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# ANALYSIS OF THE LOCAL BENEFIT INSTRUMENTS

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# EXECUTIVE SUMMARY

## Purpose of the study and research tasks

The focus of the study is on business agreements with local authorities and / or local communities in situations where the business involves a significant change or disruption in the area and the company makes financial payments or benefits to the local government or community (local benefits). The main focus of the study is to analyze the extent to which local benefit agreements increase the interest in tolerance, ie the acceptance of this type of entrepreneurship by the community and the local government. According to the terms of reference, the aim of the study is to analyze the financial benefit (local benefit) instruments of the local government and the local community of the company's place of business. According to the client of the study, the main focus of the analysis is to create possible bases for each agreement.

According to the terms of reference, from the point of view of the local government or local community, local financial benefits can be considered as financial compensation for significant environmental disturbance or significant land, water or infrastructure use, but all members of society must perceive and accept that changes in the environment and there is no financial compensation for the environmental impact within the norm. Based on the principle that the environmental impact must always remain within the norm and otherwise the activity is prohibited, the problem is still situations where the effect or disturbance remains within the norm, but there is still opposition to it. In particular, the need for compensation is therefore due to a change in the environment which the local population has not been able to anticipate and which has led to the expectation that it will be offset by other benefits. The local financial benefit from the entrepreneur's point of view is the cost or loss of income that is necessary to obtain the consent of the local government or local community to the operation of the business in a given location. The aim of the study is to analyze the financial benefit instruments of the local community and local government of the company's place of business (i.e. agreements for realization of local financial benefits) and the expected impact of legalization of agreements on realization of local benefits, ie to what extent such agreements would increase business acceptance. The study considers the effect of local benefit agreements on a change in the attitudes of local governments or local communities towards accepting proposed entrepreneurship in the area. The needs for regulating local benefit agreements and ways to make the expectations of the parties more clear, to make the agreements more transparent if necessary, and to encourage development activities (investments) with the consent of the parties were examined.

The study examines economic activity in the context of five situations, comparing the needs and attitudes of different parties through the eyes of local governments, communities and entrepreneurs, analyzing the legal framework and everyday practice as well as the solutions of other countries in similar situations. The study focused on agreements for the construction of wind farms, the development of commercial or residential land on forest or agricultural land, the construction of buildings with a significant spatial impact (such as a larger factory), the extraction of construction resources, and the construction of mobile masts on private land.

In the study

- financial benefit (local benefit) agreements between the local government of the company's location and the local community are analyzed;
- a legal analysis of the implementation of the agreements is carried out;
- based on the experience of other countries and placing them in the Estonian context, it is assessed if these solutions could increase the interest in tolerance in Estonia;

- it is analyse and recommendations made which indicators or indicators could be used as a basis for concluding agreements between the parties;
- recommendations are given for possible changes in the organization of local benefits (including possible changes in legislation to fine-tune the field) and possible alternative legal solutions (eg drafting guidelines, clarification) to ensure equal treatment of parties, legal certainty, transparency of agreements and flexible and win-win agreements.

The aim of the legal analysis that is part of the study is to assess how it is legally possible to implement corporate and local government financial (local) benefit instruments in a situation where legislation regulates the issue only to a limited extent and there is a risk of fundamental constitutional rights (property, freedom of establishment ) infringement or even infringement. The legal analysis examines:

- What legal problems arise in Estonia from the vague legal basis for the implementation of local benefit instruments?
- What are the constitutional requirements for local benefit instruments?
- What are the alternative legal solutions that are in line with the law (including the Constitution) and transparent?
- What are the frameworks for the law applicable to local benefit instruments and what are the legal bases for possible agreements, including in relation to (i) public (financial) obligations; (ii) the right to property, freedom of establishment and non-discrimination; (iii) the regulation of administrative procedure?
- What are the alternative legal options for the legal application of local benefit instruments in different situations (in the sample situations underlying the study: construction of a wind farm, conversion of commercial land or forest land; construction of a building with significant spatial impact; construction of a mobile mast on mining);
- Would and what legislative changes be necessary for the lawful implementation of local benefit agreements?

