

Estonia: Negotiations over the Conditions of ICCP Permit for the Kunda Pulp Plant Factory

Synopsis

This case study was chosen because it shows a good example of how environmental non-governmental organisations can negotiate with developers and reach agreements about the conditions of IPPC permit. Compared to the administrative procedure, it was clearly more efficient as both parties had an interest in collaborating and making compromises. Compared to judicial procedure, the process was more intensive, but altogether still less painful for all the parties, and none of the stakeholders was left totally unsatisfied as may often happen in court proceedings.

Background of the conflict

The plan to build a pulp plant in Estonia progressed for several years. Since 2000, AS Estonian Cell had been looking for an appropriate location for the plant, discussing locations at several places (Kehra, Turi, Maardu, Paldiski). The elements of a conflict were encoded in this plan from the beginning, as a pulp plant can have enormous environmental impacts, but in 2000 Estonia had no proper legislation for environmental impact assessment (EIA).

In 2001, environmental concerns kept the plant from being built in Turi. Environmental activists and experts warned of ecological catastrophe in Parnu River, where the plant was to dump its sewage. The plan to build the plant in Kehra also failed because the likely effluent recipient, Jagala River, was already contaminated to such a level that the plan to conduct more pollution into it was not acceptable. In the beginning of 2002, Kunda was chosen by the developer as a new possible location for the plant.

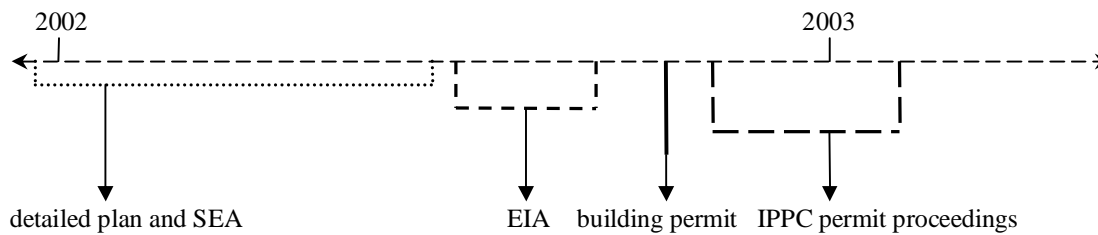
Diagram 1 —Alternative locations for the plant in Estonia



In Kunda, the effluent recipient was planned to be the Baltic Sea. A strategic environmental assessment (SEA) was carried out on the process of the detailed land-use plan. An EIA was also carried out in order to assess the impacts of establishing and operating the plant. Due to its complex nature, the plant needed an integrated environmental permit (IPPC permit), which, among other conditions, prescribed emission requirements for sewage and monitoring activities. The administrative proceedings took place along the following timeline:

- detailed plan together with SEA — December 2001 – June 2002
- EIA — July-August 2002
- Issuing the building permit — October 2002 (no public participation involved)
- IPPC permit proceedings — November 2002 – January 2003

Table 2 — Timeline of the administrative proceedings

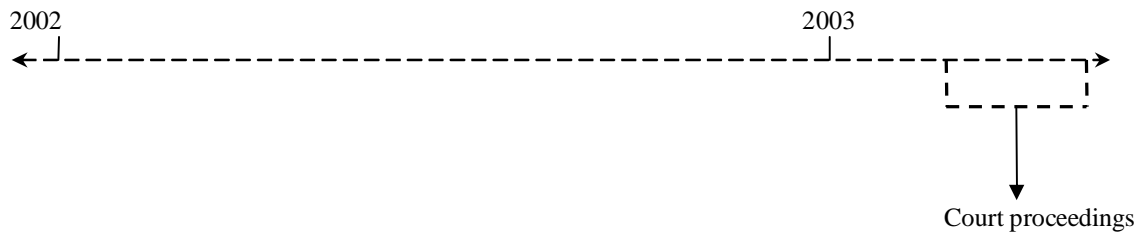


From environmental organisations, Estonian Green Movement (Friends of Earth Estonia) participated in the EIA process, but their comments were not taken into account. Because of a lack of resources and capacity, ELF did not participate directly in the administrative proceedings. In September 2002, however, ELF sent a letter to the relevant authorities and developer, indicating threats that may arise from operation of the plant: biological pollution, additional pressure to aspen woods and the need for electricity, which also causes environmental damage due to the source of its energy: oil shale mines. In this letter, ELF listed conditions on which the establishment of the plant would be acceptable from an environmental point of view. These conditions were not taken into account in the administrative proceedings.

