

1st call for proposals,
2nd call for proposals,
3rd call for proposals
Priority 3 Better network of harbours

Version 29.06.18

Annex 4

Complaint procedure

Commencement of complaint proceedings

A person, who finds that his or her rights are violated or his or her freedoms are restricted by an administrative act or in the course of administrative proceedings or measures may file a complaint. The purpose of the complaint procedure described below is to ensure effective examination of such complaints.

Complaint proceedings commence when a person files a complaint with an administrative authority, which is the Managing Authority of Estonia-Latvia Programme (hereinafter *programme*). A complaint shall be filed within thirty calendar days as of the day when a person becomes or should become aware of the challenged administrative act or measure.

Complaint procedure is a pre-court procedure, it is without prejudice to any mechanism or process for legal redress at national level.

Jurisdiction

If in Estonia supervisory control is exercised over an administrative authority by a minister, a complaint shall be adjudicated by the administrative authority, which issued the administrative act or took the measure, unless otherwise provided by law. As the Minister of Public Administration exercises supervisory control over the Managing Authority of the programme and the Managing Authority is the administrative authority, a complaint shall be adjudicated by the Managing Authority.

All complaints except for complaints related to financial control of partner reports shall be submitted to the Managing Authority of the programme by lead partner of the project.

Complaints related to financial control have to be lodged to the national responsible authority according to the applicable national rules by the project partner who is affected by the decision: in Estonia to the Ministry of Finance and in Latvia to the Ministry of Environmental Protection and Regional Development. Contact information can be found on the website of the programme.

Submitted complaints shall be proceeded in accordance with the procedure for complaints, as stipulated in the current document, and the Estonian Administrative Procedure Act in matters not regulated on programme level, including current procedure for complaints. English version of the Act, where chapter's 5 §71-§87 describe challenge proceedings, can be found in the following link: <https://www.riigiteataja.ee/en/eli/530102013037/consolide>.

Object of complaint proceedings

The following may be applied for in the frames of complaint proceedings:

1. repeal of an administrative act¹;
2. repeal of a part of an administrative act, unless partial challenge of the administrative act is restricted by law;
3. issue of a prescription to:
 - the issue of an administrative act;
 - new resolution of a matter – reviewing of a previously issued administrative act;
 - taking a measure.

Also, it is possible to file a complaint without an administrative act of the programme authority, in case of delay, omission, refusal to remove an official, return of an application for issue of the administrative act, other acts provided by programme rules and law.

Lodging the complaint and formal requirements

The complaint shall be submitted in English and in writing including:

- the name of the programme authority with which the complaint is filed;
- the name, postal address, telephone number and email address of the person filing the complaint;
- reference number of the application, which is a subject of the complaint;
- the content of the challenged administrative act or measure;
- the reasons why the person finds that the administrative act or measure taken by a programme authority violates the rights of the person: clearly indicated reasons for the complaint, including listing of all elements of which are being complaint and/or failures in adherence with the procedures or measures taken;
- the clearly expressed claim of the person filing the complaint;
- certification by the person filing the complaint that no judgment has entered into force and no court proceedings are being conducted concerning the matter subject to the complaint;
- a list of documents annexed to the complaint.

A complaint shall be signed by the person lodging the complaint or by the representative of such person. When signed by the representative, the complaint must include the authorisation document of the representative, unless such document has been submitted before. It is possible to submit digitally signed complaints electronically.

¹ Administrative act applies both public and private authorities.

The relevant documentation shall be provided for the sole purpose of supporting the complaint and may not alter the quality or content of the assessed application or other decision of the programme authority. No other grounds for the complaint will be taken into account during the complaint procedure.

Deficiencies in complaint

If a complaint does not comply with the requirements provided for above, the Managing Authority shall assist the person filing the complaint in eliminating the deficiencies or grant a term of 10 days to such person for elimination of the deficiencies.

Return of complaint

The complaint will be returned by the Managing Authority without examination in the following cases:

- the person has no right to file the complaint;
- the person filing the complaint has failed to eliminate the deficiencies in the complaint within the designated term;
- the term for filing the complaint has expired and is not restored;
- a court judgment has entered into force concerning the same matter;
- judicial proceedings are being conducted concerning the same matter.

The Managing Authority shall notify the complainant and the Monitoring Committee of the return of a complaint and explain to the complainant the procedure for appeal.

