Recent developments – Estonia

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1. **General Part of Environmental Code Act** (hereinafter GPECA) entered into force

Development of Estonian environmental law is still framed by the codification process. This process was started already in 2007, and has not been fully completed yet. Codification has taken much more time than initially planned. Last year General Part of Environmental Code Act (hereinafter GPECA), finally came into force. This year is significant as well, because new drafts of waste act, water act, ambient air protection act, radiation act (which will form Special Part of Environmental Codes) have been under the discussion in the Parliament. These drafts have been modelled taking into account the basic elements of GPECA.

GPECA is in Estonian circumstances indeed very innovative development and contains many provisions which will lead to a number of substantial changes in the fundamentals of national environmental law and implementation of EU law.

2. **Substantive right to an environment adequate to person's health and well-being**

GPECA defines in addition to the fundamental concepts of environmental law, the principles of environmental protection, the basic environmental obligations, also fundamentals of the protection of environmental substantial and procedural rights. One of most prominent innovations is stipulation in article 23 of GPECA of the substantive right to an environment adequate to person's health and well-being**.** Earlier existence of such fundamental right was denied in legal doctrine and court practice of Estonia. The prime rationale behind the environmental substantive right, as well as environmental procedural rights, is more effective involvement of citizen in implementation and enforcement of environmental regulations. Such involvement is a fairly important additional resource, which is still largely untapped in achieving environmental compliance. Reliance solely on the procedural rights may not be effective enough to ensure the high level of environmental protection in the flesh. Execution of procedural environmental rights might not safeguard any particular level of environmental quality which indeed corresponds to health and well-being needs. Procedural rights focus traditionally on three pillars: access to information, participation in decision making, and access to justice and follows the template set in the Aarhus Convention

Wording of the right was obviously modelled on the basis of article 1 of the Arhus Convention, which also provides that every person of present and future generations has the right to live in an environment adequate to his or her health and well-being, Under Estonian law every person enjoys such right if having a significant exposure to affected environment. Consequently, in order to assert the right a person should often be present in the affected environment, use often the affected natural resource, or have a special relation with the affected environment by some other reason. According to article 23 of GPECA in order to assess what the state of the environment is adequate to person s health and well-being the rights of other persons, the public interests, e.g. national defence, and the specifics of the location, e.g. city or sparsely populated countryside, have to be taken into account.

Article 23 of GPECA enables affected person to claim remedies. If the environmental quality is inadequate the exposed person can request an administrative authority to sustain the environment and therefore, to avoid the deterioration of environmental quality. An administrative authority may be also requested to take reasonable measures for ensuring the adequacy of the environment to health and well-being. In assessing the reasonableness of measures both, the benefits gained from the improvement of the environment and the burden imposed by the measures on the administrative authority, should be taken into consideration.

3. Recognition of the peculiarities of "appropriate assessment" under article 6(3) of Habitats directive

In 2015 EIA Act was amended and the threshold of initiation of Natura "**appropriate assessment**" reformulated and brought in line with rulings of EU Court (in particular Waddenzee case). Now EIA Act stipulates that environmental impact is assessed if an activity is planned whereby, according to objective information, it cannot be precluded that the activity alone or in conjunction with other activities may potentially significantly and adversely affect the protection purpose of a Natura 2000 site. When making these changes legislator was also guided by case law of national Supreme Court which already couple of years earlier pointed to certain differences between regular EIA and "appropriate assessment". In Estonian conditions, this change is of fundamental importance, since in the Estonia there are just very many Natura sites.