On January 3, 2003, the Laane-Viru Department of the Ministry of Environment published an announcement about the issuance of the IPPC permit to the plant. This was the last of all administrative acts necessary for the building activities to commence. The IPPC permit contained false information, claiming that according to the scientific studies by the Marine System Institute (MSI), the discharge of the plant's process water into the sea would not affect the marine environment on a larger area, but that there would be a negative effect locally. The IPPC permit also said that should there be severe damage (e.g. destroyed marine fauna and flora, or a drop in water quality) measures should be taken to correct the problem. This stipulation is a violation of the precautionary principle by not avoiding the damages, but rather adopting measures in a stage of the process where damages may be irreversible. In reality, the MSI study did not contain an assessment of the effects of the plant's process water on the Bay of Letipea or on the beaches of Letipea near the plant's location. The MSI study said that no certain assessment of the impacts on the marine environment can be made because of insufficient data. In addition to the false information, the IPPC permit allowed emissions of chemical oxygen demand in the plant's process water that were not in accordance with the law, exceeding the allowed emissions by six times.

ELF disputed the IPPC permit in court on February 3, 2003, declaring that since it contained false information and the allowed emission of chemical oxygen demand was six times more than the legal limit, there was a high risk of contamination in very sensitive areas. These conditions might result in the loss of marine fauna and flora. The Marine Systems Institute supported ELF's complaint with confirmation that their study did not provide a basis for assessing the impacts of the plant processes on the marine environment.

Table 3 — Timeline of court proceedings



Parties and stakeholders to the processes

Party/stakeholder	Nature	Interest	People involved
Estonian Fund for Nature (ELF)	Non-governmental environmental organisation	Environmental protection	Marek Strandberg (chairman of the board) Robert Oetjen (chairman of the executive committee) Toomas Trapido (director, member of the executive committee) Urmo Lehtveer (member of the executive committee, PR) Kart Vaarmari (lawyer)
AS Estonian Cell	Business company, developer	Building and operating the pulp plant	Peeter Lodi (member of the management board) Roald Paulsrud (member of the management board)
Larvik Cell	Business company, Norwegian parent company of Estonian Cell	Building and operating the pulp plant	Roald Paulsrud
OU Ecoman	Environmental expert	To guarantee that the EIA carried out by Ecoman, would be considered as correct and of high quality	Heino Luik
Laane-Viru Department of Ministry of Environment	Public authority	To guarantee that by issuing the IPPC permit requirements of law were fulfilled	Aivar Laane (head of the department)
Law Firm Raidla & Partners	Law firm	To protect their client's (Estonian Cell) interests	Juri Raidla, attorney Martin Triipan, attorney

Marine Systems Institute at Tallinn Technical University (MSI)	Marine environment scientists	To avoid misuse of their expert studies and name	Juri Elken Tarmo Kouts
European Bank for Reconstruction and Development (EBRD)	Bank owned by 60 countries and two intergovernmental institutions	Financing a project which is in accordance with environmental requirements and provides no risk of being declared illegal	

Local citizens did not participate in the conflict resolution process and it was not open for them as the timeline, pressed by AS Estonian Cell to negotiation process, was so tight that involving more parties would have exceeded the resources of the Estonian Fund for Nature (other parties were not interested in involving the public or local citizens as they were purely protecting their interests).

Conflict resolution process

Why was this tool used?

The conflict resolution process was initiated by AS Estonian Cell, represented by the law firm Raidla & Partners, shortly after AS Estonian Cell found out about Estonian Fund for Nature's court suit (beginning of February 2005). Mr. Juri Raidla, attorney, contacted Mr. Strandberg, chairman of the board of the Estonian Fund for Nature, and proposed to negotiate a way to end the court proceedings. Estonian Cell was interested in solving the conflict quickly because it was seeking a loan from the European Bank for Reconstruction and Development (EBRD). A court dispute over the negative environmental impacts of the projects would have likely ended that opportunity.

