GREEN PAPER ON ESTONIAN SPATIAL PLANNING

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About the Green Paper

The Green Paper on Spatial Planning is an insight into Estonian planning practices, 25 years after the planning regulations entered into force following the restoration of Estonia's independence. The people mainly responsible for preparing the Green Paper are specialists in the field of planning from the Ministry of Finance, with significant input from experts outside the Ministry.

The Green Paper stems from daily work in the field of spatial planning such as: explaining legislation, following developments in other countries' spatial planning systems, communicating with international planning experts, following specific planning processes, engaging in dialogue with stakeholders and professional associations, and working with other ministries and agencies.

In addition, the Ministry of Finance carried out a case study of detailed plans to assess the issues raised during the preparation of the Green Paper based on the specific planning proceedings that have been completed.

Workshops were organised to involve stakeholders in the preparation of the Green Paper. In November 2017, a discussion was held in Tartu to clarify the need for a Green Paper and to introduce the topics to be addressed. In April 2018, the background document of the Green Paper was presented in Tallinn, covering the topics through relevant legislation, examples, and opinions expressed in the media or professional networks. In Tartu in October 2018 The Ministry of Finance introduced the specified topics addressed and upcoming activities to stakeholders. In the autumn of 2019, feedback was received to the Green Paper working document in writing as well as in the form of feedback seminars.

The Green Paper contains proposals to improve both the planning practice and the planning system, focusing on spatial planning in Estonia under the Planning Act.

We hope that what is described here will help all those involved in the preparation of the plans to understand and fulfil their roles in developing a good spatial solution in all planning proceedings. As necessary, the planning sector has to be advanced through changes in legislation, but legislative changes should not be the primary option for steering the practice of spatial planning. As in all sectors, research and development and NGOs that reflect developments in the sector are important for spatial planning.

Listing precise activities for developing the sector are avoided in the Green Paper. There are many ways in which changes can be made to the topics covered, requiring detailed consideration in any given circumstances. It must also be borne in mind that the planning system must be constantly adapted to changes in society and that the necessary changes must be justified in any specific situation. At the same time, the directions described in the document can already be considered today in everyday planning processes.

The following issues emerged during the preparation of the Green Paper, that need further consideration in the future:

- The authorship of the plan, the plan as an object of copyright.
- Regulating in national legislation instead of in each plan, aiming to reduce the burden of reasoning on issues without any significant location-specific differences.
- The practicality of moving from land-use planning to form-based planning.
- Difficulties of comparing alternative locations for activities in the Estonian ownership structure.
- Reducing planning levels.
- Simplifying the rules of participation.
- Level of detail of environmental impact assessment in spatial planning, specifics of the Natura assessment.

Foreword

The goals set by society for spatial development and the high quality of the living environment cannot be achieved without the contribution of different sectors in any organisation of society. The quality of the built environment[1], the sustainability of land use, spatial preconditions for business development, and the access to services and housing for everyone are highly dependent, for example, on national tax policies (e.g. immovable property ownership taxation), transport policy (e.g. modal split), decisions made and targets set in the field of nature protection, climate policy, or energy. Therefore, the impact of spatial planning together with other sectors has also been analysed[2]. The quality of space depends to a large extent on sectoral decisions, often made outside the field of spatial planning. It must be borne in mind that all sectoral problems cannot be solved by just making a spatial planning document.

To a large extent, a region's spatial development is determined by overall economic development and wider demographic trends[3]. Administrative configurations and the functioning of public-private cooperation also play an important role in the development of space. The choice of instruments that the local governments are able to use to direct spatial development heavily depends on overall land ownership structure, as canalizing the private sector's initiatives may require more complex arrangements than directing the use of land owned by the local government.

Spatial planning is the only administrative proceeding that considers the spatial needs of sectors at a certain location in interaction with each other. Comprehensive spatial solutions to sectoral challenges show the potential for synergies between spatial solutions: for example, a pedestrian road is used more if it leads to both the school and the local government building; placing a health centre in a valuable building in the centre of the settlement will bring people to the centre and increase attendance on high street businesses while preserving the valuable buildings. In order to identify and implement such spatial interactions, sectoral decision-making needs to be willing to apply the information emerging from the planning processes.

The concept of spatial planning has various meanings. Spatial planning has its 'hard' side: for example, finding the right location for a building can mean a forcible relocation of someone. At the same time, another plan might have the main purpose of emphasising and preserving a value that is important to society or to a particular community, or to direct long-term land use. In an even broader sense, the term also relates to general land use tendencies – spatial planning seems to be responsible for everything that is related to land use, while in reality it does not always have the resources and the legal means to actually direct changes.

Each spatial planning system balances among the following topics, to name a few[4]:

- Top-down planning and locality-based placemaking.
- The speed of planning processes (from idea to construction) and thorough participatory proceedings.
- Plans with precise rules and flexibility in implementation.
- The need to regulate one-off circumstances, the simplicity of a plan and the planning system.
- Property rights and the public interest.
- Framing the content of the plan in legislation and freedom of decision on local level.

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[1] The issue of quality space was addressed by the Expert Group on Spatial Design in 2017–2018. The final report of the expert group is available on the website of the Government Office (in Estonian): https://www.riigikantselei.ee/sites/default/files/riigikantselei/strateegiaburoo/ruumiloome_lopparuanne_.pdf, annexes to the report https://www.riigikantselei.ee/et/ekspertruhmad.

[2] See, for example, OECD (2017). The Governance of Land Use in OECD Countries: Policy Analysis and Recommendations, OECD Publishing, Paris.

[3] The links between the activity of the construction sector and economic development have been extensively analysed. For a comprehensive overview see for instance Barras, R. (2009). Building Cycles: Growth and Instability. Wiley-Blackwell.

[4] Based on, inter alia, the following article: Allmendinger, P & Haughton, G (2007). The Fluid Scales and Scope of UK Spatial Planning. *Environment and Planning A: Economy and Space*, 39(6)

Societal needs are behind every topic presented above. For example, it is believed that the simpler the planning system is, and the faster it is possible to move from the idea to construction, the more competitive the country's business environment is Internationally. On the contrary, it is also believed that the more time spent on participation and the development of a spatial solution that takes different views into account in the planning process, the better the final spatial solution will be.

In practice, these extremes might not be mutually exclusive. Solutions that support the achievement of different goals at the same time, need to be found. For example, unified (digital) spatial planning platforms can also reduce unnecessary time spent in planning proceedings and help focus on a comprehensive spatial solution.

Similar issues also form the essence of everyday spatial planning – for example, each plan seeks to balance private and public interest, and to determine how strict or loose the land use rules should be in a certain plan.

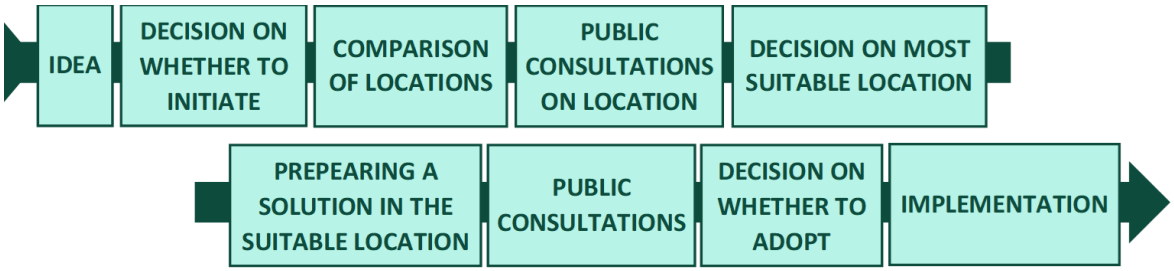
Each national planning system is constantly seeking balance between extremes through policy decisions, legislative changes, and the development of planning practices, responding to societal ideas, changes in administrative and legal order, and the needs of the present.

It must not be forgotten that the focus of spatial planning should be the short- and long-term needs of the members of society – the people.

Definitions

Spatial plan. A set of principles and rules guiding and framing the use of, and construction on land. Devised according to the Planning Act through public participation. The core stages of a spatial planning process are shown in the following schemes. See also subsection 3 (1) of the Planning Act.

