

Interim review of the implementation of Rail Baltica

*How is the acquisition of immovables organised?
Has the Ministry of Economic Affairs and
Communications kept the project schedule and
budget up to date?*

Interim review of the implementation of Rail Baltica

How is the acquisition of immovables organised? Has the Ministry of Economic Affairs and Communications kept the project schedule and budget up to date?

Summary of audit results

The Ministry of Economic Affairs and Communications does not have complete information on how many and which immovables must be acquired for the construction of Rail Baltica

Immovable – plot of land and things permanently attached to it, such as buildings, standing crop, other vegetation and unharvested fruit. This audit report uses the term primarily within the meaning of a cadastral unit (plot of land).

Source: subsection 50 (1), subsection 54 (1) of the General Part of the Civil Code Act

Planning documents for the National Audit Office are plans, i.e. county plans, detailed plans (e.g. for Ülemiste terminal and Pärnu terminal) and building design documentation, incl. preliminary and detailed designs.

County plans serve as a basis for the preselection of the location of the railway route. The preliminary design completed in 2018 specifies the county plans and the detailed designs specify the preliminary design.

The schedule and budget for Rail Baltica need to be revised

During the implementation of the Rail Baltica project, the acquisition of **immovables** necessary for the construction of the railway has not proceeded at the planned pace. The time lag compared to the original deadline is nearly five years. It is still unclear how many and which immovables need to be acquired because the preparation of **planning documents** for the project is delayed. The cost of acquiring immovables is also unknown because, for example, more expensive immovables in Harju County are largely yet to be acquired, the need for immovables (location and size) is changing and the practice of determining the compensation value of immovables is still being developed and needs legal clarity.

- The Pärnu County Plan is expected to be adopted in the repealed part only in 2022. Detailed designs in Estonia for the entirety of the route were to be completed in 2018. It is currently estimated that all detailed designs will be completed only in 2023.
- In addition to the completion of planning documents, the implementation of the new Acquisition of Immovables in Public Interest Act in practice has taken longer than expected. The delay in the procedural process has been caused by land consolidation steps, incl. settlement of boundary disputes, also lack of persons performing land consolidation steps in prior proceedings. According to the data of the second quarter of 2021, 28% of all known immovables have been acquired. Continuing at the current pace, the acquisition of immovables is likely to end only in 2024.

The Ministry of Economic Affairs and Communications (MEAC) has not changed the schedule of the project, although it is clear that commissioning the railway to the extent of the entire route by 2026 will probably not be possible. The problems identified in the 2019 audit already indicated that the schedule would be exceeded. The partial repeal of the Pärnu County Plan, the delay in the completion of detailed designs and the prolongation of the process of acquiring immovables further strengthen the belief that the schedule needs to be revised.

TEN-T Regulation – Regulation (EU) No 1315/2013 of the European Parliament and of the Council on Union guidelines for the development of the trans-European transport network, and CEF Regulation, i.e. Regulation (EU) No 1316/2013 of the European Parliament and of the Council establishing the Connecting Europe Facility

- The final deadline for the completion of Rail Baltica has not been amended, although the time for carrying out the activities has extended. Therefore, project activities are concentrated over a short period of time. Procurement for works carried out over a short period of time may lead to the overheating of the construction market, causing an increase in construction prices. According to the European Union **TEN-T Regulation**, the Rail Baltica railway must be complete in 2030 at the latest.
- Rail Baltic Estonia OÜ (RBE) has taken the recommendations of the 2019 audit of the National Audit Office into account and the MEAC has taken the recommendations into account partially, but several important topics are still being developed or have been suspended.

MEAC does not know how much the acquisition of immovables and construction of the railway for the Estonian section of the Rail Baltica project could actually cost. The project budget for the entire Estonian section revised last in 2018 is no longer accurate as the scope and cost of the project activities, incl. price of immovables, has changed.

CEF grant agreement – a grant agreement entered into between RB Rail AS, ministries responsible for transport in the Baltic States, and the Innovation and Networks Executive Agency (INEA) representing the European Union, which sets out the activities necessary for implementing project sections, the time frame for implementing thereof, cost, financing from the Connecting Europe Facility, and sub-activities, which are generally carrying out the procurement and award of a procurement contract.

- With the specification of the project, the volume and need for works to be carried out as part of the project, for example, the scope and cost estimates of the activities agreed in 2014 in the **grant agreement CEF 1** are no longer accurate.
- The cost of acquiring immovables is affected by the number, location and compensation value of the immovables to be acquired. So far, it is not clear for all immovables how to assess their value.
- MEAC has not revised the project budget, but RBE's forecasts indicate that the project will end up more expensive than planned. For example, the composition and cost of the projects of the construction of Ülemiste and Pärnu passenger terminals have nearly doubled compared to the previous.
- It is necessary to find additional funds for financing the additional and more expensive activities of the project from other European Union funds as well. This, in turn, means that the Rail Baltica project also competes for funds that could be used to finance other infrastructure projects in Estonia.

Main recommendations

Fair consideration – pursuant to subsection 11 (2) of the Acquisition of Immovables in Public Interest Act, the consideration comprises the value of the immovable and compensation. According to international valuation standards, the fair value of an immovable shall be determined based on the market value of the immovable.

Recommendations of the National Audit Office to the Minister of Economic Affairs and Infrastructure:

- Review the deadlines for the procedural acts provided for in the Acquisition of Immovables in Public Interest Act (AIPIA) and initiate, in cooperation with the Ministry of the Environment, an amendment of AIPIA in order to adjust the methodology for assessment of compensation value in a manner that would ensure that land owners are paid **fair consideration** on transparent and uniform grounds;
- Revise the entire project schedule and bring the acquisition plan for immovables in line with reality, taking into account risks that may delay the schedule;

- Revise the comprehensive budget for the Estonian section of the project in the course of preparing the next state budget strategy, justify changes in the costs when amending the budget, thereby ensuring the transparency of the project budget and its changes.

Response of the Minister of Economic Affairs and Infrastructure:

According to the Minister, an amendment to the AIPIA has been submitted to the Riigikogu, which seeks to grant the authority that conducts the proceedings the right to determine the time-limits of proceedings. The Minister explained that the currently long durations of proceedings are largely due to the fact that the authority that conducts the proceedings has tried to consider the land owners as much as possible and acquire the necessary immovables by agreement. In order to solve the issues with forest land valuation, a methodology is also being developed, on the basis of which the value of a growing forest that needs to be acquired for the Rail Baltica project can be assessed. The comments of the National Audit Office about the valuation methodologies not ensuring fair consideration are declarative in the opinion of the Minister.

In his response, the Minister of Economic Affairs and Infrastructure noted that revising the estimated cost and schedule of the project is underway in cooperation between the MEAC and RBE. The revision of the cost and schedule will take into account the latest relevant information on each specific object or section. The Minister promised that the new specified cost estimate and schedule until 2026 will be prepared no later than upon the preparation of the State Budget Strategy 2023–2026.

Table of Contents

Overview of the area	5
Organisation of the acquisition or free transfer of immovables for the Rail Baltica railway in Estonia	5
The state does not have a complete overview of how many and which immovables need to be acquired for the construction of Rail Baltica	8
Planning documents identifying the land required for the railway have not yet been completed along the entire route	8
Due to the delay in the completion of detailed designs, it is not yet known for the entire route where and how many immovables are actually necessary to acquire	10
Acquisition of immovables for the railway takes longer than planned, which in turn postpones the final deadline for the entire project	11
Acquisition of immovables is not progressing according to the planned schedule	11
The process of acquiring immovables takes longer than expected	12
Completion of detailed designs and acquisition of immovables has taken longer than expected, but the final deadline for the completion of Rail Baltica has not been revised	16
Acquisition of immovables is likely to cost more than currently planned	18
The final budget for the acquisition of immovables is unknown	19
The budget for the Rail Baltica project has not been revised and the cost of activities is likely to exceed the initial estimates	22
The recommendations of the previous audit of the National Audit Office have been partially implemented, but the change and risk management systems are still being developed	28
Recommendations of the National Audit Office and responses of the audited	32
Audit description	38
Audit objective	38
Criteria for giving an assessment	38
Previous audits of the National Audit Office in the field of railways:	41
Appendix A. State budget funds used for the implementation of the Rail Baltica project in 2010–2020	42
Appendix B. Audit recommendations made in 2019 and their implementation	45

Overview of the area

For your information

Rail Baltica is an electrified railway line with a track gauge of 1435 mm for the transport of passengers and goods from Tallinn to the Lithuanian-Polish border.

The planned speed for passenger transport is 249 km/h and for freight transport 120 km/h.

Source: Website of Rail Baltica Estonia OÜ

1. The National Audit Office has previously conducted several audits on the Rail Baltica project.¹ With these audits, the National Audit Office has drawn the attention of the implementers of the project and the public to the fact that the project might not be completed on time and the cost of the activities is likely to exceed the initial estimates.
2. In the course of the 2019 audit, the National Audit Office recommended the MEAC to analyse possible scenarios of how to mitigate the risks of financing the project and to implement a project supervision and change management system (see cl 89–99) to improve project implementation.
3. While previous audits focused on the organisational structure of the project and the analysis of funding and schedule, the present audit mostly focused on how the acquisition of immovables² for the construction of the Rail Baltica railway is taking place. In addition, it was assessed how the implementers of the Rail Baltica project have taken into account the previous recommendations of the National Audit Office.

Organisation of the acquisition or free transfer of immovables for the Rail Baltica railway in Estonia

4. The immovables necessary for the construction of the Rail Baltica railway will be determined during the preparation of the planning documents (see Figure 1). In Estonia, a preliminary design of the railway sections and facilities was prepared in 2018, the preparation of which was organised by the Consumer Protection and Technical Regulatory Authority (CPTRA). In the Estonian section, the detailed technical designs are being prepared by the joint company of three states RB Rail AS (RBR) and Rail Baltic Estonia OÜ (RBE). RBR is responsible for the design of ecoducts, bridges and overpasses on the railway route and in the route corridor, and RBE is responsible for the design of local facilities, i.e. freight and passenger terminals, maintenance depots and local stations.

¹ [Overview by the National Audit Office of the agreement for the development of the Rail Baltica rail connection between the governments of Estonia, Lithuania and Latvia \(2017\); Funding and implementation of the Rail Baltica project in Estonia in 2014–2019 \(2019\); Implementation of the Rail Baltica project. Joint audit by the Estonian National Audit Office, Latvian National Audit Office and Lithuanian National Audit Office \(2019\).](#)

² Hereinafter, the word ‘land’ may, in addition to acquisition of the plot of land, also be used in the case of the acquisition of things permanently attached to it, such as buildings, standing crop, other vegetation and unharvested fruit. Here, the number of plots of lands is the same as the number of immovables.

Land acquisition plan is a plan for the acquisition of an immovable or for the establishment of limited real right necessary for the utilisation of building design documentation.

Source: Minister of Economic Affairs and Infrastructure Regulation No. 2 'Requirements for road building design documentation'

Cut – part of the plot of land, which is covered by the railway and its facilities. For example, only 4% of the area of all plots of land where the train will run overlaps with the Rail Baltica railway route. In the railway project, the route may also cut through the plots of land diagonally.

Source: Land Board (Q1 of 2021)

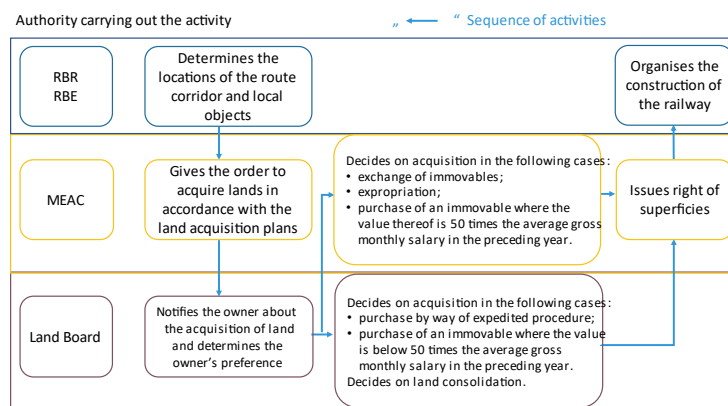
5. The task of the MEAC is to submit to the Land Board a list of immovables to be acquired by the Board for the state after receiving the **land acquisition plans** provided for in the detailed technical designs from RBR or RBE. In addition, the MEAC is responsible for organising the application for funds necessary for carrying out the project, financing the project, and acquiring immovables.

6. The acquisition of immovables for the Rail Baltica railway started in 2016 when the Ministry of the Environment, the MEAC and the Land Board entered into a cooperation agreement, according to which the Land Board is responsible for preparing the acquisitions. Among others, the Land Board must notify the land owner, determine the compensation value and find out which compensation measure the current owner prefers.

7. The decision to acquire land is made either by the Minister of Economic Affairs and Infrastructure or the Land Board as the authority that conducts the proceedings, for example, in the case of smaller **cuts**. In addition, the Land Board decides on land consolidation³.

8. The land covered by railway shall be acquired for the state before the construction of a specific bridge, overpass, ecoduct or section of the railway route commences. The construction of the railway on the territory of Estonia is organised by RBE. Applications for building permits for sections of the railway route and ecoducts, bridges and overpasses included in the route corridor are processed by the CPTRA, and applications regarding access roads, parking lots and waiting pavilions for local stations, the right of construction of which arises from the detailed plan of the local authority, by the local authorities.

Figure 1. Main activities of the Rail Baltica project and authorities carrying out the activities* in the process of acquiring immovables**



* RBR – RB Rail AS; RBE – Rail Baltic Estonia OÜ; MEAC – Ministry of Economic Affairs and Communications

** The scheme of the acquisition of immovables describes the acquisition of immovables from private owners. State lands are not acquired but are instead transferred to the Ministry of Economic Affairs and Communications.

Source: National Audit Office

³ Land consolidation steps included in the Rail Baltica project are the following in accordance with the Land Consolidation Act (subsection 2 (2)):

- 1) reallocation of an immovable or a part thereof;
- 2) exchange of parts of immovables;
- 3) change of the boundary of immovables;
- 4) division of an immovable;
- 5) joining of immovables;
- 6) establishment of the boundary of immovables; and
- 7) ascertainment of restrictions on immovable property ownership.

Acquisition of Immovables in Public Interest Act (AIPIA) – the AIPIA entered into force on 1 July 2018 and replaces the Immovables Expropriation Act in force until then.

According to the concept of the AIPIA, expropriation is part of the procedure for acquisition of an immovable in public interest and not the only option for acquisition.

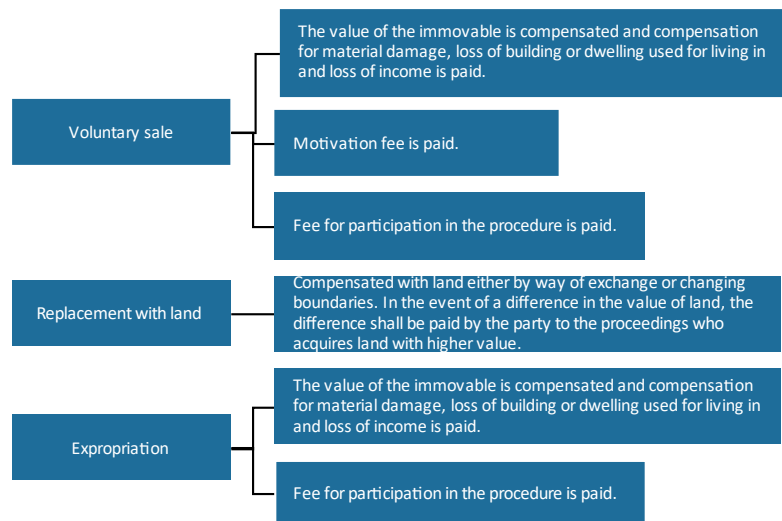
For your information

The shortcomings in the situation existing before the entry into force of the Acquisition of Immovables in Public Interest Act (AIPIA) have largely been eliminated: the option to pay motivation fee in the event of voluntary sale has been established, the option to use state lands for exchange has been expanded (previously, the difference in value could be 10%, now 30%), the number of parties to the proceedings has been reduced, the Land Board has been granted more rights in carrying out land consolidation activities.

