

The Natura 2000 network in the European Union and Estonian law

Chapter 3.2. Protection of the Natura 2000 network
in Estonian law

Kaarel Relve Estonian Environmental Law Center. 2022.



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Photographs: Katre Liiv
Language editor: Gunnel Koba
Layout and design: Meeli Mets

Estonian Environmental Law Center
Telliskivi 60B/3, Tallinn 10412
<http://www.k6k.ee/>

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Foreword

Natura 2000 is a network of nature conservation areas in the European Union. The decision to form the network was agreed on in the Habitats Directive to protect the common natural heritage of the EU. Most of the nature conservation areas in Estonia are fully or partly Natura network areas. The protection of Natura 2000 is also not clearly distinct from other Estonian legislation in the legal sense, but is integrated into the regulation of the Nature Conservation Act. However, a considerable number of special requirements arise from the EU law, especially the case-law, which only apply to Natura sites.

This analytical review discusses the legal issues of the protection of the Natura 2000 network. The review is primarily intended for people who are not complete strangers to legal regulation, but who are not involved in the protection of the Natura network on a daily basis. The text is intended to supplement, not replace the numerous EU and Estonian guidelines which cover the protection of the Natura network. The authors intend to present the reference material without passing judgement in the review, but reserve, in some cases, conflicting opinions on the positions expressed in Estonian guidelines. Any defining or rephrasing is always also subjective to a certain extent. The opinions which are not directly based on the reference material are highlighted with comments such as 'the Estonian Environmental Law Center notes', etc.

The text covers pieces of legislation, judicial decisions, and other materials as at 1 November 2021. In order to ensure user convenience, the materials are linked in the text, where possible, not provided as separate footnotes or a list of references. A list of the main guidelines used can be found in the end of the review, however.

The review was compiled as part of the project NaturallyEst-LIFE, 'Piloting Natura 2000 communication in Estonia' (LIFE16 GIE/EE/000665), 2017–2022. The aim of the project was to discuss the challenges which have arisen in the protection of the Natura 2000 network in a manner which helps to solve conflicts of interests. The project was managed by the Estonian Fund for Nature. The main cooperation partners were the Centre for Applied Social Sciences of the University of Tartu and the Estonian Environmental Law Center (EELC). The university was tasked with assessing the impact of the project. The main role of the Estonian Environmental Law Centre was to provide free legal advice to land owners, officials, friends of nature, and others in the issues of the protection of the Natura 2000 network and to compile this review.

Kaarel Relve, lawyer of the Estonian Environmental Law Center, is highlighted as the author of the review, but many people contributed to the compiling of the work. The initial version of the two first chapters (chapters 1.1 and 1.2) was drawn up by Pille Priks, legal assistant and project manager of the EELC, but the text was broken down in depth by the communications manager of the EELC, Katre Liiv, who is also the author of the photos included in the review. The first draft version of the second chapter was compiled by Merlyn Mannov, lawyer of the EELC. Another lawyer of the EELC, Triin Jäädmaa, also wrote a sub-chapter which was

unfortunately left out of the final version due to changes in the structure of the review. We would like to thank all specialists who provided many useful comments and suggestions about the working version of the review.

3.2. Protection of the Natura 2000 network areas in the Estonian law

3.2.1. Characterisation and definition of the Estonian Natura network in the domestic law

The Natura 2000 network in Estonia consists of special areas of conservation and special protection areas like elsewhere in the EU (subsection 69 (1) of the Nature Conservation Act). The areas are protected as part of the general network of nature conservation areas: 92% of the areas protected in Estonia are at least partially Natura sites ([ELK 2020](#), p. 28). **Based on Estonian law, a Natura site is a protected area, limited-conservation area, species protection site, or an individual protected natural object** (subsection 69 (2) of the Nature Conservation Act). In 2020, the surface area of the Natura network areas in Estonia was divided as follows: limited-conservation areas 49%, protected areas 48%, species protection sites 3%, individual protected natural objects 0.005%, areas with an unspecified protection procedure 0.08% ([ELK 2020](#), p. 31).