Core stages of a spatial planning process
regardless of legislative requirements or the planning system



Core stages of a spatial planning process in case alternative locations are considered for a project

Comprehensive spatial solution. In accordance with the explanatory memorandum to the Planning Act in force[5], a comprehensive vision of how the area should be used in the best possible way in the future. In correspondence to the type and task of a plan, a comprehensive spatial solution comprises sectoral and spatial solutions, considers their combined effect, and combines them into a balanced comprehensive solution. A comprehensive spatial solution forms the basis for a comprehensive living environment, specified during the design and construction phases.

*Spatial plan for a specific construction (*ad hoc *plan[6])* versus *strategic spatial plan.* On the basis of usage and functions, plans can be divided into two types. Some are strategic plans that set long-term land use rules and principles of an area. These may but may also not, address locations of specific conditions for particular constructions. The second group consists of plans that are initiated to determine the realizability of a particular construction and the conditions required. In practice, plans can include both strategic and *ad hoc* planning functions: for example, a detailed plan for a larger area may include the building conditions of the specific buildings proposed, as well as the general development guidelines for the area. A comparison of *ad hoc* and strategic plans is presented in the table below.

[5] Available at https://www.riigikogu.ee/tegevus/eelnoud/eelnou/fc811573-8339-4f19-8064-9679fd001f43/Planeerimisseadus/ (in Estonian)
[6] Ad hoc literally means 'for this' in Latin. In English, this usually means 'for this specific purpose'.

The conditional division into plans compiled for a specific construction and strategic plans. Each specific plan may contain features that are specific to both strategic and ad hoc plans.

SPATIAL PLAN FOR A SPECIFIC CONSTRUCTION (*AD HOC* PLAN)	STRATEGIC SPATIAL PLAN
Prepared to determine the realizability of a particular building and the conditions required.	Prepared for setting general land use and building rules for an area.
Preparation is initiated upon the request of the interested party.	Initiated to set or update general land use rules for a specific area or a specific sector.
Clear interest and the person applying for its realisation (the interested party) – the plan is prepared to check at what location, if, and under what conditions the interest can be realised.	There is no specific interested party. Umbrella organisations (such as an association of renewable energy enterprises, an association of commercial enterprises, a local inhabitants' union) or sectoral governmental organisations may partially perform the roles of interested parties.
The basis for construction activities in the next few years.	General long-term rules and principles, as well as guidelines on locations of constructions with significant spatial impact.
The commissioning of the preparation of the plan may be financed by the interested party, as the plan is prepared to check the viability of the particular interest.	The preparation of the plan is financed by the planning authority, as the plan is prepared for setting general rules.
In the current planning legislation, for example, detailed plans, national or local designated spatial plans, and in some cases, municipality comprehensive plans.	In the current planning legislation, for example, the national spatial plan (including maritime thematic spatial plan), county plans, or municipality comprehensive plans.
ALL PLANS	
Planning principles are followed, including: - Affected and interested persons and parties are given the possibility to participate. - Public and private interests are balanced. - Prerequisites for the improvement of the living environment are created (safety, spatial community values, aesthetics). - Due consideration is given to documents and information relevant to spatial development. - Land is used efficiently, rationally, and sustainably. Where possible, more rational use of sites is encouraged. The built environment and green areas are treated in a balanced way.	

The planning authority. The administrative body which organises the preparation of the plan, identifies the impacts and interests related to the implementation of the plan, and prepares the planning decisions. Pursuant to the Planning Act in force, these are a city or rural municipality government (in the case of a comprehensive plan, a detailed plan, or a local municipality designated spatial plan), the Ministry of Finance (in the case of the national spatial plan, including maritime thematic spatial plans, county plans, and national designated spatial plans), and, in some cases, by decision of the Government, the Ministry of Defence or the Ministry of the Interior (in case of a national designated spatial plan concerning national security).

Decider. The administrative body that has been given the right and obligation by law to make a final decision on a spatial plan. Pursuant to the current Planning Act, these are a city or rural municipality government (detailed plan), the city council or the council of a rural municipality (comprehensive plan, detailed plan amending the comprehensive plan, local municipality designated spatial plan), or the Government of the Republic (national spatial plan (including a maritime thematic spatial plan), a county plan, a national designated spatial plan).

Planning official[7]*.* An employee of the planning authority – an expert who works with spatial planning.

Planning consultant. An expert who provides consulting services during the preparation of a spatial plan, usually through a consultancy. For example, the planning consultant may prepare planning materials and proposals for the planning solution and advise the planning official in preparing the planning solution.

The party interested in the preparation of the plan (also referred to as: *the interested party*). Proponent of the preparation of a plan – the party who usually wishes to carry out the proposed activity or increase the value of the land through the rights granted by the plan, e.g. the owner of the planned land. For example, the Road Administration or the Ministry of Economic Affairs and Communications may be the party interested in the preparation of the plan if, for example, the plan is prepared to determine the location of a national road. In some cases, the interested party may also be the planning authority itself – for example, in the case of preparing a detailed plan for a municipality administration building or kindergarten, but also in an area important for urban development.

[7] The use of the term 'official' in this document does not imply that, for example, a planner working in a city or rural municipality government must be an official within the meaning of the Civil Service Act. For comparison in English: *planning official, planning officer*.

I Roles of participants in the preparation of the plan

Desired situation

The parties involved in the preparation of a plan contribute to the production of the best possible comprehensive spatial solution. The participants in the preparation of the plan are aware of their roles in the preparation of the planning solution and the decision-making. The roles are carried out in a responsible and competent manner.

The planning authority establishes a platform for discussion for the parties involved in the preparation of the plan, ensuring, inter alia, that the interested person and those affected by the proposed activity are aware of the opportunity to voice their opinions.

The planning authority ensures that the planning solution at a specific location contributes to the achievement of overall spatial development objectives, including long-term objectives. The planning authority reaches agreements between the parties (negotiations with stakeholders, neighbours, utilities' companies, and governmental organisations who officially approve the plan).

The planning authority prepares the discretionary decision of the plan (including the reasons for the discretion), balancing public and private interests, as well as sectoral development needs.

The decider is aware of the content of the planning solution, the changes that implementing the plan brings about, impacts of the changes, and the views of different parties. The decider is aware of the plan-making throughout the preparation of the plan, not just when the final decision is formalised – also in the instances where the plan is prepared by a planning consultant. The decider is aware of the impacts of the implementation of the plan and the possibilities for its implementation, both after its establishment and over the following years and decades.

The planning official plays a pivotal role in performing the duties of the planning authority. The planning official works closely with other sectors of the authority and is supported by management and political leadership.

The planner, who may be both the planning official and the planning consultant in collaboration with the planning official, develops possible planning solutions that are used to discuss the content of the proposed spatial solution. In cases where the planning solution is developed by a planning consultant, this is coordinated by the planning official.

The interested party participates in the preparation of the plan as the implementer of the plan, presenting views on the content of the planning solution and participating in discussions with other parties involved in the preparation of the plan. The planning authority ensures that the views of the interested party are public in the planning process and are considered in decision-making.

Persons affected and interested in the activity (e.g. neighbours of the area) participate in the preparation of the plan by submitting proposals for a comprehensive spatial solution and representing their own interests in the preparation of the plan.

The public participates in the preparation of the plan by representing the interests of various stakeholders during public hearings of the plan and making proposals for achieving a comprehensive spatial solution.

A governmental agency or other organisation involved in the preparation of the plan (e.g. a network or utilities' operator) provides input for the preparation of the comprehensive spatial solution in accordance with its area of activity and represents the interests of its own sector in the preparation of the plan. As a result of the cooperation, a comprehensive spatial solution is prepared for a specific location.

Problems

- During the preparation of spatial plans, the interested person or planning consultant has fulfilled the roles that, essentially, the planning authority has to fulfil – balancing interests, discretionary decisions of the planning solution, reaching agreements with neighbours, and cooperation with agencies.
- Over the years, it has become more common practice for the planning authority to retreat from their leading role in developing a planning solution and balancing interests. This may, among other things, lead to a lack of motivation of competent spatial specialists to fulfil the role of the planning authority. However, there are also examples of areas where the role of the planning authority is still significant.
- When preparing a plan, the participating agency or body may give priority to the protection of sectoral interests without regard to the comprehensive spatial solution and the compromises needed to achieve it at a particular location. If one's own contribution to the comprehensive solution is not given sufficient prominence, the need for competent planners inside organisations may also not be apparent.
- As with other processes, spatial planning also involves decisions in which the person deciding on the planning solution is not familiar enough with the circumstances and is unaware of the implications of the decision.