The study is aimed at mapping the current situation, identifying the expectations and needs of the parties and analyzing the practice of other countries in similar cases. Based on this analysis, the study also aims to suggest practical solutions for legal alternatives. A survey of local governments will map out whether and in what areas agreements have been concluded. The general picture is mapped, how much local governments have experience in concluding local benefit agreements in similar situations. Local governments that have concluded agreements can describe in more detail how this has been done and what their experiences have been so far. The focus groups discuss why the previous solutions have been just like this and what are the expectations and needs of local governments. Comparing this with the legal analysis, an overview is created whether any current opportunities have not been used (eg local governments are not aware / aware of the opportunities), whether any opportunities need to be created (eg at the legislative level, through contractual forms at the local government level, etc.). would need to be changed (problems encountered). In order to suggest possible solutions, it is analyzed what legal solutions could be, at what level and what they could be (incl. What could be solved with discretion, there are possible dangers-restrictions-opportunities).

At the validation seminar, the researchers gave an overview of the research results and the solutions presented as proposals were discussed with the representatives of the participants as the most important parties. 40 people participated in the validation seminar and their feedback was taken into account when compiling the study report.

## Previous research and the context

Estonian practice in concluding and implementing such agreements is uneven and entrepreneurs have pointed out the ambiguity that hinders economic activity. The possible differences in the practice and terms of the agreements between regions, in turn, raise questions about how to ensure equal treatment and avoid the potential risk of corruption. The significance of the subsidies already made has emerged as problems if the building still does not come, the significance of the social infrastructure charge has been raised by landowners. The vague legal basis of the agreements has also raised questions. There is no comprehensive overview of the practice of local benefit agreements in Estonia. The studies have dealt with this mainly in the case of agreements concluded due to mining (incl. Oil shale mining), from which it has been concluded that the need to conclude agreements arises from causing environmental problems and related damages and their impact on local residents who expect compensation for damages.

In the international analysis, the concept of local benefits is considered more broadly than the definition of the basis for the agreements to be concluded in each case, defined as the focus of this study. According to the terms of reference, the study did not focus on tax issues, but in response to the customer's request, we replaced the analysis of three contracts with the analysis of local tax feasibility in the case study of local government contracts.

The results of the local government survey conducted during the analysis showed that the practice of using local benefit agreements in Estonian local governments is rather low (only a quarter of local governments approved the conclusion of local benefit agreements), limiting them to up to 5 agreements. The answers of the respondents revealed that the dispersion of the practice is high, ie in the case of more numerically more agreements, they are concentrated primarily in two areas. Dozens of agreements have been concluded by a few local governments in connection with the change of buildings or land use with significant spatial impact, but most local governments have entered into agreements for the extraction of construction mineral resources.

Based on the analysis of Estonia's current practice and discussions with the parties, and on the basis of the experience of countries analyzed as comparative examples of international practice, possible solutions have been presented that could be considered. In the case of solutions used in model countries, it must be taken into account that their implementation is framed by the state government, economic and legal context specific to each country, which is why they cannot be transferred directly to Estonia. These are all important aspects influencing the internal functioning of the complete solution and the suitability of the implementation mechanism depending on the purpose.

## Main findings

The analysis of international practice highlighted the importance of organizing and improving the local benefit-sharing process and strengthening the capacity and skills base at the local government level for the successful implementation of local benefit agreements. Broadly similar solutions are used. Critical aspects are whether the benefit or compensation reaches the affected people or the community, and whether the benefit-sharing process is transparent and inclusive of local people and the community. For solutions where the local level or community or local resident does not participate in the decision-making mechanism, it is important that the benefit or compensation reached by the local person or municipality is disclosed in a way that is understandable to the community.

It is incremental to increasing tolerance towards business activities that bring negative impacts that

- the compensation or benefits reach the party that lives in the zone of these negative effects,
- transparency and involvement in the decision-making process is ensured to respective parties,
- agreements are disclosed, community is informed of these agreements and the compensations.

Based on the preliminary analysis, the expectations of the different parties can be summarized as follows.

