scale amendments. The only amendment that is currently prepared is related to the full inclusion of all impact assessment regulations in the Planning Act and excluding them from the act dealing with impact assessment. The need for this amendment derives from the fact that regulating planning with two acts creates confusion and only hinders reaching the objective – achieving better and more thorough consideration of environment in spatial planning.

2. Planning Related Legislation

2.1 Acts and Legislation

2.1.1 Acts

In addition to the Planning Act, **Environmental Impact Assessment and Environmental Management System Act** regulates the assessment of the likely effects of the implementation of plans. Today (April 2006), work is in progress to fully include all impact assessment regulations in the Planning Act.

2.1.2 Regulations Based on Planning Act

In the Planning Act, **a delegation norm[1] has been granted for issuing a regulation** of the Government of the Republic, which **establishes the list of objects of significant spatial impact**.

[1] Estonian legal system has a principle that for the specification of regulations established in an act the state government, a ministry or a local government may

In the Planning Act, another delegation norm has been granted, according to which the **local governments may establish the Building Regulation of the city or rural municipality**. The Building Regulation of a rural municipality or city is established in order to provide *the general principles and rules for planning and building in the rural municipality or city or parts thereof and to determine the division of the internal functions of the local government in administration in the field of planning and building.* In general words, the PLA states that all proceedings and decisions during the preparation of a plan will be carried out by *the local government*; the role of the Building Regulation is to designate, **based on the content/weight of the decision**:

- Whether the decision is carried out by the city/rural municipality government, council or department;
- Which are the deadlines for the proceedings within the city/rural municipality;
- What are the detailed rules for the proceedings of preparation of comprehensive plan and detailed plan;
- How are the procedures related to the design and building of construction works organized.

2.1.3 The Structure of Planning Act

The structure of the Planning Act gives a relatively good overview of what and to which extent is regulated in the Planning Act. Presenting the structure of the Act by paragraphs would be too voluminous, therefore it is hereby presented by chapters:

Chapter 1. General Provisions (§1 - 5)
Chapter 2. Types of Plan (§6 - 9)
Chapter 3. Preparation of Plan and Public Participation (§10 - 22)
Chapter 4. Supervision of Preparation of Plans. Adoption and Repeal of Plans (§23 - 29)
Chapter 5. Transfer of Immovables to Implement Adopted Plans (§30, 31)
Chapter 6. Specifications for Planning of Objects of National Importance (§ 32 - 34)
Chapter 7. Implementation of Act (i.e. amendment of other acts related to planning and the deadlines of the tasks and entry into force) (§ 35 - 47)

2.2 Legally Binding Effect

According to the PLA, an adopted national spatial plan, county plan and comprehensive plan of a built-up territory form the mandatory basis for preparation of a more detailed type of plan, but they do not have direct legally binding effect to the owners of immovables. The administration of the respective territory has to ensure that the plans are followed and implemented. Therefore, the aforementioned plans are legally binding only to the administrations that organised the preparation of the plans and to those who prepare the more detailed plan. *Land use provisions, building provisions and restrictions arising from law may be established for immovable property on the basis of the following plans:*

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issue orders, regulations, by-laws only if the act prescribes respective warrant denoted as “*delegatsiooninorm*” (delegation norm) in Estonian.

- *On the basis of an adopted detailed plan where preparation of a detailed plan is mandatory;*
- *On the basis of an adopted comprehensive plan where preparation of a detailed plan is not mandatory* (§ 3 subsection 3).

2.3 Possibilities for Contestation

2.3.1 Contestation During the Preparation of Plan

Everyone has the right to present proposals and objections concerning a plan during the time the plan is on display to the public. An objection is the presentation of a disagreeing opinion concerning a planning solution or a claim that the requirements of law have not been met in the processing of the plan. The need to differentiate proposals and objections in the Act derived from the past planning practice. During the plan display, often proposals were made recommending one or another solution, including also such proposals which say that the plan is good, and suggest continuing the same way in the future. Burdening the supervisors with the proceedings of the ones like the latter is not necessary.

The Act also differentiates between proposals and objections because during the final stage of the preparation of the plan objections, especially those which are not taken into consideration during the preparation of the plan, elicit more rigorous requirements for proceedings. According to the PLA, **everyone has the right to present proposals and objections concerning a plan, not depending on whether she/he is settled on or owns property on the planning area.**

People may also present proposals and objections concerning a plan also at other times than public display. The proceedings of these proposals are not regulated by the Planning Act – they are treated as citizens' applications and their proceeding is carried out according to the general rules for proceeding citizens' applications. The proposals presented at other times do not impact the order of the proceedings of a plan.

The Act also provides that *a person who presents written proposals or objections concerning a plan during the public display thereof may withdraw those proposals and objections*. *A written notice thereof has to be sent to the local government or county governor administering preparation of the plan within at least two weeks as of the date on which the public discussion regarding the plan is held*.

2.3.2 Contestation of the Decision to Adopt a Plan

Every person, irrespective of whether she/he is settled on or owns property on the planning area, has the right to contest the decision of the adoption of a plan in court or before the administrative authority which adopted the plan.

2.3.2.1 Contestation in Court

Every person who finds that a decision to adopt a plan is in conflict with an Act or other legislation or that his or her rights have been violated or freedoms restricted by the decision has the right to contest the decision in court within one month as of the day on which he or she became or should have become aware of the adoption of the plan (§ 26 subsection 1). It becomes evident that according to the PLA, additionally to those people whose rights have been violated or freedoms restricted, the decision to

adopt a plan may also be contested by people who are not settled on or owning property on the planning area, but who find that the decision is in conflict with legislation. Such extended right of contestation in the PLA is exceptional in Estonian legislation and derives from the specific character of planning.

2.3.2.2 Contestation before the Administrative Authority which Adopted the Plan

Every person who finds that an adopted detailed plan or comprehensive plan is in conflict with an Act or other legislation or the decision to adopt the plan is in conflict with an Act has the right to make a proposal to the authority which adopted the comprehensive plan or detailed plan to bring the adopted plan or the decision to adopt the plan into compliance with the Act or other legislation. The county governor or local government who adopted the plan shall make a decision concerning the proposal and, if the proposal is found to be justified, bring the plan or the decision to adopt the plan into compliance with the Act or other legislation and, by way of registered letter, inform the person who made the proposal of the decision and of the reasons for accepting or rejecting the proposal within one month after the date on which the proposal is received (§ 26 subsection 2). This clearly indicates that at any time, any person may draw the attention of the administrative authority which adopted the plan to conflicts between the plan and an act or other legislation. Such provision has been included in the Act with the main objective of ensuring public control of the decisions to adopt a plan and through it achieving greater legal certainty.

2.4 Mandatory Preparation of a Plan

2.4.1 General Plans

The general obligation to prepare national spatial plan, county plan and comprehensive plan **has not been provided** in the PLA. At the same time, deadlines are given in the implementing provisions of the PBA and PLA for completing the preparation of different types of plans. The implementing provisions of the PBA provide that county governments should ensure the completion of county plans within three years after the PBA has entered into force, i.e. before July 22nd 1998. The implementing provisions of the PLA provide that all cities should have adopted comprehensive plans by January 1st 2006 in the latest and all municipalities by July 1st 2007.

2.4.2 Detailed Plan

The PLA provides the obligation to prepare a detailed plan only on certain cases – **as the basis for land areas' division into plots and the construction of buildings**. According to the PLA, *the preparation of detailed plan is mandatory for areas located in cities and towns and for existing or planned, clearly delimited built-up parts of small towns and villages in the following cases:*

- *As the basis for the preparation of building design documentation for new buildings, except for outbuildings of detached houses, outbuildings of summer-houses, outbuildings of garden houses and other small buildings with an area occupied by buildings of up to 20 m^2, and as the basis for the erection of such new buildings;*

- *As the basis for the expansion of the cubature above ground of existing buildings, except for detached houses, summer-houses and garden houses and their outbuildings, by more than 33 per cent and for the preparation of building design documentation for such work;*
- *In the event of land areas being divided into plots. (§3 subsection 2)*

A city/municipality may make exceptions to this general rule (§ 9 subsection 10) and decide that the preparation of a detailed plan is not necessary. *Local governments may, except in areas placed under state protection and built-up areas of cultural and environmental value, permit the following without the requirement to prepare a detailed plan:*

- *Extension of an existing industrial building located on the plot of an industrial undertaking, erection of outbuildings connected thereto and preparation of building design documentation for such purpose;*
- *Preparation of building design documentation for and erection of a detached house on an empty plot in an existing built-up area provided that, upon the design and erection of the detached house, the style of building and principles of planning applied in the area are taken into consideration and that concertation is sought for the building design documentation from the owners of the neighbouring registered immovables;*
- *Preparation of building design documentation for and erection of an apartment building on an empty plot in an existing built-up area provided that the number of storeys of the new apartment building and the area occupied by the buildings is in correspondence with the corresponding parameters of the existing buildings and that concertation is sought for the building design documentation from the owners of the neighbouring registered immovables;*
- *Division of a plot occupied by several buildings into several plots between the owners of the buildings, provided that the request for division of the registered immovable does not include an application by the owners for permission to erect buildings for which the preparation of a detailed plan is mandatory;*
- *Relocation of the boundaries of neighbouring plots, provided that such relocation does not result in the alteration of the existing building rights of the plots, except for the area occupied by the buildings, or in the alteration of the existing land use provisions and provided that it is carried out in agreement between the owners of the neighbouring plots.*

It should be emphasised that a **local government may make such alleviations, but does not have to make them**, if it is found that the preparation of detailed plan together with its accompanying public disclosure and proceedings is substantively necessary.

In the Act, it is not possible to list all the cases where the preparation of a detailed plan is substantively and legally necessary. Therefore, a city/municipality has to be given the freedom to initiate the preparation of detailed plan also in those areas and cases where as a general rule the preparation of detailed plan is not mandatory. Therefore, the PLA includes the opportunity that *in the event of justified need, a local government council may initiate the preparation of a detailed plan for areas and in the cases where, the preparation of a detailed plan is not mandatory.* In a publication by the Ministry of Environment ‘Recommendations for the Preparation of Detailed Plan’ (2003), a list of objects and cases is given, where the initiation of the preparation of

detailed plan is recommended even though it is not mandatory. Taking into account these recommendations and the substantive need, the municipal council should consider the preparation of detailed plans in low density areas, if it is desired to construct or establish the following:

- A group of detached houses, garden houses or summer-houses that consists of more than five buildings;
- A detached terraced house or a multi-storey building or a group of them;
- A detached industrial building or storehouse with more than 1000 m² of area occupied by construction works;
- Camping site, motel, holiday village or camp;
- Sports complex or bathing area;
- Port, airport, car service station or gas station

Or if the plan is prepared for

- A manor house complex area (including its accompanying park).

The preparation of detailed plans in cities, rural municipalities and other built-up areas may be substantively necessary, additionally to the general rule, as the basis for the design and construction of various civil engineering works – roads, utility structures, liquid fuel tanks, parks, larger green areas etc. If local government considers detailed planning necessary in those cases where it is not mandatory according to the Act, it should provide reasoned explanation for the decision regarding the initiation of the preparation of detailed plan indicating why it is substantively and/or legally necessary.

The explanation of the obligation to prepare a detailed plan could be concluded as follows. For cities and towns, the Act has defined the size/scope of the area which is subject to the preparation of detailed plans – it is the administrative territory of cities and towns, where the preparation of detailed plans is mandatory in the three cases which are provided in the Act. For small towns, villages and rural areas it is not clearly defined for which areas the detailed plans should be prepared in those three cases. According to the Act, for small towns, villages and rural areas the size/scope of the areas that are subject to the preparation of detailed plans is defined by the local government with comprehensive plan. Additionally, the obligation to prepare detailed plan may be imposed by way of decision in those cases where as a general rule there is no mandatory preparation of detailed plan required, or where it is not prescribed by the comprehensive plan.

