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**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 19 March 2001**

**6842/01**

**RESTREINT**

**EVAL 6  
ELARG 32**

**REPORT**

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From : the General Secretariat  
To : the Collective Evaluation Working Party  
No. prev. doc. : 9575/1/99 EVAL 39 ELARG 81 REV 1 RESTREINT  
Subject : Draft revised country report on Estonia

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I. INTRODUCTION

In its analyses the Working Party has dealt with the progress made by each acceding country and has examined shortcomings which still have to be eliminated in order to catch up with the EU Acquis in the field of Justice and Home Affairs.

The first series of country reports pointed out the precise areas where the most serious shortcomings existed and where substantial efforts by the candidate country were still needed, while at the same time acknowledging progress already made and refraining from a final judgement, thus helping Member States in selecting programmes to finance (e.g. bilateral programmes, PHARE), as well as the Commission in adjusting the priorities and objectives of the accession partnerships and feeding the discussions on enlargement.

The point of departure for the present second series of country reports, whose structure has been refined, is to identify exactly where in the process of alignment the candidate country finds itself and what remains to be done, focussing on operational conclusions. The key elements of this new structure, reflected in each chapter, are :

- adoption of the “acquis”, including shortcomings,
- administrative capacity, including an assessment of structure, staff, resources etc. and
- implementing performance, covering issues such as quality, efficiency and independence.

The conclusions drawn at the end of the report are the result of extensive discussions within the Collective Evaluation Working Group on the basis of the information presented.

In line with this approach, all other relevant background information can be found in the thematic analyses-documents constituting the basis of these reports<sup>1</sup>.

As the process of alignment and the collection of relevant data is a continuously evolving and ongoing process, the findings and conclusions in the present report cannot be considered final or exhaustive. Updates will therefore continue to be presented on a regular basis.

## II. OVERVIEW OF DEVELOPMENT

### A. Border Security

In 1991, when Estonia's independence was restored, border control was neither organised nor was there any infrastructure available- except some old ex-soviet sea surveillance systems; the borders with Latvia and Russia completely lacked any type of border surveillance infrastructure. Somehow Estonia has however, starting from scratch, managed to create a functional as well as effective border security system in only 10 years time.

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<sup>1</sup> I.e. docs 6079/01 EVAL 4 ELARG 16 ; 6843/01 EVAL 7 ELARG 33 ; 7026/01 EVAL 8 ELARG 39 ; 7065/01 EVAL 9 ELARG 40

## 1. *Formal Acquis*

Adoption of the formal acquis in relation to border security has been very fast in Estonia and it has been very active in solving the remaining problems. Estonia has declared that its border security system will be fully prepared to apply EU (Schengen) requirements by the end of 2002. The National Border Management Strategy, including all border security elements and a budget, is still needed.

The *State Border Act* and the *Border Guard Act*, both from 1994, provide the main legal bases for the control of Estonia's borders. The conditions for foreigner's entry into Estonia are stipulated in the Aliens Act. Several other laws also influence the work of border authorities. The majority of legal acts (laws and regulations) on, as well as the principles of border control and border guarding are broadly in accordance with EU legislation. However, there is still a need to adapt legislation and regulations in order to cope with all the EU (Schengen) requirements related to e.g. future internal borders and carriers' responsibilities.

The border agreement with Russia has not yet been ratified by the Russian Parliament, which is why the demarcation of the Estonian-Russian border is still missing. Despite the lack of border and readmission agreements, co-operation between Estonian and Russian border authorities is good and functional at all levels.

In its last country report the CEWG established that the level of border security at the Estonian – Latvian border was not satisfactory. The two countries have now established a concept of joint border crossing points where both authorities carry out entry checks only. Since authorities from both countries now have access to some of each other's databases and lists of wanted persons and stolen cars have been exchanged, it has become possible to perform a type of exit control on behalf of the other authority. This model deserves closer scrutiny and may be a suitable model for the so-called temporary external borders. It is however not fully in line with the Schengen principles.

Local people living at the Estonian-Latvian border are allowed to cross it with a special permit issued by the Estonian border authorities. Border checks at such local crossing point are performed either by Estonian or Latvian authorities e.g. Estonian authorities are not always present. This procedure is not in line with the EU-acquis since cross-border movement at external borders must be subject to checks by competent national authorities. It is not possible to hand over this responsibility with non-contracting parties. Estonia has preserved for local habitants of certain areas (mainly the southeastern region, at the Estonian-Russian border) a possibility to cross borders on special days and holidays at local border checkpoints open only on those occasions. This practice needs to be evaluated in more detail.

## **2. *Administrative capacity***

The basic administrative and structural system for effective implementation of border security is in place in Estonia. The Estonian Border Guard (EBG), under the control of the Ministry of the Interior, is a solid and well-organised civil authority responsible for all the country's borders. Stable and continuous development was possible thanks to there being one clear chief organisation responsible for national border security since the restoration of independence. This also created a good basis for the necessary and continuously increasing international co-operation.

At present however, this stable development and even the possibility to maintain the current level of operative capacity are threatened due to a decreasing budget. The EBG's budget does not allow for any other investments than in a new sea radar system. Although the situation is still under control, it may become alarming especially at the southeastern border area where the lack of staff is a reality and the continuing decline of the capacity of the Russian Border Troops is foreseen, resulting in increased pressure on the EBG. There is a danger that the planning made by the EBG and the budget provided by the Government do not coincide, and the level of border security will decrease rapidly in some areas as a consequence.