9. The procedure for the acquisition of privately owned immovables for Rail Baltica is governed by the **Acquisition of Immovables in Public Interest Act (AIPIA)**, and the administration of state-owned immovables is transferred pursuant to the State Assets Act. In the event that the immovable is already administered by the MEAC, land consolidation is changed, incl. the purpose of the land is changed where necessary. The acquisition of immovables in municipal ownership has so far taken place pursuant to an agreement of acquisition free of charge.

10. As expropriation is the most time-consuming way of acquiring an immovable, the AIPIA now allows offering several options to the owner of the immovable to avoid this: purchase the land from the owner and pay an additional motivation fee, give the owner replacement land somewhere else, and other ways of changing land consolidation⁴ (see Figure 2).

Figure 2. Compensation options offered in the acquisition of an immovable in the context of the Rail Baltica project



Source: National Audit Office on the basis of the Acquisition of Immovables in Public Interest Act

11. Before the entry into force of the AIPIA, land owners preferred replacing the land required by the state with other land. In terms of time, this process takes longer than voluntarily selling the land to the state (see the average duration of different procedures in Figure 5). Following the entry into force of the AIPIA, replacement with land has been implemented in the Rail Baltica project for 17% of acquisitions (see Figure 3). Land owners have mostly (82%) preferred to sell immovables to the state.

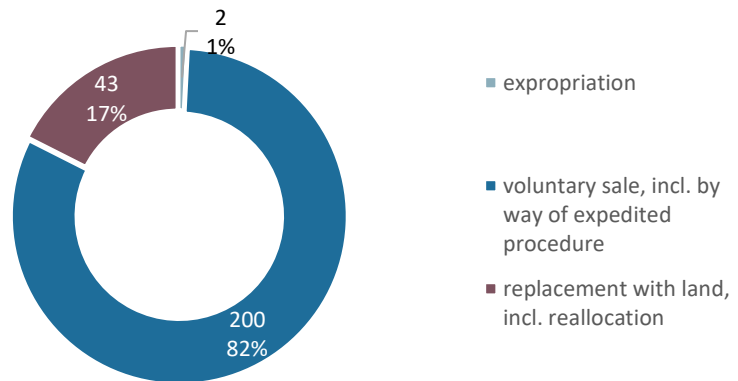
⁴ An immovable may be exchanged for another immovable owned by the acquirer of the immovable.

For your information

18 state-owned immovables have been transferred to the administration of the Ministry of Economic Affairs and Communications, 89 immovables are yet to be transferred to the Ministry in addition to the privately owned immovables.

Source: Statistics of acquisition by the Land Board (as at the second quarter of 2021)

Figure 3. Immovables acquired for the Rail Baltica route by acquisition procedures (as at Q2 of 2021)



Source: National Audit Office on the basis of the data of the acquisition decisions of the Land Board and the Ministry of Economic Affairs and Communications

The state does not have a complete overview of how many and which immovables need to be acquired for the construction of Rail Baltica

12. Before the acquisition of immovables can commence, it must be clear which land the state needs. The National Audit Office assumed that the necessary planning documents would not prevent the timely completion of the acquisition of immovables. The state must have the best available knowledge of the immovables necessary for the railway in order to prevent a situation where too many or too few immovables are acquired. Land cannot be purchased in excess of the actual need, because according to the AIPIA, only land necessary for the state can be acquired, excl. in the event that the land remaining for the previous owner can no longer be economically purposefully used. It is also not possible to use the European Union funding for the acquisition of lands that are not required for the implementation of the project.

Planning documents identifying the land required for the railway have not yet been completed along the entire route

13. The land to be acquired for the construction of the railway and the number and location thereof will become clear during design work. In order for the design solutions of the railway to be prepared, county plans must be prepared and adopted in advance.

14. The county plan ‘Determination of the Location of the Rail Baltica Railway Route Corridor’ has been established in full for Rapla County and Harju County. A preliminary design has been prepared for the route crossing all the counties. The detailed plan of the area of the Pärnu passenger terminal has been completed. According to the MEAC, the establishment of the detailed plan of the area of Ülemiste passenger terminal was planned for the last quarter of 2021. According to the revised information of the MEAC, the detailed plan of Ülemiste terminal will be established in the second quarter of 2022.

15. In 2020, the Supreme Court partially repealed the Pärnu County Plan on the territory of the city of Pärnu and Saarde and Häädemeeste rural municipalities. As at the end of July 2021, the proceedings of the repealed part of the county plan are in the stage of comparing different route alternatives. According to the forecast of the Ministry of Finance, the revised Pärnu County Plan will be established in the autumn of 2022.

16. Acquisition of immovables in the repealed route section in Pärnu County cannot commence before the establishment of the plan because it is not clear until the end of public discussions if and to what extent the location of the route will change compared to the location provided for in the plan repealed by the Supreme Court. According to the Land Board, the repealed route section covers nearly 66 immovables that may prove necessary for the state.

For your information

RB Rail AS presented the completion of design stages in percentages at the virtual workshop of the Rail Baltica auditing task force of the national audit offices of Estonia, Latvia and Lithuania on 20 May 2021 as follows:

	Estonia	Latvia	Lithuania
Optimisation of the value of the route corridor (Value Engineering)	60%	75%	100%
Detailed design	15%	25%	45%
Technical construction working documents	0%	0%	2%

17. According to the first CEF grant agreement signed in 2015, detailed designs were to be completed in Estonia to the extent of the entire route by 30 September 2018. In the course of the audit, the statements of the MEAC revealed that the detailed design in the repealed route section of Pärnu County will be completed only in 2023, in the other sections by 2022 at the latest. According to both the MEAC and RBR, it is already known that the completion of detailed designs in the Tallinn-Rapla and Rapla-Pärnu sections will be delayed by at least 5–6 months.

18. Both the MEAC and RBR foremost cited the effects of COVID as the reasons for the delay in preparing the detailed designs. Processing design solutions takes a long time because, according to the MEAC, RBR's approval procedures are complicated and the solutions submitted by them are not of adequate quality.

19. RBR, on the other hand, argued that the completion of the detailed designs has been hampered by a number of factors beyond their control. For example, as one of the reasons, RBR cited the decision of the CPTRA, according to which environmental impact must be assessed in all the Estonian sections of Rail Baltica. According to RBR, delays are also caused by the Supreme Court judgment repealing part of the county plan in Pärnu County, technical conditions of local authorities that have changed over time, the slowness of proceedings in agencies, the need to ensure interoperability with the infrastructure (e.g. Ülemiste and Pärnu passenger terminal, Muuga terminal, Ülemiste rolling stock depot), the development of which has commenced later than the design of the main route.

20. According to the CPTRA, the strategic environmental impact assessment for the preliminary design has been prepared with the level of detail of an environmental impact assessment, but according to the Environmental Board, it failed to assess the impact of deforestation in sufficient detail. In addition, the preliminary design solution has changed a great deal during the preparation of the detailed designs. The CPTRA has notified RBR of the risks to the impact assessment arising from changing the preliminary design.

Due to the delay in the completion of detailed designs, it is not yet known for the entire route where and how many immovables are actually necessary to acquire

Knowledge of the required immovables becomes more detailed and changes in the course of preparing detailed designs

For your information

Pursuant to the Acquisition of Immovables in Public Interest Act and subsection 13 (6) of the Act to Implement the Building Code and the Planning Act, immovables can be acquired on the basis of a plan and preliminary design documentation.

The original plan of the preliminary design was to design the railway with such level of detail that it can be used to apply for a building permit.

As the common understanding of the design stages changed in the course of preparing the preliminary design, no building permits have been applied for on the basis of the preliminary design because significant changes are made to detailed designs and this, in turn, would have led to the need to apply for new permits. As such, environmental impact has essentially had to be reassessed.

21. The exact number of immovables required for the entire railway located on the territory of Estonia has not been outlined by the MEAC. According to the data submitted to the National Audit Office, the Land Board is aware of at least 1,037 immovables that need to be acquired for the state or transferred to the MEAC for the railway. According to the Land Board, this number does not include at least the immovables in the repealed part of the Pärnu County Plan (approx. 66) and immovables required in the areas of several local authorities in Harju County (incl. Jõelähtme rural municipality, city of Maardu, Rae rural municipality).

22. The acquisition of immovables commenced on the basis of the preliminary design to speed up the acquisition process. To the knowledge of the Land Board, 1,037 immovables need to be acquired. According to the orders of the MEAC, the acquisition of about 32% (333) of the necessary immovables has been initiated on the basis of the preliminary design. The acquisition of at least 48 of them has been suspended as at June 2021 to await the solutions of the detailed designs and land acquisition plans. According to the MEAC, in the case of 9 immovables, it has already proven to be necessary to commence with the acquisition of the land for the second time because, following the completion of the detailed design, it has become clear that more land is required than was provided for in the preliminary design.

23. Detailed designs partially alter the solutions and need for immovables provided for in the preliminary design compared to the time of preparing the preliminary designs because

- according to the CPTRA, the technical requirements of the railway have changed significantly. Common design guidelines of the three states (RB Design Guidelines) have been adopted, which changed the current design stages and which all the states shall follow;
- the route corridor has been optimised (Value Engineering) to reduce future energy, material and maintenance costs.

24. According to the Land Board, it is now understood that there is no point in acquiring immovables in the new proceedings before the detailed designs are completed because, otherwise, the risk that several cuts of one land are required increases. The MEAC agrees with the Land Board, with the caveat that immovables could still be acquired in straight sections where only the railway is located and no other infrastructure (bridges/overpasses) is present and it is known that the location and size provided for in the preliminary design do not change. According to the MEAC, all such immovables have already been commissioned to date.

25. The number of immovables to be acquired may also change in the course of processing the application for a building permit because an approval is requested from different authorities (e.g. the requirements of the Transport Board, changes due to the environment). Immovables have been added to the initial land need in connection with, for example, designing multi-level crossings and access roads. Thus, according to the Land Board, the final need for land can be ascertained only when a

building permit is issued. To date, the procedure for a building permit for construction on the acquired immovables has been completed for one ecoduct.

26. In the opinion of the National Audit Office, the MEAC will not know the final need for immovables before the completion of detailed designs and the use of the preliminary design as a basis for the acquisition of immovables is no longer reasonable in new proceedings because, instead of accelerating the proceedings, it may take even longer due to the acquisition of incorrect immovables or lands of incorrect sizes. The Land Board has reached the same conclusion. The need for immovables to be acquired for the railway has been specified in the course of planning the railway and making the design more detailed. As the entire railway is designed on common grounds and these grounds have been approved following the preparation of the preliminary design, detailed designs have partially altered the size and location of the immovables to be acquired.

Acquisition of immovables for the railway takes longer than planned, which in turn postpones the final deadline for the entire project

27. The National Audit Office assumed that deadlines have been set for the implementation of the project, including for the acquisition of immovables, taking into account the actual duration of the necessary activities, the deadlines have been revised in due time if necessary and the deadlines have been met.

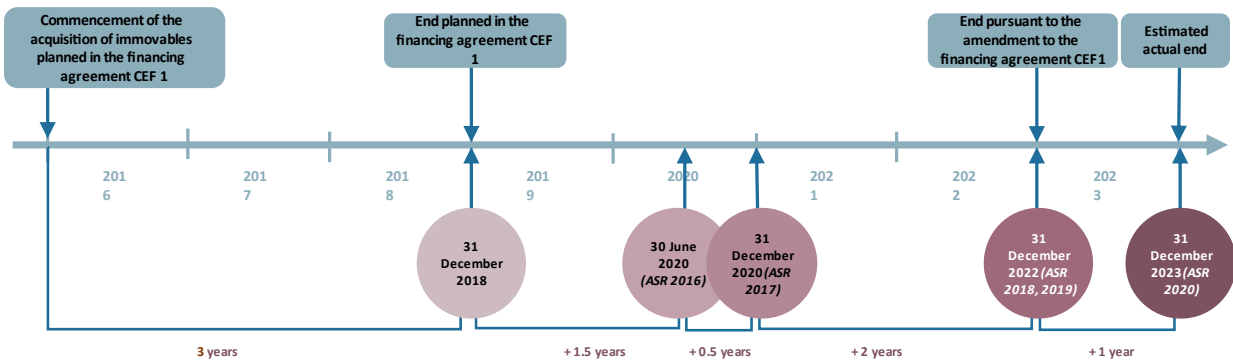
Acquisition of immovables is not progressing according to the planned schedule

28. The deadlines approved for the acquisition of immovables are provided for in grant agreements CEF 1 and CEF 6. According to both grant agreements, the deadline for the acquisition of immovables is 31 December 2022. More specific deadlines for each immovable have been set for the Land Board by the MEAC with orders to initiate acquisition.

29. By the time of entering into the grant agreement CEF 1 in 2015, the plan was to acquire the lands necessary for the construction of the railway no later than by 31 December 2018 so that the construction activities planned with the grant agreement CEF 1 could be completed by the end of 2020. In the latest action status report (ASR) of the MEAC on the performance of the grant agreement in 2020, it was estimated that the acquisition of immovables would last until the end of 2023 (see Figure 4). During the audit, both the MEAC and RBE confirmed that the plan is to extend the deadline for the acquisition of immovables until the end of 2023. An amendment to the deadline of the CEF 1 agreement will be requested once the full impact of COVID on the schedule is clear.

The time lag compared to the original deadline is nearly five years.

Figure 4. Deadline for the acquisition of immovables pursuant to the grant agreement CEF 1 and amendments to the deadline pursuant to the action status reports (ASR) of the CEF grant agreements



Source: National Audit Office on the basis of the ASR data

For your information

In connection with the COVID pandemic, the European Commission has announced that the deadline for the activities (incl. acquisition of immovables) of the grant agreement CEF 1 can be extended by one year until 31 December 2023 where justified.

Source: Ministry of Economic Affairs and Communications

30. By the amendment to the grant agreement CEF 1 in 2019, it was agreed that 50% of the immovables will be in the ownership/administration of the MEAC no later than by June 2020 – this objective has not been achieved. According to the MEAC, in setting the objective, an assumption was made that the preliminary design correctly reflects the need for the acquisition of land with regard to specific objects or sections or the detailed designs are sufficiently completed by that time. As at the end of the second quarter of 2021, 245 immovables⁵ had been acquired, constituting 28% of all known privately and municipally owned immovables (864) to be acquired. A total of 265 immovables were in the administration of the MEAC for the construction of the railway, constituting 25.6% of all known immovables (1,037).

31. The Land Board commenced with the acquisition of immovables in 2016 but acquisition proceedings could not be completed until the second half of 2018 because both the establishment of county plans and the entry into force of the necessary amendments to the law were delayed. At present, the MEAC and the Land Board justify the slow pace of the acquisition of immovables by the fact that the completion of detailed designs is delayed compared to the agreed schedule. During the interviews, the MEAC and the Land Board pointed out that it is probably not possible to acquire all the lands by the official deadline provided for in CEF 1 as it is currently unknown exactly how many immovables are required for the railway (see more in the section ‘The state does not have a complete overview of how many and which immovables need to be acquired for the construction of Rail Baltica’).

The process of acquiring immovables takes longer than expected

32. In order to speed up the process of acquiring immovables, the AIPIA expanded the range of compensation options offered to land owners for land. This has helped to avoid expropriation but has not accelerated the process.

⁵ Including those immovables which are not directly needed for the railway but which can no longer be economically purposefully used on its own after cutting. (Subsection 10 (1) of the AIPIA).

33. The land acquisition statistics of the Land Board show that the proceedings for acquiring land for a fee as well as land exchanges have taken the longest (more than two years).

34. The audit revealed that the actual duration of the proceedings for acquisition of immovables has been longer than expected because the practice of implementing the AIPIA is in its infancy and there are uncertainties for both property valuers and land owners and there are pauses in the proceedings as land allocations have been repeatedly changed.