Examples of cases in which the planning authority has receded from roles which, under the meaning of the Planning Act, can only be performed by the authority

An excerpt of the terms of reference of a detailed plan (2016):
The draft detailed plan is submitted to the local government for inspection and, if necessary, amending. The draft detailed plan, which has been amended as necessary, is submitted to the local government for examination and public consultation. A detailed plan with all approvals along with a statement to that effect, is submitted to the local government for approval within two years from the date of approval of the terms of reference. The detailed plan must be submitted for enacting no later than three years after the initiation.
The terms of reference show that the local government has receded from preparing the planning solution: developing the solution, coordinating it with stakeholders, and preparing it for implementation.

An example of an agreement for the preparation and financing of a detailed plan (2010):
The contractor (planner) undertakes to obtain the approvals specified in the terms of reference of the detailed plan and those arising from law.
It is clear from the contract that approval is not led by the local government but by the planning consultant.

Proposals for solutions

- <u>Fulfilling the central role of the planning official in the preparation of the plan.</u> Under the coordination of the planning official, the planning authority brings together sectoral input and development needs, engages the relevant professionals, the public, and the affected individuals (e.g. residents of neighbouring areas), directs the work of the planning consultant, and prepares the considerations and decisions for the most appropriate comprehensive spatial solution.
- The planning authority recognises the role of the interested party in each planning process and balances the roles of the interested party and other persons. The interested party is aware of their responsibility for creating high-quality space, of the effects that using their private property has on public space and is motivated to create high-quality space.
- Activities to raise awareness among all parties of their respective roles in the planning processes, both in the planning system in general and in the preparation of each spatial plan.
- Raising awareness of the role of the decider in planning proceedings, including in situations where consensus cannot be reached on the spatial solutions and a reasoned decision has to be made on the basis of known facts.
- Ensuring substantive spatial planning competence in the authorities and bodies involved in day-to-day planning proceedings, in particular as parties approving plans based on their sectoral competences.
- Finding ways to motivate the sectors involved in planning processes to contribute to the creation of a comprehensive spatial solution at a specific location rather than protecting their own interests.

Inevitable circumstances

The best possible spatial solution is achieved when all parties involved in the preparation of a plan use their best knowledge and skills to work towards achieving the best spatial solution, taking into account the specific circumstances of a particular location. In actual planning proceedings, other factors may motivate the actions of the parties, such as coalition agreements, short-term maximum economic returns, subjective fears related to the planned activity, etc. In essence, in the preparation of an *ad hoc* plan, the ultimate goal of an interested person may not be the best spatial solution, but maximising financial benefits.

With regard to spatial planning, it has been said that no one is happy after a plan has been prepared – no party has fully achieved the result they wanted. Nonetheless, a plan is the best instrument available for achieving a spatial agreement.

Relevant questions

Does the interested party unduly influence the spatial decision? Even if the answer is 'yes', the impact must not be reduced by denying the role of the interested person, as they perform functions in the planning process that no one else can perform (the implementer of the plan). In order to avoid undue influence, the role of the planning authority, including the role of the planning official, must become more important. Among other things, the planning official ensures, through invitations to participate and cooperate, that different interests are balanced, including those expressing their views during the preparation of the plan.

Does the planning authority (the planning official) have to prepare the plans? Preparing the plan as a document is a role that a planning consultant could perform, if necessary. During the preparation of a plan, the planning authority must reach agreements as a balancer of interests and make a discretionary decision on the planning solution. The planning consultant works in partnership with the planning official in the development of the planning solution and in the performance of their duties, takes into account the principles arising from the performance of spatial planning as a public task (e.g. due diligence, balancing of interests).

II Public participation, availability of information regarding spatial plans

Desired situation

The preparation of plans is public and transparent. On the one hand, public participation can provide additional information and opinions on how to create the planning solution. On the other hand, the public proceedings of each spatial plan give the parties an opportunity to defend their interests.

Public participation and communication is proportional to the significance of the changes that are planned. In the case of decisions with significant spatial implications, the planning authority must find additional ways to make sure that information reaches all those who may be interested in or affected by the proposed activity.

Spatial plans are unambiguous to everyone and cannot be interpreted in different ways. Planning documents distinguish between what is established by the plan and baseline information. Modern and easy-to-use visualisation and participation tools are used in planning processes to present the proposals for solutions.

Information on the adopted plans is up-to-date and accessible to all, without hindrances or delays.

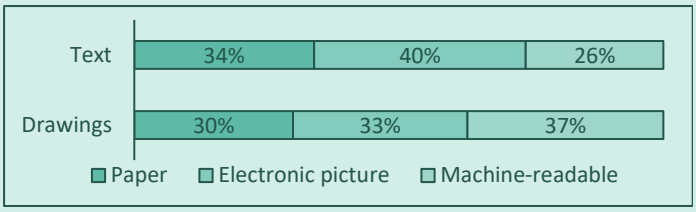
The best possible comprehensive spatial solution is the focus of participation and cooperation; the participants in the preparation of the plan understand the possibilities for their participation in the development of each specific planning process. The planning authority ensures that all parties involved in the preparation of the plan are equally informed and all parties have an equal opportunity to present their views.

Even if all parties do not agree with the content of the planning solution, all parties have been granted the opportunity to have their say, all suggestions have been considered, and the choice of a particular planning solution is clearly justified.

Problems

- Agreeing on a planning solution can be difficult because the expectations of the parties involved in the planning process vary – from informing to shared decision-making. The reason for this may be that space is perceived to be a 'common asset', something that everyone should have a say in, especially when it comes to changing it. At the same time, it is unreasonable to expect that someone's surroundings will remain unchanged.
- Information on adopted plans is often only available on paper in the local municipality archives. This means that it is time-consuming to find valid the valid rules set by a plan for using an area and accurate information is not always available.
- Changes that have been made in spatial plans after their adoption, have not been introduced to planning documents (e.g. in the cases of changes in legislation, or changing a comprehensive plan with a detailed plan).

At the end of 2018, there were approximately 15,000 valid detailed plans in Estonia. Only slightly more than one third of the drawings of valid detailed plans were available in machine-readable form.



Data: *Eestis kehtivate detailplaneeringute hulga ning nende seletuskirja ja jooniste andmekandja formaadi väljaselgitamine* (Determination of the amount of detailed plans in force in Estonia and identification of the format of their explanatory memorandums and drawings). Skepast & Puhkim 2019

- There have been situations in the preparation of plans where no other participants were present for the public discussion of the plan, except for the planning authority (planning official) and the planning consultant. If the spatial agreement is important for the region – e.g. a comprehensive plan for a local government or a detailed plan for an important area – this could mean that the communication of the plan and public consultation has not taken place in such a way that the parties understand the importance of the issue and the importance of the topic for themselves. There have also been cases where planning information has not reached those affected by the activity. At the same time, it is a matter of fact that those who agree with the planning solution rarely participate in the public discussions.
- The wordings of the adopted plans are ambiguous, lack specificity; inconsistencies can be found in plans' drawing and text.

The ambiguity of plans facilitates disputes in the preparation and implementation of plans and the resolution of disputes through court, not based on the best spatial solution.

Example: It is clear from the Supreme Court's decision (3-14-52416) that the court has also had to explain how the Chamber understands the wording of the plan:
'The Chamber finds that the appellants cannot invoke the condition of the detailed plan to contest the building permit, whereby warehousing and noise-free production can be developed on the industrial area in the sanitary protection zone of residential buildings (50 metres from the border of the registered immovable). The Chamber understands this condition as meaning that the protection zone must be taken into account from any specific residential registered immovable.'