3. Types of Plan and Their Proceeding

3.1 Administrative Organisation of Planning

According to the Act, *administration and supervision of planning activities at national level is within the competence of the Ministry of Internal Affairs, while administration and supervision of planning activities in a county is within the competence of the county governor.* Hereby it is important to note that in Estonian law, **county governor is indicated as an institution** instead of county government.

In Estonia, planning is in the area of the Ministry of Internal Affairs since May 2004. Before that time it was overseen by the Ministry of Environment. The Ministry of Internal Affairs is the only ministry in Estonia which has two ministers. Police, border guards and rescue issues are handled by the Minister of Internal Affairs. Population census issues, local government administration, regional development and spatial planning are lead by the Minister of Regional Affairs.

Administration of planning activities within the administrative territory of a rural municipality or city is within the competence of the local government. The local government shall:

- *Ensure that there are plans which serve as the basis for land use and building;*
- *Ensure, as a prerequisite for adoption of a plan, that the interests of interested persons are taken into consideration in a balanced manner;*
- *Ensure that adopted plans are adhered to.*

During the cooperation for the preparation of a plan, a ministry, county governor or local government that is in charge of the preparation of the plan has to involve state authorities whose interests may be affected by the plan. The plan will be concerted with state authorities. Before the adoption of a plan, the supervision of the preparation of a county plan will be carried out by the Ministry of Internal Affairs and the county governor supervises the preparation of a local plan. The role of local governments and state authorities during the preparation of plan is given in detail in the descriptions of the proceedings for each type of a plan.

3.2 Types of Plan

According to the PLA, a *plan prepared in the process of planning is a document which consists of a text and maps. The types of plan are as follows:*

- *National spatial plan, which is prepared with the aim of defining the prospective development of the territory of the state and the settlement systems located therein in a generalised and strategic manner;*
- *County plan, which is prepared with the aim of defining the prospective development of the territory of a county in a generalised manner and determining the conditions for the development of settlement systems and the location of the principal infrastructure facilities;*
- *Comprehensive plan, which is prepared with the aim of determining the general directions in and conditions for the development of the territory of a rural municipality or city, and of setting out the bases for the preparation of detailed plans for areas and in the cases where detailed planning is mandatory and for the establishment of land use provisions and building provisions for areas where detailed planning is not mandatory;*
- *Detailed plan, which is prepared with the aim of establishing land use provisions and building provisions for cities and towns and for other areas and in other cases where detailed planning is mandatory.*

3.2.1 National Spatial Plan (§ 6)

The national spatial plan is prepared for the entire territory of the state. The objectives of the national spatial plan are to:

1) *Define the principles of and directions in sustainable and balanced spatial development;*
2) *Create the spatial bases for the regional development of the state;*
3) *Direct the development of settlement systems;*
4) *Direct the creation of a national transport network and the development of technical infrastructures;*
5) *Create the basis for a system ensuring the preservation of various types of ecosystems and landscapes and balancing the impact of settlement systems and economic activities which is comprised of natural and semi-natural biotic communities (hereinafter green network);*
6) *Establish objectives for county plans.*

According to the Act, a national spatial plan cannot be prepared for a part of the territory of the state, nor can there exist a thematic plan of the national spatial plan. The paragraph of the PLA describing the content of the national spatial plan is one of the few ones that has been completely amended compared to the Act that was in force previously. The amendments are based on the experience of Estonia and other countries in preparing national spatial plans and the understanding that national spatial plan is not a classical land use plan that defines the locations of certain objects. It is a strategy which sets the objectives of balanced and sustainable spatial development of the state.

3.2.2 County Plan

A county plan is prepared either for the whole territory of a county or for a part thereof. A county plan may be prepared:

- For the territories or parts of the territories of several counties if there is mutual agreement between the county governments concerned;

- As a thematic plan to specify a certain objective of county plan*.*

According to the Act, **a thematic plan can be prepared only if the county has an adopted county plan**. A thematic plan is prepared for *specifying or amending the county plan in force.* Irrespective of whether the county plan is prepared for the whole county or a part of it or as a thematic plan, the requirements for proceeding the plan are the same.

The objectives of a county plan are to:

1) *Define the principles for and directions in the spatial development of the county;*
2) *Balance state and local needs and interests with regard to spatial development;*
3) *Create the bases for sustainable and balanced development and involve them in spatial development, taking balanced account of the needs for development of the economic, social, cultural and natural environment in the preparation of the plan;*
4) *Direct the development of settlement systems;*
5) *Designate the areas and cases outside cities and towns where preparation of a detailed plan is mandatory, unless they have been designated by an adopted comprehensive plan;*
6) *Designate densely populated areas within the meaning of the Land Reform Act unless they have been designated by an adopted comprehensive plan;*
7) *Plan measures to ensure the preservation of natural resources, valuable arable land, landscapes and natural biotic communities, and the functioning of the green network;*

8) Define general provisions for the use of land and water areas;
9) Define the land use provisions for areas influenced by the mining of mineral resources or earth material;
10) Determine the location of roads, railway lines, waterways, utility network routes, airports, ports, sites for the final disposal of waste and other technical infrastructure;
11) Take account, in planning, of protected areas and of the provisions for their use and, where necessary, to make proposals for the amendment of such provisions, the establishment of new protected areas or termination of the protection regime;
12) Designate recreation areas and define the provisions for their use;
13) Designate national defence areas of national importance.

An adopted county plan serves as the basis for the preparation of comprehensive plans for rural municipalities and cities and, in the absence of an adopted comprehensive plan, for the preparation of detailed plans and the issue of design provisions for rural municipalities and cities. Upon preparation of a county plan, adopted comprehensive plans shall be taken into account or, upon agreement with the local governments, a proposal shall be made to amend the comprehensive plans. The latter is important to avoid the situations where for the same territory there would be different land use regulations set with two different plans. In case a plan that is prepared later amends the land use rules that had been established with an earlier prepared plan for the same territory, these rules also need to be included in the earlier adopted plan.

3.2.3 Comprehensive Plan

A comprehensive plan is prepared for the whole territory of the rural municipality or city or for parts thereof. A comprehensive plan may be prepared:
- For the territories or parts of the territories of several rural municipalities or cities if there is mutual agreement between the local governments concerned;
- As a thematic plan to specify or amend the comprehensive plan in force.

Similarly to the case of county plans, a thematic plan can only be prepared for a comprehensive plan if the local government has an adopted comprehensive plan. The thematic plan is for dealing with a certain topic (or topics) that has been set as the objective of the comprehensive plan. Irrespective of whether the comprehensive plan is prepared for the whole territory of a local government or a part of it or as a thematic plan, the proceeding rules of the plan are the same.

Until now, mostly the comprehensive plans of rural municipalities or cities have been prepared. In the last years, more and more comprehensive plans have been made for parts of the rural municipalities or cities for renewing their earlier adopted comprehensive plans as by now the first contemporary comprehensive plans that were prepared approximately 10 years ago are becoming outdated. Also, more and more thematic plans are being prepared, for example focusing on coastal areas, green systems of cities, identifying areas with cultural value, defining the locations for roads and technical networks or landfill etc.

The objectives of a comprehensive plan are to:
1) Form the principles for the spatial development of the rural municipality or city;

2) *Assess the potential economic, social and cultural impact of the proposed spatial development and the potential impact on the natural environment and, on the basis thereof, to establish conditions for sustainable and balanced spatial development;*
3) *Determine general use and building provisions for land and water areas;*
4) *Designate the areas and cases outside cities and towns where preparation of a detailed plan is mandatory;*
5) *Designate densely populated areas within the meaning of the Land Reform Act;*
6) *Designate built-up areas of cultural and environmental value, valuable arable land, parks, green areas, landscapes, individual features of landscapes and natural biotic communities, and to establish the provisions for their protection and use;*
7) *Establish the conditions to ensure the functioning of the green network;*
8) *Define the location of roads, streets, railways, ports and airports and the general principles of traffic management;*
9) *Declare, where necessary, a road on land in the ownership of a person in private law to be a public road pursuant to the procedure provided in the Roads Act;*
10) *Define the location of principal utility network routes and technical infrastructure;*
11) *Designate recreation and leisure areas;*
12) *Determine limited management zones and building exclusion zones of shores and banks of water bodies pursuant to the procedure provided in the Nature Conservation Act;*
13) *Make proposals, where necessary, for specification, amendment or termination of the protection regime for areas or objects placed under protection;*
14) *Make proposals, where necessary, for placing areas and objects under protection;*
15) *Take account of general national defence needs and, where necessary, to designate national defence areas and specify the boundaries of national defence areas designated by the county plan;*
16) *Make proposals to prevent, by way of planning, the risk of criminal activity in urban areas;*
17) *Address in the plan land use provisions and building provisions arising from Acts and other legislation.*

In the event of justified need, a comprehensive plan may include proposals to amend an adopted county plan.

Additional explanation should be given to aspects related to limited management zones and building exclusion zones of shores and banks of water bodies (item 12 in the list above). Conditions and restrictions for using shores and banks are provided in Chapter 6 of Nature Conservation Act. Building exclusion zone of a shore or a bank is an area with a certain width that is located on a shore or a bank of sea, lake, river, brook or canal, where it is prohibited to construct new buildings and structures. The width of building exclusion zones of shores and banks is set as follows:

- 100 meters on the sea coast and on the shores of the two biggest lakes;
- 200 meters on the sea coast within Narva-Jõesuu city limits and on the sea-islands;
- 25-50 meters on the banks of lakes and watercourses, depending on the size of the lake or the size of the catchment area of the watercourse.

Limited management zone of a shore or a bank is an area with a certain width that is located on a shore or a bank, within which the restrictions provided in the Nature

Conservation Act apply. The width of limited management zone on the sea coast and on the shores of the two biggest lakes is 200 meters, on the banks of lakes and watercourses it is 50-100 meters, depending on the size of the water body. **In case of justified need, building exclusion zones can be extended or reduced**. Local governments may extend a building exclusion zone with an adopted comprehensive plan. The reduction of the building exclusion zone can take place with the permission from the Minister of the Environment. Naturally, the Minister may decide not to grant the permission. To apply for the permission for the reduction of building exclusion zone, local government needs to submit an adopted comprehensive plan or detailed plan to the Minister. Only local governments can apply for the permission, it cannot be done by the person interested in the permission or by the owner of immovable. The favourable decision by the Minister regarding the reduction of the building exclusion zone does not mean the final decision to reduce it. Local government may choose not to use the opportunity given with the permission. The reduction of the building exclusion zone comes into force with the adoption of the respective plan. Limited management zones cannot be reduced. In case the building exclusion zone is extended to become bigger than the limited management zone, it means also the extension of the limited management zone by the respective width.

In the aforementioned list of the objectives of comprehensive plan, attention should be drawn to a few amendments compared to the Act that was in force until the beginning of 2003. The task related to **green network** became part of the Act based on the experience of the preparation of national spatial plans and county plans, and derived from the need not only to ensure the protection of the individual valuable objects, but also the preservation and operation of the green system as a whole. The inclusion of the areas of cultural and environmental value and other valuable areas in the Act is an innovation that in practice means that those areas are taken under planning protection.