35. The Land Board exceeded the deadline set by the MEAC in the acquisition of 11% of the immovables (30), in the case of five of them by more than half a year. In total, the MEAC has set a deadline for the Land Board for the acquisition of 263 immovables in the order to initiate acquisition.

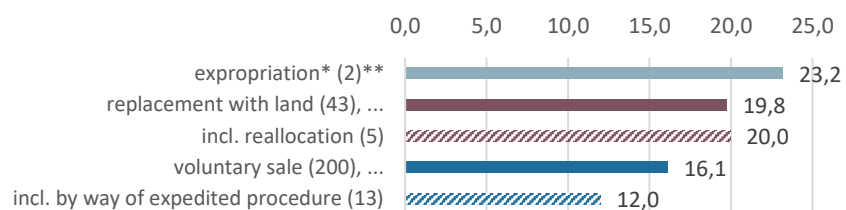
36. The Land Board explained that the MEAC has not always officially extended the deadlines, although the proceedings have continuously come to a standstill by default due to waiting for changes in the project. For example, the MEAC has suspended the acquisition of nearly 20% of immovables (85) given to the Land Board for acquisition (in total 415) at least once.

37. According to the AIPIA, the assessment of the compensation value of one immovable should not take longer than two months, negotiations with the owner should not take longer than three months as of making the offer, the contract shall be entered into within two months after the decision to acquire the immovable.⁶

38. The current practice of the Land Board shows that it takes, on average, 16.8 months from the order of the MEAC to initiate acquisition to the decision to acquire the immovable (see more by types of acquisition in Figure 5).⁷ Another two months to enter into a contract is added to this time.

In the acquisition of immovables, sending notices to the owners takes the longest, and deadlines have been exceeded in carrying out acts of valuation and in negotiations

Figure 5. Average duration of the proceedings for types of acquisition of the Land Board in months (from 2018 to Q2 of 2021)*



* In the case of expropriation, a decision has been made but the possession has not been transferred and the proceedings are still ongoing. The number of immovables the average duration of the proceedings for which was calculated is presented in parentheses.

⁶ Section 12, subsections 27 (4) and 27 (6) of the AIPIA

⁷ The calculation of the average duration also includes proceedings for state lands, although the duration of these proceedings is not subject to the criteria of the AIPIA. The purpose of the calculation of the average duration was to determine how long it takes, on average, to transfer the ownership of an immovable to the MEAC, incl. also in the case of state lands.

Source: National Audit Office on the basis of the Ministry of Economic Affairs and Communications' orders to initiate the acquisition of immovables and the data on the decisions of the Ministry and the Land Board to acquire immovables

39. The analysis of the procedural practice shows that, on average, it took six months from the MEAC's first order to initiate acquisition to the submission of the procedural notice to the owner by the Land Board. The Land Board explained that notifying the land owners took longer because previously the valuation of the immovable was performed before the notification. Some of the proceedings were at a standstill because neither the Land Board nor the providers of the valuation service for immovables had the capacity to take on all the immovables at once and there was no rush with acquisition (the deadlines set by the MEAC were, on average, 20 months away back then). At present, according to the Land Board, many proceedings have stalled due to the constant changes to the project.

40. According to the Land Board's calculations, acts of valuation of immovables, negotiations with the land owners were not carried out within the deadline provided for in the AIPIA from October 2018 to January 2021. Acts of valuation took, on average, 4.5 months and negotiations with the land owner, on average, 5.7 months.⁸ According to the Land Board, these activities take longer particularly in the case of more expensive immovables. In five cases, entering into contracts has also taken longer than expected. For example, if the land owner is abroad and does not have an ID card, the owner is a minor, or the inheritance transfer process is in progress.

The acquisition of immovables is likely to be completed only in 2024

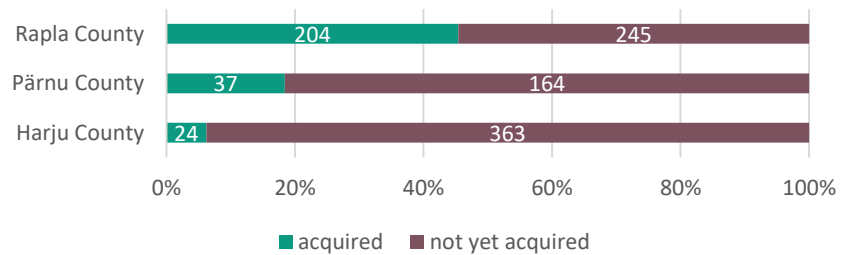
41. Based on the duration of the current proceedings, the Land Board has estimated that it is optimal to acquire about 200 immovables per year with the resources available. As at the second quarter of 2021, acquisition or transfer has not been commenced with for at least 622 necessary immovables (see more about the number of immovables to be acquired in the section 'The state does not have a complete overview of how many and which immovables need to be acquired for the construction of Rail Baltica'). Thus, it will take at least another three years to complete the acquisition. Furthermore, taking into account that the duration of proceedings pursuant to the current practice is 16.8 months and the detailed design in a certain section will be completed in 2023, it can already be predicted that the acquisition of immovables will not be completed before 2024.

42. In addition, immovables that are easier to acquire have been acquired so far as the majority of the complex area – in Harju County – is yet to be taken on (see Figure 6). Almost 200⁹ immovables have been added to the list of known immovables in the course of specifying the project, and the immovables required in the area of Jõelähtme rural municipality, city of Maardu and Rae rural municipality are not yet known. It is not known how long the court actions on expropriation may take and how many immovables need to be acquired in Pärnu County in the area of the county plan yet to be established.

⁸ State lands are not taken into account when calculating the averages as it is not necessary to assess the value of the land or hold negotiations.

⁹ According to the Land Board, there were 804 immovables that overlapped with the route based on the analysis of 2016.

Figure 6. Number of acquired immovables and immovables yet to be acquired by counties (Q2 of 2021)



Source: National Audit Office based on the request of data from the Land Board and data on decisions to acquire immovables

The process has been prolonged by the practice of implementing the AIPIA, the scarcity of persons performing land consolidation steps, and settlement of boundary disputes

For your information

The analysis of decisions to acquire immovables revealed that the Land Board has provided more detailed explanations to the land owners regarding the following issues:

- future purposeful usability of the immovable on its own;
- fair consideration (e.g. in compensating for forest land);
- elongation of the access road;
- direct damage (e.g. destruction of perennials);
- immovables next to the route;
- loss of income.

Source: Acquisition decisions of the Land Board in 2018–2021 (Q2)

The Land Board has created the conditions for speeding up the proceedings

43. At the same time, in the opinion of the MEAC, the fact that the implementation of a new law involves a learning curve – the proceedings take longer in the beginning – should be taken into account when analysing the timelines of proceedings. The analysis of the acquisition practice performed by the National Audit Office shows that the pace of acquisitions has increased. Acquisitions initiated in 2018–2019 took an average of 18.9 months, and acquisitions initiated in 2020–2021 (Q2) took an average of 13.2 months.

44. During the audit, the Land Board outlined several issues of the implementation of the AIPIA where the process had slowed down due to the lack of previous practice. For example, there have been cases where valuation exceeds the deadline because the valuation task is too complicated or the owners do not consent to the initial offer, which leads to longer negotiations.

45. One of the purposes of establishing the AIPIA was to ensure that if the decision to acquire an immovable is challenged due to price, the land ownership is still transferred to the state before the conclusion of the dispute. It has now become clear that in challenging the first expropriation decision, the administrative court has applied interim relief and the transfer of the ownership has been prevented. The dispute is over both the valuation methodology as well as the future purposeful usability of the immovable on its own.

46. In addition, the proceedings were at first slowed down by the incorrect boundary data of immovables entered in the land cadastre during the land reform, the transition of land surveyors to the professional system, and the related problem of finding persons to perform land consolidation steps.

47. According to the Land Board, finding persons to perform land consolidation steps is no longer a problem and workers are now also competent to resolve boundary issues. In the hopes of shortening the total duration of the proceedings, the Land Board has, for example, commenced with land consolidation steps immediately after sending the acquisition notice. At the end of 2020, the Land Board employed two more people to increase capacity. At the moment, however, they are waiting for more immovables to be taken on.

48. At the same time, the Land Board acknowledges that until the detailed designs are approved, the performance of, for example, land

consolidation steps before the preference of the land owner is determined may prove to be useless. According to the Land Board, the acquisition process could become faster if the designer solved all the technical issues with the land owners in the design stage and such designs would undergo expert assessments and approvals before acquisition commences.

49. Among others, the Land Board has prepared guidelines for assessment of compensation value in order to harmonise the practice of implementing the AIPIA (see more in cl 67–76).

Completion of detailed designs and acquisition of immovables has taken longer than expected, but the final deadline for the completion of Rail Baltica has not been revised

The completion of the railway must be guaranteed by 2030 at the latest

50. The acquisition of immovables has not progressed in the expected pace and a large part of the land necessary for construction has not been acquired for the state. This, in turn, affects the final deadline for the completion of the railway.

51. Although the Estonian activities of the project have not stayed in schedule in 2019–2020 either in addition to previous years, the schedule for the entire project has not been revised. So far, the official deadline for the completion of the Rail Baltica railway is 2026, which was agreed upon by the three Baltic States in 2017.¹⁰

52. According to the MEAC, the final deadline would still be achievable in the Tallinn–Pärnu sections if the detailed designs were completed faster than in the current practice. One solution for achieving the partial opening of the railway in 2026 is to commission the railway in stages, for example in the Tallinn–Pärnu section. In the case of deployment in stages, the railway would have to be fully completed by 2030 when the cross-European TEN-T core network must be completed in accordance with the TEN-T Regulation. According to the MEAC, specific stages and the content thereof for the deployment of the railway are being prepared.

53. According to the explanatory memorandum to the State Budget 2021 and 2022, the majority of the expenditures are planned to be made in 2023–2024 (see cl 78). A schedule that concentrates construction works over a too short of a period may lead to the overheating of the construction market, which, in turn, could cause a rapid increase in construction and material prices. Therefore, in a review submitted to the Riigikogu in May 2021, the MEAC noted that, in reality, it may be necessary to extend the final deadline for the implementation of the project.

There is a risk that some of the objects that have received funding will not be completed on time

54. As the design deadlines have not been met, there is a risk that some of the objects that have received funding from the European Union will not be completed during the period of validity of the grant agreements

¹⁰ The final deadline for the project has been previously questioned by the National Audit Office in its 2019 audit report ‘Funding and implementation of the Rail Baltica project in Estonia in 2014–2019’ as well as the European Court of Auditors in 2020 in its special report ‘EU transport infrastructures: more speed needed in megaproject implementation to deliver network effects on time’.

entered into to date. In this case, the MEAC will have to find funds for the construction of these objects elsewhere.

For your information

Objects with a high priority schedule are the following:

- 7 wildlife crossing bridges, i.e. ecoducts;
- 23 overpasses (7 for local roads, 16 for national roads);
- crossing fields (3 gas pipelines, 10 high voltage lines).

Source: Explanatory memorandum to the State Budget 2021

55. Should this happen, according to the MEAC, an attempt shall have to be made to extend the deadlines provided for in the CEF agreements entered into to date upon an agreement with the other Baltic States and the European Commission.

56. In order to be able to build the objects financed pursuant to the CEF 1 agreement, RBE has chosen objects to be developed as a priority, i.e. objects with a so-called high priority schedule. According to the valid grant agreement CEF 1, the deadline for their completion is 31 December 2022. The MEAC predicts that the grant agreement CEF 1 will be extended due to the effects of COVID and assumes that the deadline for the construction of objects with a high priority schedule can also be postponed until 31 December 2024.

57. According to the explanatory memorandum to the State Budget 2021, the construction of several objects with a high priority schedule will be completed in 2023. According to the MEAC, however, not even all the lands necessary for these objects have been acquired yet. At the same time, the MEAC says that the contracts for works being entered into at the moment provide a condition that allows for adjusting the contract deadlines in the event that the process of acquiring immovables is delayed.

58. **According to the National Audit Office**, the completion and commissioning of the Rail Baltica railway in its entirety by 2026 is no longer likely. Although the Land Board has undertaken several activities to speed up the pace of acquiring immovables, the practice, incl. time spent on proceedings, indicates that it has so far not been possible for the acquisitions to stay on schedule. The audits completed in 2019 already indicated problems with keeping the Rail Baltica project on schedule. Circumstances such as the partial repeal of the Pärnu County Plan, delays in the completion of design solutions and prolongation of the process of acquiring immovables further strengthen the conviction. Failure to revise the project schedule puts pressure on the implementors of the project to rush to achieve the currently unrealistic deadline. Procurement for works carried out over too short of a period of time may lead to the overheating of the construction market, causing an increase in construction prices.

59. Recommendations of the National Audit Office to the Minister of Economic Affairs and Infrastructure:

- Revise the entire project schedule and, accordingly, the schedule for the acquisition of immovables, taking into account the risks that may prevent compliance with the schedule;
- If necessary, initiate an amendment to the Acquisition of Immovables in Public Interest Act so that the deadlines provided for procedural acts are also realistic for the acquisition of lands for Rail Baltica.

Response of the Minister of Economic Affairs and Infrastructure:

- The revision of the project schedule in cooperation with the MEAC and RBE is underway, and cooperation with ministries responsible

for the area of transport and authorities carrying out the project in the other Baltic States as well as with the joint company RB Rail AS is also ongoing. In revising the project schedule, among others, the time required for the acquisition of lands is also taken into consideration for each specific object or section because the result of the process of the acquisition of lands affects subsequent activities in the construction of RB. The schedule to be revised must also be reviewed in the future and specified where necessary, including also upon the full completion of the detailed designs in Estonia and other states participating in the project. The new revised schedule until 2026 will be prepared at the latest upon the preparation of the State Budget 2023–2026.

- The amendments to the AIPIA submitted to the Riigikogu recommend abolishing the specific three-month deadline for negotiations and grant the authority conducting the proceedings the right to determine the deadlines. This would also grant the right to set shorter deadlines to speed up the proceedings. An amendment proposal has also been made with respect of the value date so that the value date could be revised in justified cases. We explain that the currently long durations of proceedings have largely been due to the development of the acquisition practice and that the authority that conducts the proceedings has tried to oblige the land owners as much as possible so that acquisition could be carried out by agreement. At present, the aim has been to acquire lands foremost upon an agreement with the land owners, not so much to carry out the acquisition quickly as, to date, the deadlines for acquisition have been long.

Acquisition of immovables is likely to cost more than currently planned

60. The National Audit Office assumed that the budget for the Estonian section of the Rail Baltica project would be kept up to date based on the progress of the project and specification of information in order to have an overview of the funds needed for the project, actual costs and changes in the costs. This allows for managing the risks involved in financing the project and, if necessary, to plan necessary changes. Planning financing must include the whole project, incl. budgets for local stations and acquiring immovables.

61. The National Audit Office also assumed that the authorities carrying out the project have ensured the implementation of project activities in such a way that the funds from the CEF grant agreement would be used on time.

The need for funds related to the acquisition of immovables is unpredictable because it depends on the completion of detailed designs, the speed of acquisition and the results of the valuation of immovables

The final budget for the acquisition of immovables is unknown

62. As the completion of design solutions has been delayed (see the reasons in cl 13–20) and largely depends on the designer of detailed designs and RBR, it is somewhat unpredictable when and to what extent an actual larger need for funds from the state budget related to the acquisition of immovables will arise.