Proposals for solutions

- In each participatory process, it is explained to the parties exactly what has been previously agreed (e.g. in a higher-level plan or at the initiation of the plan), who decides on which planning conditions, on which issues the parties' views are expected, whether and in what way they were taken into account, or not (developing a so-called participatory memorandum).
- Use of the most appropriate engagement tools for the target audience to ensure the best possible understanding of the proposed activity and its implications. Where appropriate, for example, 3D visualisation, use of web-based participatory tools, installation of illuminated advertising boards on the central square by the time the plan is made public.
- Stressing the importance of the unambiguousness of the plan as a legal act (including during the ratification process). Distinguishing between the planning solution and reasoning, explanations, analysis, and baseline information. It may also be necessary to clearly indicate and reason that a significant issue is not regulated by the plan (for example, it may be necessary to clarify in the plan that the distance between buildings is not regulated as the conditions arise from legislation).
- Presenting the contents of the plan in a way that it is understood by people who are not engaged in the field of planning on a daily basis.

During the making of Tartu's comprehensive plan, advertising boards were also used for informing the public.

Photo: Tartu City Government

- Timely introduction of changes to previously adopted plans.
- Ensuring that spatial plans are accessible and available without hindrances or delays, both during the preparation of the plans and after they are adopted.
- Finding ways to pilot different participatory instruments, noting the issues addressed in the plans.
- Continuing to raise public awareness of the opportunity to participate in the preparation of plans.
- Considering options for creating a national digital environment for planning proceedings that would facilitate participation during the preparation of plans.

Based on examples of spatial planning, Sherry R. Arnstein (1969; 2019) has proposed a step-by-step model for participation. According to the approach, participation should evolve from informing to a partnership between the community and the decider and to decision-making by citizens.

Testing various models of participation, including the possibility of partially or wholly community-based decision making, could provide significant added value in the practice of spatial planning in Estonia (for comparison, the community plan used in the United Kingdom in addition to the usual planning tools). When testing different models, attention must be paid, inter alia, to the relationship between participatory democracy and representative democracy.

Source: Arnstein, S. R. (2019). A Ladder of Citizen Participation, *Journal of the American Planning Association*, 85:1, 24–34.

Inevitable circumstances

It is not reasonable to expect that all planning decisions give priority to the interests of the individuals or communities affected. As both Estonian courts and the European Court of Justice have found, it is not reasonable to expect that the environment around us will not change.

Different values and interests may spatially conflict (e.g. industrial development versus preservation of natural areas). In the case of value conflicts, achieving a compromise is not always possible, so the legitimacy of the decision-making process is important – the decision is made by the legitimate decider based on understandable considerations and following the rules of procedure.

Relevant questions

Does holding a participatory planning process mean sticking to the procedural requirements of the Planning Act? Yes, but not only that. During each plan-making, the planning authority must find the best ways for making information understandable for the parties and enabling them to present their views. *Pro forma* participatory process, the sole purpose of which is to comply with the statutory requirements, must be avoided.

Does every plan have to be based on public interest or interests of the local community only? No, but local interest and interests of the community must be considered in all planning decisions. Each spatial plan is a balance between different interests.

III Role and competence of the planner

Desired situation

The comprehensive spatial solution of the plan is developed by a competent planner (a team of competent experts). Specialists are involved in developing the solution and preparing and finalising the planning considerations: e.g. specialists with expertise in water and sewerage design, architects on architecture and town planning issues, and lawyers to ensure the legitimacy of the plan as an administrative act.

The planner is an expert who has the knowledge and skills needed for spatial planning. The planner manages the work of the specialists involved in the preparation of the planning solution and finds ways to develop a comprehensive spatial solution. The planning authority ensures that the planner preparing the specific plan has the necessary knowledge and experience in making similar plans.

The planner is aware of approaches used in spatial planning both in Estonia and abroad and applies their knowledge to develop a comprehensive spatial solution. The planner receives high-quality formal education and refresher training. The field of spatial planning is supported by the spatial planners' occupational qualifications system. An occupational qualification ascribed to a spatial planner helps the planning authority in assessing the planner's expertise in the preparation of the plan, as the provider of the qualification has confirmed the general competence of the planner in the preparation of the plan.

The planning official may develop the planning solution either independently or in cooperation with the planning consultant. Many tasks can only be performed by the planning official: e.g. balancing interests, inviting parties to participate in the planning process and concluding agreements between them, and cooperating with authorities and other bodies. If these tasks are performed by the planning official, we can be sure that the planning solution is developed under the direction of the planning authority and the basic function of spatial planning – achieving a comprehensive spatial solution at a specific location through public proceedings where everyone has had the opportunity to express their views and to receive reasoned answers – is followed.

The planning official coordinates the preparation of the plan within the institution. To do this, the planner also brings together the positions of the sectors within the institution, explaining the facts to both managers and deciders. The skills and knowledge of the planner are also included in the final decisions of the plan. The planning official is the contact person for the interested party and for anyone who wishes to participate in the preparation of the plan.

As a specialist in spatial issues, the planning official, with their knowledge and experience, also participates in the preparation of other spatial decisions at the local government or national level. The planner is involved in the preparation of strategic development documents. This way, the planner is aware of strategic development trends and is able to incorporate spatial needs and values in the strategic choices more successfully.

The planning official and planning consultant work together to find a comprehensive spatial solution, complementing each other's skills and experience. The planning official performs the functions of official authorities (balancing interests, creating a comprehensive spatial solution). The planning consultant may have more experience in consulting the preparation of plans in different areas, types of planning, and in the various activities planned. The planning official is at all times knowledgeable about the development of the planning solution and is able to explain the planning solution and the related circumstances to the community or interested persons.

Problems

- The experience and knowledge of the particular planner or specialist involved in the preparation of a plan may not be relevant to the plan in question (type of plan, degree of generalisation, proposed activity, location). This, in turn, may be due to the fact that the planning consultant was found in the course of lowest cost tendering, without considering their experience in making similar plans.
- The planning official and the planning consultant do not always work together to develop a comprehensive spatial solution, confrontation takes place. The planning consultant has been treated as a 'pencil' for the interested party in the planning processes, not a partner to the planning authority.
- Systematic refresher training for planners is modest, formal education is fragmented between several higher education institutions.
- Specialists of all required fields of expertise are not always involved in the preparation of plans.
- Planners as experts in the field are not always valued by managers when making substantive decisions. The planning authority considers the main task of the planning official to be carrying out planning proceedings, not the development of a comprehensive spatial solution.
- In planning decisions, a comprehensive spatial solution may be overshadowed, for example, by short-term economic benefits or day-to-day political pressure for land use agreements. In this case, the other interests prevent the best solution from the spatial perspective being considered, as it would make it more difficult to achieve the other interests.

The educational background of local governments' experts in spatial planning. Larger font size indicates more common specialties, but no conclusions can be drawn for all of Estonia due to incomplete data.

Data: Ministry of Finance, December 2019.

Proposals for solutions

- Ensure that the planning consultant's work is coordinated by the planning official even if the right to commission plan-making is entrusted to the interested party through an administrative contract. The planning authority is responsible for the preparation of the plan even if the proposals for planning solutions are prepared by the planning consultant (due diligence).
- Promote planner education (formal education, refresher training) to ensure the next generation of competent planning officials and planning consultants, as well as the competence of the existing ones.
- Ensuring ongoing training and awareness activities for planners, deciders, those involved in the preparation of plans, and the wider public.
- Providing more counselling on spatial design.
- Promoting the occupational qualifications system of spatial planners.

- The planning authority makes sure that when each plan is made, the necessary specialists are involved in the preparation of the planning solution and that the planner and specialists have experience in making similar plans. Experts are included in the planning process at the right stage – for example, depending on the situation, an architectural competition to find a spatial vision can take place both before the plan is initiated and during the preparation of the plan.
- In planning procurements, quality criteria are set for evaluation (fulfilment of the due diligence obligation of the planner) and the service to be procured is precisely defined[8].
- It is ensured that all planning authorities (local governments, the Ministry of Finance, the Ministry of Defence) have a sufficient number of competent planners. Suitable forms of cooperation are found to ensure the existence of a spatial planner in smaller local governments, where only a few plans are prepared per year.
- Effective and continuous international cooperation in the field of spatial planning. International cooperation and strong international networks facilitate inviting experts to participate both in the promotion of planner education and in the preparation of plans in sectors where Estonia has little to no national competence.
- Emphasising the key role of the planner in spatial decisions.

