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AMET

Instructions

Assessment of competing applications for a superficies licence

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Introduction

These instructions for assessment of competing applications for a superficies licence have been prepared foremost to facilitate the assessment of criteria set out in subsection 113[9] (2) of the Building Code. The Consumer Protection and Technical Regulatory Authority (CPTRA) takes the provisions of these instructions into account in the assessment of the specified aspects. Support questions provided in the description of the aspects of the substance of the business activities of the applicant, economic strength of the applicant, economic profit that accrues to the State and the social usefulness of the project assist the applicant in describing these aspects.

These instructions were prepared by Liina Roosimägi, Merilin Kraun, Nele Väits, and Martti Kangur. The report "Criteria for assessment of competing applications for a superficies licence for offshore wind farms" of the University of Tartu Centre for Applied Social Sciences (CASS), authored by Siim Espenberg and Janika Bachmann and commissioned by the CPTRA, has been taken into account in substantiating clauses 113[9] (2) 4), 5), 6) and 8) of the Building Code.

In supplementing the instructions, the opinions and proposals of developers of offshore wind farms have been partially taken into consideration. By letter of 21 April 2023, the CPTRA requested feedback on the instructions from the Estonian Wind Power Association and companies who have submitted applications for superficies licence to the CPTRA. The CPTRA received feedback from a total of eight companies.

Assessment of competing applications for a superficies licence

Where more than one application has been filed with the CPTRA concerning a delimited area in a public water body (hereinafter competing application), in relation to which no grounds apply for refusing to initiate superficies licence proceedings (see section 113[11] of the Building Code), the proceedings are initiated on the basis of the application that meets the aspects provided for by subsection 113[9] (2) of the Building Code. If these aspects are met by several competing applications, a competitive tender provided for by subsection 113[10] (1) of the Building Code is held. With respect to applications that did not meet the aspects of assessment, the CPTRA issues a decision to refuse to initiate the procedure for superficies licence.

The CPTRA conducts a conformity assessment of the competing applications on the basis of the 12 aspects set out in subsection 113[9] (2) of the Building Code. The principle of the conformity assessment is that applications for superficies licence must comply with the aspects set out in subsection 113[9] (2) of the Building Code. No points are awarded during the assessment, instead the compliance of the application with the aspects is evaluated.

1. Opinion of the relevant authority

The opinions and positions of other state authorities (Ministry of Finance, Ministry of Climate, the Environmental Board, the Police and Border Guard Board, Ministry of Defence, the Transport Administration, Ministry of Regional Affairs and Agriculture, Ministry of the Interior, etc.) in various areas, such as national security, the environment, continuity of provision of a vital service, operation of the state's communications, economy, are taken into account. After receiving opinions from relevant authorities, the CPTRA may ask the applicant to supplement the application. The CPTRA asks the opinion provided for in section 113[5] of the Building Code from ministries and their divisions as well as from local authorities that share a border with the specific sea area.

The applicant must submit the information necessary for a security risk assessment to the CPTRA (preferably in a separate document):

1. information on the applicant's ownership structure, substance of the business activities, economic strength, beneficial owner and activities in other countries;
2. information on the applicant's ability to finance the implementation and operation of the planned development;
3. if there are co-financiers, information referred to in points 1 and 2 on the co-financier; if there are sources of financing, information referred to in points 1 and 2 on the source of financing.

Applicants must answer the questions mentioned above to the best of their knowledge and should note that they may be asked additional questions at any stage of the superficies licence proceedings.

2. Guidelines and requirements stated in the relevant spatial plans

It is assessed whether the application complies with the maritime spatial plan, including the environmental conditions within the offshore wind areas. The CPTRA verifies whether the planned activity described in the application for a superficies licence is in accordance with the guidelines and requirements stated in the spatial plan, the data collected in the course of the spatial plan proceedings and whether the impact of the planned activity corresponds to the achievement of the goals set out in the spatial plan. It is primarily based on the Estonian maritime spatial plan[1] and the county-wide spatial plans of the sea area bordering Pärnu[2] and Hiiu[3] counties. The purpose of these spatial plans is to contribute to achieving and maintaining a good state of the marine environment and promoting maritime economy. With respect to applications for a superficies licence, it is assessed whether the applicant has based their planned activities on the requirements stipulated in the spatial plan in which areas and under which conditions activities can be carried out in the sea area. In addition, whether the applicant has based their planned activities on the long-term future vision of the Estonian sea area, which includes the good environmental state and versatile and balanced use of the Estonian sea area, which promotes the growth of sustainable blue economy[4]. At the same time, in case of certain areas and business activities, the options for concomitant use can be taken as a basis.

