Activity Permits Granted by the Maritime Administration

Summary

The State Audit Office audited the organization of the activities of the Maritime Administration, related to the issue of activity permits, sufficiency of the legal grounds for the issue of activity permits and other procedures implemented by the administration, but also the necessity for the implementation of such permits.

The Maritime administration issues the activity permits according to the provisions prescribed by two legal acts – Maritime Safety Act and Merchant Shipping Code. Presently, the number of valid activity permits is approximately 200.

The State Audit Office has formed an opinion that the implementation of activity permits as a restriction to the participation in entrepreneurship is justified only in case it is seen as an attempt to manage risks to the health, life and environment of people.

Essential conclusions

- The State Audit Office did not identify any violation of legal acts that regulate the issue of activity permits and the supervision of the activities of the holders of the permits. The Maritime Administration has specialists with the special education and experiences necessary for such work; the administration has also established relevant procedures for the implementation of respective proceedings.
- The legal acts mentioned above do not provide for the causes and objectives for the implementation of activity permits.
- The legal acts do also not establish the criteria to be observed in the issue of permits, arising of the Merchant Shipping Code. This is in contradiction with the Constitution – the conditions and procedures, to be used as the grounds for giving a person the right to be involved in some kind of entrepreneurship, must be established with law.
- Substantial requirements to the applicants of activity permits only arise of the Maritime Safety Act, but there are no formal procedures which would enable to check whether the applicants comply with the requirements. The decisions of the Maritime Administration, stating whether the permit applicant complies with the requirements arising of the legal act or not, depends, above all, on the qualification and motivation of the official giving the assessment. It is the opinion of the State Audit Office that due to the general wording of the requirements established to the applicants and lack of legal grounds there is no way to exclude an opportunity that the permit is granted to a person lacking the necessary competence; this also increases the danger of unfair treatment of individuals.
- It is the opinion of the State audit Office that the activity permits issued on the basis of the Merchant Shipping Code do not manage the risks to the health, life and environment of people, therefore, such permits are not necessary in their current form.
- The issue of activity permits and implementation of supervision over the permit holders, arising of the Maritime Safety Act, forms a part of the procedures of the Maritime Administration, implemented to check the compliance with requirements established to water crafts / maritime safety regulations. In substance, when granting the permits, the Maritime Administration is managing the risk of the individuals purchasing works and services from the holders of permits not getting works and services with a quality not acceptable for the classification associations and the Maritime Administration. It is the opinion of the State Audit Office that the state should give up the provision of such services, above all, in spheres where the requirement for the recognition of entrepreneurs on state level is not directly arising of international conventions.
- The state institutions are not liable to control whether the state fees charged are actually received by the state budget. In course of the audit no evidence about the problems with receipts was found.

Recommendations Made to the Minister of Transport and Communications by the State Audit Office

- To initiate the amendments to the Merchant Shipping Code, calling the current requirement for the activity permit, arising of the code, null and void.
- To consider the necessity for the activity permits, issued by the Maritime Administration pursuant to the Maritime Safety Act.

- In case it is decided that the requirements for the activity permit shall prevail, the legal acts should be rectified so as to:
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    - Specify the reasons and objectives for the implementation of activity permits;
    - The decisions made in the process of permit implementation should be less dependent upon the qualification and motivation of the officials (according to the Constitution, the requirements to be complied with for the purposes of obtaining a permit/recognition should be prescribed with law);
    - It would be possible to apply for the activity permit/recognition for a company in the process of being established.

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The Maritime Administration expressed its opinion concerning the recommendations made to the Minister. It is the opinion of the administration that the problems handled by the State Audit Office within the framework of audit are important and the audit gives a true picture of the situation. The audit has prompted the administration to review several problems related to the objectives and organization of the Administration, therefore supporting the attempts the Administration is making to take its management system into compliance with international quality assurance standards.

The reply given by the Administration shows that the Administration considers it possible to replace the requirement for an activity permits, arising of the Merchant Shipping Code, with the requirement stating that an entrepreneur has to be registered in a state register for entrepreneurs operating in areas requesting the compliance with special requirements, while the shipping agents are registered only provided they meet the requirement of having concluded and agreement on the collection and transition of lighthouse and ice breaking fees with the Maritime Administration. The administration considers the activity permits arising of Maritime Safety Act necessary (from the next year, the recognition of the entrepreneur), stating that the implementation of such permits arises of international conventions.

The Minister of Transport and Communications informed the State Audit Office that his opinion coincides with the opinion expressed by the Maritime Administration and that the ministry shall consider the recommendations accepted by the Administration in further activities related to the elaboration of legislation.

Recommendations Made by the State Audit Office to the Minister of Finance

- To submit a recommendation to the Government of the Republic to make amendments to the Government's Regulation No 140 of 11.04.2001 in such a way that the state institutions collection state fees and having the electronic means necessary for checking the receipt of such fees at credit institutions, should undertake the implementation of such control in practice, enacting also that state institutions lacking the means for controlling the receipt of fees electronically should ask for the original of a document evidencing the payment of such fees.

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The Minister of Finance informed the State Audit Office that resultant to the amendments made to the Administrative Procedures Amendment and Implementation Act that entered into force on August 1, this year, the collectors of state fees are not allowed to ask for the original of a document evidencing the payment of such fees, therefore it is inevitable for them to implement electronic tools for that purpose. It is the opinion of the Minister that there is no need to enact the respective commitment as an amendment to the Government's Regulation of 11.04.2001.

Jüri Kõrge
Head of Department of Audit of Operational Risks