Under the leadership of the University of Tartu and the Association of Estonian Spatial Planners, the Tartu Planning Conference, held for the fifth time in 2019, has become an important discussion platform on spatial planning, providing information on important innovations in planning.

Tartu Planning Conference 2016. Photo: Sander Gering

Relevant questions

Is it sufficient to ensure that a spatial plan is prepared by a planner with the required education? No, the authority must make sure that the planner has both the required education and experience in making similar plans. Each plan is a team effort that requires input and collaboration from professionals in different fields.

[8] See also the instructional material *Soovitused ruumilise planeerimise konsultatsioonihanke läbiviimiseks* (Recommendations for a Spatial Planning Consultation Procurement). Available at https://www.rahandusministeerium.ee/sites/default/files/Regionaalareng_poliitika/soovitused_ruumilise_planeerimise_hangete_labiviimiseks_2018-02-26.pdf (in Estonian)

IV Spatial and strategic planning, financing decisions with significant spatial impact

Desired situation

Spatial and strategic development (e.g. development plans, budget strategies) are planned in an integrated way – strategic development decisions take spatial needs and spatial impacts into account. Spatial planning helps to achieve the overall development goals in both the long and the short term.

The local government's development goals, and activities to achieve these goals are defined holistically in the development plan, comprehensive spatial plan, and budget strategy. Development plan and budgeting activities implement the spatial development goals set out in the comprehensive plan.

The spatial challenges of the local government (e.g. adaptation of land use, settlement structure, and infrastructure to the decreasing population) are taken into account in the development plan; the comprehensive plan sets out the necessary land use principles and conditions.

The comprehensive plan of the local government, is at the same time, a tool for setting building and land use regulations, and for strategically directing the spatial development of the territory of the local government. It is acknowledged how, and which overall development objectives could and should be addressed with the tools and capabilities of spatial planning.

Spatial impact is considered in preparing the development strategies of counties. Overall development principles agreed in the counties development strategies form the basis for municipalities comprehensive plans.

Spatial planning is used by the society as a tool to identify spatial conflicts and interactions between sectors, to resolve conflicting spatial needs, and to encourage shared use of space.

National strategic spatial plans balance the spatial development needs of the sectors and sectoral spatial restrictions. When preparing spatial plans, as necessary, proposals are made to change the spatial outputs of the sectors (spatial functioning principle, spatial restriction imposed by sectoral legislation). The spatial impact of the sectors is considered in the preparation of sectoral development plans and their implementation through one-off investment decisions.

Examples of countries where spatial and strategic planning are integrated as a whole through a single strategy paper.

Ireland's central strategic and spatial development document recently entered into force: The National Planning Framework *Ireland 2040*. In addition to focusing on spatial development, the document also plays a central role in guiding national investments. See more: http://npf.ie/

Lithuania is in the process of drafting a new national spatial plan, which will also serve as the basis for sectoral development documents. See more: http://www.bendrasisplanas.lt/2019/06/03/en/

Problems

- The goals set in the development plans of local governments are not always spatially solved or balanced in the preparation of the municipality comprehensive spatial plans.
- Comprehensive spatial plans are not used as an instrument to direct spatial development, but only to set building rules.
- In drafting of strategic development documents (sectoral development plans, development plans of local governments), their spatial impacts are not addressed or accounted for; experts with spatial expertise are not consulted.
- The country's sectoral development goals and restrictions, as well as important financing decisions, are primarily based on the development needs of the respective sector, without focusing on spatial

interdependencies. Not all national sectoral development objectives are addressed in the national strategic spatial plans.

- Spatial plans reflect sectoral constraints without the ability to change the spatial regulation of sectors, even if needs for this are identified during the preparation of the plans.
- The country's spatial development objectives are scattered across various development documents.
- There is a widespread opinion that the spatial development of a society is only steered by spatial planning. Due to this, sectoral development goals are set, and one-off sectoral decisions are made without considering spatial considerations, as the sectors do not consider it important to contribute to the achievement of spatial goals.

Examples of tools for achieving the country's spatial goals and promoting sustainable land use:

- transport policy and transport-related taxes,
- immovable property ownership taxes (e.g. land tax),
- the state's land policy,
- grants and incentives to maintain existing values or encourage the re-use of previously used areas.

Source: OECD (2017). The Governance of Land Use in OECD Countries: Policy Analysis and

Proposals for solutions

- Informing and awareness-raising activities to strengthen the connections between local government development documents and to take spatial impact into account.
- Accounting for spatial impacts and cross-sectoral synergies during the making of strategic development documents (e.g. development plans of local governments, national sectoral development documents, development strategies of counties, national spatial plan, and activity-based state budgeting), as well as major financing decisions. Strategic and spatial development documents form a coherent whole.
- The needs to change the sectoral spatial principles and restrictions that have emerged during the preparation of the plans are considered profoundly, amending, if necessary, the sectoral legislation and development documents. A comprehensive spatial plan is both a spatial development strategy for the local government and a set of specific land use and building rules (building code). The development plan of a local government is connected to the comprehensive plan and its action plan.

The strategy *Estonia 2035* is being drafted, and the draft also devotes considerable attention to spatial development. When implementing the strategy, the activities must be planned through both strategic and spatial planning.

See also https://www.riigikantselei.ee/et/Eesti2035

A spatial plan addresses the issues spatially, but it is not always practical to prepare a spatial planning document in accordance with the Planning Act to think about issues spatially.

Inevitable circumstances

Prioritising sectoral objectives and instruments over spatial planning is not unique to Estonia. In the Netherlands, which is considered the flagship of spatial planning, the importance of spatial planning compared to sectoral governance has been described as decreasing[9]. It should be borne in mind that spatial planning cannot replace sectoral decision-making, but better spatial consideration can increase the influence of sectoral decisions, and spatial planning helps to identify spatial synergies between sectors.

Relevant questions

Should it be possible, for example, to change the boundaries of a nature reserve by adopting a spatial plan? No – precise proceedings for changing the boundaries of a nature reserve exist, as is the case with any sectoral regulations or development documents. As the preparation of a plan is the only administrative proceeding designed to observe the interaction between sectors at a particular location,

[9] Evers, D & Tennekes, J (2016). The Europeanisation of spatial planning in the Netherlands. PBL Netherlands Environmental Assessment Agency

sectors need to be prepared to change their spatial conditions if the planning process reveals the appropriate justification. When preparing the plan, the relevant facts must be documented and the spatial and other reasons for changing the boundaries of the nature reserve must be indicated in the plan.

V Spatial planning instruments of the local and central government

Desired situation

Spatial planning is a tool for finding solutions to societal development needs, which can take place in close cooperation between the local and national levels.

The planning decisions are made at the closest administrative level to the person competent to make decisions, execute activities, or regulate the implementation. Spatial planning will continue to be a shared task between the local and central government, where both will perform their functions. The local government and the governmental level use strategic planning (setting long-term principles and rules, long-term location reservation) as well as plans for a particular project (detailed plan, comprehensive plans) to guide spatial development. The plans of local and central governments are prepared in close cooperation between local governments and government agencies.

Spatial plans are prepared in accordance with the Estonian administrative levels of governance. Local governments organise spatial planning at the local level, setting spatial development directions, the necessary land use and building rules, and investment priorities. Local governments work closely with other local governments on long-term and costly spatial issues that go beyond the local government's geographic boundaries (such as buildings with a large service areas).

Local governments have a high degree of autonomy in territorial issues at the local level, applying the principle of autonomous and final decision-making on local issues. At the government level, spatial decisions made on the local level are monitored on a case-by-case and needs basis, to monitor the legitimacy of local planning decisions. Sectoral input regarding national development needs is introduced to local-level plans through cooperation during spatial the planning processes.

The general principles governing Estonia's land and sea use are set out in a national spatial plan, creating the spatial framework for other development documents. The national spatial plan essentially forms the general principles of spatial policy in the structure of national development documents. National location-based rules for long-term land use (e.g. settlement structure, green areas network) and the approximate location of projects of strategic importance are set out in the national strategic spatial plans, covering one or more counties or parts thereof, depending on the subject under discussion. The exact location of projects of national or international importance is determined by national designated spatial plans. When planning projects of national importance, the state involves local governments in the development of planning solutions to determine the local requirements and circumstances.