The application must specify how the buffer area has been taken into account, and it must be designated with separate coordinates. The buffer area is the area between two wind farms. The buffer area must remain within the area to be encumbered. According to the terms and conditions provided in section 5.6.5 of the Estonian maritime spatial plan, the minimum distance between wind farms to mitigate the effect of possible windbreak is the diameter of approximately eight wind farm turbine rotors to be added at a late date, a minimum of 2 km. No buffer area is required on the sides where the area is bordered by the boundary of the spatial plan, a shipping route or reserve area. The applicant of a superficies licence is required to leave a buffer area between two find farms. If no superficies licence proceedings have been initiated with respect to the applications for superficies licence, each applicant must account for a buffer area of at least 1 km within the area in respect of which they are submitting an application. If superficies licence proceedings have been initiated with respect to the application for superficies licence, the applicant of a superficies licence for the adjacent area must account for a buffer area of at least 2 km within the area in respect of which they are submitting an application.

[1] Available online: https://www.agri.ee/en/maritime-spatial-planning (15 April 2024). In addition, information about the Estonian maritime spatial plan is available at: https://mereala.hendrikson.ee/ (18 May 2023).
[2] Available online: https://maakonnaplaneering.ee/maakonna-planeeringud/parnumaa/parnu-merealamaakonnaplaneering/ (18 May 2023).
[3] Available online: https://maakonnaplaneering.ee/maakonna-planeeringud/hiiumaa/hiiu-merealamaakonnaplaneering/ (18 May 2023).
[4] Blue economy, also blue growth – sustainable maritime economy that includes all areas related to the sea: tourism, renewable energy, aquaculture, fishing, biotechnology, use of seabed minerals, etc.

3. Environmental considerations

The suitability of the planned activity in the environment based on the spatial plan in force and the available data, such as environmental restrictions, surveys conducted, environmental impact assessment, etc., is assessed. In the course of preparation of the maritime spatial plans in force (Estonian maritime spatial plan and county-wide spatial plan of the sea area bordering Pärnu and Hiiu counties), a great many environmental studies have been carried out. In the assessment of applications for a superficies licence, it is taken into account whether the applicant has considered the environmental considerations set out in the spatial plans in their planned business activities. If a superficies licence is applied for in an area where significant environmental restrictions are known, the applicant must take these restrictions into account in their business activities planned in the application for a superficies licence and it must also be described in the application. More detailed information about the impact of the planned construction work on the environment will be revealed in the stage of environmental impact assessment and further studies.

4. Substance of the business activities of the applicant

The principles of competence and expertise are complied with in assessing the substance of the business activities of the applicant. The applicant must be competent for the experienced performance of work to be carried out. Competence and expertise can generally be based on prior experience and education. Considering the volume, complexity and long-term nature of an offshore wind farm project, it can be assumed that the applicant has involved a competent team with relevant knowledge and experience or competent undertakings related to the applicant to prepare and manage the project. The competence and expertise of the applicant are assessed in the following areas: 1) competence of engineering skills in the construction, operation and decommissioning (demolition) of offshore wind farms; 2) competence in the field of energy; 3) competence in preparing a business plan and financial reporting; 4) communication competence in communicating with the local community and the public. The applicant must be competent to implement the project and have the necessary skills and knowledge in all the specified areas. Outlining, *inter alia,* prior professional experience and cooperation partners and giving specific examples in the respective area is suitable to describe the substance of business activities. In this stage, the applicant is not required to list their team in person or submit documents (diplomas, certificates) certifying the competence of the respective persons. In addition, the application should provide answers to the following questions:

- What prior experience does the applicant and/or their cooperation partner have in the planning and construction of offshore wind farms? Give specific examples.
- How is the transport and delivery of large-scale structures planned?
- How is the financial competence of the undertaking ensured? How do prior experience and ongoing projects support it?
- How is the smooth operation of the offshore wind farm ensured?
- How is the resolution of technical problems in the operation of the offshore wind farm planned?
- What activities are planned after the end of the design life of the offshore wind farm?