The definition of an **object of significant spatial impact** has been introduced in the Planning Act (§ 8 subsections 5 and 6). In earlier practice, the planning of an object of significant spatial impact began directly with a detailed plan, which provided the reason to include this concept in the Act. As a detailed plan is only concerned with the respective plot, the wider area that could be affected by the construction of an object was left out of the plan. In order to ensure that the whole area of an object's immediate impact is taken into consideration while selecting the location of the object, the PLA provides that *the preparation of a comprehensive plan is mandatory upon selection of the location for an object of significant spatial impact*. *The size of the comprehensive planning area in the case of an object of significant spatial impact shall be determined by the county governor in co-operation with the local government concerned and concertation therefore shall be sought from the Minister of the Environment.* For the purposes of the Planning Act, *an object of significant spatial impact is an object which creates a significant change in comparison with the existing situation in the flow of transport, volume of pollutants, amount of visitors or need for raw materials or labour force at the proposed location of the object and which has an impact on a large territory. The list of objects of significant spatial impact shall be established by the Government of the Republic.* Such list has been established by the Government of the Republic and it includes the following:

1) Plant for crude oil processing with the daily usage of more than 500 tons of raw material;
2) Terminal for oil products with the total holding capacity of more than 5000 m^3;
3) Terminal for chemical products with the total holding capacity of 5000 m^3 of category D and C chemicals or 500 m^3 of category B chemicals or 50 m^3 of category A chemicals;
4) Nuclear power-station;
5) Power station which produces more than 500 MW of energy;
6) Wind energy power station with more than 5 wind turbines with the total capacity of more than 7,5 MW;
7) Temporary storage or landfill site for radioactive waste;
8) Airport;
9) Cargo port or passenger port on the sea coast;
10) Landfill for more than 25 000 tons of non-hazardous waste or inert waste;
11) Handling premises for non-hazardous waste with the capacity for more than 100 tons in a twenty-four hour period;
12) Landfill site for hazardous waste;
13) Handling premises for hazardous waste;
14) Dams and reservoirs for storing or obstructing more than 10 million m^3 of water;
15) Cellulose, paper or cardboard plant;
16) Permanent racecourse or testing course for motor vehicles;
17) Defence forces central training area;
18) Cement factory;
19) Burial place and handling premises for animal waste;
20) Factory for the industrial production of yeast;
21) Factory of explosives.

At present, this list is under review and potential amendment.

Adopted comprehensive plans serve as the basis for the preparation of detailed plans for areas and in the cases where the preparation of a detailed plan is mandatory and for establishment of land readjustment and ***design provisions*** *for areas where the preparation of a detailed plan is not mandatory. A comprehensive plan shall determine the need for and sequence of detailed planning and indicate the economic possibilities for implementation of the comprehensive plan.* For fulfilling better the latter task, local governments are recommended to prepare an action plan for comprehensive plan's implementation, where the necessary action steps would be prioritised, responsible people indicated, deadlines set, the sources of financial means shown etc. Such action plan helps both the public as well as the council to understand better which changes, when and in which order could take place in the spatial development of the city or rural municipality and whether they can be financed.

For achieving a deeper understanding of Estonian planning and design work organisation, it is hereby relevant to clarify **the role of design criteria in the preparatory process for building**. The design of buildings is governed by the Building Act. In areas and cases where the preparation of detailed plan is mandatory, adopted detail plan is obligatory basis for building design. In areas and cases where the preparation of detailed plan is not mandatory, the Planning Act and the Building Act provides that the design criteria issued by the city/rural municipality is the

obligatory basis for the design of buildings and structures. The design criteria outline several conditions for the design work of the building:

- Area occupied;
- Allowed height;
- Purpose of the building;
- Several architectural criteria;
- Conditions for the construction of utility networks etc.

3.2.4 Detailed Plan

*A detailed plan is prepared for a part of the territory of a rural municipality or city and it serves as the basis for building activities and land use **in the short term**.* In practice, detailed plans are prepared for the territories of greatly varying sizes. The area of detailed planning is often relatively small – one or a few plots. In new building areas, detailed plans are also prepared for the construction of comparatively large groups of buildings.

The objectives of a detailed plan are to:

1) *Divide the areas being planned into plots;*
2) *Determine the building rights of a plot;*
3) *Delimit the area that can be occupied by buildings, meaning that share of a plot on which buildings permitted by the building rights of the plot may be erected;*
4) *Determine the areas and traffic management of streets and, where necessary, to declare an existing or proposed street located on land in the ownership of a person in private law as a public road pursuant to the procedure provided for in the Roads Act;*
5) *Determine the principles for planting vegetation and providing public services and amenities;*
6) *Determine clearances;*
7) *Determine the location of utility networks and technical infrastructure;*
8) *Establish environmental provisions for implementation of the plan and, where necessary, to designate buildings in the case of which the preparation of the building design documentation requires environmental impact assessment to be carried out;*
9) *Make proposals, where necessary, for specification, amendment or termination of the protection regime for areas or individual objects placed under protection;*
10) *Make proposals, where necessary, for placing areas and objects under protection;*
11) *Designate, where necessary, built-up areas of cultural and environmental value and to establish the conditions for their protection and use;*
12) *Establish the essential architectural requirements for buildings;*
13) *Determine the need for easements;*
14) *Determine, where necessary, land areas for national defence purposes;*
15) *Establish requirements and conditions to prevent the risk of criminal activity;*
16) *Determine the scope of other restrictions on immovable property ownership arising from Acts and other legislation in planning areas.*

At this point, it is relevant to look further into the aspects related to easements. According to the Act, the detailed plan *determines **the need for easements***. The easements **can be established only** with the **agreement of the owners** of respective immovables. For establishing easements, it is reasonable for the respective owners to

enter into the contract only after the plan has been adopted. Before the detailed plan is adopted it is necessary to ensure that it is possible to implement it later. It is rather meaningless for a local government to adopt a detailed plan, for which it is known that it cannot be implemented. If during the preparation of a detailed plan it becomes known that the need for establishing easements arises in the planning area, it has to be ensured during the preparation of the plan that the establishment of easements would be possible after the adoption of the plan. For ensuring such arrangement, it is useful to sign a pre-contract between the counterparts of the easement during the preparation of detailed plan.

In the Act, a *plot* is defined as *a land unit intended for building purposes and located in an area where the preparation of a detailed plan is mandatory.* Based on this definition, a park or city forest cannot be regarded as a plot.

In detailed plan, for every plot the **building rights of the plot** must be defined.

The building rights of a plot define:

1) The intended use or intended uses of the plot;
2) The maximum permitted number of buildings on the plot;
3) The maximum area to be occupied by the buildings;
4) The maximum permitted height of the buildings.

The Act requires ***at least one drawing illustrating the content of the detailed plan*** *to render the plan understandable both in the course of the public display and to the participants in the decision-making process.* Such requirement has been included in the Act mainly because a detailed plan is a specific technical document, the content of which is relatively hard to be understood by people who are not engaged in planning. Despite that, an 'average' person participating in public disclosure and a member of the city/rural municipality government or council should understand how the planned environment will look like. For more complex detailed plans (if there are both private and public interests in the planned area, or if the planned object may significantly impact the environment, or in case a central/important location in is dealt with), illustrations of the content of the plan from different perspectives or its model should be added additionally to the minimum requirements in the Act. This would help the citizens as well as the officials or politicians who are involved in decision making to understand the nature of the detailed plan better, and assess its suitability or unsuitability to the area.

In the event of justified need, a detailed plan may include proposals to amend an adopted comprehensive plan.

Adopted detailed plans serve as the basis for:

- *The formation of new cadastral units and for the alteration of the boundaries of existing cadastral units,*
- *The building design.*

If a detailed plan has been adopted, the design of the building will take place according to the detailed plan; no supplementary permits or supporting documents are required for the design. As provided in the Land Cadastre Act, the determination of the intended use of cadastral unit takes place on the basis of an adopted detailed plan. Local government determines the intended use of the cadastral unit and it is registered in cadastral register by the county cadastral office.

3.3 General Proceeding Requirements and Definitions

3.3.1 Publishing Public Notices

According to the PLA, all public notices should be published in a newspaper. The Act indicates in which newspapers the notices regarding a particular type of plan should be published. In the PLA, the term ***relevant newspaper*** is used – and the same phrase is employed hereon in this article. *For the purposes of* PLA*, the relevant newspaper is:*

- *In the case of a national spatial plan, at least one daily national newspaper;*
- *In the case of a county plan, a county newspaper published on a regular basis or at least one daily national newspaper and a rural municipality or city newspaper published at least once a month;*
- *In the case of a comprehensive plan or a detailed plan, a rural municipality or city newspaper published at least once a month and a county newspaper published on a regular basis or a daily national newspaper, designated by the local government as the newspaper where the official notices of the rural municipality or city are published.*

Even though it is not required by the Act, most of the local governments also publish their public notices on their web pages. Additionally, many local governments make the plans that are going through the stage of public display available on their websites.

3.3.2 Personal Notifications

Persons should be personally informed of the information related to the preparation of plans in the following cases:

- The prepared plan will prejudice the right of ownership of the owner of immovable;
- The person has presented proposals or objections during the public disclosure of the plan.

In such cases where persons have to be personally notified about plan proceedings, the notice should be sent by the way of registered letter that has to reach the addressee in person and should be confirmed by the person's signature. Such relatively "complicated" form of notifying is provided by the Act in order to ensure that all persons who definitely need to know that certain planning procedures are taking place will be confirmed receiving the information on time.
In case a person has presented proposals or objections during the public disclosure of the plan by electronic mail, the reply will be given in the same format.

3.3.3 Notification of the Intention to Plan

Local governments shall inform the public of any proposed comprehensive planning and detailed planning at least once a year in the relevant newspaper. Such requirement has been included in the Act to ensure that the people will receive prior information about the plans that local government intends to prepare within the coming year. It has to be admitted that the practical application of this requirement is yet poor. As the Act does not define what *a proposed plan* is, the question arises about its meaning. The widespread explication of the term is that a proposed plan is the plan that local government has included in its schedule by a document (local budget, development plan or other decision of the city/rural municipality).

3.3.4 Temporary Building Ban

A local government may establish a temporary building ban in a planning area or a part thereof if, upon initiation of comprehensive planning or detailed planning, if it is known that the initiated comprehensive planning or detailed planning will result in amendments to the previously adopted detailed plan of the area as well as to the land use provisions, building provisions or building rights of plots determined thereby. **Temporary building ban is necessary in order to avoid granting building permits for those areas about which it is known that its earlier adopted land use and building provisions are to be changed by the new comprehensive plan or detailed plan.**

Temporary building ban may be established for a maximum of two years. *The local government* has to*, by way of registered letter, inform the owners of immovables who may be affected by a temporary building ban of the intent and reasons to establish the temporary building ban at least two weeks prior to the date on which the temporary building ban is to be established.* Temporary building ban has been used very little in the past practice; it is only in the last couple of years that it has been taken into more extensive use.

3.3.5 Planner

According to the PLA, the right to prepare and direct the preparation of national spatial plan, county plan and comprehensive plan belongs to *the specialists with higher education in an appropriate field to whom either the ministry, county governor or local government administering preparation of the plan assigns the task of preparing the plan.* The Act does not specify what these *appropriate fields* should be. For example, the experience in county planning has demonstrated that a psychologist could be a successful leader of the planning process as county planning is largely a task of communication and cooperation. In Estonian practice, an architect or a geographer is the most common leader of the preparation of or the compiler of a county plan or comprehensive plan.

Detailed planning is architectural planning, which requires the education of an architect or planner. Therefore, the PLA provides that *architects and planners with higher education and other specialists with higher education who have received training in the field of planning may undertake or direct the preparation of detailed plans independently and on their own responsibility.* As the provision also mentions responsibility, it should be stipulated in the contract of employment of the planner in detail who, how and to what extent will bear the legal and proprietary liability in case of dispute between the planning company and the institution who orders the plan. As in Estonia there is no education given to planners and there are only a few planners who have received related special education abroad, the architects usually prepare detailed plans and direct their preparation.

3.3.6 Assessment of the Likely Effects of the Implementation of a Plan

The requirements of impact assessment are provided in Chapter 2 of the Environmental Impact Assessment and Environmental Management System Act (EIAEMSA) that deals with the strategic environmental assessment of the likely effects of implementation of strategic planning documents. Impact assessment is mandatory in the preparation of national spatial plan, county plan and comprehensive plan. For

detailed plans, impact assessment is mandatory in case the plan is prepared for objects for which environmental impact assessment is required by EIAEMSA. During the preparation of a plan, the following documents should be prepared:
- Impact assessment programme;
- Impact assessment report;
- Monitoring measures of the plan implementation.