Examples of OECD member countries where, in addition to strategic spatial plans, spatial plans that set location-specific binding land use rules are also prepared at the government level: Slovenia, Spain, the Netherlands, Israel, Greece, the Czech Republic.

Source: OECD (2017), Land-use Planning Systems in the OECD: Country Fact Sheets, OECD Publishing, Paris.

Problems

- The national designated spatial plan was added to the Planning Act in 2015, changing the functions of county planning and making changes to the Estonian planning system. According to the previous Planning Act, it was reasonable to use the county plan as the instrument to select the most suitable location for a project, which could be located in the territories of several local governments. Under the current Planning Act, this is not the case, as it is not legally possible to prepare a construction project on the basis of a county plan. This means that the hierarchical system of spatial plans has partially changed.
- The institutional separation of spatial and strategic planning at the regional level, effective from the beginning of 2018, is considered controversial (the preparation of county plans is organised by the Ministry of Finance through regional operations, while the preparation of county development strategies is organised by the county development organisations).

National location-based land use rules: The Netherlands and the 'sustainable urbanisation ladder'

In the Netherlands, the obligation to answer the following questions was enacted at the legislative level in 2012 for any local-level spatial plan that is planning a new urban settlement:
1. What proves the regional need for this urban development?
2. If there is a regional need for this action, is it possible to develop it as a so-called brownfield development*?
3. If the development cannot be done as a brownfield development, is it possible to place the development in transport hubs that are accessible by different modes of transport (or in traffic hubs that can be turned into such)?

The regulation was to replace national location-based rules to limit the uncontrolled spread of the population.

A few years later, only 8% of the plans complied with this rule, and the reasoning was mostly formal rather than substantive. This was followed by a series of lawsuits challenging compliance with the claim and, consequently, compliance with the planning proceedings. As a result, land use decisions were *de facto* decided in court on the basis of legal rather than substantive spatial considerations. The change also favoured land plot based spatial planning rather than directing land use on a strategic level. The example from the Netherlands illustrates, among other things, the need for national location-based planning rules.

* Brownfield development – development activity on land that has previously been used (e.g. former industrial site).

Sources:
Evers, D. (2017). *Dutch Spatial Planning in Transition*. PBL Netherlands Environmental Assessment Agency.
Salet, W. (2015). The Ladder of Sustainable Urbanization. disP - The Planning Review. 50. 4–5

Proposals for solutions

- The most appropriate planning level and planning instrument is selected in accordance with the issue being solved. The state and local governments cooperate closely in the preparation of the plans.
- Selection of planning area is based on issues to be solved, not on administrative boundaries – for example, functional or urban area plans address issues that transcend the boundaries of local governments in cooperation with local governments.
- When preparing spatial plans, cooperation between local governments must be promoted to help solve problems that transcend the territories of local governments.
- When preparing spatial plans, cooperation between the state and local governments on issues that address both local and national issues must be promoted.
- A suitable planning instrument must be developed for the planning of buildings which are not of major national or international interest, but which may be located in the territory of several local governments (e.g. joint planning proceedings by the local governments with a joint decision-making mechanism or a county plan as the basis for the building design documentation).

Inevitable circumstances

A division of spatial planning tasks between the local and national levels is impossible, as is any complete division of tasks between the local and national levels. Therefore, cooperation between levels must be promoted and the principles of the Planning Act implemented at all planning levels[10].

[10] See also chapter 2 of the Planning Act – Principles of Planning

Relevant questions

Who organises regional spatial planning? Spatial planning goes hand in hand with general administrative levels of governance. At the regional level, central and local governments are responsible for spatial planning within their competence. Local governments cooperate regionally in the preparation of local plans and the development strategies of counties.

Can central government prepare spatial plans for projects to be carried out by the private sector? Yes, because the private sector can also carry out developments of major national or international interest. The state has to prepare the plan considering every case and do so only in cases of major national or international interest.

What is the basis for choosing the spatial planning instrument for solving issues that transcend the territory of the local government? Local issues are the responsibility of the local governments. At the government level, plans are prepared in situations that are essentially national or where there is a high national or international interest.

VI Financial gains and costs related to changes in land use

Desired situation

The partial receipt of financial gain into the budget of the local government, resulting from the increase in the value of the land being planned, is organised in a transparent and uniform manner. The planning authority has the opportunity to make appropriate arrangements as necessary. The equal treatment of parties is guaranteed. The benefit-sharing arrangements are public and accessible to all.

Indirect costs of major changes in land use (e.g. increase in the need for kindergartens, infrastructure investments outside the planning area) are shared between the interested person, the local government, and the infrastructure manager. The general rules on cost allocation are known to all parties and the cost allocation arrangements are public and accessible to all.

Problems

- The city and rural municipality governments have entered into various agreements to provide additional funding to the local budget through the increase in the value of the land with the plan. For example, landowners have paid the social infrastructure fees to varying degrees to the local government budgets; the interested person has also concluded agreements for the development of social and technical infrastructure. However, the current practice may not ensure the equal treatment of interested parties; agreements are not always easy to find.

Excerpt from a local government contract with the party interested in the preparation of a plan (2015):

- Definitions: An object of social services – a building with the furnishing and service facilities necessary for the local government to fulfil its statutory obligations (kindergarten, school, library, community centre, sports centre, social centre, recreation area, etc.). /…/
- In connection with social objects, the interested person undertakes to finance the construction of the local government's social objects by paying to the local government's bank account 1 (one) euro for each 1 m^2 of gross surface area planned with the detail plan. The interested person does not own the funded object. The financing obligation must be performed before the moment of applying for the building permit required for the construction of the building planned by the detailed plan, but not later than 2 (two) years after the establishment of the detailed plan.

Proposals for solutions

- A coherent framework for the distribution of the benefits and costs of implementing the plan between the interested person (owner of the land) and the local government must be developed throughout Estonia. It is possible, for example, to create a legal basis for contracts, to introduce a local tax system, or implement some other instrument. The selection and implementation of the exact instruments needs further analysis.

VII Risk of corruption in spatial planning

Desired situation

Planning decisions are made on the basis of the principles of the Planning Act, identifying all relevant circumstances and justifying the essential considerations of the plan to the public. The preparation of each plan balances public and private interests – the latter contributes to the realisation of the general objectives of spatial development.

The necessary steps are taken to minimise the risk of corruption in the preparation of plans, including the withdrawal from decision-making processes in the event of a potential conflict of interest, and the disclosure of all arrangements made in the preparation of the plan.

The conditions set out in the plan are unambiguous, precluding the possibility of arbitrary interpretation during the implementation of the plan. The comprehensive plan, the main spatial plan directing land use at the local level, sets out the necessary conditions and principles that provide a solid framework for land use in the region. The planning decisions and proceedings are transparent, comprehensible to the public, and accessible at all times. The parties understand the considerations of the planning decisions and there is a low perceived level of corruption in spatial planning.

The spatial planning regulations and practices minimise the chance of corrupt planning decisions. Wherever possible, planning practices and regulations are uniform across Estonia, thus facilitating public control over planning activities.

Problems

- Agreements made during the preparation of a plan are not always readily available to the public, so there is no public control over the agreements.
- As in other public sector decisions, there have been cases of corruption in spatial planning.
- Spatial planning is perceived as an activity with a high risk of corruption.

Spatial planning is a sector where corruption cases have been identified. In 2017, six cases of corruption were identified in the construction and planning sectors. During detailed plan proceedings, an official influenced the planning proceedings in the person's favour

Sources:
Crime in Estonia 2017 Ministry of Justice
Estonian Internal Security Service Yearbook 2013

Proposals for solutions

- Minimising the risk of corruption in each planning proceeding: among other things, documenting and disclosing all agreements made during the preparation of the plan (e.g. interested person's agreements with neighbouring property owners, arrangements between the planning authority and the interested party), documenting potential conflicts of interest and, where appropriate, withdrawing from the decision. At the same time, the rules on the protection of personal data and commercially sensitive information must be complied with.
- Preparing guidelines and providing training on corruption awareness and prevention in spatial planning.
- The transparency of planning proceedings can be enhanced by a register for all planning proceedings, where all relevant information is documented and accessible to all, in a uniform manner. Connecting the register to other spatial information systems allows for further transparency.

