

Species protection system in Estonia

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[1. General background of the MS relevant for species protection](#)

The principal act regulating the protection of animal and plant species in Estonia is Nature Conservation Act, into which formally the relevant provisions of the EU law have been transposed. However, the transposition of directives into domestic law does not require only that its provisions to be incorporated formally, but these should be adequate for the purpose and guarantee the full application of EU law with sufficient clarity and precision. Formally the species protection provisions of EU law transposed rather correctly into the Estonian legislation. Although there are insufficient measures for some species, which are not in the protected categories in Estonia, and for that reason species protection provisions are not transposed fully. There are also some minor formal differences between the provisions of the Directive and Estonian legislation. The main reasons why some of the requirements of the Habitats Directive (namely article 12) are not transposed exhaustively originate from the fact that certain species' conservation status is rather good in Estonia and therefore they are not protected as strictly as Directive requires.

As it is not sufficient to transpose the directive only formally, the role of implementation measures play decisive role. Accordingly, it is important to integrate the species protection measures into different sectoral environmental protection requirements - as forestry, agriculture, planning and building sectors etc. In Estonia different measures for species protection are provided also by Forestry Act, Planning Act, Environmental Impact Assessment and Environmental Management System Act, European Union common Agricultural Policy Implementation Act, etc. It is also important to raise awareness among general public, local government, land owners about the protection requirements for certain species and to take a species-by-species approach, as different species will react differently to potentially disturbing activities.

In general, damaging of the habitats, breeding and nesting places, migratory routes and natural sites of the protected species is prohibited. Research, marking, removal from nature and use for scientific and educational purposes of such places without a permit issued by the Ministry of the Environment is prohibited.

The nature conservation status of species of European concern (species listed in annexes to the EU Habitats Directive) has significantly improved over the past five years While the

status of about one quarter (24%) of nearly hundred species was favourable in 2009, the share of such species was 54% in 2013. The number of species that need to be studied for their status has also decreased significantly. While the status of about one third (27%) of species was unknown in 2013, the share of such species had dropped to 11% by 2016. Unfortunately, the status of more than a third of species is still bad or inadequate, i.e. the preservation of their vital populations in Estonia is not guaranteed.

In all 565 plant, mushroom and animal species are protected in Estonia. Management plans will be drawn up for species, which preservation has not been ensured by the protective measures taken so far. A management plan is the basis for preferential ranking and planning of activities necessary for the protection and preservation of a species, which shall be approved by the Committee of the Management Plans of Species after completion and confirmed by the Minister of the Environment. Activity plans will be drawn up for the protection and management of species, which are not protected in Estonia, but which are of European importance (e.g. brown bear) or are species protected by international Conventions. Such activity plans will be drawn up for the protection of for example beavers and big predators: wolves, bears and lynxes. Estonia as member of the European Union has obligations also in the field of the protection of species.

2. Risks

Of all species registered in Estonia, 81 of bird species (21%), 10 species of fish (13%); one species of reptiles (20%); four species of amphibians (36%) and seven species of mammals (10%) have been entered in the list of threatened species (classified according to the Red List as near threatened (NT), vulnerable (VU), endangered (EN), critically endangered (CR) and regionally extinct (RE)). Estonia has 391 threatened species of vascular plants (27%), 213 threatened species of mosses (39%) and 23 threatened species of algae (1%). According to the Red List, about one third of the assessed species and 3% of all species registered in Estonia are threatened.

The spatial distribution of threatened biodiversity corresponds to the known distribution of total biodiversity in Estonia. The majority of threatened species are found in coastal areas and on islands as well as in South Estonia. Highest number of threatened species have been registered on the western coasts of Saaremaa and Hiiumaa islands as well as the vicinity of the Matsalu National Park and Puhtu-Laelatu, Alam-Pedja and Nigula nature reserves — the species have retrieved to these areas due to human activity that has rendered their previous habitats unsuitable. The big number of threatened species in the surroundings of Tartu and Tallinn is probably caused by the nature of the dataset — these are the areas where nature observers live or have their permanent observation points and where the development activities are concentrated; therefore, biota are more extensively studied. Biodiversity is poorer in Central Estonia (Järva County) and Viljandi County — no threatened (rare) species are found in these areas of intensive human activity (agriculture) any more.