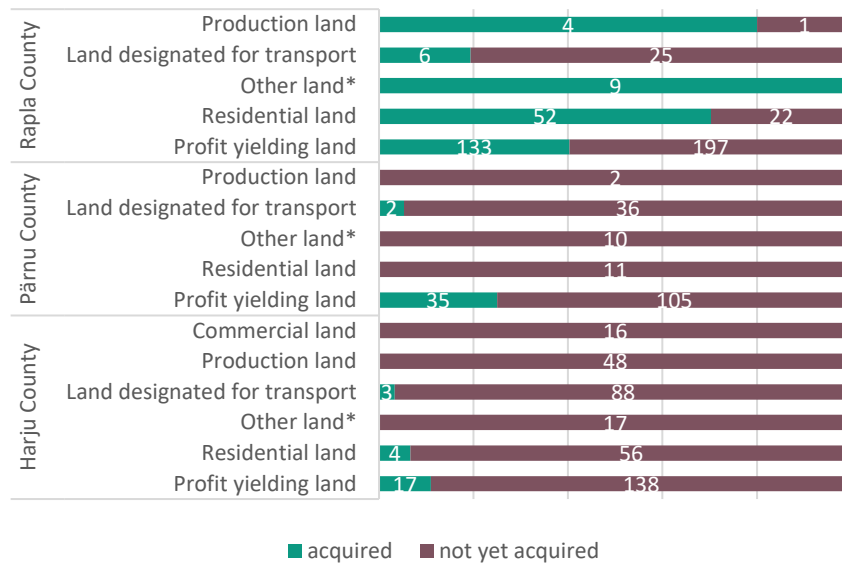
63. The total budget of grant agreements CEF 1 and CEF 6 for the acquisition of immovables is 29.1 million euros (incl. self-financing), of which 11% has been used to date as lands have not been acquired at the planned pace.

64. The action status report 2020 of the grant agreement CEF 1 revealed that the amount planned for the acquisition of immovables by the agreement has been reduced by nearly 3 million euros, but it is not clear that fewer immovables (approx. 700) will be acquired. According to the MEAC, the plan is to apply for additional funds for the acquisition of immovables from the next CEF application rounds if necessary, taking into account that no more than 10% of the total value of a specific CEF grant agreement can be used for the acquisition of lands.

65. There is a risk that more funds than currently planned will be needed for the acquisition of immovables because the exact number of the required immovables and the extent of their overlap with the railway is unknown and acquisition is still in the early stages in more expensive areas. In addition, the database of transactions of the Land Board revealed that the cost of land transactions in Pärnu, Rapla and Harju counties has increased by more than 50% by 2020 in comparison with 2014.

66. To date, the Land Board has acquired lands primarily in Rapla and Pärnu counties where the route is mostly planned through forests and fields and where not many residential lands are located (see Figure 7). The situation in Harju County is different. For example, in Rae rural municipality, there are valid plans for commercial and production lands which the route crosses – according to the Land Board, the acquisition of these lands is more expensive.

Figure 7. Number and intended purpose of immovables necessary for Rail Baltica and the status of acquisition (II quarter of 2021)



* Other land includes lands with the following intended purposes: land for waste disposal site, national defence land, land not designated for a specific purpose, peat handling land, water body land, land for public buildings, public land.
 Source: National Audit Office on the basis of the data of the Land Board

The regulation provided for in the AIPIA does not ensure transparent assessment of compensation value on uniform grounds

67. The budget for the acquisition of immovables depends not only on the changes in the number of immovables and the market, but also on the methodology of assessing the compensation value of an immovable and which compensation the land owners prefer. Both land owners and taxpayers must be ensured that the compensation value of an immovable is determined on uniform grounds and transparently, which means that similar immovables are valued similarly and it is clear how the calculation methodology is chosen.

68. The Land Board has the right to decide which methodology it uses to ensure the compensation value as the authority conducting the proceedings, but there is no obligation to justify its choice of valuation methodology to the land owner. According to the AIPIA, there are essentially two¹¹ alternatives for the choice of methodology: commission valuation from a property valuator holding a professional certificate or determine the value itself based on the methodology approved under the relevant Act.

69. The audit revealed that neither option ensures the determination of compensation value on uniform grounds. The Land Board explained that the general principle for the acquisition of immovables provided for in the AIPIA is to acquire an immovable in public interest for fair and appropriate consideration, but the methodologies approved pursuant to the Acts specified in the AIPIA do not always follow the same principle.

¹¹ According to subsection 12 (2) of the AIPIA, the Land Board can also determine the compensation value on the basis of the transaction data contained in the transaction database as well as on the basis of a market analysis, but because transaction value might not always contain information on the specific land, such as regarding a growing forest, the Land Board itself cannot assess the value of an immovable with a forest on the basis of the data of the transaction database.

For your information

The law firm LEXTAL on behalf of the Ministry of Finance has also criticised section 12 of the Acquisition of Immovables in Public Interest Act (AIPIA) in 2020. According to their legal analysis of the implementation of clause 4 (1) 10) of the AIPIA, the procedure for the valuation of apartments is not regulated clearly enough and implementation would be significantly simpler if the rules for valuation provided for in section 12 provided a single and clear methodology.

Source: [Legal analysis by the law firm LEXTAL 'Analysis of the implementation of the AIPIA with regard to apartment buildings becoming vacant, development of methodology, and consulting on the implementation of the Act'](#)

The Land Board has created conditions to ensure the uniformity in the assessment of compensation value

70. For example, the methodology established by the Government of the Republic pursuant to the Nature Conservation Act (NCA)¹² by a regulation¹³ does not use market value as initial information in determining the value of a growing forest, and instead uses the average price of sales transactions with the respective timber (assortments) made in the three years preceding the valuation. The Ministry of the Environment is of the opinion that the methodology established pursuant to the NCA is intended only for determining compensation for restriction on right of ownership for the purposes of nature conservation, not for the purpose provided for in the AIPIA. The AIPIA, on the other hands, aims to compensate for the loss of right of ownership. According to the National Audit Office, the methodology established pursuant to the NCA can therefore not be used to determine the compensation value of an immovable on the basis of the AIPIA.

71. In addition, the responses of the Land Board revealed that no methodology for assessing the value of circumstances subject to compensation (e.g. direct damage) has been approved pursuant to the law.

72. According to the explanatory memorandum to the AIPIA, a professional valuator must be guided by the standard EVS 875-12:2016 Property valuation - Part 12: Valuation for compensation. In determining the value of a growing forest, the professional property valuator shall involve a forest expert in the preparation of the expert assessment. The valuation methodology used by the experts does not use the three-year average prices of timber as initial data, instead property valutors determine the price of a growing forest on the prices corresponding to the current market situation. At the same time, neither a professional property valuator nor a forest expert has been granted competence to assess the value of a forest by law.

73. In addition to the general principle of the AIPIA, the purpose of section 12 of the AIPIA has been to develop a harmonised administrative practice and principles to assess the value of an immovable. In the opinion of the National Audit Office, section 12 in its current wording does not fulfil this purpose.

74. As there is essentially no relevant valuation methodology established pursuant to the law, the Land Board has attempted to create a situation where land owners are treated equally and fair consideration is paid for their lands and has established the guidelines for determining compensation value pursuant to the directive of the Director General. Professional property valutors are also guided by the same guidelines in preparing expert assessments, so in practice valuation is not based on different principles.

75. However, in the opinion of the National Audit Office, the legislator has not granted the Director General of the Land Board the right to establish valuation methodology. The MEAC and the Land Board indicated that the Director General of the Land Board has the right to

¹² Subsection 20 (3) of the NCA

¹³ Government of the Republic Regulation no. 242 'The procedure for the acquisition of immovables containing protected natural objects by the state and for proceedings regarding proposals and the criteria on the basis of which the use of an immovable for its intended purposes is deemed to be significantly hindered by the protection regime, and the procedure and basis for determination of the value of an immovable' of 8 July 2004

establish guidelines because the Director General can issue directives pursuant to the statutes of the Land Board, which in turn is based on the law. The National Audit Office notes that the right to establish guidelines must be provided for in the relevant law. The Government of the Republic Act and the statutes of the Land Board do not grant such powers.

76. The Ministry of the Environment is of the opinion that the Land Board has not interpreted the methodology established pursuant to the NCA in the guidelines lawfully and sees a risk that an incorrect implementation of the methodology could gain attention in the subsequent audits of Rail Baltica, in which case recoveries against the state and land owners are not ruled out.

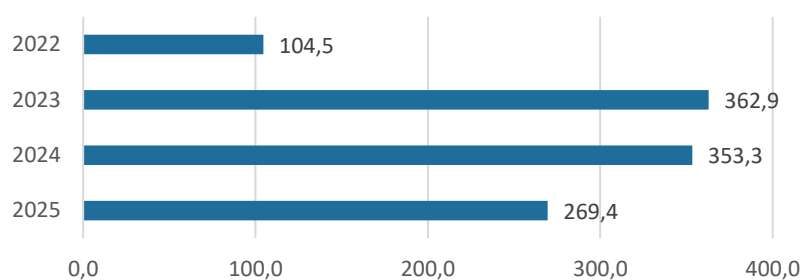
The budget for the Rail Baltica project has not been revised and the cost of activities is likely to exceed the initial estimates

The project budget has not been revised in its entirety, but the forecasts of Rail Baltic Estonia OÜ indicate that their activities will be more expensive than planned

77. The MEAC explained that, at the moment, the calculation of the cost of the entire Rail Baltica project is based on the budget of the preliminary design completed in 2018. Although RBE regularly revises the budget for its activities, the MEAC does not know the complete budget for the entire Estonian section of the project. The complete budget depends on not only the activities of RBE but also the activities of the MEAC and RBR. The project budget will gradually change as additional and more detailed design information is received.

78. According to the data provided by the MEAC, the estimated budget for the Estonian section of the Rail Baltica project for 2022–2025 is 1.1 billion euros. According to the State Budget Strategy 2021–2024, the majority of the expenditures are planned to be made in 2023–2024 (see Figure 8). According to the MEAC, 62 million euros from the state budget have been used for the development of the project in 2010–2020 (see Appendix A).

Figure 8. Estimated budget for the Estonian section of the Rail Baltica project in 2022–2025, million euros



Source: National Audit Office on the basis of data of the Ministry of Economic Affairs and Communications

For your information

The preparation of detailed plans for local stations and the design of buildings and the surrounding area is financed pursuant to agreement CEF 6 of the Connecting Europe Facility. The design and construction of the railway infrastructure of local stations is financed pursuant to agreement CEF 1 and CEF agreements for 2021–2027 as well as from other European Union structural funds.

The volume and costs of the construction projects of Ülemiste and Pärnu passenger terminals has significantly increased compared to what was planned in the grant agreement

79. To plan their activities and resources spent on them more precisely throughout the project, RBE has prepared an investment plan for the construction of the Estonian section of the Rail Baltica project, i.e. an updated budget for its activities that is revised on an ongoing basis.¹⁴ According to RBE's revised construction budget for 2021, some civil engineering works have become more expensive compared to the budget of the initial grant agreement as well as the preliminary design prepared later, and the scope of the project has changed.

80. Compared to the cost-benefit analysis of 2017, the scope of the project has changed; for example, the construction of local stations has been added. The construction of local stations is planned to be financed from the European Union structural funds for 2021–2027 (cost approx. 16 million euros).

81. The volume and budget for the construction of Pärnu and Ülemiste passenger terminals has increased in the course of design work compared to what was planned in CEF 1. According to the grant agreement CEF 1 originally entered into, the plan was to build Ülemiste and Pärnu passenger terminals for a total of 40 million euros based on the initial estimate of 2014. According to the MEAC's current estimate, the construction of these passenger terminals will cost a total of 89 million euros. According to the explanation of the MEAC, the budget has been increased during the preparation of the design and the composition of the project has changed. For example, the Ülemiste project now also includes works that were not included in the initial budget of CEF 1. Works based on further requirements of local authorities that were not foreseen at the time of preparing the initial budget of CEF 1 have also been added. Applying for funds from CEF 1 in 2014 was based on the information available at the time of estimating the cost of the investment and because detailed plans and design solutions for the areas were not available, there was little information about the project.

82. The construction of Ülemiste and Pärnu passenger terminals, which were originally planned to be built within the deadline and using the budget of the grant agreement CEF 1, has now been divided into several stages. The works of the second stage of Ülemiste terminal, i.e. the construction of access roads, construction of the embankment and construction of power lines, will also be financed pursuant to the grant agreement CEF 6.

83. As, according to the explanations of the MEAC, the construction of the buildings of passenger terminals do not qualify as construction works for which CEF financing could be applied for pursuant to the CEF Regulation 2021–2027, the construction of these is financed from other European Union funds and Estonia's own contribution related to these (see Table 1).

84. The Government of the Republic has decided to finance the construction of Ülemiste passenger terminal from the European Union Recovery and Resilience Facility (RRF) with 31.5 million euros. It is

¹⁴ Internal working document of RBE revised on an ongoing basis which the MEAC has not approved. RBE's investment plan is not the total cost of the project. The investment plan does not take into account RBE's activities, the costs of managing the RBE project, the costs of acquiring immovables nor other activities not carried out by RBE.

planned to finance the construction of the building and terminal area of Pärnu passenger terminal as well as the construction of surrounding streets from the European Union structural funds for 2021–2027 in the amount of approximately 24 million euros. In total, another approximately 13 million euros need to be applied for to construct the entire Ülemiste node, i.e. the terminal building and railway infrastructure.

Table 1. Budget coverage of Ülemiste and Pärnu passenger terminals (million euros)

Project	Estimated cost of the project	Grant agreement CEF 1	Grant agreement CEF 6	Other support funds	Unclear source of financing
Construction of Ülemiste passenger terminal	72	26.55	1	31.5	12.95
Construction of Pärnu passenger terminal	17	1.5	–	24	–

Source: National Audit Office on the basis of data of the Ministry of Economic Affairs and Communications

85. The National Audit Office finds that despite the project having been developed for a long time already, the MEAC does not have an overview of the complete budget for the acquisition of immovables and construction of the railway in the Estonian section of the Rail Baltica project. In addition, the specification of the project has changed the volume and need for works to be carried out as part of the project. For example, the estimates of the scope and cost of the activities agreed in the grant agreement CEF 1 in 2014 are no longer accurate. Additional funds from other European Union funds must be directed and/or applied for to finance the activities that have been added to the project. This, in turn, means that the Rail Baltica project also competes for funds that could be used to finance other infrastructure projects in Estonia.

86. The final budget for the acquisition of immovables is unknown. The budget for acquisition is affected by how many lands and in which period must be acquired, what is the methodology of assessing compensation value, and how much compensation will cost. The current regulation for determining compensation value does not ensure that land owners are treated in the same way and that the choice of methodology is transparent. Land owners of similar immovables may receive a compensation offer in a different amount depending on the choice of methodology.

87. Recommendations of the National Audit Office to the Minister of Economic Affairs and Infrastructure:

- Revise the budget for the Estonian section until the completion of the Rail Baltica project. In the event of changes to the project budget, justify the changes in the costs, thereby ensuring the transparency of the project budget and its changes;
- In cooperation with the Minister of the Environment, initiate an amendment to the Acquisition of Immovables in Public Interest Act in order to develop a methodology for assessing the compensation value of damages directly related to the acquisition of immovables in public interest and the value of a growing forest.

Response of the Minister of Economic Affairs and Infrastructure:

- The revision of the estimated cost of the project in cooperation with the MEAC and RBE is underway, and cooperation with ministries responsible for the area of transport and authorities carrying out the project in the other Baltic States as well as with the joint company RB Rail AS is also ongoing. The financing conditions of the various European Union funds for the budget period 2021–2027 are also being taken into account. The latest known estimated cost of each specific object or section is taken into account in revising the estimated cost of the project. The budget to be revised will have to be reviewed and revised repeatedly in the future too, including both as the conditions and results of application rounds of different sources of financing become clear as well as upon the completion of detailed designs in Estonia and other states participating in the project. The new revised cost estimate until 2026 will be prepared at the latest upon the preparation of the State Budget 2023–2026.

- The cases are quite diverse both upon the construction of Rail Baltica as well as upon the acquisition of immovables on other grounds – these are not simply forest lands and immovables used for living in. For example, in certain cases, it is necessary to assess the values of rights of superficies, rental buildings or production lands instead. It is clear that there can be no single and exhaustive guideline that would serve as adequate grounds for resolving whatever case. The reason for this is solely that not all potential cases can be exhaustively foreseen. In more complex cases, property valuers of the highest level who are experts in the field of valuation and who select the suitable methodology for the valuation of the specific object are used. The National Audit Office partly states in the report that compensation of market value must be ensured, but ignores that pursuant to the current law, subsection 11 (2) of the APIA, as a rule, allows for compensation of an immovable in a significantly higher value than the market value. In addition, it is unclear from the report of the National Audit Office why the National Audit Office does not consider valuations carried out by a Level 7 property valuator pursuant to EVS valuation standards appropriate. The comments of the National Audit Office that subsection 12 (2) of the APIA that allows for the use of different methodologies does not ensure a fair result are declarative. Subsection 12 (2) of the APIA provides a basis for using different methodologies in order to enable choosing a methodology for each case that would, in the specific case, best suit the specifics of the immovable being valued.