Impact assessment programme, impact assessment report and the monitoring measures will be approved by county environmental department or the Ministry of the Environment. During the preparation of the plan, the results of impact assessment have to be taken into account.

3.3.7 Concertation

Concertation is the **pre-control of the content and the legality of the plan** by relevant state authorities prior to finalising the preparation of the plan and adopting it. State authorities with whom a plan has to be concerted are given in the Act. Additionally to those, the Ministry of Internal Affairs or the county government may also identify the need for seeking concertation with other state authorities. The Act indicates clearly that local governments or county governments are the ones to seek concertation with necessary state authorities. The Act **does not give the opportunity to delegate the seeking of concertation to companies/consultants preparing the plan**.

It was considered one of the shortcomings of the previous Act that concertation was not defined and it was not clear to what extent the viewpoints of the agencies from whom the concertation is sought should be taken into account. The regulation of the concertation in the Planning Act operates on the distinction between proposals and objections that are based on acts, legislation and adopted plans and those subjective proposals and objections which are based on some deliberations. Proposals and objections of the first category must be taken into account, while the ones in the second category may be treated as advice/recommendations and it is not mandatory to take them into account. According to the Act, *a plan is deemed to have been concerted regardless of any proposals or objections submitted concerning the plan unless, upon seeking concertation, reference is made to contradiction with an Act, legislation established on the basis of an Act or an adopted plan* (§ 17 subsection 4). Including such provision in the Act was necessary as the parties authorised to concert the plans tended to give very subjective opinions and often set restrictions that had no legal grounds to the owners of immovables.

Let us look at the following example to illustrate the aforementioned situation. A detailed plan is being prepared for a territory inside a city heritage conservation area. According to the plan, the construction of a 3-storey building is expected. When concertation is sought for the plan, the National Heritage Board does not agree with a building that has more than 2 storeys. According to the Heritage Conservation Act, the terms and conditions for building are set by the Heritage Conservation Area Statute that is adopted by the Government of the Republic. This document does not provide restrictions to the number of storeys that the buildings in heritage conservation area can have. Deriving from that, the National Heritage Board does not have the right to prescribe their intended restriction. According to the Planning Act, making the decision about how many storeys the buildings can have on a particular plot is within the

competence of local government. The example is not made up – it describes what really happened in one small town in Estonia.

It has been continuously **emphasised that the cooperation with potential agencies that are authorised to concert the plan should be initiated already at the beginning of the preparation of the plan. It ensures that in case of good cooperation obtaining the official concertation is more of a formality that concludes a successful cooperation.**

Concertation is given in written format. The summary of concertation should be formulated as a table, where also the opinion of local government on concertation is included. The table of concertation is the best way to present the results of concertation and the decisions about them. The table should also be included in the public display of the plan.

In order to avoid undefined delays in concertation, the Act provides that *if the agency authorised to concert a plan has not concerted the plan within one month as of the date on which the plan is sent thereto, the compiler of the plan shall assume that the agency has no proposals or objections concerning the plan.*

According to the PLA, the ways in which public and private bodies and natural persons participate in the final stage of the preparation of the plan are different. **As a rule, state authorities give their opinions on a plan during concertation, private bodies and natural persons do it during the time of public display.**

The word *concertation* is relatively modestly used in this context in English; the translation of this term is based on the direct meaning of its Estonian equivalent (*kooskõlastamine*) that is widespread and common in Estonian legislation. In English, such activity is usually described by the word *consultations.*

3.3.8 Acceptance of the Plan

According to the Planning Act, local government or county government *shall make the decision on acceptance of a plan and shall organise the public display of the plan*. Acceptance of a plan means that the city or rural municipality government or council or the county governor who is going to make the decision acknowledges that the plan is ready, its content complies with their purpose, it has received all the necessary concertations and that its content and proceedings are in conformity with the law.

3.3.9 Presentation of proposals and objections and responding to them

Everyone has the right to present proposals and objections concerning a county plan, comprehensive plan and detailed plan *during the time the plan is on display to the public.* Proposals and objections can be sent *by post or electronic mail during the time the plan is on display to the public. The local government or county governor administering preparation of a plan shall inform persons who have sent proposals and objections of the opinion of the local government or county governor on such proposals and objections and shall specify the time and place of the public discussion within two weeks after the end of the public display of the plan. In the case of proposals and objections sent by post, the opinion shall be sent by way of registered letter, and in the case of proposals and objections sent by electronic mail, the opinion shall be sent by way of electronic mail.*

During the time of public display a person may present proposals and objections and a local government or county government may respond to them either by post or electronic mail (§ 20 subsection 2). The communication during the public display is **the only communication that can take place by electronic mail**, in all other stages of the proceeding of a plan, the local government or the county government has to send the notifications by the way of registered letter.

3.3.10 Access to Public Display

The earlier Act defined the length of the public display, but it did not specify the access time to it within the 4-week display period – e.g. should access be made available during the time outside the office hours. In order to avoid misunderstandings and possible court disputes on this matter, the PLA states that *during the time the plan is on public display, all interested persons shall have access to all material and information related to the plan in the possession of the county government or local government administering preparation of the plan* ***during the office hours*** *of the county government or local government.* Although the Act provides the access to public display during the office hours, **it is also important to identify certain times outside the office hours when the public display may be visited and to include this information in the display announcement**. This is to ensure that the public display can also be accessed by those who are not able to attend it during the office hours.

At the location of public display, there should be a note with the contact details of a person in city/county government who could be reached for proposals and objections, should anyone want to submit these in person, and for any additional inquiries about the plan that may arise during the public display. The latter contributes to a more complete fulfilment of the aforementioned accessibility requirement and reduces the need to present written proposals and objections.

3.3.11 Amending the Basic Content of Plan as a Result of Public Display

As a result of public display and discussion, a local government or a county governor may consider it necessary to change the content of a county plan, comprehensive plan or detailed plan to such extent that it brings about the amendment of the basic content of the plan. Amending the basic content of the plan means in practice that a plan with different/new content is prepared. Therefore, in case the basic content of the plan is amended, the concertation seeking, public display and public discussion of the county plan, comprehensive plan or detailed plan have to be repeated.

3.3.12 Supervision of the Preparation of Plan

Supervision is exercised with regard to the preparation of county plans, comprehensive plans and in some cases of detailed plans. *With regard to county plans, the supervision is exercised by the Ministry of Internal Affairs; with regard to comprehensive plans and detailed plans, county governor* exercises the supervision. One of the objectives of supervision is the legal supervision to ensure the compliance of the plan with requirements to its content, proceedings and public disclosure. Additionally to legal supervision, it is within the competence of the supervisory authority to *monitor compliance with national interests in planning if no more general*

plan has been adopted for the planning area. It is also the task of the supervisory authority to *grant consent for the amendment of a more general plan which has been adopted, upon the adoption of a plan which include a proposal to amend the more general plan submitted to it*. These two responsibilities are clearly of such nature where in most cases there is no direct regulative basis for taking the supervisory decisions. The supervisory authority has to make discretionary decisions based on substantive consideration. In case the discretionary decision of the supervisory authority does not accept the substantive content presented in the plan, it has to reason its decision especially thoroughly. In cases where the objections presented during the public display have not been taken into consideration in planning, it is the task of the supervisory authority to *hear persons who have presented written objections concerning a plan and the county government or local government administering preparation of the plan, and to present an opinion concerning these objections* (§ 23 subsection 3 clause 5). Thus, **the Act provides the supervisory authority with the role of a conciliator, who should in case of disagreements mediate the process of reaching an agreement between the counterparties**. Let us remember that the objection could entail a subjective disagreement with a particular part of the plan as well as an allegation that the substantive content of the plan, public disclosure or proceeding does not meet the requirements of the Act or legislation. Therefore, the settlement of planning disputes and the forming of an opinion on an objection are also largely discretionary activities. If the agreement is not reached during the supervision, *the supervisory authority* shall provide the county government or local government who is administering the preparation of the plan and the person who submitted the objection with *a written opinion concerning the objection within two weeks after hearing the parties.* For subjective objections to substantive planning solutions the supervisory authority has to provide reasons with sufficient depth, explaining why it considers one or the other solution more justified, i.e. the opinion on subjective objection is based on discretionary reasons. In such questions the final decision making competence on whether to take the substantive objection into account or not is within the authority who adopts the plan. If the supervisory authority proves that the substantive solutions of the plan are not in compliance with the Act or other legislation, the content of the plan has to be amended accordingly.

Including the requirement of supervision in the Act is largely **motivated by the wish to prevent court action**. Supervision gives a chance for the counterparties in disagreement to discuss their arguments and reach the agreement via the assistance of an impartial mediator. The practice till now has demonstrated that the majority of disputes can be settled during supervision. Additionally, the wish to prevent court action elicits the provision according to which *differences in opinion between the local government administering preparation of the plan and the county governor exercising supervision which remain unsolved during supervision shall be resolved by the Ministry of Internal Affairs.* After the adoption of the Planning and Building Act in 1995, the ministry has had to solve disagreements of such nature only a few times.

Approval of the plan by supervisory authority is a prerequisite for the adoption of a county plan, comprehensive plan and a detailed plan which is subject to supervision.

3.3.13 Partial Adoption of Plan

In the current planning practice there have been several occasions where during the final stage of the preparation of a plan or during supervision it is concluded that, for example, on a part of the territory of rural municipality:

- The content of comprehensive plan should be amended;
- The proposed content of the plan causes disputes that cannot be settled and therefore alternative solutions should be sought for the particular rural municipality/city.

In such situations it would not be practical not to adopt and delay a largely acceptable comprehensive plan due to certain disagreements that have not been settled in some parts of rural municipality/city, as this document provides the basis and prerequisite for successful further spatial development of the rural municipality/city. In cases like these, it makes sense to exclude the disputable parts from the plan and adopt the rest of it.

The aforementioned problem can be well explained by the example of the comprehensive plan of Kuusalu rural municipality. Within its territory, there is the intended Defence Forces training area. Several plan disputes arose about its location and building conditions. Settling these disagreements would have taken quite a while and it would have impeded the adoption of the comprehensive plan for a long time. At the same time, there were no objections related to the plan for other parts of the rural municipality. Adopting the comprehensive plan as soon as possible was necessary to set up land use conditions for other parts of the rural municipality's territory, especially for the coastal areas where there is intense construction pressure. Therefore, the only reasonable solution was to exclude the territory of the training area from the comprehensive plan to be adopted and to treat this territory in a separate Defence Forces training area plan.

In regulating such cases, the Act provides that *in the event of justified need, a supervisory authority may make a proposal for a plan submitted for supervision to be adopted partially. Alteration of the size of the planning area in connection with the partial adoption of a plan is not deemed to be amendment of the basic content of the plan.*

3.3.14 Accessibility and Filing of the Information Necessary for the Preparation of Plan

In order to take into consideration the interests of all persons related to the planned territory and the existing information about the territory, the necessary information should be easily accessible to the ones preparing the plan. To ensure it, the PLA provides that *persons who are located in a planning area or who possess information concerning such an area are required to provide, free of charge, information required for the preparation of a plan to the ministry, county governor or local government administering preparation of the plan or to the compiler of the plan authorised thereby.*

It is as important that all information gathered during the planning process would be filed and, in case of need, be easily accessible to all. For this, the Act provides that *the ministry, county governor or local government administering preparation of a plan is required to ensure the preservation of information and*

materials collected in the course of preparation of the plan and that interested persons have access to such information and materials.