Which area is a Natura site? In Estonian law, a Natura site may be protected as a national park, nature conservation area, landscape protection area, limited-conservation area, species protection site, or an individual protected natural object. National parks, nature conservation areas, and landscape protection areas are referred to as **protected areas**. The majority of the protected areas existed before the Natura network was formed. Most of the protected areas are at least partly also Natura sites. However, the existing protected areas were not enough for the formation of the Estonian Natura network. Thus, the regulation of a **limited-conservation area** was added to the nature conservation law. In practice, almost all limited-conservation areas are Natura sites. A species protection site or an individual protected natural object may also be a Natura site. **A species protection site** is a habitat which is permanently or periodically inhabited by a species, such as a habitat of a plant or a reproduction site of an animal. Those species protection sites which are located outside of protected areas and limited-conservation areas may be separate Natura network sites. An **individual protected natural object** may be a Natura site as some habitat types specified in the Habitats Directive are individual protected natural objects pursuant to the Nature Conservation Act, such as siliceous rocky slopes (8220) or caves (8310). Individual protected natural objects may also have become Natura areas accidentally, so to speak, as species or habitat types which are protected under the Natura network may be found in areas which were protected as individual protected natural objects before the Natura network was formed. For example, the Estonia Hill is part of the Raikküla-Paka conservation area. A terrain feature is protected as an individual protected natural object and the individual protected natural object is also a Natura site due to the Natura habitat types, such as a wooded meadow (*6530) found on the terrain feature (moraine). To be exact,

this individual protected natural object is not actually a Natura site, but a part of a Natura site which also includes another individual protected natural object, a landscape protection area, a limited-conservation area, and a species protection site. Thus, a Natura site may be protected in the form of several different protected areas, limited-conservation areas, species protection sites, and individual protected natural objects in Estonia. In conclusion, the answer to this question is very complicated. In practice, however, it is easy to check whether a certain piece of land is included in a Natura site by using the 'Nature conservation areas and Natura 2000 sites' map application of the Land Board.

In general, **large areas** are defined as Natura sites in Estonia, not only the specific sites which are especially important for preserving or restoring a favourable conservation status of a species or a habitat type. This decision was made to ensure a **buffer zone** for valuable habitats and **cohesion between the areas** ([Loodusveeb](#), 01.11.2021). Based on the above, Natura sites may include intensively used areas, such as settlements.

3.2.2. General protection rules of Natura sites

Many provisions of the Estonian law are relevant for the implementation of the directives. For example, the Atmospheric Air Protection Act limits the level of environmental noise and helps to prevent the disturbing of birds on Natura sites, among other things. **The requirements of the Habitats and Birds Directives are, however, mainly transposed by the Nature Conservation Act** and the legislation adopted on the basis thereof, such as the protection rules of conservation areas. The Nature Conservation Act does not impose a specific protection procedure of the Natura sites; the protection procedure primarily depends on the type of a specific protected area. In total, 97% of the Natura 2000 network areas are defined as limited-conservation areas or protected areas ([ELK 2020](#), p. 31). Therefore, the respective protection procedures are described in detail in sub-chapters 3.2.3. Limited conservation area and 3.2.4. Protected area. The most important common features of the protection procedures of the Natura sites are discussed below.

[The Environmental Board](#) organises nature conservation on all Natura sites. Pursuant to the Nature Conservation Act, the Environmental Board is the governor of those sites (subsection 21 (1) of the Nature Conservation Act), even though it would be more appropriate to refer to the authority as the 'guardian' of the sites, in essence. Management consists of the obligation to ensure that nature conservation goals are achieved on the sites, which includes making sure that the human activity on the sites allows achieving those goals. For example, building permits are not issued for Natura sites without the approval of the Environmental Board and the authority may not permit any construction works which may damage the site (clause 14 (1) 8) and subsection 14 (2) of the Nature Conservation Act). In general, the possessor of an immovable (e.g. the owner or tenant) may not prohibit officials of the Environmental Board from entering their immovable in connection with organising the protection of a natural

object in the immovable. The entry of a research worker who can present an appropriate certificate also may not be prohibited.¹

The conservation objectives of a site are defined at the most general level in the piece of legislation by which the site is protected nationally, as well as in the [list](#) of special protection areas and special areas of conservation submitted by Estonia. In those pieces of legislation, the habitat types and species protected in the site are referred to as the conservation objectives. The Estonian Environmental Law Centre highlights that pursuant to the EU law discussed in the previous sub-chapters, the conservation objective does not lie in a species or a habitat type, but what must be ensured in a specific area to enable achieving the overall objective of the network. In principle, the desired condition of all habitat types and species protected in the site should be specified as the objective, taking into consideration the importance of the specific area in preserving or restoring a favourable conservation status of the habitat types or species found in the site and in ensuring the cohesion of the Natura network. For example, for the purposes of EU law, the conservation objective of a conservation area is not a juniper grove (a habitat type), but improving the condition of the juniper grove in the site to excellent within ten years, see 3.1.2. Obligation to establish and implement protective measures appropriate for the ecological needs. Such site-specific objectives are generally prescribed by the management plans in Estonia.