As for the valuation of forest lands, the MEAC is aware of the respective problems. A methodology for assessing the value of a growing forest, which would also apply to the acquisition of RB lands, is being prepared.

88. Recommendation of the National Audit Office to the Director General of the Land Board: Prepare guidelines that specify how valuation methodology should be chosen to better ensure transparency necessary for the choice of methodology for assessing compensation value.

Response of the Director General of the Land Board: We

acknowledge that the current law in the area of valuation does not always meet the needs of real life. In the opinion of the Land Board, the issue is not so much in the regulation of the AIPIA but rather in the legislation concerning valuation in general, and in the interest of legal clarity, it would be more appropriate to adopt the regulation of assessing compensation value in the Land Valuation Act and its implementing provisions. The Land Board plans to make a proposal to the Ministry of the Environment to initiate amendments to implementing provisions of the Land Valuation Act. We note that the Land Board has already convened a working group to supplement the procedure for individual valuation of land and to harmonise the methodology of valuating immovables with a forest.

At the same time, we find that the Land Board has acted within the context of valuation competence provided for in the AIPIA and in line with the Constitution. In the proceedings for the acquisition of immovables in public interest, the Land Board is merely an administrative body exercising state power who must in their activities be guided by the applicable law and ensure the equal treatment of people and the fair and uniform valuation of immovables being acquired. We explain that the guidelines of the General Director of the Land Board are based on the grounds provided for in sections 12–15 of the AIPIA and supplement the standard EVS 875 12 Valuation for Compensation. It is not legislation but guidelines used in the preparation of valuation reports prepared or commissioned by the Land Board and the principles set out in which are recommendations. As such, the Land Board does not agree with the assessment of the National Audit Office that the Director General does not have competence to establish such recommended guidelines.

The Land Board also does not agree with the position of the National Audit Office that methodology established pursuant to the NCA cannot be used for determining compensation value of an immovable pursuant to the AIPIA. Subsection 12 (2) of the AIPIA provides that in addition to valuation by a property valuator holding a professional certificate and determination of value by the Land Board on the basis of the transaction data contained in the transaction database maintained on the basis of subsection 9 (21) of Land Cadastre Act as well as on the basis of a market analysis, the authority conducting the proceedings may determine the value in accordance with the methodology approved on the basis of the Land Valuation Act, Nature Conservation Act, State Assets Act or another relevant Act. Insofar as the Government of the Republic Regulation no. 242 'The procedure for the acquisition of immovables containing protected natural objects by the state and for proceedings regarding proposals and the criteria on the basis of which the use of an immovable for its intended purposes is deemed to be significantly hindered by the protection regime, and the procedure and basis for determination of the value of an immovable' of 8 July 2004 (hereinafter Regulation 242) governs the acquisition of immovables containing protected natural objects, Regulation 242, which relates solely to the acquisition of protected natural objects, cannot be implemented for the acquisition of immovables in public interest. Clause 3.3 of the guidelines of the Land Board specifies the extent to which Regulation no. 242 can be used to value a growing forest upon acquisition in public interest. The

most important and substantial part of the methodology are the calculation models for the valuation of a growing forest provided in Appendices 1–6 to the Regulation, which the Land Board has followed in the valuation of a growing forest. As the value of immovables with a forest containing protected natural objects is determined using the three-year average timber prices as initial information, which do not reflect the current market situation, the Land Board has not been able to rely on the provisions of Regulation 242 with regard to the initial data for valuation. In conducting the proceedings for acquisition of immovables in public interest for the state and for determining the fair value of an immovable being acquired, market-based prices must be used when applying all valuation methodologies. Thus, the use of valuation methodology established pursuant to the NCA to the extent that is not in contravention of the principles of the AIPIA is legally permitted.

Clause 88 of the draft audit provides a recommendation to the Director General of the Land Board to prepare guidelines determining when the Land Board commissions valuation in the proceedings for acquisition of immovables in public interest from a professional property valuator and when the Land Board determines the value itself. We believe that all methodologies used must use market-based initial data and provide a comparable result. Different professional property valuers will not get exactly the same valuation result when valuating the same object in normal practice either, but a similar result could be achieved by analysing the valuations. The simultaneous use of different methodologies provides a more likely valuation result, which is why the Land Board is often implementing different methodological approaches to compare valuation results. The Land Board determines the value itself foremost if the immovable under valuation is forest land or arable land where it can be assumed that the best use for the land in the case of which the asset is valued the highest is the present use and where addressing damages is simpler than average (e.g. the damage is limited to extending the access road or changing the best use in the part remaining with the owner of the immovable). If the owner of the immovable does not agree with the valuation result, they must be able to commission their own comparative valuation from a professional property valuator. Therefore, we do not want to restrict the use of different methodologies and are instead in favour of establishing a common regulation.

Comment of the National Audit Office on the responses of the Ministry of Economic Affairs and Infrastructure and the Director General of the Land Board: In the opinion of the National Audit Office, the legislator has not granted the Director General of the Land Board the right to establish valuation methodology. Both the MEAC and the Land Board responded that they do not agree with the assessment of the National Audit Office that the Director General of the Land Board does not have the competence to establish recommended guidelines. In addition, it was unclear to the MEAC why the National Audit Office does not consider valuations carried out by a Level 7 property valuator pursuant to valuation standards appropriate.

The National Audit Office does not question the competence of a Level 7 property valuator and has not asserted in the report that the Director General of the Land Board does not have the competence to issue guidelines, provided that the guidelines govern procedural matters such as

in which situations is the methodology established pursuant to the Land Valuation Act followed, etc. The recommended nature of the guidelines is doubtful as the Land Board has imposed on professional property valuers the obligation to comply with the guidelines in procurements for valuation services.

The National Audit Office has stated in the report that the Land Board has not been granted the right to establish, incl. amend, valuation methodology by law, and the Land Board's guidelines must not be in contravention of the valuation methodology established pursuant to the law. The right to establish valuation methodology for the valuation of a growing forest has been granted to the Government of the Republic pursuant to the NCA. The response of the Land Board reveals that the guidelines follow the valuation methodology established pursuant to the NCA only partially as the three-year average price used as initial data in the methodology does not comply with the principles of the AIPIA according to the Land Board. In the opinion of the National Audit Office, the Land Board cannot amend the Regulation at leisure by combining methodologies taken from different Acts to provide an assessment on compliance with the Constitution. Constitutionality is verified by the Supreme Court.

The Ministry of the Environment (MoE) is responsible for coordinating the activities of state agencies within its area of government and legislative drafting in the area of government as well as for providing explanations regarding legislation governing its area of activity (see explanations regarding the methodology for determining the value of immovables with a forest in the MoE letter no. 13-2/20/1342 of 26 March 2020 to the Land Board, letter no. 1-17/20/2667-3 of 24 July 2020 to the Chancellor of Justice). The MoE has stated that the valuation methodology established pursuant to the NCA is not intended to be used for the purpose provided for in the AIPIA. Based on the interpretation by the MoE, the National Audit Office finds that the valuation methodology established by the NCA as a whole is not suitable, but the Land Board which is within the area of government of the MoE has nevertheless decided to use this methodology. Due to the above explanation, the National Audit Office recommends the Minister of Economic Affairs and Infrastructure in cooperation with the Minister of the Environment to initiate an amendment to the Acquisition of Immovables in Public Interest Act.

The recommendations of the previous audit of the National Audit Office have been partially implemented, but the change and risk management systems are still being developed

89. The National Audit Office assumed that the MEAC and RBE have commenced with solving the issues identified in the previous audits of the National Audit Office.

90. The audit showed that RBE has taken the recommendations of the 2019 audit of the National Audit Office into account and has supplemented the processes. The MEAC has also taken a number of audit

findings into account, but several important topics still need to be developed (see the summary table in Appendix B).

91. RBE has updated several rules of procedure in 2020 and 2021, and the internal change management procedure has been introduced and the budget and schedule have been constantly monitored. Project management decisions are documented. A risk register has been created and a risk manager has been hired to manage RBE's risks.

92. The MEAC has supplemented the tasks of the parties to the management and control system of the Rail Baltica project.

93. The financing of the Rail Baltica project is still planned at the national level pursuant to the state budget strategy for a period of four years. No document setting out a long-term and more detailed financing forecast for the project has been drawn up as a separate official document.

94. To date, the MEAC has not established its tasks in managing the changes to the project. The MEAC has not developed a change management procedure – who makes decisions on which changes – and therefore, according to the RBE, it is unclear to what extent RBE can adopt decisions on changes itself and when these must be approved by the MEAC.

95. The supervision tasks of the MEAC are set out in the project management and control system, and the Rail Baltica working group has been established to carry out supervision. However, it was not possible to assess supervision during the audit as the meetings of the working group for the purposes of supervision are not documented.

96. In addition, the risk assessment system of the Estonian section of the project does not include the risks of the entire project. According to the project management and control system, the task of the MEAC is to prepare an Estonian risk management system for the Rail Baltica project in cooperation with RBE and use it to regularly assess risks. RBE has developed a risk management system and regularly assesses risks related to the project, incl. risks related to financing and acquisition of immovables, but, according to the MEAC, the Ministry does not participate in risk management. However, RBE is not able to mitigate the risks of the Land Board, the MEAC, or the CPTRA. Thus, the management of risks related to, for example, ensuring financing, acquisition of immovables or building permits should take place at the MEAC across the project.

97. A joint risk management system between RBR and the Estonian parties to the project is still under development. RBR has procured the Primavera program to harmonise the risk management of the entire project and, among others, training for the use of the program has been organised. RBE is still implementing the program and the risk register is still being kept in the MS Excel format. RBE has set the goal to transfer the assessment of Estonian risks to the Primavera program in 2021.

98. The joint audit of the national audit offices of the three Baltic States published in 2020 provided recommendations on how to improve the implementation of the project. The national audit offices have monitored the implementation of the recommendations of the joint audit and RBR

Recommendations at the national level on the long-term planning of project financing, project modifications, supervision and risk management are yet to be fully implemented

Recommendations of the international joint audit have mostly been complied with

has provided feedback on compliance with the recommendations. RBR has supplemented several procedures, for example, new procurement guidelines were approved and a management matrix was drawn up in 2021 to establish decision-making processes within RBR.

99. The joint audit recommended improving project management to prevent further delays in the project. The parties to the project, including the MEAC and RBR, prepared for the merger of RBR and national implementors carrying out the project to improve the management of the company, but the states failed to reach an agreement on how to organise the project implementation structure. According to the MEAC, there will be no merger.

100. **According to the National Audit Office**, the recommendations of the Estonian audit carried out in 2019 as well as of the international audit published in 2020 have been implemented, but several important topics are still being developed or have been suspended. The cross-project risks assessment system is still not operational, although RBR commissioned a common risk assessment application for the states in 2019. The MEAC has not established the principles of change management within the Estonian project, which means that the liability of the parties is not clear in the event of changes to the project volume, schedule or if the implementation of the project becomes more expensive.

101. Recommendations of the National Audit Office to the Minister of Economic Affairs and Infrastructure:

- Develop a system for assessing the risks of implementing the Rail Baltica project in Estonia and involve all the parties to the project in risk assessment so that persons responsible for risk mitigation are appointed;
- Agree in cooperation with Rail Baltic Estonia OÜ on the principles of change management, incl. with regard to the budget and volume, so that it would be clear to which extent the parties to the project can make decisions independently;
- Record the meetings of the Rail Baltica working group to ensure the transparency of the decisions adopted by the working group.

Response of the Minister of Economic Affairs and Infrastructure:

- We agree with the proposal to develop and specifically describe the RB risk assessment system in Estonia. Although risk assessment and making mitigation proposals has been ongoing throughout the entire RB project (risks have been assessed and described both in the RB cost-benefit analyses and as a separate assignment¹⁵), the development and introduction of more specific process descriptions could simplify risk identification and assessment, helping in both prevention and timely response in the event of their occurrence. Similarly, it is practical to describe in more detail the principles of change management, which must, in addition to the agreement with

¹⁵ Risk analysis of the planning and construction stage of the Estonian section of the Rail Baltica project. Final analysis report, 2017.

RBE, also include the activities of the joint company RB Rail AS related to Estonia.

- Although the meetings of the RB working group are mostly of an informative nature, it is practical to record these. This has already started in September 2021.

/signed digitally/

Ines Metsalu-Nurminen
Director of Audit at the Audit Department

Recommendations of the National Audit Office and responses of the audited

Based on the audit, the National Audit Office made recommendations to the Minister of Economic Affairs and Infrastructure and to the Director General of the Land Board. The Minister sent their response to the recommendations of the National Audit Office on 28 September 2021 and the Director General of the Land Board sent their response on 24 September 2021.

General comments regarding the audit report

Minister of Economic Affairs and Infrastructure: 1. Cl 6. Although the agreement for the acquisition of lands for Rail Baltica (hereinafter RB) was indeed entered into between the parties in 2016, the acquisition of lands commenced only after the entry into force of the Acquisition of Immovables in Public Interest Act (hereinafter AIPIA) in 2018. According to the cooperation agreement between the MEAC, the Ministry of the Environment and the Land Board entered into in 2016, the Land Board could commence with preparatory activities for the acquisition of land (e.g. meetings with the owners of affected lands located in the RB corridor pursuant to the Harju, Rapla and Pärnu county plan, mapping of interests, introduction of preliminary design solutions, and organising procurement).

Comment of the National Audit Office: The wording has not been elaborated as it partially repeats clause 31 of the report.

Minister of Economic Affairs and Infrastructure: 2. Figure 2. Compensation for participation in the proceedings is also paid in the event of expropriation and exchange.

Comment of the National Audit Office: The Figure has been supplemented.

Minister of Economic Affairs and Infrastructure: 3. Cl 13. Although lands to be acquired for the construction of the railway and their exact number and location will be finalised during the preparation of detailed designs, the route has been acquired and many sections where the land need approved by the preliminary design will remain in force are being acquired, and the law allows for acquisition pursuant to preliminary design documentation (see, among others, subsection 13 (6) of the Act to Implement the Building Code and the Planning Act (hereinafter AIBCPA)).

Comment of the National Audit Office: The wording has been generalised so that both the detailed design and, in certain cases, preliminary design documentation are a suitable criterion for determining immovables.

Minister of Economic Affairs and Infrastructure: 4. Cl 14. The fact that the county plan has been established also in the northern planning sections in Pärnu County needs to be elaborated. The updated information is that the detailed plan (DP) of Ülemiste terminal will be established in the II quarter of 2022.

Comment of the National Audit Office: The wording has been supplemented with updated information about the detailed plan of Ülemiste terminal. The status of the Pärnu County Plan is provided in clause 15.

Minister of Economic Affairs and Infrastructure: 5. Cl 17. The detailed design of RB will be completed before 2023 in the part of the section in Pärnu County where the plan has not been updated pursuant to the Supreme Court judgment, i.e. in the area where the plan remained in force even after the Supreme Court judgment of 2020.

Comment of the National Audit Office: The wording has been elaborated.

Minister of Economic Affairs and Infrastructure: 6. Cl 20. The strategic environmental impact assessment for the preliminary design solution carried out in parallel to planning the RB route was prepared with the level of detail of an environmental impact assessment. Please add this to the sentence.

Comment of the National Audit Office: The wording has been supplemented.