- Expectations for local governments are primarily related to the legal competence of officials (incl. To negotiate with developers) and the ability to build an inclusive cooperation model, as well as the local government financing model, which would support local government motivation to allow / encourage entrepreneurship.
- Entrepreneurs' expectations are first and foremost equal treatment, predictability of obligations and burdens, equal treatment of market participants, state policy choices (eg where wind turbines are allowed / national defense restrictions), clarity of local government expectations creation). The community's expectations of businesses are first and foremost linked to an objective impact assessment that takes into account all the significant impacts, and businesses, like local people, want the way in which compensation is provided to reach those affected.
- Expectations for the state are related to the goal of regionally balanced development: is it seen as a need to define restrictions as uniformly as possible across Estonia or to give maximum decision-making power on the ground. Related to this is the distribution of the receipts related to the negative impact between the state and the local government, the local government's decision-making possibilities regarding the method and amount of compensation.
- The survey showed that communities want more involvement in decision-making processes. There is a need to build more trust in the organization of local benefit agreements. The risk that the measures or benefits offered will not alleviate the impact on the victim must be mitigated.

The focus of the study was to establish the basis for each agreement, which would ensure that compensation reaches those directly affected / the community and equal treatment. The validation seminar emphasized the importance of keeping decision-making power as low as possible. As the current practice of local benefit agreements is low in Estonia and different solutions are used in the countries internationally selected as model countries, the choice of the basic starting point is important. Any limitation or condition imposed will limit each discretion. Local authorities also need to be active in cases where the local population and / or community representatives and the business cannot reach an agreement.

The state is expected to ensure policy consistency, as companies invest in the long term and the policy should also take into account the large impact on the business environment (eg during the global economic downturn, resource fees were raised when turnover fell). Transparency and equal treatment of companies can be ensured by establishing the basic principles for the use of local benefits in a public document, eg in the local government development plan, by the council, but the local government could decide more precisely on the basis of agreed principles.

It is also important to increase transparency if companies themselves are motivated to publish contracts. This makes it possible to disclose both the company's contribution to the local community and the way in which it contributes. Such voluntary registers are used in the United Kingdom, for example.

Comparing the practice of local benefit agreements for the **construction of wind farms** with the practice of other countries, it can be said that similar solutions are generally used. In the case of wind farms, used as instruments

- property (individual ownership, co-ownership),
- compensation for the local population,
- funds for projects or studies,
- personal contracts.

In Estonia, both property and community compensation payment models are used. There are no legal norms in Estonia that would regulate the compensation of local residents and communities for the disturbances

associated with the use of the environment in case of noise, vibration or odor. The characteristics on the basis of which the agreements have been concluded have been the production volume (kilowatt fee), ownership (possibility to acquire units), contribution to the community (eg payments to the community NGO). In principle, it is also possible to consider a model of financial compensation, in which case the basis for calculating it is important in order to balance possible expectations with opportunities. At the same time, it is important to ensure that there is no double burden.

In Estonia, a solution similar to the Danish co-ownership scheme has been used, but to a limited extent. It is expected that the possibilities of using such a scheme would be quite limited in Estonia, similarly to Denmark, as only a relatively small number of people have free funds to invest. According to a 2019 survey, half of Estonian people have savings and 39% do not save. At the same time, one third have savings in the amount of up to 3 months' salary, slightly more than a tenth in the amount of 4–12 months' salary and only 5% in the amount of more than one year's salary. 17% (incl. 2%) of the Estonian population assess their level of knowledge in financial matters as high, 60% as average and 20% as low. Unfortunately, the survey did not confirm that all residents would use their financial knowledge to increase the family's economic well-being and confidence. Only 12% of the population have long-term planners and investors. Saving money on a current account (42%) and depositing cash (28%) continue to be the most common way of saving, financial services tend to use various loan options, insurance and deposits, but the availability of investment products remains relatively low. Against the background of the low use of investment products so far, the implementation of the co-ownership scheme would require a significant change in people's attitudes and an increase in investment readiness.

In the case of Estonia, the use of a financial compensation scheme similar to Denmark may be considered, but it is important on what basis and in what way such compensation would be calculated and who would be the subjects of the scheme.