Management plans are drawn up to achieve the nature conservation objectives on a specific site. It is not mandatory to draw up the plan. In selecting which sites to compile the plans for, the Environmental Board must prioritise the Natura network areas, however, especially those areas which require human intervention into the natural processes (e.g. regular cutting of grass) to ensure the preservation of the natural values.² The plan describes the site in general and the natural values found on the site as well as the factors affecting those values in detail. The plan provides an assessment of the condition of the species and habitat types protected and defines in detail the conservation objectives and the management activities required to achieve the objectives. The activities are divided into three priority classes:

1. essential activities;
2. activities required for achieving long-term conservation objectives and the related support activities, such as studying the performance of the management plan;
3. recommended activities.

The plans are usually compiled for ten years. The Environmental Board organises the compiling of the plans and approves the plans. The principles of compiling the plans are explained and the plans are published on the [website of the Environmental Board](#).

The Supreme Court has explained that different parts of the management plans are of a different legal nature. They are largely internal administrative action plans which do not regulate the rights and obligations of persons external to the administration. **A management plan as a whole must be treated as an administrative act**, however, or more specifically as

¹ Subsection 15 (3) of the Nature Conservation Act; [Regulation no. 60 of the Minister of the Environment of 28 May 2004](#) 'Terms of issuing a certificate to a research worker for movement on an immovable within a protected natural object and the format of the certificate'.

² Section 25 of the Nature Conservation Act; section 5 of [Regulation no. 60 of the Minister of the Environment of 20 October 2009](#) 'Procedure for the preparation and approval of the management plan and determining the person approving the management plan'.

a general order, as the plan partially has the characteristics of an administrative act (decision no. [3-3-1-81-15](#) of the Administrative Law Chamber of the Supreme Court, clause 20).

In addition to site-specific plans, species- and habitat-specific action plans are also compiled. **An action plan for the protection of a species** is drawn up for organising the protection of protected category I species, especially endangered species, such as the flying squirrel,³ and for other kind of achievement of a favourable conservation status of the species. The plan describes the biology, spread, and population of the species. It also includes the conditions for ensuring the favourable conservation status of a species, the risk factors, the conservation objective, and the prioritised operations required for achieving the objective, as well as the schedule and budget (section 49 of the Nature Conservation Act). The Nature Conservation Act also enables drawing up **habitat action plans** for ensuring a favourable condition of the habitat if the results of a scientific stock-taking indicate that the measures taken thus far do not ensure it or if it is required by an international obligation. (section 25¹ of the Nature Conservation Act). Action plans have also been drafted for the protection of bogs and heritage meadows. The action plans for the protection of a species and the habitat action plans are approved by the Environmental Board and published online.⁴

In order to achieve the conservation objectives of a site, **human intervention** into the natural processes may be required in the site. This is especially required **in the case of semi-natural biotic communities**. These are areas hosting communities of natural biota which have developed in the course of long-term human activity, such as grazing or mowing, such as wooded meadows, alvars, paludified meadows, fen meadows, coastal meadows, flooded meadows, grasslands on mineral soils, and wooded pastures. The activities necessary within the areas hosting semi-natural biotic communities are activities which promote the natural aspect and species composition thereof, such as mowing, grazing, and designing, thinning, or deforestation of tree and shrub layers. The Environmental Board may provide free tools to the possessor of the immovable (e.g. the owner or tenant) on the site for the activities required in the protected area, concluding a respective contract (section 17 of the Nature Conservation Act). **Nature conservation subsidies** may also be applied for from the Environmental Board for certain works for restoring semi-natural biotic communities (e.g. for removing coppice or repairing cowpens)⁵ and from the **Agricultural Registers and Information Board for the maintenance** (mowing and grazing).⁶ The possibility to receive tools or apply for subsidies does not mean that the performance of the works required for nature conservation is the obligation of the possessor of the immovable – this obligation lies on the state. On the other hand, the owner may not prevent the performance of the required works (subsections 17 (8) and (9) of the Nature Conservation Act). As a rule, the works are ordered by the Environmental Board and performed by private individuals.