3.3.15 Obligation to Review Adopted Plans

According to the PLA, the obligation to review adopted plans **concerns only the national spatial plan and comprehensive plan**. The objective of the review of adopted plans is to make conclusions about their implementation during the past election period and to inform the Government of the Republic or the rural municipality/city council of the substantive planning decisions that have been made, the activities that should be carried out to continue implementing the plan, and, in case of need, what should be improved in the current plans. Plan review has to ensure regular monitoring of plan implementation and its improvement, should it be needed. It is also necessary to assure that the new council and government of the rural municipality/city would be competent while making subsequent planning decisions.

3.3.16 Entrance of an Interested Person to the role of subscriber or financer of a detailed plan

The PLA **allows an interested person to order and/or finance the preparation of plan**. The Act provides that *a local government may enter into a contract for the preparation of a detailed plan with a person interested in the preparation thereof. The contract shall determine the respective obligations of the local government and the person interested in the preparation of the detailed plan in the course of preparation of the plan and in the financing of its preparation (§ 10 subsection 6).* The Act allows that an interested person, based on contract, may provide the rural municipality/city with the necessary means for the preparation of plan; after that, the latter prepares the detailed plan or orders its preparation. It also allows that, based on a contract with rural municipality/city, an interested person may be the one who orders the preparation of plan. At the same time, the Act also enforces a restriction, according to which **an interested person should not contract for the preparation of a detailed plan for the areas of significant public interest**, i.e. the areas under nature conservation or heritage conservation, or the territories where public interests or general development needs have not been expressed in the adopted comprehensive plan or, in large cities, in the partial comprehensive plan adopted for the respective city district. The contract referred to in the Act also allows combining the means of the local government and of the interested person in situations where:

- Within one area, it is desired to prepare the construction on immovable that belongs to several owners/investors;
- Additionally to the immovable that the investor is interested in, the local government considers it necessary to prepare the plan for a wider area.

3.3.17 Specifications for the Planning of Objects of National Importance

Specifications for the planning of objects of national importance (Chapter 6) were included in the Act mainly because in practice no local government wants such

building on their territory, because, as a rule it raises many objections among the citizens. In order to ensure the possibility for such buildings to be planned and constructed, it was necessary to create an opportunity by the Act to ignore the opposition of local government. *For the purposes of the Act, the following are objects of national importance:*

- *Defence Forces training areas of national importance,*
- *Military airfields of national importance,*
- *International civil airports,*
- *Power stations with energy production exceeding one third of the national electricity consumption,*
- *National landfills for the final disposal of hazardous waste,*
- *National radioactive waste storage facilities,*
- *Ports of national importance with a national defence purpose (§ 32).*

The ministry in whose area of government a planned object of national importance belongs shall prepare proposals for site of the object. Proposals are generally prepared for several sites. A proposal shall include economic and technical justifications and an environmental impact assessment. On the basis of proposals for the site of an object, the ministry shall enter into negotiations with the local governments of the potential sites of the object in order to agree on the final site of the object. The specifications provided in the Act do not apply if an agreement on the site of an object of national importance is reached with the local government of one of the potential sites of the object.

The final location of the object of national importance is determined by the comprehensive plan. In case no local government agrees to allocate the object of national importance on its territory, the Government of the Republic may ignore the will of a local government and make the decision about the location. If the Government of the Republic has made the decision, the comprehensive plan and the detailed plan for the final location of the construction works are prepared by the county governor, not the local government.

In Estonia, there has been no case where the specifications for the planning of objects of national importance have been applied since their adoption in 2003. Hopefully the existence of such special arrangements has preventive effect, and makes the involved parties look more for agreement so that there would never be a need for putting them into practice.

3.4 Plan Proceeding Rules

3.4.1 National Spatial Plan

The procedures for proceeding national spatial plan are relatively briefly regulated compared to other types of plans. For national spatial plan, there are no requirements for public display and public discussions provided in the Act.

The decision to initiate the preparation of national spatial plan is made by the Government of the Republic; the administration of the preparation of the plan is the task of the Ministry of Internal Affairs. The decision to initiate the preparation of

national spatial plan, like all other decisions of the Government of the Republic, is published in the Appendix of the State Gazette. *Within one month after the decision to initiate planning is made*, the ministry will publish a notice concerning the initiation of the preparation of the plan and communicate *the objectives of the initiated planning* in a national daily newspaper*.*

National spatial plan should be prepared in cooperation with county governors, county unions of local governments and ministries, and should also be concerted with them afterwards. The Ministry of Internal Affairs has to communicate the main statements of national spatial plan to the public *in at least one national daily newspaper*. The Ministry of Internal Affairs is also the body which submits the concerted national spatial plan to the Government of the Republic for adoption after administering its preparation, and has to ensure that the announcement about the adoption of national spatial plan is published in a national daily newspaper.

The preparation of *National Spatial Plan Estonia 2010* was carried out in large scale cooperation with county governments and the county unions of local governments. With them, the draft text of the plan was discussed, and a great many ideas were collected as feedback. Constant cooperation was also developed with all ministries who govern the physical or social infrastructures. Additionally, a working group was involved in planning, comprising of scientists, politicians and representatives from the field of culture. The result of the working group was the consolidation of four potential development scenarios for Estonia, which were taken as the basis for designing the content of the national spatial plan. Although the Act regulates the preparation of national spatial plan only briefly, it can be said that it was prepared in wide based cooperation with different levels of administration and stakeholders.

3.4.2 County Plan

3.4.2.1 Initiation and Notification

A county governor or the Government of the Republic shall initiate and administer the preparation of a county plan. The Government of the Republic is the initiator of the preparation of county plans if the same task of the preparation of a county plan is given to all counties at the same time. In such cases the Ministry of Internal Affairs has cooperated with county governments in working out a common planning methodology for all counties.

The county governor shall notify the respective local governments of the initiation of the preparation of county plan *within two weeks as of the date on which the decision to initiate planning is made*. It will also announce the initiation of the preparation of county plan in the respective newspaper within one month after the decision to initiate planning is made. In the published notice, information has to be provided about the size and location of the planning area and the objectives of the initiated plan have to be communicated. There is no need to inform anyone personally about the initiation of the preparation of a county plan.

3.4.2.2 Cooperation and Involvement

Preparation of county plan is a long process and based on the experience so far, it may last up to three years. At the same time, there is only one sentence in the Act regulating the communication during the plan preparation. According to it, the

planning should be carried out in cooperation with *local governments on planned territory, county governors whose territories are neighbouring the planned territory and ministries* whose area of governance the plan has impact on. In practice, county planning has been a constant consultation process, in which the local governments of the planned territory are involved together with respective ministries and several non-governmental organisations and persons representing the interests of various stakeholders.

3.4.2.3 Concertation

For a county plan, concertation should be sought from *the county governors of counties neighbouring the planning area and from the local governments of the planning area*. Additionally to that, the Ministry of Internal Affairs may determine ***the need to seek concertation*** *from state authorities or county environmental services* (§ 17 subsection 3). For determining other concertations, the county governor should contact the ministry.

3.4.2.4 Public Display and Discussion

County governor shall decide on the acceptance of a county plan and shall organise the public display of the plan. The latter is to be held in the *county centre, in other cities in the county and in rural municipality centres of the planning area*. The duration of the public display of county plan is *4 weeks*. The time and place of the public display of the county plan should be made known *at least one week before displaying the plan to the public by publishing the notice in the relevant newspaper*. The notice should *provide information on the size and location of the planning area and a short overview of the content of the plan*.

The county government shall inform *persons who have sent proposals and objections of the time and place of the public discussion* and of its *opinion on such proposals and objections within two weeks after the end of the public display of the plan*. *Within one month after the end of the public display a county government shall organise a public discussion regarding the county plan and the outcome of the public display thereof*. If written proposals or objections concerning the county plan were received during the public display, the county governor shall publish *information concerning the outcome of the public display and public discussion in the relevant newspaper within two weeks as of the date on which the public discussion is held.*

Taking into account the outcome of the public display and public discussion, necessary amendments are made to the county plan and it is then submitted to the supervisory authority *together with information on the proposals and objections which were not taken into consideration.* (§ 21 subsection 4)*.*

3.4.2.5 Supervision, Adoption and Notification of the Adoption of Plans

The supervision of county plans is exercised by the Minister of Regional Affairs. *The plan that has been approved by the Minister of Regional Affairs is adopted by the county governor*. A county governor shall publish a notice concerning the adoption of a county plan in the *relevant newspaper within one month as of the decision to adopt the plan*. Within the same time, *a county government shall send a copy of the decision to adopt a county plan and the adopted county plan to the local governments of the planning area and to the Ministry of Internal Affairs*.

3.4.3 Comprehensive Plan

3.4.3.1 Initiation and Notification

According to the Act, the decision on the initiation of the preparation of comprehensive plan can only be made by the local government council. City or rural municipality government are not eligible to take such decision. *Within one month after the decision to initiate comprehensive planning is made, a notice concerning the initiation of planning has to be published in the relevant newspaper*. In it, information should be provided about the *size and location of the planning area* and *the objectives of the initiated planning*.

Local government has to inform county governor about the initiation of the preparation of comprehensive plan *within two weeks after the decision to initiate comprehensive planning is made*. If with comprehensive plan the selection of the location for an object of significant spatial impact takes place, the size of the comprehensive planning area has to be determined in cooperation with county governor and concertation should be sought from the Minister of Regional Affairs.

A local government may establish a temporary building ban for the time of the preparation of comprehensive plan if it is known that the comprehensive plan intends to make *amendments to the previously adopted detailed plan of the area*. A notice about temporary building ban has to be published as provided in the Act.

3.4.3.2 Cooperation and Involvement

Owners of immovables located in and residents of the planning area and other interested persons shall be involved in the preparation of comprehensive plan. Local government should also host *public discussions to present the initial planning outline, the draft plans and the potential impact of the implementation of a comprehensive plan*. As plural form is used in the Act to refer to public discussions, it indicates that several of them should be organised. In practice, local government receives many opinions on the plan during the preparation of comprehensive plan. Responding to these should follow the standard procedures and their existence or non-existence does not impact the proceeding rules. During the preparation of comprehensive plan the local government should cooperate with *local governments neighbouring on the planning area and the county governor concerned*. In practice, cooperation is also initiated with several state authorities (e.g. rescue service, heritage conservation and environmental protection authorities, ministries, road administration etc); it is recommended to cooperate continuously with all the stakeholders from whom concertation should be sought for the plan.

3.4.3.3 Concertation

For comprehensive plan, local government should seek concertation from:

- *Local governments neighbouring on the planning area and the county environmental services;*
- *Relevant state authority or manager of a protected area if the planning area includes an area or object placed under state protection or if the plan serves as a proposal to place that object under protection or if earth deposits belonging to the state or subsurface mining areas are located in the planning area.*

Besides the aforementioned, county governor has the right to identify state authorities with whom the plan should be concerted. During the preparation of comprehensive

plan the city/rural municipality should approach county governor for the identification of additional concertations.

3.4.3.4 Public Display and Discussion

According to the Act, a city/rural municipality council shall decide on the acceptance of a comprehensive plan and on the organisation of the public display of the plan. City/rural municipality government cannot make these decisions. Public display of comprehensive plan should be organised in the *rural municipality or city centre, the larger settlements of the rural municipality or the settlement for which the plan is being prepared*. The duration of the public display of comprehensive plan is *4 weeks*. *At least one week before displaying the plan to the public, a notice in the relevant newspaper should be published,* setting out the time and place of the public display of the plan and the time and date of the public discussion regarding the plan. It should also *provide information on the size and location of the planning area and a short overview of the content of the plan*. In addition to newspaper announcements, also supplementary advertisements about the public display should be placed *in at least one public building or place open to the public (shop, library, school, bus stop or other such place) in the villages of the rural municipality or in the urban regions of the city*.