In the Estonian context, the Danish so-called green scheme can be considered not as an instrument of local benefit, but rather as an environmental charge, as the costs are covered by electricity consumers' energy taxes and distributed on the basis of local government applications and the wind farm developer does not incur separate costs. However, given the legitimacy of compensation mechanisms in Denmark and the purpose and rationale for implementing this scheme, this scheme has also been addressed in this study. According to an interview with a Danish expert, the so-called green scheme was valid until 2018. The reason for changing the green scheme was that the implementation of the scheme did not increase people's support for wind farm developments, as local governments could not effectively return money to communities living near wind farms (ie the actions taken did not directly benefit the affected target groups). . As of December 2019, a new measure will be developed to replace the green scheme so that people living near wind turbines can start applying for money to compensate for the negative effects.

In the case of wind farm developments, there are no mitigation measures established by law in Estonia, which is why both the local government and the local people in the affected area do not have an understanding of what local benefits can be shared and what can be demanded to compensate for disturbances. When regulating the practice of concluding agreements, it is necessary to agree on which objects and for which criteria it is possible to conclude agreements, and visual pollution must be considered as one of the disturbances. In practice, it is difficult to take into account disturbances that are difficult to quantify (eg visual pollution) in mitigating their effects. The developers of the wind farms who participated in the focus group discussion suggested that market participants could voluntarily agree on good practice. In this way, it would essentially act as an opportunity for self-regulation, which is seen as one of the strongest opportunities for transparency and confidence-building in the implementation of policies, with the participation of a large majority of market participants, which would give legitimacy to this solution.

If the aim is to strengthen local democracy and active communities, leaving such decisions to the local level will increase the capacity and skills base of local people to participate in and implement decisions, and thus increase local autonomy. However, in order to achieve these goals, it must also be supported by adequate



resources and the competence of officials. In addition to guidance material on the implementation of these schemes, it is important for developments to be approved by local people

- skillful implementation of schemes and instructional materials,
- knowledge of the local context, ability to identify the needs of local people, awareness raising,
- the involvement of the activities carried out in the local area and the involvement of local people.

Comparing the practice of local benefit agreements in Estonia in **changing the purpose of land use or constructing buildings with a significant spatial impact** with the practice of other countries, it can be said that similar solutions are generally used. It has been used

- community infrastructure tax, property tax,
- agreements in the permitting process,
- agreements to provide public goods, improvement fees.

The main focus of the local benefit-sharing solutions used in connection with the construction of land use change and / or buildings with significant spatial impact is primarily to cover the investment needs related to the development of infrastructure. Differences in national practice are reflected in whether obligations are imposed by law (eg flat rates) or are left to the negotiation of an agreement. In the case of Germany, for example, it is clearly defined that it is the responsibility of the public authorities to build basic infrastructure and that developers can be charged an upgrade fee. In the United Kingdom, however, as an additional tool for local government financial management, the option of giving local government the opportunity to link borrowing to an increase in expected tax revenues has been considered. This would allow local authorities to borrow money to build infrastructure projects or improve public space, given the region's expected increasing tax revenues - but would be essentially suited to more prosperous and promising developments and not so much to socio-economically disadvantaged local authorities. Compared to Poland, municipalities play a dominant role in the German urban planning process and, like Poland, use traditional European planning tools, i.e. master plan, development plan and building permit. As the overview of German practice shows, local benefit instruments are legalized in Germany in such a way that it is possible to finance the necessary infrastructure construction through the collection of improvement fees or to conclude voluntary agreements.

In Estonia, the agreements are primarily used for infrastructure investments. The characteristics on the basis of which the agreements have been concluded are due to the purpose of the land (investment in infrastructure) or the purpose of the building (investment in social infrastructure). Other countries also have taxes with a similar focus, but unlike the agreements, the tax is characterized by its uniformity and mandatory for all taxpayers. The introduction of the tax is expected to increase the costs of entrepreneurs and, on the other hand, reduce the possibility for local governments to make flexible agreements based on specific needs. With regard to social infrastructure charges, it is also important to take into account the scale of development when developing residential land, following the principle of the United Kingdom not to make development obligations so great that development is no longer economically viable.