³ The species in protected category I are listed in a regulation of the government. [Regulation no. 195 of the Government of the Republic of 20 May 2004](#) 'List of the species placed under protection in the protected categories I and II'.

⁴ [Action plans for the protection of species](#) and [habitat action plans](#) (01/11/2021)

⁵ [Regulation no. 62 of the Minister of the Environment of 1 June 2004](#) 'Procedure for applying for the nature conservation subsidy, review of applications and payment of the subsidy, the requirements for payment of the subsidy, the rates of the subsidy, and recovery of the subsidy'.

⁶ [Regulation no. 38 of the Minister of Rural Affairs of 22 April 2015](#) 'Grants for the maintenance of semi-natural habitats'. This regulation is, however, not adopted based on the Nature Conservation Act, but based on subsection 67 (2) of the European Union Common Agricultural Policy Implementation Act.

3.2.3. Protected area

Subsection 4 (2) of the Nature Conservation Act: Protected areas are areas maintained in a state unaltered by human activity or used subject to special requirements where the natural environment is preserved, protected, restored, researched or introduced. The following are protected areas: 1) national parks; 2) nature conservation areas; 3) landscape protection areas.

Most protected areas are nature conservation areas. National parks are protected areas of a special national value where landscapes and cultural heritage are protected in addition to the nature and which are aimed at preserving the balanced use of the environment (section 26 of the Nature Conservation Act).⁷ A landscape protection area or a nature park is a protected area which is primarily created for the preservation, protection, researching, and introduction of natural or heritage culture landscapes or their elements, but also for regulating the use of a landscape (section 28 of the Nature Conservation Act). In practice, each area is placed under protection by a separate decision in the form of a regulation of the Government of the Republic. The rules of protection of the area are also established by this regulation.⁸

Different nature conservation restrictions apply to different protected areas and the restrictions may also vary within one protected area. Protected areas are divided into zones which are subject to rules of protection with different degrees of strictness. Three types of zones with different degrees of strictness are described in the Nature Conservation Act. **A strict nature reserve** is a protected area whose natural status is unaffected by direct human activity and which humans are not even permitted to visit. There are next to no strict nature reserves on private land. **A conservation zone** is an area with a high nature conservation value which is subject to strict restrictions. Conservation zones are mostly located on state-owned land.⁹ The law does not differentiate different types of conservation zones; in practice, however, there are natural and maintained conservation zones. In the case of the former, the protection rules generally require that the natural processes are not interfered with (e.g. bogs, natural forests); in the case of the latter, however, constant human intervention is the rule (e.g. meadows), as the natural values could not be preserved otherwise. **A limited management zone** is an area of the lowest nature protection value which often connects areas with stricter degrees of protection and may serve as a buffer between a conservation zone and land with no nature conservation restrictions. Almost a half (50.8%) of the limited management zones of the protected areas are on private land ([ELK 2020](#), p 88). All protected areas are not necessarily divided into the three types of zones. For example, most protected areas do not include strict nature reserves. Protected areas also usually consist of several conservation zones and limited management zones. The number and locations of the zones are specified in the rules of protection.

⁷ In 2021, there are six national parks: Lahemaa, Karula, Soomaa, Vilsandi, Matsalu, and Alutaguse.

⁸ Parks, arboreturns, and forest stands, which are subject to common rules of protection, are an exception. [Regulation no. 64 of the Government of the Republic of 3 March 2006](#) 'Rules of protection for parks, arboreturns, and forest stands'.

⁹ In total, 97.9% of the natural conservation zones and 89.2% of the maintained conservation zones are state-owned. [ELK 2020](#), p. 88.



Kasari River in the Matsalu National Park

The protection procedure of protected areas is defined through the general provisions of the Nature Conservation Act, which may be specified with rules of protection. If the procedure has not been specified, the protection procedure arising from the general provisions applies. The most important are the general provisions concerning conservation zones and limited management zones (sections 30–31 of the Nature Conservation Act). In principle, economic activities, use of natural resources, erection of new construction works, staying of persons in the habitats of protected species (incl. in the habitats of plants) and staging areas of migratory birds, driving motor vehicles, off-road vehicles, or floating vessels, camping, building fires, and organising public events are prohibited within a conservation zone (subsection 30 (2) of the Nature Conservation Act). Exceptions to those restrictions can be established by rules of protection, but only to a limited extent. For example, gathering berries and other forest by-products, fishing and hunting activities may be permitted by the rules of protection, but not logging for economic purposes (subsection 30 (3) of the Nature Conservation Act). Pursuant to the Nature Conservation Act, extensive restrictions apply to human activity in a limited management zone by default, e.g. extraction of mineral resources, erection of new construction works, clear felling, and the use of fertilisers are prohibited (clauses 31 (2) 3), 5), 7), and 8) of the Nature Conservation Act). On the other hand, exceptions to those restrictions can be made by the rules of protection and such exceptions are common in practice.