Minister of Economic Affairs and Infrastructure: 7. Cl 21. The exact number of immovables to be acquired will become clear following the completion of the detailed designs and plans for the railway and civil engineering works serving the railway. The MEAC 'could not' indicate the exact number because all the proceedings necessary for obtaining this knowledge have not yet reached their conclusion (the detailed design is being prepared, the county plan is in the process of being updated in Pärnu). Thus, it would be proper to say that the MEAC 'could not yet' indicate the exact number of immovables necessary for the railway.

Comment of the National Audit Office: The wording has been elaborated.

Minister of Economic Affairs and Infrastructure: 8. Cl 22. Please change the beginning of cl 22 and add the following as the first sentence: 'The AIPIA and the AIBCPA allow for the acquisition of immovables on the basis of a plan and preliminary design documentation.'

Comment of the National Audit Office: A reference to the right to acquire land also pursuant to preliminary design documentation has been added to clause 22.

Minister of Economic Affairs and Infrastructure: 9. Cl 23. Please change the introductory sentence of clause 23: 'In many cases (e.g. in straight sections of the railway), the detailed design does not alter the preliminary design. In some cases, detailed designs alter the solutions and need for immovables provided for in the preliminary design compared to the time of preparing the preliminary designs because...'

Comment of the National Audit Office: The wording has not been supplemented. The National Audit Office has not taken any steps to determine in how many cases the detailed design alters the preliminary design. The content of the comment is partially covered in clause 24.

Minister of Economic Affairs and Infrastructure: 10. Cl 24. Please specify the end of the third sentence with the following: 'because, otherwise, large infrastructure objects would necessitate the acquisition of many immovables over a very short period of time and, among others, the resources of property valutors are not sufficient for servicing this volume.' Additionally, the last sentence should be supplemented with underlined text: 'According to the MEAC, all such immovables have already been put into operation to date, excluding in the section of the Pärnu County Plan in the process of being revised.'

Comment of the National Audit Office: The wording has not been supplemented as the idea of the comment is partially presented in clause 22. According to the information available to the National Audit Office, no selection among the route alternatives has been made yet and the preparation of the preliminary design has not commenced nor is there a plan to prepare the preliminary design on the selected route in the section of the Pärnu County Plan in the process of being revised, so the accuracy of the wording proposed by the MEAC is questionable.

Minister of Economic Affairs and Infrastructure: 11. CI 25. Changes to the slope of ecoducts are provided in parentheses as an example of potential changes to be made after the approval requested upon processing the building permit. We are specifying that the need for making changes to the slopes of ecoducts became clear after the preparation of the preliminary design due to the environmental requirements and it has already been taken into account in the preparation of the detailed design. It is unlikely that the slope will change again. For clarification – as at 17 September 2021, a building permit has been issued for 25 of the RB objects, and an application for building permit has been submitted for an additional 96 objects.

Comment of the National Audit Office: The wording has been corrected.

Minister of Economic Affairs and Infrastructure: 12. CI 26. This is not an assessment of just the National Audit Office. Both the MEAC and the Land Board have reached the same conclusion even before the respective assessment of the National Audit Office, taking into account, however, that in many cases, the detailed design will not alter the preliminary design to such an extent that acquisition of lands is not possible on the basis of the preliminary design. Consequently, it is proposed to redraft the beginning of the first sentence. The second part of the clause cannot be fully accepted because the detailed designs have not changed the sizes of all the immovables to be acquired pursuant to the preliminary design, instead this has occurred in individual cases, e.g. with regard to immovables related to civil engineering works with a high priority schedule. Civil engineering works with a high priority schedule are road overpasses and ecoducts – with regard to road overpasses, the most important changes have been caused by the terms and conditions added by the Transport Administration or local authorities, while in the case of ecoducts, slopes were changed pursuant to the SEA after the completion of the preliminary design. In straight sections without any civil engineering works or which have not changed in terms of the natural environment or data known with regard to thereof after the preparation of the preliminary design (e.g. found nesting site of a protected species) it is rather unlikely that the detailed design will change the land needs arising from the preliminary design.

Comment of the National Audit Office: The wording has been partially supplemented. On its assessment, the National Audit Office has pointed out that the Land Board has reached the same conclusion. The National Audit Office can amend the wording only in the part where the MEAC comments on how their positions are expressed. The position of the MEAC is provided in clause 24 and, in the opinion of the National Audit Office, it differs from the assessment provided in clause 26 to the extent which concerns the continuation of acquisition of lands on the basis of the preliminary design. However, the National Audit Office has amended the last sentence of its assessment to give the reader the impression that the detailed designs have not altered the size and location of all the immovables to be acquired following the preliminary design.

Minister of Economic Affairs and Infrastructure: 13. CI 30. Please supplement the second sentence of the clause with underlined text: 'According to the MEAC, in setting the objective, an assumption was made that the preliminary design correctly reflects the need for the acquisition of land with regard to specific objects or sections or the detailed designs are sufficiently completed by that time...'

Comment of the National Audit Office: The wording has been supplemented.

Minister of Economic Affairs and Infrastructure: 14. CI 31. For correctness, the last sentence should be supplemented as follows: '...and part of the RB route does not have a county plan solution that would allow commencing with the acquisition of lands in all the sections.'

Comment of the National Audit Office: The wording has not been elaborated as it repeats the content of clauses 13, 16 and 21 of the report.

Minister of Economic Affairs and Infrastructure: 15. CI 39. Please add that the quality of property valuers' work is a problem: if the land owner starts arguing about the price, Level 7 property valuers often amend their valuations, which causes the proceedings to be prolonged.

Comment of the National Audit Office: The wording has not been supplemented as clause 39 explains why it has taken six months from the decision to initiate the acquisition of an immovable to the submission of the notice of proceedings. The comment of the MEAC is essentially covered in clause 44.

Minister of Economic Affairs and Infrastructure: 16. CI 41. Based on the current practice, the average duration of proceedings for one immovable is 16.8 months. According to the MEAC, future forecasts should take into account that authorities involved in land acquisition are constantly looking for ways to improve the proceedings and to shorten the duration of the proceedings as a result. The experience and competence of professional property valuers is also expected to increase as they value land and they will no longer revise their valuations.

Comment of the National Audit Office: The wording has not been supplemented. The activities of the Land Board to improve the process and accelerate proceedings is covered in clauses 47–49. The National Audit Office has not assessed the improvement of the competence of professional property valuers nor its impact on the speed of acquiring immovables, however, the analysis performed by the National Audit Office shows the acceleration of the speed of acquisitions on the basis of proceeding initiated in recent years – this is outlined in clause 43.

Minister of Economic Affairs and Infrastructure: 17. CI 45. The court has the right to apply interim relief in each individual case, regardless of which proceedings or law is being applied. The court decides when to exercise this right. Thus, the identified risk was already known and had been taken into account. In addition, no conclusions can be drawn about the future based on the case referred to by the National Audit Office as in the present case, the period between applying interim relief and the planned commencement of construction is fairly long and the court has always reiterated in the proceedings that as soon as the situation changes, a petition for review of the interim relief should be submitted to the court.

Comment of the National Audit Office: The wording has not been supplemented. The National Audit Office can amend the wording only in the part where the MEAC comments on how their positions are expressed. It is not known at this time whether the court will also accept the petition for reconsideration of the judgment on interim relief and annul it when construction nears. In addition, the National Audit Office has not substantiated its conclusion with only the content of clause 45, but also taking into account the reasons provided for in clauses 40, 41 and 43.

Minister of Economic Affairs and Infrastructure: 21. Cl 85. It is not appropriate to assume that no sources of financing that could not yet be foreseen in 2014 should not be used for the construction of Rail Baltica. In using the sources of financing for the period 2021–2027, the new requirements, restrictions and opportunities introduced by these basic legal instruments that were not yet known in 2014 must also be taken into account. For example, the establishment of the Recovery and Resilience Facility (RRF) or the rules of the Connecting Europe Facility 2021–2027 (which have been revised compared to the rules of the EU Facility 2014–2020) were not yet known in 2014. The current activities in financing RB from different sources is fully in line with the RB intergovernmental agreement from 2017. Various directorates-general of the European Commission have repeatedly supported the use of EU structural funds and the RRF, among others, to connect other modes of transport in Estonia and RB as well as to improve the interoperability of different modes of transport. It is also incorrect to say that, for example, EU structural funds are not 'earmarked' for a specific project. In accordance with the so-called Common Provisions Regulation and the Funds Regulation, the use of funds is planned by each Member State in cooperation with the European Commission. This has also been done in planning the use of the funds of the Cohesion Fund and the RRF, basing it on, among others, the Sustainable Mobility Development Plan until 2035 (and the Estonia 2035 strategy) as one of the ground for planning. The construction of better access to the so-called local stations and the railway on the RB route is absolutely in the best interests of developing sustainable mobility. See also the comment in cl 93.

Comment of the National Audit Office: The wording has been elaborated. In its assessment, the National Audit Office hopes to draw the reader's attention to, among others, the fact that in addition to Rail Baltica, there are other projects in Estonia the financing of which depends on the same sources of financing as the Rail Baltica project. It is therefore a fact that some of these projects may end up not being implemented.

Minister of Economic Affairs and Infrastructure: 22. Cl 86. The National Audit Office says, 'The final budget for the acquisition of immovables is unknown. The budget for acquisition is affected by how many lands and in which period must be acquired, what is the methodology of assessing compensation value, and how much compensation will cost. The current regulation for determining compensation value does not ensure that land owners are treated in the same way and that the choice of methodology is transparent. Land owners of similar immovables may receive a compensation offer in a different amount depending on the choice of methodology.' We acknowledge that in a situation where the final list of immovables is not yet known and they have not yet been valued, the budget for the acquisition of immovables cannot be known. The MEAC is not able to specifically predict the price that will become clear during the actual valuation proceedings. However, revising the cost estimate related to the acquisition of lands (when new information or circumstances become clear) is part of the implementation of the RB project.

Comment of the National Audit Office: The comment has been taken into account.

Minister of Economic Affairs and Infrastructure: 23. Cl 93. We maintain our position expressed in our written opinion on the National Audit Office's audit report 'Funding and implementation of the Rail Baltica project in Estonia in 2014–2019' on page 3 and clause 84 of the report. This written opinion was sent to you by our letter no. 1.1-14/2019/8222 of 6 November 2019.

Comment of the National Audit Office: The wording has not been amended. In the National Audit Office report 'Funding and implementation of the Rail Baltica project in Estonia in 2014–2019', the comment of the National Audit Office is worded as follows: 'In the opinion of the National Audit Office, preparing the project budget forecast for a longer time does not restrict the financial competence of the Riigikogu. In its overview of 2017, the National Audit Office made the following recommendation with regard to the agreement for the development of the Rail Baltica rail connection between the governments of Estonia, Lithuania and Latvia: ask the government to submit an analysis and action plan for financing Rail Baltica. The National Audit Office pointed out that the Riigikogu should know the answers to at least the following questions: What is the financing commitment to be assumed for the state? How is the project be financed? Has a clear decision-making mechanism been agreed in case the project ends up costing more than planned, is not completed by the deadline or there are changes in financing? The role of the government is to guarantee that the Riigikogu has all the information necessary for making decisions. The longer project financing forecast and scenarios recommended in this audit could therefore be an input for the preparation of the state budget and the state budget strategy if necessary.'

General comments regarding the methodology for assessing compensation value of immovables and the activities of the Land Board:

Minister of Economic Affairs and Infrastructure: 18. Cl 70. The National Audit Office says, '70. For example, the methodology established by the Government of the Republic pursuant to the Nature Conservation Act (NCA) by its regulation does not use market value as initial information in determining the value of a growing forest, and instead uses the average price of sales transactions with the respective timber (assortments) made in the three years preceding the valuation. The Ministry of the Environment is of the opinion that the methodology established pursuant to the NCA is intended only for determining compensation for restriction on right of ownership, not for the purpose provided for in the AIPIA. According to the National Audit Office, the methodology established pursuant to the NCA can therefore not be used to determine the compensation value of an immovable on the basis of the AIPIA.' The conclusion of the National Audit Office is unsubstantiated and relies solely on the opinion of the Ministry of the Environment, which has not been discussed in more detail, and the conclusion is, in our opinion, erroneous and unsubstantiated. The NCA can be regarded as a specific law in relation to the AIPIA, i.e. the AIPIA does not even provide for grounds for the state to acquire immovables for nature conservation purposes (see section 4 of the AIPIA). The acquisition of land for nature conservation purposes is governed by the NCA. The NCA is intended for cases where land is essentially acquired because *de facto* ownership is being transferred without the consent of the owner, but also when a particularly intensive restriction on ownership arising from nature conservation is being compensated for. It is clear that the NCA and the methodology established pursuant to it (specified in clause 70) are intended to compensate not only for restrictions on ownership but also transfers of ownership without the consent of the owner because nature conservation restrictions may often lead to this. As such, the use of valuation methodology established pursuant to the NCA is also appropriate in other analogous instances and the conclusion of the National Audit Office that it cannot be used is erroneous and unsubstantiated. Please be sure to amend the conclusion in cl 70; if necessary, the MEAC can provide further explanations.

19. (cl 74 and 75). The conclusion of the National Audit Office that the Director General of the Land Board does not have the right to establish guidelines is erroneous. The guidelines of the Director General of the Land Board are administrative internal provisions, and the Director General of the Land Board does have competence to establish thereof. For comparison, we refer to the position from the practice of the Administrative Law Chamber of the Supreme Court where the court stated on 18 December 2014, 'The valuation matrix pursuant to which the ARIB determines the extent of the reduction of support constitutes administrative internal provisions that the ARIB can establish in order to harmonise practice and apply discretion in a uniform

manner, but the existence thereof does not preclude assessing the proportionality of a specific decision.' Director General of an authority has the competence to establish internal provisions and no separate provision on powers is required in the law. The position of the National Audit Office may be due to the understanding that compliance with the principles set out in the guidelines has been made compulsory to property valuers and this can be done only on the basis of a legislative act. However, the MEAC notes that the principles set out in the guidelines are recommended. Thus, the property valuator conducts valuation pursuant to their own analysis and beliefs. The purpose of the guidelines is to harmonise practice, and such use of the guidelines is not a prohibited activity pursuant to the court decision. Please be sure amend the conclusions in cl 74 and 75; if necessary, we can explain further.

20. Cl 76. The National Audit Office says, 'The Ministry of the Environment is of the opinion that the Land Board has not interpreted the methodology established pursuant to the NCA in the guidelines lawfully and sees a risk that an incorrect implementation of the methodology could gain attention in the subsequent audits of Rail Baltica, in which case recoveries against the state and land owners are not ruled out.' In order to provide explanations, we would need to know exactly what opinion and on which specific question the MoE has expressed (e.g. reference to the comment of the MoE or an extract thereof).

Director General of the Land Board: We acknowledge that the current law in the area of valuation does not always meet the needs of real life. In the opinion of the Land Board, the issue is not so much in the regulation of the AIPIA but rather in the legislation concerning valuation in general, and in the interest of legal clarity, it would be more appropriate to adopt the regulation of assessing compensation value in the Land Valuation Act and its implementing provisions. The Land Board plans to make a proposal to the Ministry of the Environment to initiate amendments to implementing provisions of the Land Valuation Act. We note that the Land Board has already convened a working group to supplement the procedure for individual valuation of land and to harmonise the methodology of valuating immovables with a forest.

At the same time, we find that the Land Board has acted within the context of valuation competence provided for in the AIPIA and in line with the Constitution. In the proceedings for the acquisition of immovables in public interest, the Land Board is merely an administrative body exercising state power who must in their activities be guided by the applicable law and ensure the equal treatment of people and the fair and uniform valuation of immovables being acquired. We explain that the guidelines of the General Director of the Land Board are based on the grounds provided for in sections 12–15 of the AIPIA and supplement the standard EVS 875 12 Valuation for Compensation. It is not legislation but guidelines used in the preparation of valuation reports prepared or commissioned by the Land Board and the principles set out in which are recommended. As such, the Land Board does not agree with the assessment of the National Audit Office that the Director General does not have competence to establish such recommended guidelines.