Although it is not directly set by the Act, many local governments have considered it necessary to organise a public introduction of the comprehensive plan at the beginning of public display. It is very reasonable as on one hand it creates wider public interest towards the display, and on the other hand narrating and explaining the content of the plan to people helps to obviate several potential proposals and objections.

In cases where proposals and objections have been presented during the time the plan is on public display, the local government shall inform *persons who have sent proposals and objections of the time and place of the public discussion* and of its *opinion on such proposals and objections within two weeks after the end of the public display of the plan*. *Within one month after the end of the public display* a local government shall organise *a public discussion regarding a comprehensive plan and the outcome of the public display thereof*. In the preparation of comprehensive plan, it is mandatory to organise public discussion after the public display and it cannot be left out.

If written proposals or objections concerning the comprehensive plan were received during the public display, the local government should publish *information concerning the outcome of the public display and public discussion in the relevant newspaper within two weeks as of the date on which the public discussion is held.*

Taking into account the outcome of the public display and public discussion, necessary amendments and improvements are made to the comprehensive plan and it is then submitted to the supervisory authority *together with information on the proposals and objections which were not taken into consideration.* As a result of public display and discussion, a local government may consider it necessary to amend the content of a plan to such extent that it brings about the amendment of the basic content of the plan. In case the basic content is amended, the concertation seeking of the comprehensive plan (from the persons who are impacted by the amendment), public display and public discussion should be repeated.

3.4.3.5 Supervision, Adoption and Notification of Adoption of Plans

Supervision over comprehensive plan is exercised by county governor. A plan can be adopted only after it has received the approval from the supervisory authority. According to the Act, only the city/rural municipality council can adopt comprehensive plan. *If an adopted comprehensive plan includes a proposal to amend an adopted county plan and the county governor has given his or her consent to the amendments in the course of supervision, the county governor shall enter the corresponding amendments in the county plan. A decision to adopt a comprehensive plan which includes a proposal to amend an adopted county plan enters into force after the amendments made to the comprehensive plan are entered in the county plan.* When entering the amendments to county plan which are included in the comprehensive plan into the county plan, the county governor has to issue the regulation that provides the entry of the amendments.

Within one month after the adoption of comprehensive plan the local government has to:

- Publish a notice concerning the adoption of comprehensive plan in the relevant newspaper;
- *Send a copy of the decision to adopt a comprehensive plan and the adopted comprehensive plan to the county governor*;
- *Send information concerning the land use provisions, building provisions and restrictions on land use or building which enter into force upon adoption of the comprehensive plan to the state registrar of the land cadastre. If an adopted comprehensive plan includes any amendments to the county plan and the county government has entered the corresponding amendments in the county plan, the county government shall send an extract of the county plan containing the amendments to the Ministry of Internal Affairs within one month as of the date on which the amendments are entered in the plan.*

Personal notifications concerning the adoption of the comprehensive plan should be sent to persons whose:

- *Written proposals and objections made in the course of the public display of the plan were not taken into consideration upon adoption of the plan;*
- *Current land use or building rights are restricted on the basis of the adopted plan;*
- *Registered immovable is made a subject to a temporary building ban that has been established in the course of preparing the plan.*

If in the course of the preparation of comprehensive plan a temporary building ban was established for an area that had an earlier adopted detailed plan, then it is necessary to decide, together with the adoption of the comprehensive plan, whether the detailed plan should be declared invalid. In case the comprehensive plan that is to be adopted defines different land use and building provisions compared to the earlier detailed plan, the decision to a adopt comprehensive plan has to be accompanied by the decision to declare the earlier adopted detailed plan invalid. Together with the decision to adopt the comprehensive plan, also the decision declaring the temporary building ban invalid has to be made, irregardless whether the earlier land use and building provisions are amended or not.

3.4.4 Detailed Plan

3.4.4.1 Initiation and Notification

A city/rural municipality government or council shall initiate the preparation of detailed plan. If it is considered justified, the local government may refuse to initiate the detailed plan. In case the local government finds that the implementation of the objective enclosed into the proposal to initiate the detailed plan in its desired location is not acceptable, the decision of refusal to initiate the detailed plan has to be substantively and thoroughly reasoned. Written notification of the refusal has to be sent to the person proposing the preparation of the detailed plan together with relevant reasoning.

According to the Planning Act, *anyone may make a proposal for initiation of the preparation of a plan.* There are no restrictions regarding who can propose the preparation of a plan. It has been debated whether a city can decline the proposal for the preparation of detailed plan and refuse to initiate the preparation of detailed plan. A person may propose anything to the local government, also absurd suggestions. For example, someone may propose to the city government to initiate the preparation of detailed plan for planning her/him a residential building in the middle of the central square of the city. Local government should consider whether any proposal it receives is acceptable both by its content and legal basis. In case the proposal is not acceptable (for example, it may be in contravention of the comprehensive plan of the city/rural municipality, the Act or other legislation, prejudice other persons' interests to a significant extent or is not suitable for a particular location based on some other substantive reason), local government has to send a written reply to the person who has made the proposal and reason thoroughly why it refuses to initiate such detailed plan. The more thorough the explanation is the fewer reasons there are to dispute the refusal. Accepting or refusing the proposal to initiate the preparation of plan is the first discretionary decision that is to be made in the preparation of a plan. It could be concluded that **the obligation to accept every proposal for initiating the preparation of plan would be in contradiction with the discretionary nature of planning**.

The Act does not specify whether the decision to initiate the preparation of detailed plan should be made by the city/rural municipality government or council. The general rule for it should be provided in the building regulation of the city/rural municipality. The decision on to initiate the preparation of detailed could be made by the council if:

- The planning concerns an area of significant urban development potential;
- With the detailed plan it is intended to make a proposal to amend the adopted comprehensive plan (i.e. it is intended to amend the comprehensive plan that has been adopted by the council);
- The planning concerns an area which is of significant public interest or value.

In case t

Local government has to inform the public about the intended plans *at least once a year* in the relevant newspaper. When initiating the preparation of detailed plan local government should:

- *Publish a notice concerning the initiation of planning, provide information on the size and location of the planning area and communicate the objectives of the initiated planning in the relevant newspaper within one month after the decision to initiate planning is made;*

- *Inform county governor within two weeks as of the date on which the decision to initiate planning is made;*
- *Inform by way of registered letter the owners of the immovables about which it is known that the initiated detailed planning may bring about a need to transfer immovables or parts thereof within two weeks as of the date on which the decision to initiate planning is made.*

When initiating the preparation of detailed plan, the local government has to decide also whether it will:

- Prepare the plan itself;
- Order it from a planning company;
- Make a suggestion to the interested person to involve her/him in the financing of plan preparation;
- Allow the interested person to order the plan.

Even if local government allows an interested person to order the preparation of detailed plan, all proceedings during preparation of the plan provided in the Act have to be carried out by the local government.

3.4.4.2 Cooperation and Involvement

The preparation of detailed plan lasts from the decision to initiate planning until the decision to accept it. The preparation of detailed plan is often a long and complex process that takes up ~90 per cent of the total time spent on preparing and proceeding the plan, however in the Act it is only regulated by one section and its 3 subsections. Such fact may seem paradoxical, but the reason for it is that different plans may be very different from each other in their content, making it almost impossible to provide common requirements for the plans of such varying nature.

The PLA provides that *the owners of immovables located in and residents of the planning area and other interested persons* shall be involved in the preparation of detailed plans. As a general rule, it is indicated that *the need to organise public discussions to publicise the initial detailed planning outline and the draft plan shall be determined by the local government*, adding at the same time that *at least one public discussion shall be organised if the detailed plan is prepared for an area under heritage conservation or nature conservation, a region of significant urban development potential or an area concerning which a corresponding proposal was made in the course of processing the plan*. Furthermore, it states that detailed plan should be prepared *in co-operation between the owners of the immovables located in the planning area and the owners or possessors of existing or planned utility networks in order to ensure that the planning area is supplied by utility networks*. This means that the Act leaves the local government a considerable freedom of decision and choice, or the discretionary obligation for deciding on whom, how much and how to involve in the process of detailed planning. While making the decision about the way and the extent of involvement, it is important to consider the following aspects for every particular detailed plan:

- The location and size of the planned territory;
- The significance of the location from the perspective of urban development potential;
- Alignment with adopted comprehensive plan;
- The nature and scope of planned buildings;
- The nature and value of existing buildings;

- Natural conditions;
- The extent of public and private interests;
- Possible conflicts of interest etc.

Even though the Act leaves it for the local government to decide about the need for public discussions, it does not mean that public discussions on the initial planning outline and the draft detailed plans should not be organised. It means that **the local government should use their right for discretion while deciding on the need for public discussion**.

In practice, public discussions on initial planning outline and draft plans could only be disregarded for simple detailed plans that follow comprehensive plans. Organising at least one public discussion is definitely necessary when the planning area has been described as one where the decision to initiate the preparation of detailed plan should be made by the council. The success of the preparation of plan and its implementation is largely dependent on how the local government utilises involvement, cooperation and public discussion during the preparation of the plan. Involvement, cooperation and public discussion ensure that all persons can have timely access to sufficient information about plans. Delayed and inadequate information may create the impression that the local government wants to hide something from the public and may cause conflicts that cannot be settled. Hereby it is appropriate to remember that based on the Act, the city/rural municipality has to ensure that *the interests of interested persons are considered and balanced, which is a precondition for adopting a plan*. **Different interests can only be considered and balanced if they are identified during the preparation of the plan through cooperation and involvement.**

Taking into account that insufficient usage of the right for discretion, inadequate reasoning of the decisions and insufficient informing can be contested in court, the decisions made during the preparation of detailed plans have to be sufficiently reasoned and the records should be appropriately maintained. Also, the records of public discussions carried out during the preparation of plan and of the events aimed at involvement and cooperation have to be maintained.

3.4.4.3 Concertation

For a detailed plan, concertation should be sought from *the relevant state authority or manager of a protected area if the planning area includes an area or object placed under state protection or if the plan serves as a proposal to place that object under protection or if earth deposits belonging to the state or subsurface mining areas are located in the planning area*. On various occasions detailed plans should also be concerted with other state authorities. If the preparation of detailed plan follows the adopted comprehensive plan, *local government determines the need to seek concertation from state authorities or county environmental services*. If a detailed plan includes proposal to amend comprehensive plan or is prepared for *an area where there is no comprehensive plan*, *county governor* will determine the need for other concertations. Local government should form its opinion on concertations and present its viewpoints to the public during the public display of the detailed plan.

3.4.4.4 Public Display and Discussion

A local government shall make a decision on acceptance of a plan and shall organise the public display of the plan. It is not specified in the Act in which cases the detailed plan should be accepted by city/rural municipality government or council. The decision to accept the plan should be made by the council at least in those cases where it was the one deciding on the initiation of the preparation of plan. Public display of detailed plan is mandatory, except in case it is prepared following the **simplified procedure** (see 3.4.4.6). Public display should take place in the *rural municipality centre and the settlement concerned, or the city centre and the city district concerned* and it should last for *two weeks*.

If the proposals made in the detailed plan result in a need to expropriate immovables or in changes to the existing land use or building rights on the plots against the will of the owner, the local government shall, by way of registered letter and at least two weeks before displaying the plan to the public, inform the owners of the immovables concerned of the time and place of the public display of the plan and of the public discussion regarding the comprehensive plan. Whether amending the existing land use and building provisions is against the will of the owner of the immovable has to be identified by the local government during the cooperation and involvement as set by the Act. Sometimes, prejudicing persons' interests is unavoidable – for example in a case where it is necessary to expand a public road and it cannot be done in any other way but on the account of the parts of the plots facing the street.