Description of the process

The process started on February 4, 2003 and the parties reached an agreement on February 18, 2003. The process was short and intensive, being constantly pushed by the developer.

Table 5 — Timeline and form of negotiations

Timeline	Activities	Form	Organisations involved
February 4-12, 2003	AS Estonian Cell expresses interest in starting negotiations about an out-of-court settlement with Estonian Fund for Nature	Personal contacts, phone conversations	AS Estonian Cell Estonian Fund for Nature
February 13, 2003	Meeting of the negotiating parties	Personal meeting in office of law firm Raidla & Partners	AS Estonian Cell Estonian Fund for Nature

			Laane-Viru Department of Ministry of Environment OU Ecoman Marine Systems Institute
February 13-17, 2003	Preparation of conditions for possible agreement by Estonian Fund for Nature	E-mail and phone discussions between experts from Marine System Institute and Estonian Fund for Nature; internal phone and e-mail discussions in Estonian Fund for Nature	Estonian Fund for Nature Marine Systems Institute
February 17-18, 2003	Discussions between law firm Raidla & Partners and Estonian Fund for Nature about procedures for concluding the agreement	E-mail discussions	AS Estonian Cell: Estonian Fund for Nature
February 18-20, 2003	Further discussions about conditions of the agreement	Personal meetings at Raidla & Partners	AS Estonian Cell Estonian Fund for Nature
February 20, 2003	Signing the agreement by parties and posting the applications of parties to relevant authorities, according to the agreement	Personal meetings at Raidla & Partners	AS Estonian Cell Estonian Fund for Nature Laane-Viru Department of Ministry of Environment
February 25, 2003	The Johvi Administrative Court issues an order to end the court proceedings	Written order	
April 25, 2003	Laane-Viru Department of Ministry of Environment makes changes in the IPPC permit	Administrative proceedings	

Mr Raidla, as attorney of AS Estonian Cell, acted as facilitator of the whole process (with assistance of another lawyer or his firm) in the following way:

- He guided the negotiations.
- He offered solutions that would satisfy all parties.
- The meetings took place in his law firm office.
- He offered legal support by shaping the final agreement.

The process cannot be considered as a mediation process because Mr Raidla acted on behalf and in the interests of his client. Nevertheless he sought solutions that would satisfy the Estonian Fund for Nature and persuaded his client to make compromises on some issues of importance to the Estonian Fund for Nature.

Output of the process

The concluded agreement consisted of three main parts:

- 1) the obligation of AS Estonian Cell to present an application **to change the IPPC permit**, concerning the following conditions:
 - a. AS Estonian Cell undertook the obligation to work out and implement measures for control of the timber used for production so it would be possible to determine the origins of the timber and the legality of the cutting. AS Estonian Cell agreed to refuse to accept illegally cut wood. In three years, AS Estonian Cell was obligated to certify at least 50 percent of its annual production with an FSC certificate.
 - b. AS Estonian Cell agreed to implement an environmental management system accordingly to the standards of ISO 14001 within one year of obtaining the user permit for the plant.
 - c. AS Estonian Cell agreed to immediately implement measures when the monitoring results show significant worsening of environmental conditions in an area of 1,000 metres from the place of discharge.
 - d. The false information about the results of the surveys by the Marine Systems Institute was to be left out from the permit.
 - e. The frequency of monitoring the condition of the marine environment was changed from an initial annual obligation to a monthly obligation.
- 2) the obligation of the Estonian Fund for Nature to present an application to the court **to end the court proceedings**;
- 3) all three parties declare that they have **no claims for possible legal costs** against each other.

The agreement was put into practice in a way that both obligated parties posted the applications of another party – in this way it was ensured that neither of them could elude an obligation. On the basis of these applications, the administrative court ended the proceedings on February 25, 2003, and the IPPC permit was changed by the Laane-Viru Department of the Ministry of Environment on April 25, 2003.

Related actions and campaigns

There were no other related actions or campaigns connected to the process. Only two press releases were made by ELF:

- 1) on February 4, 2003 about the filing of the complaint to the courts;
- 2) on March 12, 2003 about reaching an agreement with Estonian Cell.

It was hard to press the developer to allow announcement of the conditions of the agreement publicly, so it was a concession to ELF's interest to protect its reputation as public interest guardian.