3. Principles of species protection

No specific principles regarding species protection, however, fundamental principles of nature protection are applicable – for instance art (2) of Nature Conservation Act introduces principle according to which Nature conservation will be based on the principles of balanced and sustainable development and in each individual case, alternative solutions will be considered which, from the position of nature conservation, are potentially more effective. Unfortunately, due to the rather vague wording of this principle, it has in legal practice extremely rarely been cited and implemented (mainly in connection with habitats protection) neither scrutinised by courts. At least theoretically this principle could be potentially implemented for example in case of protection of migratory routes. According to nature conservation law upon construction work, living and moving conditions that are as safe as possible will be ensured to the specimens of protected species. Moreover, in order to protect the migratory routes of animals, the Minister of Economic Affairs has the right to establish additional temporary restrictions for example of traffic. In such cases the cited principle could be part of application

4. Directive 92/43

4.1. Surveillance of conservation status – (art 11, art. 14 HD)

Monitoring of the conservation status of species is regulated under Environmental Monitoring Act - which establishes the organisation of national environmental monitoring, the completion of national environmental monitoring programme and its sub-programmes. Accordingly, national environmental monitoring programme consists of sectoral sub-programmes. One of the latter is sub-programme of biodiversity monitoring, which includes species. According to Environmental Monitoring Act the general aim biodiversity monitoring is designed to identify, monitor and forecast the abundance and distribution of species and communities, human influence on the habitats and analyse changes taking place. The regulatory framework of monitoring is very general and leaves out many important peculiarities, for instance legal consequences of the outcomes of the monitoring. There is no direct link between those outcomes and conservation measures. However, indirectly this link still exists as article 49 Of the Nature Conservation Act prescribes that special action plan must be prepared for ensuring the favourable conservation status of a species, if the results of the species monitoring indicate that the current measures fail to do so. Such action plan in turn may potentially result in change of conservation status of species. Such action plan has been adopted as regards 16 species entered into Annex IV of the Directive – for instance flying squirrel, the bats (11 species), brown bear.

4.2. Conservations of species (art. 12 -16).

4.2.1. Art. 12-13 of Habitats Directive - system of strict protection for animal and plant species

In general, species protection requirements are correctly transposed –but unfortunately there is not enough data available as of real implementation practice.

However, to my estimation the system works quite well in the framework of protected areas. But general protection requirements (outside protected territories – e.g. EIA and SEA) are applied rather randomly

Estonian system of species protection is based on division of species into different categories depending on their conservation status. So, protected species are divided into three categories of protection in Estonia

In the protected category I are included:

- 1) species that are rare in Estonia, are located within restricted areas, in few habitats, in isolation or whose population is thinly scattered over a more extensive range;
- 2) species which are in danger of disappearance, whose population been reduced as a result of human activity, whose habitats have been damaged to a critical point and whose extinction in the Estonian wild is likely if the adverse impact of the danger factors continue.

In the protected category II are included:

- 1) species that are in danger due to their small or reducing populations and whose range in Estonia is reducing due to overexploitation, destruction or damaging of habitats;
- 2) species that are likely to exposed to danger of being destroyed if the existing environmental factors continue operating.

In the protected category III are included:

- 1) species whose population is endangered by the destruction or damaging of habitats and has been reduced to a point where they are believed to move into the endangered category if the causal factors continue operating;
- 2) species that were included in the protected category I or II but that, due to application of necessary protective measures, do not experience a danger of destruction.