5. Economic strength of the applicant

The applicant assumes the obligation and liability for successful launch, operation and completion of the project, and therefore it is important that the applicant demonstrates their economic strength. If the applicant is a company founded for the purpose of building an offshore wind farm, its owners must be economically viable. The applicant must ensure the financial profitability of the project, which means that they must have a financing plan for the project. The applicant must have a business plan showing the costs and revenue of an offshore wind farm project by stages and according to the project schedule. Competent preparation of the business plan requires competence in the area of the operation of an offshore wind farm project and in the energy market. The aim of the CPTRA is not to verify or assess the applicant's business plan but to make sure that the business plan exists. In order to assess the economic strength of the applicant, audited annual reports and income statements of the previous three years must be submitted to the CPTRA. If the project is to be financed through a parent undertaking, these reports must also be submitted with respect to the parent undertaking. In addition, the application should provide answers to the following questions:

- Is the applicant a profitable company?
- How is it planned to finance the project?

6. Economic benefit to the state

Valuation of a public water body, creation of wealth or value in the state is assessed. Economic benefit to the local authority and the state at large is assessed, i.e. what accompanies the issuance of a superficies licence from the erection of a construction work or civil engineering work up to specific business activities in the public water body. Both material and immaterial as well as direct and indirect economic benefits to the Estonian state are assessed. Direct material benefit to the state may result from tax revenue, export revenue, and employment growth. Therefore, if the development, operation and decommissioning of an offshore wind farm includes cooperation with companies registered and operating in Estonia, the state will directly benefit from it materially. The indirect material benefit to the state may be, for example, a stable and secure economic environment, which in the case of an offshore wind farm project may mean the reliability and smooth operation of the power network. The infrastructure established or improved for the construction of an offshore wind farm that can also be used after the completion of the project also brings indirect material benefits. In addition, an offshore wind farm project may encourage tourism, create opportunities for cooperation with Estonian research institutions, and help to find innovative technical solutions. Direct immaterial benefits to the state include recognition for broader use of renewable energy and reduction of carbon emissions as well as patents for innovative technical solutions. Indirect immaterial benefits result, for example, from research and development, innovation and infrastructure improvements, which contribute to Estonia's economic growth and increase in the competitiveness of companies. The applicant is expected to provide a description of how the development of the offshore wind farm will generate economic profit that accrues to the Estonian state. In addition, the application should provide answers to the following questions (submitting specific cooperation agreements etc. is not required):

- Does the business plan foresee employment growth in Estonia? How many jobs are planned by estimate?
- Are there plans to establish or improve infrastructure in Estonia as part of the offshore wind farm project that could be used even after the construction is completed?
- Are there plans to use sea transport with low carbon emission in the course of the construction of the offshore wind farm?
- Are there plans to use new technical solutions in the course of the construction of the offshore wind farm in the development of which there are plans to cooperate with Estonian research institutions? For example, in the areas of structures, production, logistics, construction, etc. of the offshore wind farm?
- Are there plans to use new technical solutions in the course of the operation of the offshore wind farm, such as smart network solutions or operating as a network of independent frequency?
- Is the project planned to operate without state subsidies?
- Does the business plan provide for energy export?
- How is the maintenance supervision of the offshore wind farm planned? Does the applicant plan to use local cooperation partners for this?

7. Deadline for erecting and using the construction work to be built in an area in a public water body

The expected time of commissioning the construction work planned in the application, the planned life of the construction work and plans for future use of the area covered by the superficies licence if the planned life of the construction work is shorter than the term of the superficies licence applied for is assessed. One of the principles of administration of state assets arising from the State Assets Act is also to increase gains and avoid losses that the state stands to make from these acts and transactions[5]. A public water body is a public asset, and these principles must be kept in mind when issuing a superficies licence, particularly in a situation where a superficies licence can be issued for up to 50 years. It is probably not expedient to issue a superficies licence for an area in a public water body for 40–50 years if the planned life of a construction work planned in the area covered by the superficies licence is, for example, only 10–15 years and the applicant is not clear whether and if so, what activities are intended in the area covered by a superficies licence after the expiry of the respective period.