Resource charges, pollution charges and also agreements for reclamation and compensation of additional burden on infrastructure are used in the **extraction of construction mineral resources**. Receipt of financial income for a local government or community for enduring an environmental disturbance is regulated as a fee for the right to extract, a fee for special use of water and an oil shale ash pollution fee (i.e. mandatory fees). It is important to avoid the risk of double taxation. The financial burden on operators in this sector as a whole must also be assessed before considering additional burdens. The characteristics on the basis of which the agreements are concluded are based primarily on the objectives of covering additional costs (compensation for additional burdens on the infrastructure) and environmental remediation (reclamation). In other countries, investment funds and other instruments are also used in the field of mining, but they are primarily related to mining activities with a larger environmental footprint.

Compensation for the effects related to the extraction of construction mineral resources is regulated by various environmental fees, but local governments receive only 25% of these revenues. However, the current equalization fund in the financing model of local governments equalizes the substantial interest of local governments in promoting entrepreneurship, as it is received as passive support. The current financing system of local governments does not motivate them to think actively about entrepreneurship, as the local government budget does not receive significant revenues related to entrepreneurship. Local governments also do not have the possibility to impose such local taxes or to determine the levels of state taxes collected on their territory by law to the extent that would have a significant impact on the decisions of companies. Most of the local government budget comes from personal income tax, followed by land tax, the rate of which can be established by the local government within the range allowed by law. Environmental charges are paid for the right to use natural resources and are distributed between the state budget and local government budgets in accordance with the proportions specified by law. In 2018, local governments received a total of approximately 18 million euros in environmental fees. Directing most of the mining right fee to local governments would help increase local government consent to developments.

According to the undertakings, the requirements for compensation for disturbances in the extraction of construction minerals have, over time, become essentially part of the permit conditions and thus the limit values are in place. According to mining companies, the mitigation of the effects of disturbances can be regulated by issuing mining permits. Pursuant to clause 56 (1) 9) of the Land Act, the mining permit shall specify the measures applied to ensure the protection of the earth's crust and the rational use of mineral resources and to reduce the environmental disturbance arising from mining for human health, property and the environment. In the field of mining, companies consider it reasonable to compensate for the effects of direct disturbances. When defining the area of influence, it is expedient to proceed from the residences of people affected by development disturbances, which is why the area of influence may not be limited to only one local government territory.

The total volume of burdens of companies extracting construction mineral resources can reach up to 60% of the company's annual budget, therefore, if local benefits are to be shared in this area, the burden of financial burdens on both the state and the local government must be analyzed. Rather, consideration should be given to changing the internal proportion where the share given to local government could be increased in order to channel the local benefits of entrepreneurship to the local community. In addition, it must be borne in mind that the motivation of the local government is increased by seeing the direct connection between the business taking place in the territory of the local government and the amount (s) received by the local government. The amounts received by the equalization fund for the local government have no direct connection for the local government with business, as well as with the successful mediation of the interests of entrepreneurs and the community by reaching agreements. Therefore, it is important to strengthen the local government's motivation to support the agreement of the common part. From a development point of view, it seems difficult for entrepreneurs to build new quarries and rather to carry them on the basis of old permits (eg permits for mining up to 30 years), extending them if possible, because it is difficult to start in new areas.

For entrepreneurs, the burdens borne by both the local government and the state are a whole, ie money that must be given away, so when considering any new burdens, the existing burden on companies operating in the respective field must be taken into account in order to avoid a disproportionate burden. In order to increase local tolerance in the field of construction mining, consideration should therefore be given to redirecting money without increasing the current corporate tax burden. As the effects in the field of mining are local (eg environmental damage, depreciation of infrastructure, crowding out of taxpayers from already invested areas) that local governments have to deal with, local governments expect most of the mining rights fee to go to local budgets.

## Recommendations

As a regulatory policy, local benefit agreements also include restrictions on the parties' activities, which may have programmed potential conflict, as the distribution of different benefits may put them in a better / worse position and the decision-making process on how to reach specific agreements / decisions. At the same time, local benefits as a result of regulatory policy are redistributable (eg the company compensates for the negative impact, pays a fee for the use of the resource), which makes it much more difficult for different parties to reach a consensus. Policy implementation mechanisms are becoming increasingly important, both in terms of the transparency of decision-making and monitoring mechanisms, and in terms of stakeholder involvement and organization. When considering and deciding on such policy options, the involvement of the various parties and the substantive discussion and negotiation of possible solutions are particularly important in order to create a stronger basis for the proposed solutions and to put them into practice. The clarity and unambiguity of the rules is very important in order to create a perceived equal treatment of the parties, which must be based on the transparency and comprehensibility of both decision-making processes and monitoring mechanisms.