Insurance of favourable conservation status of species depends on their protection category. The protection of all known habitats of species in the protected category I will be ensured by formation of protected areas and limited-conservation areas or determination of species protection sites. The protection of at least 50 per cent of known habitats of the protected category II entered in the environmental register will be ensured by formation of protected areas and limited-conservation areas or determination of species protection sites based on the representativity of the areas and sites. The protection of at least 10 per cent of known habitats of the protected category III entered in the environmental register will be ensured by formation of protected areas and limited-conservation areas or determination species protection sites based on the representativity of the areas and sites. In habitats of species in the protected categories II and III that have not been differentiated, individual specimens of such species will be protected

From the species of Annex IV only brown bear (*Ursus Ursus*) has not been taken under the protection, the other species are either I (8 species), II (28) or category III (29 species). Deliberate capture, killing and killing of animal species is regulated under the Hunting Act as one of the conservation measure can be brought to article 14 paragraph 3 which provides that the hunting license should further specify protection rules (limitations and conditions), including the protection of species restrictions.

4.2.2. Art. 14 of Habitats Directive – measures to control taking of and the exploitation of certain animal and plant species of Community interest.

Deliberate capture and killing of animal species is regulated under the Hunting Act. The Hunting Act specifies wild game harvest quotas and structure. The harvest quotas and structure of moose, red deer, roe deer and wild boar shall be agreed each hunting year by hunting districts in the hunting council based on the monitoring. The harvest quota of brown bear, wolf, lynx and grey seal shall be established each hunting year by the Environmental Board based on the monitoring reports.

The Environmental Board has the right to establish additional restrictions and conditions based on the species protection action plan

4.2.3. Art 15 HD - the prohibit to use of all indiscriminate means of killing

The indiscriminate means of hunting are listed in Hunting Act. According to Hunting Act (art.24) it is prohibited to hunt:

- in a manner which endangers humans;
- in a manner which damages and destroys the natural habitat of the animal, unless otherwise provided by law or legislation established on the basis thereof;
- using self-shooting devices, explosives, electrical devices, birdlime, snares, net, poison, gas and smoke;
- pursuing the game in motorised water craft, motor vehicles and all-terrain vehicles, shooting at the game from motor vehicles and all-terrain vehicles or using motorised water craft, motor vehicles and all-terrain vehicles in another manner for shooting the game;
- using artificial light sources;
- using an aircraft;
- using crossbows, air rifles, firearms with a silencer, laser sight or sighting devices for night shooting;
- game animals fleeing from a natural disaster;
- animals in a helpless situation, unless otherwise provided by law;
- by means of falconry;
- using firearms that are not hunting firearms;

- using bows that are not hunting bows within the meaning of subsection 27 (1) of this Act.

This exhaustive list seems to cover obligations under Habitats Directive. Moreover, control over hunting is clearly one of the priorities of Environmental Inspectorate, the main surveillance and enforcement authority

4.2.4. Art. 16 of Habitats Directive derogation from the provisions of Articles 12, 13, 14 and 15 Habitats Directive

Broadly speaking, most of the derogation provisions are correctly transposed. But again, there is no clear picture of their implementation

According to Nature Conservation Act intentional killing of a specimen of a protected species, except for the purposes of euthanasia, is prohibited. As an exception killing of a specimen of an animal species in the class Mammalia in the protected category I is permitted:

- 1) if the animal directly endangers the life or health of a person and the attack cannot be prevented or controlled in any other manner;
- 2) in the interests of public safety.

Exceptionally killing of a specimen of an animal species in the protected category II or III is permitted:

- 1) if the animal directly endangers the life or health of a person and the attack cannot be prevented or controlled in any other manner;
- 2) in the interests of public safety;
- 3) in the interests of air safety;
- 4) if it is necessary to prevent damage to important agricultural crops or farm animals, fish farming or other important assets;
- 5) educational or research purposes.