8. Social benefit of the project

The impact of the planned activity on employment (*inter alia*, the creation of additional jobs) and the connection of the project with other business activities (*inter alia*, use of industrial production and services of companies) are assessed. The impact on employment consists of, *inter alia*, the

[5] Subsection 8 (4) of the State Assets Act

creation of new jobs both during construction as well as subsequent business activities. For example, the establishment of an offshore wind farm may create additional jobs in ports that will later provide services to offshore wind farms. The social benefits of the project include a wider social impact that goes beyond the direct goals established for the project and may directly or indirectly impact the society as a whole as well as the local community. The project may affect the economy, social inclusion, the environment, well-being, education and erudition. The social benefits of the project in terms of economy refer to the possibilities of improving the economic situation of the region, increasing economic activity and creating new jobs. Local entrepreneurs would be able to offer their products and services, and different types of long-term cooperation with local entrepreneurs could also be useful. In economic cooperation, cooperation with, *inter alia*, companies in respect of impact assessment, studies, construction, subsequent operation is also assessed. The social benefits of the project in terms of social inclusion require introducing the project to the local community, explaining the impact of the project on various areas, and finding positive solutions for the affected groups. An offshore wind farm project directly impacts the environment, so the social benefits of the project in the area of the environment could be defined as how the project affects the promotion of environmental protection, offers sustainable solutions either directly through its operation or through accompanying activities in different stages of the project. The social benefits of the project on the well-being of the region refer to the improvement of the quality of life of the residents of the region. Improving well-being can result directly from economic benefits, but also from, for example, improving the infrastructure. The social benefits of the project in the area of education and erudition can result form, for example, training the local workforce required for the project as well as providing training on the construction and operation of the offshore wind farm, renewable energy, etc. to the public at large. In addition, the application should provide answers to the following questions:

- Whether and how is the involvement of the local community and local entrepreneurs and the use of local products and services in different stages of the project planned? Are there plans to organise the involvement of local entrepreneurs (accommodation, catering, transport, etc.) to provide services to the construction? How is the involvement of local entrepreneurs (e.g. website showing the necessary work and services to which local companies can submit tenders) planned to be organised?
- Are there plans to promote the possible concomitant use of wind energy and tourism/fishing/aquaculture, etc.?
- How is it planned to involve local companies in the different stages of the project? What part of the workload is planned for local companies by estimate?
- Are there plans to use companies registered and operating in Estonia as suppliers for the offshore wind farm project in the area of structures, logistics, constructions, etc. of the offshore wind farm?
- Are there plans to train local people to supervise the safety of the offshore wind farm?

9. Purpose of use of the area in the public water body

The compliance of the planned business activities or the compliance of other planned activities with the spatial plan is assessed. An important criterion for assessment is

compliance with the requirements set out in the maritime spatial plan. The activities in the public water body planned by the application must ensure the achievement and maintenance of the good state of the marine environment, but also ensure the economic benefits that are stood to be made from the use of marine resources. It is assessed whether the activities planned in the area covered by the superficies licence are based on the general guidelines of the maritime spatial plan which, in turn, are based on the long-term vision of the sea area and the need for concomitant use. The explanatory memorandum of the Estonian maritime spatial plan provides guidelines for each possible activity, and compliance with the maritime spatial plan is assessed according to the activities intended to be implemented in the sea area.

10. Compliance of the project with the aims provided for by the development documents of the state

The compliance of the planned activities with the preferences of the state in the use of the sea area are assessed. Aims provided for by the development documents of the state and the opinions of relevant authorities are taken into account as the preference of the state. In respect of the compliance of aims provided for by the development documents of the state, it is assessed in applications for a superficies licence whether the planned activity is in compliance with the aims provided for by the development documents of the state. It is important to assess the compliance of the planned activities with the development strategy *Estonia 2035*[6], the aim of which is improve and support the well-being of the people living in Estonia so that Estonia is the best place to live today and in the future. In addition, the performance of tasks provided for by the development plans is also assessed. The most important development documents that the applicant must take into account are the following: national strategy "Sustainable Estonia"[7], national strategy "Estonia 2035", national spatial plan "Estonia 2030+"[8], General Principles of Climate Policy 2050[9], Estonian Environmental Strategy 2030[10], Estonia's Development Plan for Adaptation to Climate Change 2030[11], Estonia's National Energy and Climate Plan 2030[12], Energy Sector Development Plan 2030[13], Estonian maritime strategy[14].