Inevitable circumstances

Due to the wide margin of discretion in planning and the wide range of values and interests to be considered, it is not possible to completely eliminate the risk of corruption in spatial planning.

The identification of a corruption case by an investigative body or a court does not automatically mean that the spatial plan as an administrative act is unlawful.

VIII Duration of planning proceedings

Desired situation

In the preparation of a spatial plan, all the operations and discussions necessary for developing a comprehensive spatial solution are carried out. The plan determines the relevant circumstances for the preparation of the plan and explains the planning solutions to the parties involved.

During the preparation of a plan, the authority ensures that the participants are able to obtain information on the purpose of the plan and the conditions set for its achievement, as well as the solution and its justification. Good communication between the interested party, the planning official, and the planning consultant is essential and aimed at finding the best spatial solution. The parties present their views without delay. The parties involved in planning proceedings as approvers or input-providers co-operate in the development of the planning solution and present their views without delay.

The one-stop-shop principle is used in communication with the planning authority – the main communication partner for the interested party and for the planning consultant is the planning official, who clarifies the circumstances necessary for the preparation of the plan and works with the planning consultant to complete the planning solution.

The spatial plan addresses the issues that are necessary to create a comprehensive spatial solution. The plan-making is not overloaded with issues that are not material in terms of the planning solution, or which are more appropriate in other proceedings (e.g. public proceedings for design conditions, building permit, environmental permits).

Problems

- During the preparation of the plan, issues hindering the continuation of the preparation of the plan may arise – issues that cannot be decided in the context of land or maritime planning but are linked to more fundamental policy choices.
- In the preparation of plans, it is not uncommon for the planning consultant to communicate directly with representatives of sectors and agree on solutions. This means that the comprehensive spatial solution is not prepared by the planning authority and may lead to additional time expenditure because the planning solution is not created under the direction of the planning authority.
- In some planning proceedings, the planning official and the planning consultant might not be working in partnership, but the planning consultant may be focused on fulfilling the wishes of the interested party. This may result in additional time expenditure, as the planning consultant and the planning official are not working towards a common goal but overseeing each other's work.
- Spatial planning processes can be hindered through other proceedings (e.g. votes of no confidence against local government leaders, submitting objections or requests for clarification to obstruct the planning process, etc.) by the parties whose views or interests conflict with the planning solution or devising the plan in the first place. Because planning proceedings are public and all the views presented must be considered, discussions on actual planning solutions can be delayed by so-called malicious disputes with the sole purpose of preventing the preparation of the plan.
- Time can be wasted if the plan is not being made by an expert with sufficient experience in making similar plans.

In spatial planning, it is vital to focus on the most important issues.

In Spanish urban planning, one of the systemic problems has been shown to be that addition to spatial issues, the plan also seeks to address issues with the right of ownership. This has led to situations where spatial planning is not seen as planning for the future, but rather as an instrument for sharing financial added value. A number of changes have been made to the Spanish planning regulation to reduce the financial impacts.

Source: *White Paper on Sustainability in Spanish Urban Planning.* Ministry of Housing, Government of Spain (2010).

- Getting approvals for the plan from authorities can take months, which extends the time it takes to prepare a plan. Time is expended if the proposed planning solution conflicts with the sectoral needs; the lack of expertise of the approving authority on spatial planning issues; the lack of co-operation in the preparation of the plan; as well as general bureaucratic administrative requirements.
- There has been criticism of plans that attempt to address too many topics or to deal with topics in too much detail, including those that require more detailed information or specific solutions that would be more appropriate at the design criteria or permitting stage.
- A plan that is too detailed can lead to excessive time expenditure and can be an obstacle to its implementation – especially when the solution may need to be carried out flexibly.

Proposals for solutions

- When preparing any spatial plan, the issues to be addressed by the plan must be acknowledged and clearly communicated. This includes decisions that need to be discussed outside spatial discussions or require more detailed proceedings after the plan has been adopted (e.g. building permit, authorisation for use, environmental permit).
- In all planning proceedings, there is close and efficient collaboration between the planning official and the planning consultant to avoid unnecessary work on planning solutions. The planning consultant also engages in communication and collaboration with sectoral representatives who present their views on the planning solution or approve the planning solution.
- Implementation of the one-stop-shop principle in spatial planning. The planning official manages the preparation of the plan by involving the necessary parties (including sectoral experts, approving authorities, utility line managers, persons affected by the activities, and experts in other fields within the organisation). The planning consultant is the planning official's partner in the development of the planning solution. The consultant is paid for by the interested party, where appropriate.
- Establishment of unambiguous and reasoned conditions for construction and use in the strategic plan (e.g. comprehensive spatial plan, which is the basis for the preparation of a detailed plan or provision of design criteria at a specific location). Unambiguous conditions at the general level do not imply inflexible decision-making.
- Implementation of digital solutions in spatial planning. For example, where possible, automatically checking the requirements of the prepared plan against higher level plans and regulations[11]; automating the technical operations of the proceedings. This allows the planning official to focus on the content of the planning solution instead of technical activities.
- At the stage of developing the planning solution, the cooperation between the planner and the person approving the plan (e.g. national agencies) must be close and substantial, and lead to the approval of the plan.
- Development of the plan as an instrument and planning process, also considering the additional opportunities created by digital solutions (e.g. transition from document management to data management). Opportunities must be sought and implemented to facilitate and accelerate internal and inter-agency co-operation in the preparation of the plan, allowing a focus on the content of the plan.
- The degree of accuracy of the planning solution must be acknowledged. The rules to be set by the plan and the degree of accuracy of the issues to be solved by the plan must be sufficient to allow a decision, but they must not set excessively binding rules or resolve issues of the subsequent stages.
- The decider must have sufficient information to make the decision, but it's also important to prioritise the speed of decision-making to avoid unnecessary delays and to prevent changes in baseline conditions during the preparation of the plan.

Inevitable circumstances

Regardless of changes in regulation or practice, spatial planning remains a type of public proceeding where discussions on the actual planning solution can be deliberately obstructed by procedural issues.

[11] For example: the connectedness of the boundaries of the built-up area to the boundaries of the cadastral area; compliance of the number of parking spaces planned in the draft plan with the requirements established during the planning process; location in a green network.

IX Impact assessment in the preparation of plans

Desired situation

The social, economic, cultural, and environmental impacts of the proposed activity are accounted for in the making of every plan. Significant impacts that may occur during the implementation of the plan are identified in the assessment of the relevant impacts. Negative impacts are prevented or mitigated; positive effects are amplified in the preparation of the plan.

Impact assessment is one of the tools used by the planning authority to prepare the planning decision considerations. Impact assessment does not replace the democratic process of participation and decision-making. Impact assessment as such, or the impact assessment expert, do not make decisions for the decider, but identify the significant impacts that may result from the implementation of the plan.

It is the responsibility of the authority to ensure that significant impacts are explained to the parties during the planning process and considered when making the planning decision. Significant impacts both within and around the planning area are considered in decision-making. The significant impacts of the implementation of the plan and the reasons for the discretionary decision are reflected in the planning documents.

In cases required by law, and in cases where the activities have a significant environmental impact, a strategic environmental assessment is made during the preparation of the plan. Significant environmental impacts that may result from the activity are, like other impacts, an important basis for the deliberation of the plan, and significant environmental impacts are considered in the same way as other impacts associated with the implementation of the plan. The environmental impact is assessed by the degree of accuracy required to make the planning decision.

Problems

- The added value of a strategic environmental assessment when preparing a plan is considered low.
- While the preparation of the plan may focus on the impacts on the natural environment, other relevant impacts of the implementation of the plan, such as the need for kindergarten expansions, wider regional impacts, or the need to restructure the public transport network, may be overlooked.
- The proposal for the most appropriate alternative resulting from the strategic environmental assessment has often been perceived as the planning decision in the planning processes, although in reality, it only gives the decider the basis for making the decision.
- The logic of Natura 2000 impact assessment (based on, for instance, the directive European Council Directive 92/43/EEC) differs from that of strategic spatial planning. Impact assessment requires circumstances to be precisely identified in the planning phase, while in fact decisions on detailed solutions are only decided in the following stages.

The Environmental Performance Review of Estonia prepared by the OECD in 2016 indicates that the impact of strategic environmental assessment on substantive planning decisions is low.