The Land Board also does not agree with the position of the National Audit Office that methodology established pursuant to the NCA cannot be used for determining compensation value of an immovable pursuant to the AIPIA. Subsection 12 (2) of the AIPIA provides that in addition to valuation by a property valuator holding a professional certificate and determination of value by the Land Board on the basis of the transaction data contained in the transaction database maintained on the basis of subsection 9 (2¹) of Land Cadastre Act as well as on the basis of a market analysis, the authority conducting the proceedings may determine the value in accordance with the methodology approved on the basis of the Land Valuation Act, Nature Conservation Act, State Assets Act or another relevant Act. Insofar as the Government of the Republic Regulation no. 242 'The procedure for the acquisition of immovables containing protected natural objects by the state and for proceedings regarding proposals and the criteria on the basis of which the use of an immovable for its intended purposes is deemed to be significantly hindered by the protection regime, and the procedure and basis for determination of the value of an immovable' of 8 July 2004 (hereinafter Regulation 242) governs the acquisition of immovables containing protected natural objects, Regulation 242, which relates solely to the acquisition of protected natural objects, cannot be implemented for the acquisition of immovables in public interest. Clause 3.3 of the guidelines of the Land Board specifies the extent to which Regulation no. 242 can be used to value a growing forest upon acquisition in public interest. The most important and substantial part of the methodology are the calculation models for the valuation of a growing forest provided in Appendices 1–6 to the Regulation, which the Land Board has followed in the valuation of a growing forest. As the value of immovables with a forest containing protected natural objects is determined using the three-year average timber prices as initial information, which do not reflect the current market situation, the Land Board has not been able to rely on the provisions of Regulation 242 with regard to the initial data for valuation. In conducting the proceedings for acquisition of immovables in public interest for the state and for determining the fair value of an immovable being acquired, market-based prices must be used when applying all valuation methodologies. Thus, the use of valuation methodology established pursuant to the NCA to the extent that is not in contravention of the principles of the AIPIA is legally permitted.

Comment of the National Audit Office on the responses of the Ministry of Economic Affairs and Infrastructure and the Director General of the Land Board: In the opinion of the National Audit Office, the legislator has not granted the Director General of the Land Board the right to establish valuation methodology. Both the MEAC and the Land Board responded that they do not agree with the assessment of the National Audit Office that the Director General of the Land Board does not have the competence to establish recommended guidelines. In addition, it was unclear to the MEAC why the National Audit Office does not consider valuations carried out by a Level 7 property valuator pursuant to valuation standards appropriate.

The National Audit Office does not question the competence of a Level 7 property valuator and has not asserted in the report that the Director General of the Land Board does not have the competence to issue guidelines, provided that the guidelines govern procedural matters such as in which situations is the methodology established pursuant to the Land Valuation Act followed, etc. The recommended nature of the guidelines is doubtful as the Land Board has imposed on professional property valuers the obligation to comply with the guidelines in procurements for valuation services.

The National Audit Office has stated in the report that the Land Board has not been granted the right to establish, incl. amend, valuation methodology by law, and the Land Board's guidelines must not be in contravention of the valuation methodology established pursuant to the law. The right to establish valuation methodology for the valuation of a growing forest has been granted to the Government of the Republic pursuant to the NCA. The response of the Land Board reveals that the guidelines follow the valuation methodology established pursuant to the NCA only partially as the three-year average price used as initial data in the methodology does not comply with the principles of the AIPIA according to the Land Board. In the opinion of the National Audit Office, the Land Board cannot amend the Regulation at leisure by combining methodologies taken from different Acts to provide an assessment on compliance with the Constitution. Constitutionality is verified by the Supreme Court.

The Ministry of the Environment (MoE) is responsible for coordinating the activities of state agencies within its area of government and legislative drafting in the area of government as well as for providing explanations regarding legislation governing its area of activity (see explanations regarding the methodology for determining the value of immovables with a forest

in the MoE letter no. 13-2/20/1342 of 26 March 2020 to the Land Board, letter no. 1-17/20/2667-3 of 24 July 2020 to the Chancellor of Justice). The MoE has stated that the valuation methodology established pursuant to the NCA is not intended to be used for the purpose provided for in the AIPIA. Based on the interpretation by the MoE, the National Audit Office finds that the valuation methodology established by the NCA as a whole is not suitable, but the Land Board which is within the area of government of the MoE has nevertheless decided to use this methodology. Due to the above explanation, the National Audit Office recommends the Minister of Economic Affairs and Infrastructure in cooperation with the Minister of the Environment to initiate an amendment to the Acquisition of Immovables in Public Interest Act.

Recommendations of the National Audit Office	Response of the audited
<p>Revision of the schedule of the Rail Baltica project</p> <p>59. Recommendations to the Minister of Economic Affairs and Infrastructure:</p> <ul style="list-style-type: none"> ■ Revise the entire project schedule and, accordingly, the schedule for the acquisition of immovables, taking into account the risks that may prevent compliance with the schedule; ■ If necessary, initiate an amendment to the Acquisition of Immovables in Public Interest Act so that the deadlines provided for procedural acts are also realistic for the acquisition of lands for Rail Baltica. <p>(cl 28–58)</p>	<p>Response of the Minister of Economic Affairs and Infrastructure: The revision of the project schedule in cooperation with the MEAC and RBE is underway, and cooperation with ministries responsible for the area of transport and authorities carrying out the project in the other Baltic States as well as with the joint company RB Rail AS is also ongoing. In revising the project schedule, among others, the time required for the acquisition of lands is also taken into consideration for each specific object or section because the result of the process of the acquisition of lands affects subsequent activities in the construction of RB. The schedule to be revised must also be reviewed in the future and specified where necessary, including also upon the full completion of the detailed designs in Estonia and other states participating in the project. The new revised schedule until 2026 will be prepared at the latest upon the preparation of the State Budget 2023–2026.</p> <p>The amendments to the AIPIA submitted to the Riigikogu recommend abolishing the specific three-month deadline for negotiations and grant the authority conducting the proceedings the right to determine the deadlines. This would also grant the right to set shorter deadlines to speed up the proceedings. An amendment proposal has also been made with respect of the value date so that the value date could be revised in justified cases. We explain that the currently long durations of proceedings have largely been due to the development of the acquisition practice and that the authority that conducts the proceedings has tried to oblige the land owners as much as possible so that acquisition could be carried out by agreement. At present, the aim has been to acquire lands foremost upon an agreement with the land owners, not so much to carry out the acquisition quickly as, to date, the deadlines for acquisition have been long.</p>
<p>Revision of the budget for the Rail Baltica project</p> <p>87. Recommendations to the Minister of Economic Affairs and Infrastructure:</p> <ul style="list-style-type: none"> ■ Revise the budget for the Estonian section until the completion of the Rail Baltica project. In the event of changes to the project budget, justify the changes in the costs, thereby ensuring the transparency of the project budget and its changes; ■ In cooperation with the Minister of the Environment, initiate an amendment to the Acquisition of Immovables in Public Interest Act in order to develop a methodology for assessing the compensation value of damages directly related to the acquisition of immovables in public interest and the value of a growing forest. <p>(cl 60–86)</p>	<p>Response of the Minister of Economic Affairs and Infrastructure: The revision of the estimated cost of the project in cooperation with the MEAC and RBE is underway, and cooperation with ministries responsible for the area of transport and authorities carrying out the project in the other Baltic States as well as with the joint company RB Rail AS is also ongoing. The financing conditions of the various European Union funds for the budget period 2021–2027 are also being taken into account. The latest known estimated cost of each specific object or section is taken into account in revising the estimated cost of the project. The budget to be revised will have to be reviewed and revised repeatedly in the future too, including both as the conditions and results of application rounds of different sources of financing become clear as well as upon the completion of detailed designs in Estonia and other states participating in the project. The new revised cost estimate until 2026 will be prepared at the latest upon the preparation of the State Budget 2023–2026.</p> <p>The cases are quite diverse both upon the construction of Rail Baltica as well as upon the acquisition of immovables on other grounds – these are not simply forest lands and immovables used for living in. For example, in certain cases, it is necessary to assess the values of rights of superficies, rental buildings or production lands instead. It is clear that there can be no single and exhaustive guideline that would serve as adequate grounds for resolving whatever case. The reason for this is solely that not all potential cases can be exhaustively foreseen. In more complex cases, property valuers of the highest level who are experts in the field of valuation and who select the suitable methodology for the valuation of the specific object are used. The National Audit Office partly states in the report that compensation of market value must be ensured, but ignores that pursuant to the current law, subsection 11 (2) of the AIPIA, as a rule, allows for compensation of an immovable in a significantly higher value than the market value. In addition, it is unclear from the report of the National Audit Office why the National Audit Office does not consider valuations carried out by a Level 7 property valuator pursuant to EVS valuation standards appropriate. The comments of the National Audit Office that subsection 12 (2) of the AIPIA that allows for the</p>

Recommendations of the National Audit Office	Response of the audited
	<p>use of different methodologies does not ensure a fair result are declarative. Subsection 12 (2) of the AIPIA provides a basis for using different methodologies in order to enable choosing a methodology for each case that would, in the specific case, best suit the specifics of the immovable being valued.</p> <p>As for the valuation of forest lands, the MEAC is aware of the respective problems. A methodology for assessing the value of a growing forest, which would also apply to the acquisition of RB lands, is being prepared.</p>
<p>Development of guidelines for the selection of valuation methodology of immovables</p> <p>88. Recommendation to the Director General of the Land Board: Prepare guidelines that specify how valuation methodology should be chosen to better ensure transparency necessary for the choice of methodology for assessing compensation value.</p> <p>(cl 68–75)</p>	<p>Response of the Director General of the Land Board: Clause 88 of the draft audit provides a recommendation to the Director General of the Land Board to prepare guidelines determining when the Land Board commissions valuation in the proceedings for acquisition of immovables in public interest from a professional property valuator and when the Land Board determines the value itself. We believe that all methodologies used must use market-based initial data and provide a comparable result. Different professional property valuers will not get exactly the same valuation result when valuating the same object in normal practice either, but a similar result could be achieved by analysing the valuations. The simultaneous use of different methodologies provides a more likely valuation result, which is why the Land Board is often implementing different methodological approaches to compare valuation results. The Land Board determines the value itself foremost if the immovable under valuation is forest land or arable land where it can be assumed that the best use for the land in the case of which the asset is valued the highest is the present use and where addressing damages is simpler than average (e.g. the damage is limited to extending the access road or changing the best use in the part remaining with the owner of the immovable). If the owner of the immovable does not agree with the valuation result, they must be able to commission their own comparative valuation from a professional property valuator. Therefore, we do not want to restrict the use of different methodologies and are instead in favour of establishing a common regulation.</p> <p>(See the comment of the National Audit Office in the previous table 'General comments' (last comment).)</p>
<p>Compliance with the recommendations of the previous audit</p> <p>101. Recommendations to the Minister of Economic Affairs and Infrastructure:</p> <ul style="list-style-type: none"> ▪ Develop a system for assessing the risks of implementing the Rail Baltica project in Estonia and involve all the parties to the project in risk assessment so that persons responsible for risk mitigation are appointed; ▪ Agree in cooperation with Rail Baltic Estonia OÜ on the principles of change management, incl. with regard to the budget and volume, so that it would be clear to which extent the parties to the project can make decisions independently; ▪ Record the meetings of the Rail Baltica working group to ensure the transparency of the decisions adopted by the working group. <p>(cl 89–100)</p>	<p>Response of the Minister of Economic Affairs and Infrastructure: We agree with the proposal to develop and specifically describe the RB risk assessment system in Estonia. Although risk assessment and making mitigation proposals has been ongoing throughout the entire RB project (risks have been assessed and described both in the RB cost-benefit analyses and as a separate assignment¹⁶), the development and introduction of more specific process descriptions could simplify risk identification and assessment, helping in both prevention and timely response in the event of their occurrence. Similarly, it is practical to describe in more detail the principles of change management, which must, in addition to the agreement with RBE, also include the activities of the joint company RB Rail AS related to Estonia.</p> <p>Although the meetings of the RB working group are mostly of an informative nature, it is practical to record these. This has already started in September 2021.</p>

¹⁶ Risk analysis of the planning and construction stage of the Estonian section of the Rail Baltica project. Final analysis report, 2017.

Audit description

Audit objective

The purpose of the audit was to assess whether the state will acquire the correct immovables necessary for the Rail Baltica project by the agreed deadline, have the costs of acquiring immovables been determined, and how well has the implementation of the project stayed within the schedule and budget in the last few years. In addition, the aim was to examine which activities have been undertaken since the publication of the 2019 audit report of the National Audit Office.

Criteria for giving an assessment

In the opinion of the National Audit Office, the established process of acquiring immovables functions when the state is clear on which immovables are necessary so as to not acquire too many or too few lands. Among others, it was important that the necessary planning documents would not prevent the timely completion of the acquisition of immovables. In addition, the deadlines set for the implementation of the project (among others, for the acquisition of immovables) must take into account the actual duration of the activities necessary.

In the opinion of the National Audit Office, the state has the financing and schedule of the Rail Baltica project under control when the budget for the Estonian section of the Rail Baltica project is kept up-to-date as the project progresses and more information becomes available – there is an overview of the funds necessary for the project, the actual expenditure and changes in the cost. In addition, the authorities carrying out the project have ensured the implementation of project activities so that the funds prescribed in the CEF grant agreement are used on time.

Scope and approach of the audit

The audited institutions were the Ministry of Economic Affairs and Communications, the Land Board the Consumer Protection and Technical Regulatory Authority, and Rail Baltic Estonia OÜ.

The following documents were analysed in the course of the audit:

- Area-specific legislation and explanatory memoranda, in particular the Acquisition of Immovables in Public Interest Act
- Estonian state budgets and state budget strategies and explanatory memoranda
- European Union Connecting Europe Facility (CEF) grant agreements 1–3 and 6 for the Rail Baltica joint project and applications for the extension of the deadline of grant agreement 1–2
- Action status reports (ASR) of the grant agreements submitted to the European Commission until 2021
- Estonian management and control system of the Rail Baltica project of the Connecting Europe Facility, approved by the Minister of Economic Affairs and Infrastructure Directive No. 24.4-6/19-0100/9093 of 5 December 2019
- Procedure for project management of Rail Baltic Estonia OÜ, approved by resolution no. 2020.03.24-2 of the management board of Rail Baltic Estonia OÜ of 24 March 2020
- Procurement procedure of Rail Baltic Estonia OÜ, approved by resolution no. 2021.02.11-2 of the management board Rail Baltic Estonia OP of 11 February 2021
- Description of the risk management system of Rail Baltic Estonia OÜ, approved by resolution no. 2020.02.28-2 of the management board of Rail Baltic Estonia OÜ of 28 February 2020

- Risk register of Rail Baltic Estonia OÜ
- Risk analysis of the planning and construction stage of the Estonian section of the Rail Baltica project
Final report of the cost-benefit analysis prepared by Ernst & Young Baltic AS, September 2017
- Minutes of the supervisory board meetings submitted by Rail Baltic Estonia OÜ
- Table for planning the schedule of the Estonian project as at 8 February 2021
- Orders of the Ministry of Economic Affairs and Communications (MEAC) to initiate acquisition to the Land Board, 2018–2021
- Decisions to acquire immovables, 2018–2021
- Minutes of the working group for acquisition of immovables
- Reports on the implementation of the work plan for the half-year submitted to the MEAC by the Land Board, 2016–2020
- Statistics on the acquisition of immovables from the Land Board
- Cooperation agreement between the Land Board, the Ministry of the Environment and the MEAC
- Guidelines for the assessment of compensation value of immovables established pursuant to the directive of the Director General of the Land Board
- Official position of the Ministry of the Environment on the methodology for determining the value of immovables with a forest

Table 1. People interviewed during the audit

Institution	Interviewed	Date of the meeting
Ministry of Economic Affairs and Communications	Kristjan Kaunissaare, Rail Baltica coordinator	26 January 2021
Land Board	Merje Krinal, Head of the Land Consolidation Department; Maarja Virks, Adviser of the Land Consolidation Department	28 January 2021
Ministry of Economic Affairs and Communications	Triin Orav, Chief Specialist of the Transport Development and Investments Department	1 February 2021
Rail Baltic Estonia OÜ	Marko Kivila, lawyer	8 February 2021
Rail Baltic Estonia OÜ	Marko Kivila, lawyer; Vaiko Eggert, Risk Manager	12 May 2021
Land Board	Merje Krinal, Head of the Land Consolidation Department; Maarja Virks, Adviser of the Land Consolidation Department	18 June 2021
Ministry of Economic Affairs and Communications	Kristjan Kaunissaare, Rail Baltica Project Manager; Triin Orav, Chief Specialist of the Transport Development and Investments Department	21 June 2021

Time of completing the audit:

Audit activities were performed from January 2021 to July 2021.