Key issues to consider when choosing a solution.

- Creating a common space of understanding. The study reflected the different perceptions of the parties about the nature of local benefits as well as the possibilities for concluding agreements.
- Creating motivators. It is especially important to create motivators for the local government, which are related to both the funding model and the scope of decision-making. The current financing model of local governments is not so much related to supporting local entrepreneurship as to the person's place of residence according to the population register, according to which personal income tax is received in the local government budget. Companies receive a small part of the local government budget (eg 25% of resource taxes to the local government vs. 75% to the state), which is not sufficient as a motivator according to the local government or entrepreneurs. At the same time, the opposite proportion, according to entrepreneurs, motivated local governments in the past.
- Ensure equal treatment, both in terms of transparency of decision-making processes and reduction of the risk of corruption.

### The essence and benefit sharing mechanism of the local benefits

Local benefits to a local government or community are financial payments or other benefits provided as an enterprise's expenditure if the enterprise's activities involve a significant change in the use of land, water or infrastructure at the site or significant permanent environmental disturbances (eg noise, air pollution, increased infrastructure maintenance). Receipt of financial income from the local government or community of the place of business of companies for tolerating environmental disturbance is regulated in the case of the fee for the right to extract, the fee for special use of water, the pollution fee for oil shale ash. There is no legislation to compensate local people and communities for environmental nuisances such as noise, vibration or odors. In the light of the principles of equal treatment (including between market participants and between economic operators and public undertakings), transparency of decision-making processes and legal certainty, it is important to decide whether the latter distortions are mandatory and, in this case, universal thresholds.

In the case of local benefit agreements, it is important to define their precise content and scope, as the views of the various parties differ considerably here. In order to avoid ambiguity due to the often divergent perceptions of the parties, it is necessary to define the precise focus of local benefit agreements - whether they aim to compensate or prevent negative effects or to obtain community consent.

According to local residents and community representatives, in addition to compensating for possible negative effects, it is important to motivate the developer to minimize the disturbances that occur in order to minimize the impact of these disturbances on the residents. One solution here can be to link the amount of compensation to the extent of the interference caused.

The acceptance of a disruptive business by the local community is significantly influenced by the understanding and perception of whether the business is offering something back to the community to prevent, mitigate or compensate for the disruption. The current interference compensation regime does not sufficiently support this. Firstly, the fees paid for disturbances are mainly received by the state, and on the other hand, local governments do not always communicate the connection of the receipt of these funds with this business activity. In the event that additional local benefit agreement (s) is / are concluded, publicity and clear communication of these agreements to local residents is likely to help them agree to the developments.

The resources raised by the imposition of charges or taxes designed to increase, prevent or reduce the negative effects of tolerance must be directed to the parties or regions directly affected in order to prevent or mitigate those effects. On the one hand, the importance of the simplicity of the mitigation system was emphasized, which would not require local benefit agreements, but the state would collect enough tax money to cover other necessary costs and disruptions. Thus, a solution could be considered where the mitigation system is simple and should help to avoid imposing additional economic burdens on businesses. If a decision is made to introduce a local tax, care must be taken to ensure that the costs of administering the local tax do not exceed the tax revenue received. Operators in the wind energy sector have expressed a willingness to enter into local benefit agreements, as disruptions in their business are less regulated.

#### Recommendations

- Unambiguously define whether and on the basis of which disturbances that are not regulated at the level of law (noise, vibration, odor), are subject to compensation. It is expected that it is appropriate to define limit values for disturbances that are subject to mandatory compensation.
- Decide whether local benefit agreements are compensation for external costs. The current divergence of views is one source of tension, which means that more unambiguous clarity in the concepts will also create a better ground for accepting disruptive economic activities.
- Minimize possible negative effects and, if this is not possible, compensate for the negative effects in a way that would primarily compensate for the effects on its immediate subject.
- When considering the impact, not on the area of the source but on the magnitude, distribution and duration of the impact.
- Design the distribution of fees to compensate for negative effects so that the compensation reaches, in particular, the people and regions affected by the negative effects.
- In areas where current limit values define the need to repair or compensate for damage, avoid imposing additional obligations on current limit values.