The protection procedure on the basis of the Nature Conservation Act and the rules of protection. For example, the issue of intensive felling, i.e. regeneration cutting or clear cutting and shelterwood cutting in the Kõnnumaa landscape protection area¹⁰ is regulated as follows. The rules of protection of the Kõnnumaa landscape protection area¹¹ divide the protected area into six conservation areas and four limited management zones. Logging for economic purposes is prohibited in conservation areas pursuant to section 30 of the Nature Conservation Act. Exceptions to this prohibition in the rules of protection are not permitted. Clause 31 (2) 5) of the Nature Conservation Act prohibits regeneration cutting in limited management zones as well, but the prohibition may be relieved by rules of protection. The rules of protection of the Kõnnumaa landscape protection area permit clear cutting in the grey alder groves in the limited management zone of Kõnnumaa in the extent of a felling site of up to one hectare, and shelterwood cutting in the limited management zones of Kõnnumaa and Ohekatku in the extent of a felling site of up to two hectares, with the felling in the Ohekatku limited management zone only permitted between 1 August and 31 January (clauses 15 (2) 3) and 4) and subsection 15 (3)).

Any protected area may be fully or partially included in the Natura network. A special protection area or a special area of conservation may be included in any type of zone, but the most valuable sites from the perspective of the objectives of the Natura network should be included in the composition of strict nature reserves or conservation zones. The Natura sites in the protected area are listed at the end of the respective rules of protection in the form of a so-called footnote. The Natura species and habitat types protected in the protected area are specified in the beginning of the rules of protection as conservation objectives. Those objectives may be specified by management plans, action plans for the protection of species, or habitat action plans.

The regulation of the zones of protected areas does not include any special provisions for the Natura network sites. However, **the provisions of the Birds and Habitats Directives and the case-law of the Court of Justice must be taken into consideration in drawing up the rules of protection and implementing the standards on the Natura sites.** For example, in dividing a protected area into zones and specifying the protection procedure of the limited management zone, it must be made sure that the regimes applicable to the limited management zones (exceptions to the prohibitions specified in subsection 31 (2) of the Nature Conservation Act) may not hinder the achievement of the conservation objectives of the area or the objective of the Natura network in general. In granting approvals and permits, the national law must be interpreted in compliance with the EU law as much as possible. Furthermore, it should be kept in mind that the provisions of the directive may have a direct effect, but the state cannot rely on the direct effect in a matter involving a private person, see 1.3. The meaning of the directives in applying Estonian law.

¹⁰ See those definitions in clause 28 (4) 1) and sections 29–30 of the [Forest Act](#).

¹¹ [Regulation no. 41 of the Government of the Republic of 25 April 2019](#) 'Rules of protection of the Kõnnumaa landscape protection area'.

3.2.4. Limited-conservation area

Subsection 4 (3) of the Nature Conservation Act. A limited-conservation area is an area designated for the protection of habitats and sites, the preservation of which is ensured with an assessment of the impact of the proposed activities and where activities detrimental to the favourable condition of the area are prohibited.

Subsection 32 (2) of the Nature Conservation Act Destruction or harming of the habitats for the protection of which a limited-conservation area was formed, significantly disturbing the protected species, and all activities which are likely to endanger the favourable conservation status of the habitats and protected species are prohibited within a limited-conservation area.

Before accession with the EU, it was clear that it would not be possible to form the Natura 2000 network solely based on the existing protected areas. Further areas were placed under protection as limited-conservation areas ([explanatory memorandum to the Nature Conservation Act](#), p. 30). In practice, **almost all limited-conservation areas are Natura areas**. About half (47.7%) of the land under the limited-conservation areas is privately owned ([ELK 2020](#), p 88).