Audit team:

The audit team comprised the Audit Manager Kaire Kuldperre and auditors Meeli Saksing and Silja Einberg.

Contact information

Additional information regarding the audit is available at the Communications Department of the National Audit Office
tel. +372 640 0704 or +372 640 0777, e-mail riigikontroll@riigikontroll.ee

An electronic copy (pdf) of the audit report is available on the website www.riigikontroll.ee.

Summary of the audit report is also available in Estonian.

The number of the audit report in the internal records system of the National Audit Office is 80075.

Postal address of the National Audit Office of Estonia:

Kiriku 2/4
15013 TALLINN
Tel. +372 640 0700
riigikontroll@riigikontroll.ee

Previous audits of the National Audit Office in the field of railways:

24 May 2017 – National Audit Office’s overview of the agreement for the development of the Rail Baltica rail connection between the governments of Estonia, Latvia and Lithuania

4 December 2019 – Funding and implementation of the Rail Baltica project in Estonia in 2014-2019–2019

17 December 2019 – Implementation of the Rail Baltica project. Joint audit by the Estonian National Audit Office, Latvian National Audit Office and Lithuanian National Audit Office

7 December 2020 – Overview of the funding and development of public railways

All reports are available on the website of the National Audit Office at www.riigikontroll.ee

Appendix A. State budget funds used for the implementation of the Rail Baltica project in 2010–2020

Name	2010–2014	2015	2016	2017	2018	2019	2020	Total
Expenditure related to the grant agreements for EU TEN-T projects¹⁷								
Feasibility and cost-benefit analysis (2011, AECOM analysis)	150,351							150,351
Analysis of the establishment of the joint venture	119,640							119,640
Strategic environmental impact assessment	1,597,500	532,500						2,130,000
Communication	108,415	113,028						221,443
Preparation of county plans and preliminary design	2,301,232	1,919,011						4,220,243
Stage II of archaeological study		900,840						900,840
Study of land acquisition compensation measures		67,096						67,096
Preparation of the terms of reference for security of supply of mineral resources		26,304						26,304
Preparation of the terms of reference for the spatial and technological requirements of the Muuga multimodal terminal		22,800						22,800
Personnel costs (Consumer Protection and Technical Regulatory Authority)	27,589	37,510						65,099
Reimbursement of the costs of county governments in connection with the preparation of county plans	12,957							12,957
Total expenditure related to the grant agreements for EU TEN-T projects	4,317,684	3,619,089						7,936,773
Expenditure from state budget (without support)								
Preparation of county plans and preliminary design			2,590,912	537,050	811,000			3,938,962

¹⁷ Grant agreements no. C(2008)7494 and no. C(2013)5399. The expenditure include EU subsidies, self-financing and ineligible value added tax.

Contributions for the formation and increase of the share capital of Rail Baltic Estonia OÜ (incl. payments for the formation and increase of the share capital of RB Rail AS)	890,000	924,000	650,000	1,650,000	1,740,000	1,740,000	3,000,000	10,594,000
Total expenditure from state budget (without EU support)	890,000	924,000	3,240,912	2,187,050	2,551,000	1,740,000	3,000,000	14,532,962
Technical assistance from the EU								
Administration of the RB project and participation of the Republic of Estonia in the TEN-T core network		49,540	111,186					160,726
Administration of the RB project and participation of Estonia in the TEN-T core network (stage 2)				8,809	155,511	48,065	55,977	268,363
Technical assistance for implementation of the RB project					0	5,340	37,354	42,694
Total technical assistance from the EU		49,540	111,186	8,809	155,511	53,405	93,331	471,783
Expenditure related to CEF grant agreements I, II, III and VI¹⁸								
Study of mineral construction materials			0	24,580	48,726	138,240	0	211,546
Mitigation measures for environmental impact not related to construction			0	60,000	69,355	86,655	125,403	341,413
Archaeological research			0	2,490	17,954	130,630	21,000	172,074
Studies of the maintenance depot of the RB infrastructure			0	61,950	23,099	15,088	0	100,136
Design of the Rail Baltica main route and local objects			0	232,900	213,122	2,071,044	9,742,476	12,259,542
Construction of the Rail Baltica main route						1,817,385	4,870,588	6,687,972
Construction of Ülemiste passenger terminal							45,104	45,104
Acquisition of immovables			46,248	267,697	318,207	1,624,365	895,018	3,151,535
Project management and communication			164,524	385,459	460,332	816,598	1,131,756	2,958,669
Expert assessment of the designs of the						47,971	57,815	105,786

¹⁸ Grant agreements no. INEA/CEF/TRAN/M2014/1045990; no. INEA/CEF/TRAN/M2015/1129482; no. INEA/CEF/TRAN/M2016/1360716; no. INEA/CEF/TRAN/M2019/2098073; no. INEA/CEF/TRAN/M2019/2098304

main route and local objects								
Studies of Pärnu freight terminal						143,176	4,950	148,126
Studies of the tram connection to Vanasadam Harbour					102,590	70,977		173,568
Studies of security of electricity supply				76,500				76,500
Establishment of the tram connection between Rail Baltica Ülemiste terminal and Tallinn Airport			1,605,705	9,362,172	484,210			11,452,087
Owner supervision of the establishment of the tram connection between Rail Baltica Ülemiste terminal and Tallinn Airport			11,550	22,350				33,900
Studies of the maintenance depot of the RB infrastructure, stage 2							80,757	80,757
Studies of Soodevahe dry port							77,400	77,400
Connections to high voltage lines							975,565	975,565
Total expenditure related to CEF grant agreements I, II, III and VI			1,828,027	10,496,098	1,737,595	6,962,129	18 027 831	39,051,681
Total expenditure related to the Rail Baltica project	5,207,684	4,592,629	5,180,125	12,691,957	4,444,106	8,755,534	21,121,162	61,993,198

Source: Ministry of Economic Affairs and Communications

Appendix B. Audit recommendations made in 2019 and their implementation

Recommendation of the National Audit Office	Conclusion
Internal control system of the Estonian section of the Rail Baltica project	
<p>As several internal procedures and guidelines had to be developed at Rail Baltic Estonia OÜ (RBE), the National Audit Office recommended that the Ministry of Economic Affairs and Communications (MEAC) carries out special control at RBE if necessary to ensure that the internal control system of RBE is functioning effectively and contributes to the completion of the Rail Baltica project on time and within budget.</p>	<p>Partially fulfilled as the supplemented management and control system (MCS) stipulates that the task of the MEAC is to carry out special control when verifying the eligibility of activities if necessary. However, the MEAC has not yet seen the need for special control, although it has become clear that there are problems with the timely completion of the project and keeping to the budget.</p>
<p>As the functions of the parties for project management were not developed, the National Audit Office recommended that the MEAC establishes, for example in the MCS, the exact roles and responsibilities of the parties to the project, including agrees on the functions of the MEAC in the performance of supervision and management of changes.</p>	<p>Partially fulfilled as the functions of the MEAC, RBE, the Land Board, the Consumer Protection and Technical Regulatory Authority (CPTRA) and RB Rail AS (RBR) have been set out in the MCS, but the functions of the MEAC in the management of changes has not been described in the MCS.</p> <p>The supervisory tasks of the MEAC have been assigned to the MEAC and the CPTRA by the MCS. The function of the MEAC is to supervise performance agreements. The function of the CPTRA is to carry out preliminary inspection of public procurement of RBE and the other Estonian parties to the Rail Baltica project and to carry out follow-up inspection of cost statements related to the works and services commissioned as part of the implementation of public procurement that have undergone preliminary inspection. The CPTRA carries out supervision on the basis of the activities approved by directive no. 1-2/20-011 of the Director General of the CPTRA of 25 May 2020.</p>
<p>To improve the supervision of the Rail Baltica project, the National Audit Office recommended that the MEAC develops measures to carry out supervision over the activities of RBE that would, among others, ensure that the activities of the Rail Baltica project under the responsibility of the Estonian state remain on schedule and within budget.</p>	<p>Partially fulfilled as the MEAC has established several measures for carrying out supervision. For example, the MEAC has appointed a representative as a member of the supervisory board of RBE and put together a steering group for the Rail Baltica project that meets at the level of the representatives of the management board, which ensures that the heads of various related ministries and agencies are also familiar with the progress of the project.</p> <p>However, it was revealed that the meetings of the Rail Baltica working group that meets for the purposes of information exchange and supervision that take place twice a month and must be recorded pursuant to the MCS by the MEAC are not actually being recorded, and the National Audit Office was therefore not able to ascertain how supervision is carried out and whether the measures established by the MEAC have been sufficient to ensure that the project activities remain on schedule and within the budget.</p>
<p>In the opinion of the National Audit Office, the flow of information is important to ensure that problems are expressed on time so that they could also be responded to in due time. The National Audit Office recommended that the MEAC develops principles for the flow and exchange of information so that information about the status of the implementation of activities would flow from RBE to the MEAC, incl. to the management where necessary, and the information required for the implementation of the activities would flow from the MEAC to RBE. It is also important to ensure that the reports to be submitted to RBE contain accurate and up-to-date information.</p>	<p>Fulfilled. The finance department of RBE submits reports for ASR to the MEAC as part of the performance agreement. The MEAC forwards the report to RBR who, in turn, forwards the report to the INEA. This is the extent of active reporting between RBE and the MEAC. Reports of the management board of RBE to the supervisory board of RBE are sent to the MEAC and the Ministry of Finance for information.</p> <p>The MEAC prepares monthly reports to RBR and ensures that the information transmitted is accurate. Reporting takes place in MS Excel. No automated reporting to RBR has been developed yet.</p> <p>The efficiency of the flow of information is facilitated by the established project steering group which is made up of members at the management level of different agencies.</p>
<p>The National Audit Office recommended that the MEAC develops a decision-making mechanism required for change management so that the management of the MEAC could make the decisions necessary for the implementation of the project in a timely manner.</p>	<p>Not fulfilled as the MEAC has not established a decision-making mechanism for change management, i.e. it has not been established when RBE must obtain the MEAC's approval for changes. The MEAC explained that if the estimated cost differs from the current budget of the preliminary design, the management board of RBE decides whether it is necessary to contact the MEAC. According to the MEAC, RBE has not made any such appeals. However, meetings with RBE have taken place.</p>
<p>The National Audit Office recommended that the MEAC considers the need to have the owner represented at the supervisory board of RBE and, if necessary, to nominate its candidate to the committee</p>	<p>Fulfilled. The representative of the owner has been appointed to the supervisory board of RBE by the decision of 20 December 2019 of the MEAC as the sole shareholder of RBE.</p>

for appointment of members to supervisory boards of state-owned companies in connection with the fact that the owner is responsible for the performance of the company at the international level, and it would also help to simplify supervision and control.	
Functioning of the internal control system at Rail Baltic Estonia OÜ	
The National Audit Office recommended that Rail Baltic Estonia OÜ (RBE) determines the persons responsible for the processes of the internal control system and their rights and obligations.	<p>Fulfilled. RBE has supplemented the following:</p> <ul style="list-style-type: none"> ▪ Internal procedure; ▪ Procurement procedure; ▪ Description of the risk management system; and ▪ Project management procedure. <p>The project management procedure sets out the obligations and responsibilities of the parties, internal change management, monitoring of the budget and schedule.</p> <p>On the example of Ülemiste joint terminal, project management decisions are documented. In case of changes, a form of changes is established, where, among others, the content and budget must be specified. The decisions of the management board and supervisory board are recorded.</p>
As the risk management system had not been fully developed, the National Audit Office recommended that RBE updates the risk management system, incl. determines the working principles of the risk management working group and harmonises the risk management system of RBE with the system of RB Rail AS.	<p>Partially fulfilled as RBE has made several changes to risk assessment. For example, created the position of a risk manager, prepared guidelines for risk assessment, established a risk register that is constantly being updated. In addition, risks are being reported to the management board and supervisory board of RBE, regular working group meetings on risks are taking place with RBR.</p> <p>However, the audit revealed that the integration of the risk management system with RBR has not been fully completed yet. RBE is in the process of implementing the risk management program Primavera introduced by RBR.</p>
The National Audit Office recommended that RBE creates rules for the documentation of decisions and the materials, opinions, estimates, etc. on which they are based in order to ensure better transparency of risk management, amendments and decision-making.	Fulfilled. The internal control system has been established at RBE by the regulations, procedures and the like in force in the organisation. The documents of the internal control system have been supplemented in 2020 and 2021.
The National Audit Office recommended that RBE assesses whether the updated process of change management makes it possible to efficiently manage the changes occurring in procurements and contract management and update the processes if necessary.	Fulfilled. On the example of Ülemiste joint terminal, it can be said that RBE has supplemented its change management processes and used them accordingly. The amendment proposal submitted to the management board and the decision of the management board to adopt the amendment have been clearly drawn up.
Due to the increasing volume and significant increase in the number of procurement for works and due to the expansion of the company, it is necessary to ensure that the internal control system functions effectively. The National Audit Office recommended that RBE systematically assesses the functioning of the organisation's internal control system and eliminates any deficiencies identified as a result of the assessment.	Partially fulfilled because although the internal control system as a whole has not been assessed, RBE has updated several procedures and guidelines. Processes have been established in project management, risk management as well as in change management.
Assess the problems that have arisen in the organisation of procurements and the performance of contracts and update the internal processes on the basis of the analyses.	Fulfilled. Internal processes have been updated in 2019–2021. Projects have a project steering group to discuss issues. The procurement procedure has been supplemented on 11 February 2021.
As failure to record market research in writing could lead to a situation where there is no certainty that all participants in the procurement are treated equally and transparency is ensured, the National Audit Office recommended that RBE makes sure that the market research carried out before the announcement of a procurement is documented.	Fulfilled. It has been included in the procurement procedure that, where necessary, market research is carried out and documented.
Transparency and equal treatment of participants are important in the organisation of public procurement, among others, it is also important that the choice of members of the procurement committee is justified and documented. The National Audit Office recommended that RBE makes sure that the choice of	Fulfilled. RBE's procurement procedure has been updated, and the requirement to justify the choice of the procurement committee has been added. The National Audit Office verified during the audit that the choice of the members of the procurement committee has been justified.

the members of the procurement committee is justified and documented.	
Financing of the Rail Baltica project	
To better take into account the effects of the Rail Baltica project on the state budget at the time of the preparation of the state budget and ensure that the funds necessary for the implementation of the project are available, the National Audit office recommended that the MEAC and the Ministry of Finance develop schedules and funding scenarios regarding the completion of Rail Baltica during the preparation of the state budget strategy for 2021–2024 in case the co-financing by the European Union decreases and in case the project turns out to be more expensive than planned.	Not fulfilled because the financing of the Rail Baltica project at the state level is still planned for four years according to the state budget strategy. A more detailed long-term financing forecast of the Rail Baltica project in Estonia has not been prepared as a separate official document.
The National Audit office recommended that the MEAC and the Ministry of Finance present the schedules and financing scenarios to the Government of the Republic and submit them to the Riigikogu as appendices to the state budget strategy or find another suitable way for presenting the schedules and scenarios to the Riigikogu so the Riigikogu can take these into account when making budget policy decisions.	Fulfilled because the MEAC has presented the status and forecast of the implementation of the Rail Baltica project, incl. the prospects of applying for CEF support for the implementation of the project, to the Economic Affairs Committee and the Finance Committee of the Riigikogu.

Source: National Audit Office