#### Decision-making process and implementation mechanism

Some local suggestions reflected impacts that reach the individual level directly and the significant burden of fully compensating for their implementation (eg replacement fee for a residential building, purchase of a pre-existing property in another area, or "buy-out") could lead to such closures in the area. The preliminary work of the state and the local government is all the more important in order to clearly map resource agreements, plans, etc. and agree with the local government in which areas such a resource base exists (eg wind, construction minerals) and in which regions / borders it can be used. Such knowledge would enable both entrepreneurs to better plan their activities and, for example, potential buyers of real estate and local residents to take into account possible developments and constraints. The NAO has also drawn attention to the need for similar preliminary work in developing regional development plans, saying that currently local governments often do not think about which companies and where they would like to see and what needs to be done in their territory, and often the inability of rural municipality or city government to take a position on the planned investment.

At the same time, as entrepreneurship and jobs sustain life in these areas, it is important to give local authorities a stronger motivation both to make decisions about local life and to link them to greater financial autonomy to create opportunities for different types of business development. The more decision-making

power is directed to the local government level, the more it must be accompanied by an increase in financial autonomy, so that local governments have a real opportunity to both see and direct the effects of their decisions.

#### Recommendations

- Through the funding model, create motivation for local governments to mediate the conclusion of agreements between business and the community and help them reach an agreement.
- Make agreements public and make them easy to obtain. If the agreements are not yet easily accessible, local community representatives and businesses believe that they must be easy to find and at least published on the municipality's website, and it is sensible to publicize the agreements, ie advertise (ie oblige the local government to inform) that information reaches all members of the affected community.
- Support the development of good practice. Good practice companies would position themselves in the market as reliable developers with a so-called quality label, which would probably mean smoother and more effective negotiations with local communities and local governments.
- More active, relevant involvement in development discussions; the involvement of local communities in discussing the effects of disturbances must always take place, regardless of the number of people living in the affected area.
- Where possible, preference should be given to a written agreement between the three parties - the developer, the local authority and the local community - so that the parties are equally involved and needs are taken into account in the best possible way.
- When compensating for the impact of disturbances through the NGO, attention must be paid to the balance and openness of this management model in order to avoid possible conflicts within the community and to ensure the purposeful use of money.

#### **As general principles for compensating for local benefits, we recommend the following.**

- In the case of disturbances with a critical limit set by law, the compensation obligation must be uniform and the enforcement mechanism universal.
- Compensation is targeted at the community affected by the local activity or object and not at the local government or the state at large.
- The company must know in advance what conditions and obligations apply to them. Compensation must be related to the impact of a specific object or activity. It is not justified to expect the company to compensate or support objects that go beyond the scope of the sample situations, just as they do not have a legal obligation to do so.
- At the same time, it is not enough for the community to monitor compliance with the limit value alone - negative externalities can be felt even if the legal limit values are kept. Compensation must reach those whose lives are actually deteriorating as a result of the business. Residents see the fixation of pre-operational local conditions. This would be an adjunct to the current mechanism, where there is still a noticeable decline in welfare if the limits remain within the limits.
- In particular, the recording of local conditions is recommended for the construction of mines, which is the most disruptive model situation based on the current practice of communities. However, the recording of circumstances is justified and strictly recommended for other exemplary situations. The assessor who would fix the situation must be chosen in cooperation with the entrepreneur and the local (community, municipality).
- For all five scenarios covered in the report, and more broadly, the cost of building, managing and maintaining the infrastructure associated with the site or activity must be borne by the company until the end of the activity.
- Entrepreneurs must be guaranteed equal treatment, regardless of the size or other characteristics of the company. In the case of an object or activity of a similar scale, the compensation cannot differ according to the characteristics of the company.
- It is good practice for the community and business to disclose local benefit agreements as part of the detailed planning procedures.