The Minister of Environment by a regulation, establishes a list of such animal species the killing of the live specimens of which is permitted in accordance with Annexes A to D of Council Regulation No 338/97/EC on the protection of species of wild fauna and flora by regulating trade therein

In specified cases (e.g. in the interest of public safety, in the interests of air safety; if it is necessary to prevent damage to important agricultural crops or farm animals, fish farming or other important assets or educational or research purposes) animals could be killed based on a permit issued by the Environmental Board. A permit may be issued if no other alternative measures which do less harm to the fauna and birds exist to resolve the situation. The permit must set out the following:

- 1) the species and specimens regarding which the permit is issued;
- 2) the permitted devices, equipment or methods;
- 3) the conditions of danger and risk under which and the period during which such activities may be carried out;
- 4) the recipient of the permit;
- 5) the means of observation or other means for the monitoring and verification of results.

4. 2.5. Art. 22 of Habitats Directive

The following basic rules are applied concerning introduction to and removal from wild of native species

- In general it is prohibited to release live specimens of native species brought in from other countries in the wild, except in the event of scientifically justified reintroduction with the permission of the Environmental Board.
- According to law animals of native species may be relocated with the permission of the Environmental Board.
- Animals of native species may be removed from the wild:
 - 1) for treating an injury or illness and for raising an abandoned young animal;
 - 2) for establishing or supplementing collections of animals for research, training or commercial purposes;
 - 3) for supplementing the local population;
 - 4) for establishment or supplementing of animal farms for commercial purposes.

As for alien species – in short

- It is prohibited to introduce live specimens of non-native species in the wild, and to plant or sow non-native plants in the wild, except for the planting and sowing of alien tree species the cultivation of which as forest trees is permitted in accordance with the Forest Act.
- A list of non-native species likely to disrupt natural balance, live specimens of which will not be brought into Estonia and transactions with live specimens of which will not be conducted, is established by a regulation of the minister responsible for the field.

- Controlling the abundance of a non-native species accidentally released into the wild will be organised by the Environmental Board.
- It is prohibited to rear specimens of non-native species which are likely to disrupt natural balance in artificial conditions or conduct transactions with the live specimens of such species, except in events which can be justified from a scientific point of view with the permission of the Environmental Board.
- Steps taken with non-native species, which do not comply with the requirements established in Regulation (EC) No 1143/2014 are prohibited.

4.3. Enforcement (legal consequences of infringement of art. 12-16 HD or 5-9 BD)

The most important enforcement body is Environmental Inspectorate, which acts on the bases of Environmental Supervision Act. To exercise the state supervision provided for in this Nature Conservation Act, the Environmental Inspectorate may take special measures of state supervision on the grounds and in accordance with the procedure established in the Law Enforcement Act. Besides liability Environmental Inspectorate is authorised to use also other means of administrative force -in the form of substitutive enforcement and penalty payment (coercive measure)

The liability can be of three different kinds

- Administrative
- Criminal
- Compensation of damage

As far as administrative liability is concerned article 74 of the Nature Conservation Act introduces administrative sanctions for the violation of conservation requirements for flora and fauna specified in points a and b of Annex IV to Council Directive 92/43/EEC, for example

- The penalty for destruction and harming of the clearly delineated breeding sites and resting places of the specimens of the species specified in point a of Annex IV is a fine of up to 600 euros, the penalty for the same act committed by a legal person is a fine of up to 1300 euros.
- The penalty for violation of the requirements for removal of the specimens of the fauna listed in point a or the flora listed in point b of Annex IV from the wild (incl. keeping and breeding) is a fine

of up to 600 fine units, the penalty for the same act committed by a legal person is a fine of up to 1300 euros.

As for criminal sanctions Criminal code introduces sanction for damaging of wild fauna. Violation of the requirements for hunting, catching or other utilisation of wild game, fish or other wild fauna, if significant damage is thereby caused to the environment, or unlawfully organising the hunting or catching of wild game, fish or other wild fauna, is punishable by a pecuniary punishment or up to three years' imprisonment. An act provided above, if significant damage is thereby caused to the environment through negligence, is punishable by a pecuniary punishment or up to one year's imprisonment. If committed by a legal person, is punishable by a pecuniary punishment.