If written proposals or objections concerning the county plan were received during the public display, local government should organise public discussion of the detailed plan within one month after the end of the public display. Hereby it should also be emphasised that if no proposals or objections were submitted it does not mean that the public discussion should not be organised. For each detailed plan, the local government should consider the need for public discussion after the public display and decide on whether to carry it out or waive it based on the content of the plan. Local government should publish a *notice in the relevant newspaper at least one week before the public discussion of the detailed plan, setting out its time and date*. The local government shall inform persons who have sent proposals and objections during the time the plan is on display to the public of *its opinion on such proposals and objections and shall specify the time and place of the public discussion within two weeks after the end of the public display of the plan. If written proposals or objections concerning a plan are received during the public display thereof, the local government shall publish information concerning the outcome of the public display and public discussion in the relevant newspaper within two weeks as of the date on which the public discussion is held*.

3.4.4.5 Supervision, Adoption and Notification of Adoption of Plans

County governor shall exercise supervision over the preparation of detailed plan only if:

- The detailed plan includes proposal to amend adopted comprehensive plan;
- The city/rural municipality has no adopted comprehensive plan;

- Not all objections presented during the public display have been taken into consideration.

If the preparation of detailed plan follows simplified procedure, the supervision is not exercised over the preparation of plan regardless of whether the city/municipality has or has not an adopted comprehensive plan.

In practice, there have also been occasions where the local government has not submitted the detailed plan to the supervising county governor and adopts the detailed plan without the approval from the supervisory authority. The adoption of such detailed plan is null and void and the county governor has to issue the city/rural municipality the precept declaring the decision regarding the adoption of detailed plan invalid. If the city/rural municipality fails to observe the precept, the county governor has to contest the decision of the adoption of detailed plan in court.

Detailed plan is adopted by local government. The Act establishes council's exclusive competence *to declare a detailed plan invalid and to adopt a detailed plan with mandatory supervision requirement or with which the building area of cultural value is identified*. In other words, such provision means that if the detailed plan follows the comprehensive plan and all the objections presented in the public display have been taken into consideration, city/rural municipality government may adopt the detailed plan. The general rule for settling which detailed plans should be adopted by the council and which by the government should be provided in the building regulation of the city/rural municipality. The council should definitely adopt the detailed plans which were initiated or accepted by their decision. Nevertheless, for every particular plan, based on its content and the importance of its location, the local government should consider to whose competence the adoption of detailed plan should be given. For example it would definitely be better for the council to adopt the detailed plan of the central part of the city as such plan is of significant public interest and impacts the development of the whole city.

In case a detailed plan was prepared for an area that had an earlier adopted detailed plan, the old detailed plan becomes invalid with the adoption of the new detailed plan. It should be mentioned in the adoption decision that with the adoption of the new detailed plan the earlier adopted detailed plan for the same area becomes invalid.

A notice concerning the adoption of detailed plan has to be published *in the relevant newspaper within one month as of the date on which the plan is adopted*. All adopted detailed plans, irregardless of whether they are subjects to supervision or not, have to be sent to the county governor within one month after their adoption. Such arrangement is necessary for ensuring that the county governor would have all adopted detailed plans which he/she could use in the process of settling planning disputes that are brought before him/her.

The adopted detailed plan should also be sent to *the state registrar of the land cadastre within one month as of the date on which the plan is adopted*. Personal notifications concerning the adoption of the detailed plan should be sent, by way of registered letter, to:

- *Persons whose written proposals and objections made in the course of the public display of the plan were not taken into consideration upon adoption of the plan;*
- *Owners of immovable whose current land use or building rights are restricted on the basis of the adopted plan;*

- *Owners of immovable whose immovable was made a subject to a temporary building ban in the course of preparing the plan.*

If a temporary building ban was established for an immovable on the planned area, it should be declared invalid with the adoption of the plan.

3.4.4.6 Simplified Procedure for the Preparation of Detailed Plan

The Act provides an **opportunity to prepare simpler detailed plans according to a simplified procedure** (§ 22). Within the simplified procedure, there is no need for:

- Publishing notifications in the newspaper,
- Sending personal notifications to persons,
- Organising public display and discussion of the plan.

If a detailed plan is prepared according to simplified procedure, no supervision is exercised over its preparation.

If a detailed plan is prepared according to simplified procedure, it should be concerted by the owners of the planned plot and the owners of its neighbouring plots. The PLA states that simplified procedure may be followed in case the detailed plan is prepared for:

- *The planning of plots of up to five detached houses, summer-houses or garden houses in an existing built-up area;*
- *The planning of an empty plot between existing buildings in a city or town, if the main function of the building planned on the plot is a residential building or office building and if the size of the building will not change the character of the urban district.*

While planning aforementioned buildings using a simplified procedure, a full-fledged detailed plan has to be prepared, where all the necessary substantive objectives of the detailed plan stated in the Act are expanded upon.

Simplified procedure may also be applied to detailed plans that are prepared for *determining the size of plots for existing buildings and constructions located in areas where no new buildings are erected for which the preparation of a detailed plan is mandatory and where the intended purpose of the buildings will remain unchanged*. Such a possibility is necessary when carrying out ownership and land reform, during which it is necessary to identify a plot for the returned or privatised buildings. As in such situations detailed plans are prepared for allocate plots to existing buildings, there is no substantive need to deal with all the objectives of the detailed plan which are mentioned in the Act, because most of them are already set by the existing buildings. In such cases, the detailed plan may also be prepared in reduced scope, including only the information related to the division of land into plots and those provisions which are necessary to be indicated in the detailed plan in addition to the characteristics of the existing buildings. Within the reduced detailed plan, the identification of the following aspects should take place:

- Division of planned land into plots,
- Building rights of the plot,
- Street areas and the principles for traffic organisation,
- Location of utility networks and buildings,
- The need for easements,
- Other restrictions of the immovable deriving from the legislation.

The simplified procedure for the preparation of detailed plans does not extend to *areas and construction works under heritage conservation or nature conservation*. In case simplified procedure is followed for the preparation of detailed plan, the steps prior to the initiation of the preparation of detailed plan, its initiation and adoption do not differ from the standard procedures.

3.5 Sectoral Planning

No (separate) spatial planning that could be defined as sectoral planning exists based on Estonian law. All spatial planning takes place according to the Planning Act as described above.

Various sectoral strategies, programmes or plans are prepared (energy, national defence, transportation, education etc) on national level. In their nature, these are mostly the plans of socio-economic development. These plans also have a greater or smaller impact on settlement development, but commonly they are lacking the analysis of spatial impact.

Besides the plans that have been described in the earlier chapters, local governments also have to prepare the rural municipality/city development plan and several sectoral plans (education, water supply and sewerage, waste etc). In its content, the development plan is a plan of socio-economic development and on the level of generalisation it is parallel to comprehensive plan. Sectoral plans are the action plans for the implementation of the development plan and comprehensive plan.

3.6. Main Characteristics of the Planning System According to Planning Act

	National Spatial Plan	**County Plan**	**Comprehensive Plan**	**Detailed Plan**
Planned Territory	The entire territory of the state	- The whole county or a part thereof - Several counties or parts thereof - Thematic plan for the county or for a part thereof	- The whole city/rural municipality or a part thereof - Several cities/rural municipalities or parts thereof - Thematic plan for the county or for a part thereof	A smaller part of a city/rural municipality
Preparation Obligation	Based on need	Based on need	Based on Need	Mandatory as the basis for the construction of buildings (excl. small buildings) and for the division of land into plots
Plan Proposal/ Initiator	Anyone can make a proposal for the initiation of the preparation of plan Government of the Republic	Government of the Republic or county governor	City/rural municipality council	City/rural municipality council or government
Main Objectives	- Defining the principles of sustainable and balanced spatial development - Directing the development of settlement systems	- Defining the principles of sustainable and balanced spatial development - Balancing state and local interests - Determining the location of main roads and utility network routes	- Forming the principles of sustainable and balanced spatial development - Determining general use and building provisions - Determining the location of roads and utility networks - Establishing the conditions for the protection and development of the areas of environmental value	- Determining detailed land use and building provisions - Dividing land into plots - Determining the building rights of a plot
Assessment of Likely Effects of the Implementation	Mandatory	Mandatory	Mandatory	Mandatory in certain cases
Concertation	- Ministries - County governors - County Associations of Local Governments	- County governors of neighbouring counties - Cities/rural municipalities of the planning area - Other state authorities defined by the Ministry of Internal Affairs	- Neighbouring cities/rural municipalities - Nature and heritage conservation authorities - Other state authorities defined by county governor	- Nature and heritage conservation authorities - Other state authorities based on need
Public Display, its Location and Duration	No public display, the main content should	- County centre - Towns/rural municipalities 4 weeks	City/rural municipality centre and larger settlements 4 weeks	- Rural municipality centre and respective settlement - City centre and respective city district

	be introduced in the newspaper			2 weeks
Prerequisites for Adoption	None	Approval from the supervising Ministry of Internal Affairs	Approval from the supervising county governor	Approval from the county governor in case: - The detailed plan is not aligned with the adopted comprehensive plan - There are objections which were not considered
Adopting Authority	Government of the Republic	County governor	City/rural municipality council	City/rural municipality government or council
Legal Impact	Indicative basis for the preparation of county and local plans and sectoral decisions	- Basis for the preparation of comprehensive plans - Holds no direct legal impact to the owner of immovable	- Basis for the preparation of detailed plans in cities and other built-up settlements - Binding for the owner of immovable if detailed planning is not mandatory	- Basis for designing and constructing the buildings and for the formation of new cadastral units - Determines land use and building provisions and restrictions
Obligation to Purchase Immovable if the Existing Rights of Ownership are Restricted	None	None	In certain cases the owner may require the city/rural municipality to buy the immovable	In certain cases the owner may require the city/rural municipality to buy the immovable
Obligation to Review	Within a year after the election of the Riigikogu	None	Within 6 months after local elections	None
Authority Administering and Ordering/ Financing the Preparation of Plan	Ministry of Internal Affairs	County governor	City/rural municipality	- City/rural municipality - Interested person (only in cases where the detailed plan is aligned with comprehensive plan)
Amendment of the Adopted Plan	Not possible	- Comprehensive plan may include proposal to amend county plan - With thematic plan	- Detailed plan may include proposal to amend comprehensive plan - With thematic plan	Not possible, new plan has to be prepared

4. Connections and Conjunctions

4.1 Hierarchy of the Types of Plans, Connections and Conjunctions

The hierarchical connections between different types of plan are described in subsection 1.2.1 In practice, there is significant mutual influence between the plans of different levels. For example, the adopted national spatial plan has strongly impacted the choice of themes of the subsequent county plans. Also, national spatial plan has influenced the content of comprehensive plans.

As a rule, an adopted county plan should be followed while preparing comprehensive plan; however, relatively many amendments to county plans have been proposed with comprehensive plans. In practice, it is also quite common that detailed plans include proposals to amend comprehensive plans. As a conclusion it can be said that Estonia's interactive planning system allows effective reaction to the changing needs and avoids adopted plans' becoming dogmatic. At the same time, its interactive nature has a negative side, which becomes particularly evident on the local level – on many occasions the adopted comprehensive plans are amended with detailed plans too easily.

The situation, especially in the vicinity of larger cities, has been balanced by county plans that deal with the conditions for the functioning of green network. The majority of valid comprehensive plans have been adopted before the preparation of county plans that deal with green networks, and therefore they do not include green network related issues. The detailed plans which indicate new built-up areas on the defined green network areas have been rejected during supervision or court action, because they do not follow the conditions for a functioning green network that have been provided in county plan.

4.2 Spatial Planning and Sectoral Plans

On national level many sectoral strategies, programmes or plans have been prepared in Estonia (see also subsection 3.5.). As a rule, sectoral plans are adopted by the Government of the Republic, while some of the most important sectoral plans have also been approved by the Parliament. Most of these sectoral plans lack direct spatial dimension. In some cases it can be observed that, to certain extent, sectoral plans are contradictory to the spatial development objectives set in the national spatial plan or county plans. At the same time, many sectoral plans (strategy for regional development, architecture policy etc.) also support the achievement of spatial development objectives. In practice, better conjunctions of different national level plans are aimed at through the establishment of common working groups between ministries and the concertation of plans by all ministries. One of the steps taken for improving the connections and conjunctions between spatial planning, regional development and sectoral objectives was also bringing the spatial planning from the jurisdiction of the Ministry of the Environment to that of the Ministry of Internal Affairs, the Minister of Regional Affairs in 2004.