Source: OECD/ECLAC (2016), OECD Environmental Performance Reviews: Estonia 2016, OECD Publishing, Paris.

Proposals for solutions

- The impact assessment identifies important factors that form the basis for democratic decision-making to find the best spatial solution.
- Providing training and preparing guides to promote and support the impact assessment during the preparation of plans.
- In addition to effects on the natural environment, other effects (such as economic and social) of implementing the plan need to be acknowledged, identified, and considered when making discretionary decisions.

Examples of questions that may need to be answered before deciding on a planning solution:

- Does the proposed activity fit into the service network of the area, or may changes be needed (e.g. lack of kindergarten capacity)?
- Does the proposed spatial solution support spatial interactions between different population groups (so-called social mix) and prevent spatial segregation?
- Is public transport reorganisation necessary to discourage car use?
- Is the maintenance of the recreation areas and the cover of the corresponding costs decided upon?

Relevant questions

Do all plans have to undergo an impact assessment? Impacts need to be considered in the preparation of each plan. For each plan, the authority must identify the significant impacts that may result from the implementation of the plan and consider the impacts in the planning decision.

X Financing the preparation of plans

Desired situation

Strategic plans (in accordance with the valid Planning Act, national plans, marine plans, county plans, comprehensive plans) set the general rules – principles and rules of use of areas on land and at sea. Based on the strategic plans, the planning authority checks the compliance of the activities planned during the *ad hoc* planning proceedings with the general rules, and determines the circumstances important for the preparation of the plan.

The funding for strategic plans (setting general rules) comes from the resources spent on public tasks (in other words, using the resources of society as a whole). Preparing a planning solution for an *ad hoc* plan can be financed by the party interested in the preparation of the plan, as the planning solution is devised upon the initiative of the interested party and to realise their interests. Public and private interests may coincide, also doing business as a whole contributes to the development of society. The planning authority bears the expenses related to the performance of public tasks in the preparation of the plan – participation, operating expenses of the agency, etc. In case the preparation of a plan is financed by the interested party, the financing must be organised in such a way that it does not affect the performance of public tasks, including decisions made in the preparation of the plan.

Problems

- The parties perceive that paying for ordering the plan affects the content of the planning solution. In case of *ad hoc* plans (detailed plans, special plans), the costs of ordering the plan in Estonia are almost always borne by the interested person.

Interviews with local governments have shown that, in addition to public opinion, there are planners in local governments who mistakenly believe that paying for the preparation of the plan will give the party interested in the preparation of the plan greater authority to decide on the content of the planning solution.

Proposals for solutions

- Ways must be found to reduce the perceived impact and to exclude direct influence between the funding and the content of the planning decision.
- Finding ways to test different financing models: e.g. detailed plans prepared by a planning official, the costs of devising a plan are borne by the interested party.

An example of the reimbursement of the costs of the preparation of the plan:
In Finland, detailed plans are prepared or commissioned by local governments. The costs of preparing and disclosing the detailed plan are reimbursed to the local government by the interested person (the landowner). For example, in the City of Turku, when preparing a simpler detailed plan, the local government must be reimbursed more than 4,000 euros, including the costs of preparing the plan, the costs of processing, and the costs of public proceedings.

Source: http://www.turku.fi/asuminen-ja-ymparisto/kaupunkisuunnittelu/asemakaavoitus/kaava-aloite

Relevant questions

Can the developer pay for the preparation of the plan? The direct cost of preparing a spatial solution at a specific location is essentially paid by the interested person, not the society as a whole. The planning solution must be decided, and the work of the planning consultant coordinated by the planning authority.

XI An effective and efficient planning system

Desired situation

The preparation of a spatial plan is a tool for the state, the local government, and the interested party for finding out the circumstances and the best spatial solution. Spatial planning fulfils the spatial needs of the society and guides spatial development in a balanced way. The planning system avoids the *pro forma* obligations to prepare spatial plans.

Data-driven monitoring of planning practices (e.g. duration of the planning proceedings, the number and content of objections, inviting the industry experts to participate) takes place to assess the functioning of the planning system and identify need for change. The spatial planning system and practices are scientifically analysed. The legislation of spatial planning is straightforward, up-to-date, and unambiguous to everyone; over-regulation is avoided.

The preparation of strategic plans addresses spatial issues that are important to the society – e.g. reducing environmental pressures and achieving national environmental goals, adapting to climate change, facilitating different modes of transport and reducing forced mobility, sustainable land and property policy, and ensuring equal opportunities for different social groups. The preparation of strategic plans is based on a time perspective that allows forecasting of the overall changes in the area.

To promote planning practice and the legal system, pilot projects are conducted, and international co-operation takes place to assess the applicability of innovative approaches in spatial planning in Estonia.

Conflicting land use interests are resolved as far as possible on the basis of spatial considerations and not on the basis of legal disputes.

Strategic spatial plans determine the principles and rules for the use of both urban and rural areas. The degree of accuracy of a plan depends on the specific location and circumstances; setting overly specific rules is avoided in situations where it is not necessary. General land use principles and rules are followed when making more detailed decisions. The plans are time- and place-based.

Problems

- The preparation of a spatial plan is perceived as an obligation, not as an opportunity to develop the best spatial solution and find out the relevant circumstances.
- Under the current Planning Act, it is possible to use a number of legal instruments to set building regulations for specific constructions: design criteria, a detailed plan, a comprehensive spatial plan, and local government or national designated spatial plan may be used. While this allows the most appropriate proceedings in each individual case to be chosen, it does not ensure a common understanding of the planning system between the parties.
- If the land use decision is made on the basis of purely legal and not substantive arguments, the parties may not understand the considerations of the decision or perceive it as just.
- Often, comprehensive plans are changed with detailed plans. This may mean that the comprehensive plan is prepared in too much detail and hinders the desired development, or that changes in general principles are allowed too easily.
- It is possible that a spatial plan is only prepared to formalise a spatial solution that has actually been decided upon prior to the initiation of the plan (e.g. the site selection resulting from the construction financing measure). In this case, the planning proceedings can only be a formality, repeating cooperation that has already been conducted.
- Plans have been prepared on the basis of so-called wishful thinking: for example, a significant increase in population or an increase in entrepreneurship is anticipated. Plans that are not consistent with real processes make it difficult to actually direct spatial development; population development can therefore be fragmentary and increase the overall costs of society.

Proposals for solutions

- During the plan ratification process, it is important to also look into substantive spatial considerations, in addition to checking compliance with the procedural requirements (e.g. in case of planning disputes between an interest group and the local government).
- More precise planning and construction proceedings must adhere to the general development principles and land use rules set by strategic spatial plans, frequent changes must be avoided.
- Achieving a high-quality comprehensive spatial solution under the guidance of a competent planner must be at the heart of the planning process. The plan must first and foremost be a comprehensive spatial solution for a specific location, not just consist of sectoral needs that are brought together in one space.
- National and global processes need to be considered in the planning processes. In areas where population growth is not anticipated, planning adapting to shrinking population must be implemented to improve the quality of life and achieve cost savings. Detail plans that are do not consider the current circumstances must be repealed.
- Updating the spatial plan as an instrument, also considering the additional possibilities created by digital solutions (e.g. interactions with other data systems).
- Data on planning proceedings must be collected (including with the help of digital solutions) across the country – this would make it possible to identify the development needs of the planning system.
- Promotion of spatial planning research and development and the incorporation of results in the preparation of the plans and in the development of the field.

Inevitable circumstances

Compared to countries that have had an overall societal setting that supports the development of a participatory planning system considering the functioning of the market economy for decades.

Estonia's experience in shaping the field of modern spatial planning is short. The sector needs continuous development. As a society, Estonia is still looking for the best ways to balance spatial interests.

Relevant questions

Does a good plan ensure high-quality use of space? No, the plan alone is not enough. The principles and conditions set out in the plan are implemented through other proceedings, the actual final spatial solution is significantly influenced by other considerations and decisions made by the competent person in addition to the plan. The quality of space and sustainable land use are affected, for example, by tax policy, changes in the business plan (only part of the proposed activity is implemented), economic conditions, circumstances of the design criteria, building permit stages, and the effectiveness of construction supervision.

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