Civil liability - The procedure for and rates of compensating the damage caused to the environment by destroying or damaging protected specimens of protected species, or of other species of animals, except for wild game, and by introduction of live specimens of non-native species in the wild are established by a regulation of the Government. The Environmental Inspectorate has the right to file a claim with a court for collection of damages caused to a protected natural object or a specimen of a species.

Environmental Liability Directive is transposed by Environmental Liability Act. For the purposes of the Act, 'environmental damage' means among all:

- substantial adverse effects on reaching or maintaining a favourable conservation status of a habitat or species;
- substantial adverse effects on a protected area, a special conservation area, a species protection site, an individual protected natural object

A complementary list of habitats and species deemed to be habitats and species for the purposes of the Act has been established by a regulation of the Minister of Environment on the basis of Articles 2(3)(a) and (b) of the Environmental Liability directive.

The remedies include prevention, remedying either recovery

However, again the peculiarities of the application of the Act are unknown as there is no implementation practice of Environmental Liability Act, especially in the context of species.

Most commonly from above listed sanctions administrative penalties (fines) are used. Criminal cases are very rare, in particular due to lack of firm criteria for distinguishing significant damage which is one of the main prerequisites for criminal sanctions

4.4. SEA, EIA, Appropriate Impact Assessment and species protection

According to EIA and SEA Act environmental impact assessment should be initiated also in cases if plan or project is presumed to affect significantly plants and animals. Impact is deemed significant if it is likely to exceed the environmental capacity of the impact area, cause irreversible changes to the environment (including plants and animals – both protected and unprotected). So at least in theory environmental impact assessment could be utilized in cases of species protection. To take into account results of assessment is a discretionary decision. If, upon making a decision to grant or refuse to grant development consent or approve plan, the decision-maker fails to take into account the results of environmental impact assessment or the measures of prevention or minimisation of adverse environmental impact, the decision-maker must give a reasoned justification. Margin of discretion is tightened by applying principle of high level of protection prescribed in General Part of Environmental Code Act.

According to EIA and SEA Act different threshold applies in case of appropriate assessment according to Habitats Directive Art. 6(3) – 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. Among types of protected areas entered into the Natura list is species' protection site.

4.5. Agricultural or forestry activities with a foreseeable impact on protected species

Agriculture - Exceptionally killing or destruction of a specimen of an animal or plant species in the protected category II or III is permitted if it is necessary to prevent damage to important agricultural crops or farm animals, fish farming or other important assets; Notion of “preventing damage to important natural assets has not been addressed by Estonian court practice

In Estonia some measures for species protection are provided also by European Union common Agricultural Policy Implementation Act (e.g. support schemes) For example payment for areas with natural constraints

Forestry – No doubt general forest protection requirement and regulation of logging contributes to species protection – as far as forest is common habitat for a number of Annex IV species. In addition, protection of so called” key habitats” in the forest is relevant too. A key habitat is an area of up to seven hectares, which needs protection outside a protected natural object and where the probability of the occurrence of narrowly adapted, endangered, vulnerable or rare species is great. For the protection of a key habitat a notarised contract will be concluded with the owner of the immovable, on the basis of which the immovable will be encumbered with a personal right of use in favour of the state via the Ministry of the Environment for a term of 20 years.

4.6. The roles of citizens and NGOs in species protection?

Private persons can go to the administrative court to protect their subjective right, which hardly can be linked with species protection. Still one (quite curious) example from Estonia court practice- when land-owner filed a complaint on the grounds of violation of his property rights by erection of irrigation system on the neighbouring land area, which presumably lowered groundwater level and thereby damaged plants (under protection) on his property

NGO-s have broad standing. If an environmental organisation contests an administrative decision or a taken administrative step in accordance with the procedure provided for in the Code Administrative Court Procedure or in the Administrative Procedure Act, it will be presumed that its interest is reasoned or that its rights have been violated if the contested administrative decision or step is related to the environmental protection goals or the current environmental protection activities of the organisation.