Final outcome of the case

The conflict resolution process was followed by subsequent negotiations already in autumn 2003 when Estonian Cell wished to mitigate its obligations regarding the IPPC permit.

On September 16, 2003 ELF suddenly received an e-mail from Raidla & Partners with proposed amendments to the IPPC permit. First of all, the developer wanted to change following conditions:

- increase the production capacity;
- withdraw the obligation to certify the timber by FSC standards; and
- delay the start of the implementation of the environmental management system from one year to three years.

The proceeding negotiations led to an agreement to change the IPPC permit in several parts, but not in the conditions to increase the frequency of monitoring the environmental condition in the sea where the plant's process water was released. The amendments were not crucial, as the Estonian Fund for Nature accepted the new terms about increasing production capacity on the condition that adequate monitoring of the environmental condition will be carried out a year before the activities were started and also periodically during the activity of the pulp plant. Other conditions were changed in a way that served the purposes of the Estonian Fund for Nature in the same way as the former conditions (e.g. according to the new terms, the developer was not obligated to use FSC as a timber certification system, but was obligated to use a system that corresponds to the criteria of FSC). The new conditions were officially enforced on 10 December 2003. Since that date, the parties have not been in contact with each other.

On December 10, 2004, the cornerstone of the pulp plant was put into place. Building of the plant is proceeding and is planned to end soon. According to the agreement between ELF and Estonian Cell, the developer is obligated to carry out environmental studies on the condition of marine environment one year before the exploitation, but at present ELF has no information about such studies being made.

Conclusions

The conflict resolution process had its benefits and flaws.

Benefits:

- 1) The process was very useful for Estonian environmental non-governmental organisations as it proved that there is a possibility to negotiate with developers and reach agreements.
- 2) Compared to administrative procedure, it was clearly more efficient as both parties had an interest in collaborating and compromising, which is not always the case in administrative proceedings.

- 3) Compared to judicial procedure, the process was more intensive, but altogether still less painful for all the parties, and none of the stakeholders was left totally unsatisfied as may often happen in court proceedings.

Flaws:

- 1) The final outcome (after the subsequent change of the permit) was not totally satisfying for any of the parties, as all of them had to make considerable compromises with their real expectations and wishes.

Main obstacles for Estonian Fund for Nature were:

- 1) lack of time – the time frames were pushed by AS Estonian Cell and the intensiveness of the process did not allow for discussion of the positions thoroughly inside of organisation;
- 2) lack of experience – it was hard to negotiate with professional lawyers and stick to the initial demands so that the compromise would not damage the interests of the party significantly.

Suggestions:

- 1) to agree on reasonable time frames in the beginning of the process;
- 2) it would be best to have personal meetings in the presence of all parties involved instead of exchanging e-mails concerning complicated (legal or substantial) issues.

Comments of participants on the process

Statement of one participant, Toomas Trapido, representative of Estonian Fund for Nature

“The agreement shows that such working method is possible when protecting the interests of nature, but you have to be ready for surprises and compromises. It was the first precedent that showed that it is possible to reach an agreement between so forceful interest groups and with involvement of the Ministry of the Environment. As a matter of fact, these things do not have to go through court as it is very troublesome for our kind of organisations and cannot be everyday practice.”

Contact information of the parties

Name	Organisation	E-mail	Phone
Marek Strandberg	Estonian Fund for Nature	Marek.strandberg@mail.ee	Mobile phone (372 5556-7779)
Kärt Vaarmari	Estonian Fund for Nature	kart@elfond.ee	(372) 742-8443
Peeter Lodi	AS Estonian Cell	rebruk@hotmail.ee	(372) 385-1062
Heino Luik	OU Ecoman	hluik@ecoman.ee	(372) 626-3307
Aivar Lainjarv	Laane-Viru Department of Ministry of Environment	Aivar.lainjarv@l-viru.envir.ee	(372) 58-400
Juri Elken	Marine Systems Institute	elken@phys.sea.ee	
Juri Raidla	Raidla & Partners	email@raidla.ee	(372) 640-7170

Contact information of person/s providing information

Ms. Kart Vaarmari
Lawyer
Estonian Fund for Nature
Riia 185A, Tartu 50002
Estonia
(372) 742-8443
kart@elfond.ee