A pair of mute swans with cygnets in the Väinamere Special Protection Area. Kassari, Hiiumaa

Limited-conservation areas are placed under protection in the form of a regulation of the Government of the Republic like protected areas. Unlike protected areas, those areas are placed under protection by county.¹² The regulation for placing such areas under protection specifies the locations of the areas and the protected species and habitat types, but not the protection regime, as **the protection regime of those areas arises directly from the Nature Conservation Act. A uniform regime applies to all limited-conservation areas and in the entire extent of the area**, no rules of protection are compiled for those areas and there are no zones. Subsection 32 (2) of the Nature Conservation Act cited in the beginning of this sub-chapter is focal for the protection regime of a limited-conservation area. Implementation of the provision must, above all, be ensured by the Environmental Board by issuing permits and approving permits, plans, and other documents. Thereat, the provisions of the Birds and Habitats Directives and the Court of Justice case-law must also be taken into consideration, in addition to the regulation of the Nature Conservation Act applicable to limited-conservation areas. The Estonian law must always be interpreted in compliance with the EU law as much as possible, see 1.3. The meaning of the directives in applying the Estonian law.

The implementation of subsection 32 (2) of the Nature Conservation Act always calls for an assessment to identify the impact of a specific activity on the natural values protected in the limited-conservation area. The assessment may take place in the form of an environmental impact assessment (EIA) or a strategic environmental impact assessment (SEA), see 4.1.2. Natura assessment and (strategic) environmental impact assessment. The Nature Conservation Act prescribes a special permit for the assessment of the impact of certain activities (notification concerning a limited-conservation area). Those are, in general, small-scale activities for which no further permits are often required. Specifically, the following activities are listed in the Nature Conservation Act: construction of a road, removal of natural rock or soil, altering the water levels and shorelines of bodies of water, use of biocides and plant protection products, cultivation and fertilising of natural and semi-natural grasslands and polders; cutting trees located within areas that have the characteristics of a wooded meadow, construction and reconstruction of land improvement systems, and collection of reed. The possessor of the immovable located in a limited-conservation area must submit a notice to the Environmental Board if they intend to perform those operations outside of their yard area. The notice must describe the works planned, the volume of the works, the time of performing the works, and include a scheme specifying the place where the works will be performed. The notices must be submitted at least one month before the commencement of the works. The Environmental Board will decide whether the activity may have an impact on the Natura site and decide based on the assessment whether the activity may be performed and under which conditions. Thereat, the fundamental rights of individuals may not be disproportionately restricted to achieve the conservation objectives of a limited-conservation area.

¹² The Supreme Court has, however, taken the position that all limited-conservation areas referred to in the regulation must be placed under protection by a separate procedure for the purposes of the Nature Conservation Act. Decision no. [3-3-85-10](#) of the Supreme Court *en banc*, clause 36.

Yard. *The term has not been defined in the Nature Conservation Act. The same term is used in different acts of law in the field of taxation, land surveying, and the environment, but has not been defined clearly in any of them. The Estonian Environmental Law Center believes that the term 'yard' is used in the Nature Conservation Act in a similar meaning as in the General Part of the Environmental Code Act which is the framework legislation for the Nature Conservation Act. Yard is the land which is in active use by the land owner. This land includes, for example, the land between a residential building and shed, as well as garden beds and orchards, see also comments to the General Part of the Environmental Code Act, clause 3.8.1.*

3.2.5. The constitutional nature conservation duty and compensation for restriction on ownership

Pursuant to section 32 of the Constitution of Estonia, the right of ownership means the right to freely possess, use, and dispose of one's property, but property may not be used contrary to the public interest. **As a rule, nature conservation requirements restrict the right of ownership.** The Constitution permits the restriction of the right of ownership by law, including for the purposes of nature conservation, but the restriction must be proportional. If the nature conservation restrictions imposed on a property completely or almost completely remove the possibilities of the owner to exercise their right of ownership, this may, in principle, factually constitute expropriation for the purposes of the second sentence of subsection 32 (1) of the Constitution (decision no. [5-21-3](#), of the Constitutional Review Chamber, clause 33). Expropriation of ownership without the consent of the owner is only permitted in the cases and pursuant to the procedure provided for by the law to serve public interests and for fair and immediate compensation. Nature conservation restrictions are, however, generally not treated as expropriation, even if the restrictions are stringent (decision no. [5-21-3](#), of the Constitutional Review Chamber, clauses 34–38).