Handling of complaint by the Managing Authority and the Joint Secretariat

Within 7 calendar days after the receipt of the complaint the Managing Authority confirms to the complainant having received the complaint and notifies the Monitoring Committee.

The Managing Authority, assisted by the Joint Secretariat, examines the complaint and prepares a draft opinion and recommendations as a joint position to the submitted complaint for the examination of the complaint in the Complaint Panel.

The term for review of complaint is approximately three months.

Complaint Panel for the examination of complaints

In order to process the complaints, the Managing Authority has set up the Complaint Panel, which functions as the only body, which is entitled to review complaints and issue recommendations regarding the submitted complaints. The Complaint Panel provides its opinion and recommendations within the time period specified by the Managing Authority. The Managing Authority issues an administrative act based on the decision of the Complaint Panel.

The Complaint Panel comprises of representatives of the national authorities, lawyer(s), and representatives of the Managing Authority and Joint Secretariat, who is selected by the Monitoring

Committee for the whole implementation period of the programme. The Managing Authority is the Chair of the Complaint Panel. External experts, representatives of other programme authorities etc., will be used where necessary.

Impartiality of members of the Complaint Panel towards the case under review has to be ensured. If this cannot be provided, the distinct member shall refrain from the distinct case's review and be replaced by another impartial member.

The Joint Secretariat acts also as the secretariat for the Complaint Panel for the examination of complaints and provides any assistance necessary for the review of the complaint.

Preparations for the examination of complaints

The Joint Secretariat shall provide the members of the Complaint Panel for the examination of complaints no later than 10 working days before the meeting of the Complaint Panel a copy of:

- the submitted complaint;
- the original application form and all documents that are related to or were taken into consideration by the relevant bodies when taking the decision or measure against which the complaint is filed;
- a draft opinion and recommendations by the Managing Authority and the Joint Secretariat regarding the submitted complaint;
- any other document requested by the members of the Complaint Panel relevant to the complaint.

The Managing Authority with the assistance of the Joint Secretariat, if needed in consultations with the Complaint Panel, has the right to:

- conduct on-the-spot visit of inspection, if necessary;
- use an expert, if necessary;
- hear the explanations of interested persons;
- notify the respective lead partner and other interested persons of the time and place of the meeting of the Complaint Panel;
- perform other acts provided by the law.

Meeting of the Complaint Panel

A meeting (including an online meeting²) of the Complaint Panel is assembled by the Managing Authority, who chairs the Complaint Panel. The members of the Complaint Panel decide on each individual case whether there is a need to assemble or the decision on the submitted complaint is to be taken via written procedure by the Complaint Panel. Representatives of the relevant programme authorities are invited to the meeting to present the position of the examination of the complaint, to answer possible questions and to respond to the statement by complainant. Members of the Complaint Panel may request clarifications from both parties – the complainant and respective programme authorities.

² If necessary, the meeting of the Complaint Panel may also be conducted via Skype or telephone.

In case of disputes that arise during the implementation of the project, the national responsible authorities might be involved.

Decision on complaint

If the Complaint Panel is not able to create the recommendation to the Managing Authority by consensus between the Latvian and Estonian delegations, the Managing Authority and the Joint Secretariat, additional procedures may be decided in order to formulate its position. Administrative act regarding the complaint is taken by the Managing Authority.

Managing Authority upon review of complaint

Managing Authority upon review of the complaint, based on the decision of the Complaint Panel, has the right, by its decision, to:

- 1) satisfy the complaint and repeal an administrative act either wholly or partially and eliminate the factual consequences of the administrative act;
- 2) issue a precept for issue of an administrative act, for taking a measure or for new resolution of a matter;
- 3) issue a precept for reversal of a measure;
- 4) dismiss the challenge.

Administrative act regarding the complaint shall be prepared in writing and shall indicate the resolution concerning adjudication of the complaint. The administrative act of the Managing Authority is sent in writing to the respective person, respective Programme authorities and the Monitoring Committee within 7 calendar days after issuing the administrative act.

The issued administrative act of the Managing Authority is final, binding to all parties and is not subject of any further complaint proceedings within the programme based on the same grounds. A person whose complaint is dismissed or whose rights are violated in complaint proceedings has the right to file an appeal with the administrative court of Estonia.