[6] Available online: https://www.valitsus.ee/strateegia-eesti-2035-arengukavad-ja-planeering/strateegia (18 May 2023)
[7] Available online: https://www.riigikantselei.ee/media/280/download (18 May 2023)
[8] Available online: https://planeerimine.ee/ruumiline-planeerimine/yrp/ (18 May 2023)
[9] Available online: https://envir.ee/kliimapoliitika-pohialused-aastani-2050 (18 May 2023)
[10] Available online: https://envir.ee/media/28/download (18 May 2023)
[11] Available online: https://envir.ee/kliimamuutustega-kohanemise-arengukava (18 May 2023)
[12] Available online: https://mkm.ee/energeetika-ja-maavarad/energiamajandus/energia-ja-kliimakava (18 May 2023)
[13] Available online: https://mkm.ee/energeetika-ja-maavarad/energiamajandus/energiamajanduse-arengukava (18 May 2023)
[14] Available online: https://www.envir.ee/keskkonnakasutus/merestrateegia (18 May 2023)

11. Preferences of the state for use of the area in the public water body

Assessment considers the preferences of the state as the owner of the sea area in the use of the sea area as well as the impact of the construction work to be built in the sea area and the impact of the related business activities on the environment. The CPTRA inquires this of relevant authorities. The relevant authority provides an opinion – in relation to the applicant and to the envisaged construction work – concerning their potential to endanger humans, property, the environment, national security, continuity of provision of a vital service, operation of the state's communications, a national defence object or the economy. The relevant authority may request – from any person and from the applicant – any documents or additional information that it needs in order to form its opinion. For example, the state may prefer to carry out the necessary subsequent planning stages in selected sea areas as a national project itself (or by an authorised party chosen by the state) and offer a superficies licence necessary for an offshore wind farm where environmental impact has already been assessed. In this case, the CPTRA assesses the continuation of the procedure for a competing superficies licence to be futile and returns the application (see subsection 113^2 (4) of the Building Code). It is also assessed whether it is a project important for the state, which is related to the achievement of the objectives established for the state. Among other things, cross-border cooperation and transnational agreements are taken into account.

12. Novelty of the technology envisaged to be employed in the innovation area defined in the spatial plan

It is assessed whether the application submitted for an innovation area has taken into account the criterion of the novelty or innovativeness of technology. The established maritime thematic spatial plan supports, *inter alia*, the development of wind farms in innovation areas. Chapter 5.6.3 of the explanatory memorandum of the Estonian maritime spatial plan states that based on the feedback to the draft plan and given the rapid development of technology, an innovation area for wind energy was also included in the spatial plan at the proposal of, *inter alia*, developers. The free area of fast ice intended for turbines and wind farms on floating foundations but also for other innovative solutions is located in the exclusive economic zone. Taking the innovation area into use does not require the prior exhaustion of other wind energy areas. Innovation area is a separately designated sea area of approximately 88 km^2. Taking the novelty of technology in the innovation area into account does not limit the use of technology already in use and does not establish additional conditions for the applications for superficies licences submitted there. The purpose of using an innovation area is to reduce costs associated with energy production, supporting the introduction of innovative solutions and giving the opportunity to use different technologies. In addition, the aim is to highlight Estonia as a country where innovative technologies are developed, which create opportunities for investment in the supply chain (e.g. shipping, ports, the construction sector, technology companies, and universities) and development thereof. The applicant must indicate in the application submitted for the use of an innovation area in which areas they intend to introduce novel solutions. The Estonian maritime spatial plan also promotes the concomitant use of the sea area, which means

that solutions for introducing novel technologies in conjunction with one another is also suitable in the innovation area.