Nature conservation is a constitutional duty of the state, but also the obligation of each and every individual. Pursuant to section 5 of the Constitution, the natural wealth and resources of Estonia are national riches which must be used sustainably. Pursuant to section 53 of the Constitution, everyone has a duty to preserve the living and natural environment and to compensate for damage he or she causes to the environment. The Supreme Court has taken the following position: 'Imposing nature conservation restrictions is justified by a strong public interest and the obligation of an individual to withstand nature conservation restrictions is generally high. The natural environment is constantly changing and thus the measures required for nature conservation or the extent of applying such measures may also change. The need for the implementation of such measures in the future cannot be fully foreseen and the entire responsibility for the restrictions on ownership accompanying the restrictions cannot be placed on the state. The third sentence of subsection 32 (2) of the Constitution prescribes the obligation of the owner to withstand those restrictions, prohibiting the use of their property contrary to the public interest' (decision no. [5-21-3](#), of the Constitutional Review Chamber, clause 41).

The Supreme Court has also stated the following: 'The Constitution does not call for compensation for any restrictions on ownership imposed on an individual in public interests. The Constitution also does not require the full and immediate payment of compensation if compensation must be paid. The damage caused to an individual by imposing restrictions on their property must, above all, be compensated if failure to pay the compensation would be in conflict with the fundamental right of equality arising from section 12 of the Constitution or with the principle of proportionality arising from section 11 of the Constitution. The Supreme Court has stated that a situation in which one or some individuals had to incur higher expenses in public interests than others who are also using the same means and resources created in the public interests would be in conflict with the principle of equality. /../ Thereat, the stronger the public interest justifying the restriction on ownership, the higher the obligation of an individual to withstand the restrictions imposed on their property without compensation (decision no. [5-21-3](#), of the Constitutional Review Chamber, clause 40).

In certain cases, compensation (subsidy) is paid for the alleviation of the effect of nature conservation restrictions on the right of ownership. The subsidies are paid from the budget of the European Union Common Agricultural Policy, thus, the details of payment of the subsidies change in each budget period.¹³ The **compensation for restrictions imposed on the use of forest land** can be highlighted above all.

Subsidies for private forest land. *Subsidies can be applied for private forest land subject to certain nature conservation restrictions, especially for the private forest land located on the Natura 2000 network sites.¹⁴ The amount of the subsidy depends on the strictness of the restrictions applied. In the event of the land which is subject to milder restrictions, the amount of the subsidy also depends on the total number of applications, as the total annual amount of the subsidies is fixed. In order to apply for the subsidy, the size of the forest area must be at least 0.3 hectares and it must be registered as a forest area in the environmental register. The applicant for the subsidy may not breach the requirements of the Nature Conservation Act or the Forest Act in the calendar year in which the subsidy is applied for. The mandatory management requirements and the good agricultural and environmental conditions must be ensured in the entire undertaking. The issues related to the subsidy are managed by the Estonian Private Forest Centre.*

Land tax exemptions may also be interpreted as a subsidy in a sense. The land which is under strict protection is fully exempt from land tax. In the case of the land with a milder protection regime, the tax rate applied is 50% (section 4 of the [Land Tax Act](#)).

¹³ For example, during the period of writing this review, it is possible to apply for subsidies for restrictions applicable to the use of the agricultural land located in the Natura network sites, but this measure will probably not be funded in the new budget period (2023–2027).

¹⁴ [Regulation no. 39 of the Minister of Rural Affairs of 22 April 2015](#) 'The Natura 2000 private forest land subsidy'.

Section 20 of the Nature Conservation Act also provides an **option to sell land which is subject to nature conservation restrictions to the state**. This is, however, only possible in specific cases. In general, the state only buys land which is subject to strict nature conservation restrictions and even then only if the owner was not aware of the restrictions upon buying the land or if the (strict) restrictions were not applicable upon buying the land, or if the land was acquired by inheriting or from a close family member who owned the land before it was placed under (strict) protection. Even if the aforementioned requirements are met, selling the land to the state may take years, as the means of the state for acquiring land are limited. The Supreme Court has taken the position that the procedure established by section 20 of the Nature Conservation Act is not designed for acquiring land in a situation in which the nature conservation restrictions are so strict that they can be approached as expropriation of the land, in principle (decision no. [3-16-812/16](#), of the Administrative Law Chamber of the Supreme Court, clause 13).