## Legal alternatives

A survey of local governments showed that most of the opinion-giving local governments (23 out of 30) consider it necessary to regulate the conclusion of local benefit agreements, as this directly affects local residents, imposing an obligation or burden on an entrepreneur should be in accordance with or on the basis of uniform criteria. The creation of legal norms provides a legal basis for the use of the received funds for the development of local government. The entrepreneur or developer would take better account of the needs of the local community and, as a result, it would be easier to cooperate with the parties in processing the detailed plan. Avoid misunderstandings and omissions and establish a framework that is uniformly understood by all parties, including the financial amounts of fees or benefits provided. Increasing the transparency of agreements and ensuring equal treatment of developers. Counter-arguments were pointed out that regulation at the level of law does not provide greater certainty for reaching agreements. Over-regulation at the level of law will limit the activities of the parties, which will lead to a decrease in the autonomy of local governments. Regulation may prevent the local community and their needs from being taken into account, depending on the specific situation.

Property rights, freedom of enterprise, Administrative Procedure Act, encumbrances and public financial obligations (ie local benefit instruments as an inherently local tax or encumbrance) require a legal basis for the implementation of local benefit instruments, regardless of the form of administrative activity (administrative act, administrative contract or private contract). At present, the legal bases for the implementation of local benefit instruments are not unambiguous and the existing law needs to be supplemented with such bases. Regulatory intervention is not only needed by companies concluding agreements directly with the local community (eg an NGO established to promote local life). Such an agreement can be only one of many considerations for the local government in the subsequent permit procedure and cannot alone affect the non-issuance of an administrative act. Agreements that do not require a legal basis must be strictly voluntary. In response to the request made by the contracting authority in the course of the study, the implementation of local benefit instruments through the possibility of introducing a local tax has also been analyzed.

As a result of the analysis, two main alternative legal options for creating opportunities for the implementation of local benefit instruments can be pointed out on the basis of the practice of other countries and the results of the analysis conducted in Estonia. One possible solution is to regulate the implementation of local benefit instruments through the introduction of a local tax. To this end, the object of the tax, the taxpayer and the tax recipient must be provided at the level of law. This option would ensure equal treatment of addressees, while leaving local governments free to decide whether or not to impose a local tax. An additional obligation could also be foreseeable for the addressee. However, the introduction of a local tax would not ensure the flexibility of the local benefit instrument. Another set of changes could be the provision of possibilities for the implementation of local benefit instruments in PlanS, EhS and MaaPS when creating a basic norm authorizing the conclusion of a contract and allowing it to be established as a condition of planning and / or building permit and mining permit (analogous to PlanS § 131). Such regulation of local benefit instruments would allow cases to be regulated according to the specifics of this situation, ie a wider decision-making space of local governments in concluding agreements would be ensured. At the same time, however, greater discretion creates the risk of unjustified unequal treatment.

## In conclusion

The focus of this study was on the analysis of the basis for each agreement. The focus of the study was to establish the basis for each agreement, including 1) how to increase the tolerance interest in the five model situations on which the study was based, 2) how to ensure that compensation / benefits reach the local population, and 3) how to ensure equal treatment of entrepreneurs. The study showed that the concept of local benefit first requires a broader agreement, which in Estonia is understood as local benefit agreements,

and whether it is a matter of benefit sharing or compensation for some kind of disturbance. The choice of possible solutions depends on the goal. When compensation, it is necessary to clarify to whom and on what basis. When sharing benefits, clarity is also needed to whom and in which cases. The study showed that other countries do not always have one-off agreements but also use taxes and other charges. The study examined how to increase the interest in tolerance, ie the readiness of the community to accept entrepreneurship in the five sample situations on which the study was based. The study does not include an analysis of the socio-economic impacts of the implementation of solutions used in other countries in Estonia, but was limited to assessing the applicability of instruments used in other countries in Estonia based on the Estonian context and taking into account problems and limitations in other countries.

Estonia's experience so far with local benefit agreements is relatively limited (this was confirmed by only a quarter of local governments and the experience of most is limited to 5 agreements). Based on international experience, the study assessed the expected impact of using different instruments to increase tolerance and potential applicability in the Estonian context. This study presents considerations and possible alternatives for establishing a basis for each local benefit agreement. Finding the most appropriate solution requires a thorough policy-making consultation process with stakeholders.