4.3 Harmonisation of Sectoral Plans

Better conjunctions of different national level strategies, programmes and plans are aimed at through the establishment of common working groups between ministries and the concertation of plans by all ministries.

4.4 Consideration of the Planning Trends in Neighbouring Countries and Europe

During the preparation of the Planning and Building Act that was adopted in 1995, the planning experience of other countries and their acts overseeing planning were studied. The planning of built-up areas had been at a relatively good level during the period before the re-establishment of independence in 1991, and the content of plans was established. While preparing the Act, the most valuable parts of both our own experience as well as that of the other countries was taken into account. The ground principles of the Act were based on European Regional/Spatial Planning Charter.

The author of the article has always questioned the amount of impact that the documents prepared in spatial planning cooperation of the European Union and Baltic Sea countries, e.g. ESDP or VASAB (European Spatial Development Perspective, Vision and Strategies around the Baltic Sea) have on its member countries' spatial planning. ESDP can be primarily considered a collection or a summary of the planning experience that was there by the time it was made. Therefore, it is not very appropriate to speak of the implementation of ESDP through a planning activity of a country. All the elements included in ESDP are included in countries' national spatial plan, county plans and local plans. However, it is not so because of the purpose of implementing ESDP, but for finding appropriate solutions to respective questions within country's own context. At the same time, the elaboration of the topic may significantly expand the experience that the ESDP is based on. Consequently, spatial planning cooperation within the European Union and VASAB and national level are in constant interactive relations. The planning documents of the European Union and VASAB have had the most impact on the content of national level plans.

Estonia has had constant and fruitful cooperation in the field of planning with Finland. It can be said that Finland has played a major role in the design of our planning practice and methods on the county level and the local level. The cooperation with other Nordic countries and Baltic countries has been rather modest and it has had little impact on our planning practices. Hereby it should be mentioned that even though international cooperation has helped to shape Estonian planning methods, there has been no case where provisions or ideas have been directly adopted from the legislation of other countries.

5 Planning Practice

5.1 Planning Related Decisions of Supreme Court

The weakest aspect of planning practice so far has been the modest reasoning of planning decisions. Insufficient reasoning has been fatal for many such plans that have been prepared for objects which have raised strong objections (e.g. landfill, prison) or that have caused significant land use restrictions to the owners of immovables. During the contestation of these plans in court the inadequate reasoning of planning decisions has become the main reason for rejecting the plans. A number of such court cases have reached the highest court instance, i.e. the Supreme Court. Therefore, the judgements of the Supreme Court provide valuable information about the greatest problems in spatial planning as well as about the tasks that should be undertaken during plan proceeding to avoid these problems. The decisions of the Supreme Court mirror the level of our spatial planning and consequently they could also be of interest to the readers in other countries.

Until now, the most disputed issues in Estonian judicial practice have been revolving around whether the requirements of the Act regarding public disclosure and proceedings have been complied with or whether other normative requirements that influence the content of the plan have been properly fulfilled. Recently also the first **litigations concerning discretion** have reached the Supreme Court. There are very few legal or normative criteria for assessing the legality of planning decisions. Consequently, there are only limited possibilities of judicial control over the planning decisions. In litigations concerning discretion the depth and argumentative nature of the reasoning of planning decisions become especially important, together with maintaining a proper record of these reasons and communicating them to the stakeholders and the public. Especially careful reasoning should be provided to those planning decisions that restrict persons' land use or building rights or which have received objections during the preparation of plan.

The Supreme Court has repeatedly **emphasised that in spatial planning, which is characterised by a particularly wide scope of discretion, the following of proceeding and formalisation requirements is especially important.**

In its judgement (no. of the case: 3-3-1-42-02) the Supreme Court stated that by discretion, a local government should protect public interests in a reasonable manner, at the same time adequately reasoning why the arguments or evidence presented by a party to the proceeding have not been accepted or are considered insufficient. The reasoning of an administrative act should also convince the court that during the consideration process the administrative authority has taken into account all relevant facts and interests and that the consideration has been carried out rationally.

In its judgement (no. of the case: 3-3-1-13-02) the Supreme Court has stated that the reasons behind an encumbering administrative act should include both factual as well as legal reasoning. The factual reasoning should demonstrate the circumstances that bring about the application of a legal provision that forms the basis of the act. It is important to connect the factual and legal reasoning logically as the addressee of the administrative act and anyone acquainting her/himself with it should be convinced that the circumstances of the case in conjunction with the applicable acts really do result in taking that particular administrative decision.

In connection with ensuring the passage from one plot of land to the other while defining the conditions for land privatisation with the right of pre-emption or land return and settling the incurred disputes during the process, the Supreme Court has formed the opinion that an administrative act (including the order about land privatisation with the right of pre-emption) may include additional requirements (no. of the case 3-3-1-73-03). The objective of the additional requirements is to ensure the flexibility for fulfilling administering duties and that different interests are taken into account. Application of the additional requirements has to be clear, understandable and reasoned – why is it necessary to ensure the passage through this particular immovable and in this particular location, have the potential alternatives been considered etc. As ensuring the passages causes interests to clash and according to the Land Reform Act the size and boundaries of the privatised or returned land can be determined by detailed plan, it would be reasonable to solve the potential disagreements during the preparation of detailed plan. By the preparation of the plan it is also possible to determine restrictions concerning a plot of land, including the need for passage. The representatives of planners have constantly emphasised that land reform requires planning preparation, but they have often been ignored in order to carry out the land reform faster. The majority of the land reform decisions have been made without any planning preparation and therefore it has caused significant and serious planning mistakes, especially in larger cities and their vicinity. That is why this decision from the Supreme Court is very important and welcomed.

Supreme Court has also reversed some widespread misunderstandings.

On several occasions the persons who have financed and proposed the initiation the preparation of detailed plan have demanded the city/rural municipality to adopt the detailed plan, although the city/rural municipality has realised during the preparation of the plan that it is not right to adopt it. Such demand has been reasoned by the statement that together with the initiation and proceeding of the plan these persons have developed so called justified expectation, and therefore the city/rural municipality should compensate for their costs that have been made as well as for the expected damage if the persons are not able to realise their expectations. In case no. 3-3-1-15-01 the Supreme Court states: *'the preparation of plan based on a person's order, financing the costs of preparation of the plan and the approval of the initial planning objective do not create protected trust that the plan will be adopted in the form in which it was initiated.'* Additionally to that, the Supreme Court has stated (no. of the case: 3-3-1-42-02) that *'plan proceeding may also be terminated at the stage of acceptance, before organising any public display, and that the courts have concluded it correctly that* the Act *does not oblige local government to accept the initiated and prepared plan by all means*.' It is evident that the **obligation to accept or adopt the initiated plan by all means would be contradicting the discretional nature of planning.**

On several occasions the courts have, without basis, accepted the claims that have been filed during the preparation of plan. In case no. 3-3-1-8-02 it has been said that *'the violation of procedural provisions that has taken place during administrative proceeding can generally only be contested together with the final administrative act. As long as the final administrative act has not been issued, it is generally not possible for the court to evaluate whether the procedural violations could have influenced the decision-making.'* In the same case the Supreme Court adds, however, that

'exceptions could be made to this rule on cases which are directly provided in the Act, and also based on the principle of process economics, which is also allowed by the Administrative Procedure Act. As an exception, the contestation of procedural act or the administrative legislation that precedes the final administrative legislation is justified in case the procedural mistake is of such scope that it makes it possible to conclude already during the proceeding that the final administrative legislation that is going to be issued as a result of such proceeding cannot be substantively legitimate. It is also possible to file an appeal before the final administrative legislation if the procedural act violates the rights irregardless of the final result of the proceeding.'

The decision no. 3-3-1-54-03 of the Supreme Court regarding the detailed plan of Viljandi Prison with 400 places and the Central Hospital of Prisons with 100 places in Jämejala village has disclosed well the substantive and legal objective and nature of discretion in making planning related decisions. Local residents and environmental protectionists protested against having the prison and the hospital in Jämejala park. The intention to construct these buildings in the park was justified by saying that with this, it would be possible to use the building of the previous psychiatric hospital while establishing the prison complex, making the foundation of the whole complex cheaper. The rural municipality reasoned the need for building the complex by the necessity to bring new workplaces to the municipality. Already Tartu Circuit Court who dealt with this case pointed out that in the letters to the persons presenting the proposal and in the decisions of the council there is no reasoning why it was not considered to move the prison complex further from the existing park. The Supreme Court agreed with the position of the Circuit Court and explained how it interpreted the main objective of the disputed plan: *'in the current case, negative impact on the environment, particularly on Jämejala park on one side and the positive impact on employment, entrepreneurship and infrastructure on the other side were the critical considerations for making the decision. Also, it was necessary to take into account economising the costs of the state which would be possible by using the existing building. The decision had to be made based on whether the benefit of establishing the complex would outweigh the damage inflicted to the environment. Therefore, the local government had to collect information about the probability and scope of both the positive and negative impact.'*

The Supreme Court found that the plan does not indicate the consideration of why the prison complex should be established in the park and which motives outweigh the damage that is caused by partial destruction of the park. According to the Supreme Court, the reasons that were given in the planning documents did not enable the interested persons participating in the plan proceeding to understand the rationality of not considering their proposal, neither was it possible to contest the motives for not considering their proposal and to develop public discussion about the content of the plan. The nature and the need for substantive discretion were well illustrated by two examples in this decision of the Supreme Court. It stated that *'in addition to the ratio of the trees cut and the trees preserved, also the change of the holistic milieu of the park should be considered after having a prison being established on the territory of the park. A prison is characterised by walls, security zone, surveillance equipment and a constant risk for emergency situation. These phenomena cannot clearly harmonise with the essential milieu of a park that lies primarily in the natural environment that allows peace and recreation. The Chamber is of opinion that the milieu of the park would be destroyed or damaged to a significant extent even without cutting down any*

trees when a prison would be established in the park or next to it.' In the reasons for its decision the Supreme Court also stated that *'the positive impact on employment and entrepreneurship will become evident on the state level also if the prison complex is not built in Pärsti rural municipality, but somewhere else. Based on the documents of this case, the Supreme Court does not see why Pärsti municipality should be the one benefiting from damaging the environment as public good, if presumably the prison complex could be established somewhere else in Estonia without causing the damage of such scale. If in reality there are still reasons which demand the economic development and the development of infrastructure in Pärsti municipality in particular (very low standard of living, high unemployment rate etc.), the municipal council should have stated these. As such reasons have not been stated, the Supreme Court concludes that compared to the environmental impact the municipal council placed too heavy weight to the social and economic impact on the rural municipality that would derive from building the prison complex. This entails a significant discretionary mistake.'*
Supreme Court's decision on Jämejala detailed plan concludes many of its earlier judgements concerning discretion and it could be considered a good lesson of consideration to all the participants in the preparation of plans.

5.2 Relevant Documents and Links

The Planning Act and other Estonian acts are accessible in English at www.legaltext.ee.

Ministry of Internal Affairs: http://www.sisemin.gov.ee.
The web pages of the Planning Department of the Ministry of Internal Affairs provide information about the legal basis for planning, international cooperation, national spatial plan, publications of the department and the details of relevant seminars and further links.
Adopted county plans can be accessed on the web pages of the respective counties. The web pages of the majority of cities and rural municipalities provide an opportunity to make acquaintance with the adopted comprehensive plans and as well as gather information about the adopted detailed plans.