The quantity and quality of staff is not yet satisfactory. The EBG tries to compensate this by using conscripts, but this is a temporary solution.

### 3. *Implementing performance*

The Estonian border security system is chiefly based on Schengen principles and on the conclusions of Tampere. Several elements of the Schengen-like wide approach can be found in the Estonian National Border security concept. In general, the level of surveillance at the eastern border broadly responds to Schengen requirements. Some parts of the border still suffer from the lack of professional border guards and equipment. The number of staff is too low especially in the southeastern area and the use of conscripts lowers the overall good level of staff quality. Even though technical surveillance at the eastern border is at a very high level, the night-vision capacity is still rather limited and the number of dogs used to perform green border surveillance is far too small and leaves room for improvement.

Sea border surveillance is, at the moment, the weak point in the otherwise generally functional system. Given the fact that there is no integrated sea radar system and some of the existing radars are out of date, effective supervision of sea areas in all weather conditions is a real problem. Since some of the vessels are rather old and the existing air surveillance capacity very limited, it is clear that there is need for improvement. Very heavy ferry traffic and continuously increasing pleasure yachting emphasises the importance of sea border surveillance. Given the fact that smuggling of drugs, cigarettes and illegal immigrants to the EU by sea seems to increase, there is a need to develop a general and complete sea surveillance concept. This concept should include the harbours, the sea area, sophisticated risk analysis and especially promoted co-operation between the national as well as international authorities.

Due to low budgets, the level of operative actions has decreased as well as the number of mobile sea, air and land border patrols. This means that the basic surveillance intensity has lowered and the risk of discovery of unauthorised border crossings is smaller. Lack of professional staff also means lack of experience and fewer patrols. Sophisticated technical equipment can, to some extent, compensate this though not entirely. Efficient border surveillance is a combination of mobile patrols, equipment and dogs supported by aerial surveillance.

Co-operation between the national authorities has improved over the past years. It is however obvious that mutual trust and practical co-operation between the customs and border guards is still, to certain extent, missing. Successful prevention of continuously growing drugs smuggling to the Nordic Countries, requires more efficient joint actions against smugglers. This is an area where especially border guards and customs should co-operate more.

Checking procedures and traffic arrangements at the border crossing points are broadly in line with the Schengen principles. The level and amount of equipment is also good. The lack of real second level border checking systems at crossing points is damaging the quality of border checks. No sophisticated equipment and specialised staff for document examination exist at the border crossing points; all difficult cases must be sent to Tallinn.

Basic infrastructure is constantly developing but there is still need for reconstruction of 4-5 border guard stations at the eastern border in respect of improved living and working conditions for border guard officials working at this area. In the coming years Estonia must modernise equipment, transportation means (working resource of its 2 patrol aircraft and 2 helicopters, and its 5 ships which will become obsolete in the next 4-5 years) and infrastructure (optimisation of command, operative and logistical structure).

#### **4. Summary**

The basic concept of the EBG is very good and all the elements for effective and Schengen-like border security exist. Some technical elements of the system need to be modernised on short notice. Since some of these projects are very expensive, e.g. sea radar system and air component, it is reasonable to try to promote co-operation between several authorities for the benefit of these projects in an attempt to avoid overlaps. The budget gives rise to concern since the real implementing capacity of the Border Guard is decreasing due to lack of money.

The border situation is fairly stable but there are certain signals that must be taken into consideration. Very heavy ferry traffic and the growing number of pleasure yachts may provide new channels for illegal activities. Therefore the sea border surveillance system as a whole requires more attention. It is furthermore likely that the situation at the eastern border will worsen.

If Estonia and Latvia join the EU at different points in time, there is a need to change some of the existing border crossing procedures.

## **B. Migration**

### **1. Formal acquis**

Estonia has made manifest progress in dealing with its "non-citizens" (one quarter of the population). Notably, access to citizenship and to permanent residence permits has been eased. However, current legislation still leaves 20 to 30 000 persons "undocumented", who have been living in Estonia for at least 11 years (often more), but who for various reasons missed the legalisation process. Therefore, 2% of the whole population of Estonia still remains in an illegal situation. It is not clear how Estonia intends to end this legacy of the past.

This being said, the formal Acquis is already in place as regards visa policy, general rules on aliens and the fight against illegal immigration<sup>1</sup>. Admission issues still require improvements. Despite a number of amendments adopted in 1999 and 2000, the Aliens Act still contains many flaws as regards family unification:

- Whether the immigration quota applies or not to foreign spouses of Estonian citizens, depends on the marriage's fertility.<sup>2</sup> Therefore the speed, to say the least, of family unification depends on a very debatable criterion, having in mind the "right to respect for private and family life" (Art 8 ECHR).<sup>3</sup> The same goes for families of EU citizens (as well as of USA, Norway, Iceland, Switzerland and Japan): whether or not the quota applies, depends on the nationality of the family members, leading to possible and random separations.

- The time-limit, after which the family member's residence permit becomes autonomous, is unclear and too long for spouses.<sup>4</sup> For other members, there is no time-limit at all<sup>5</sup>. This is not in accordance with the Resolution of 1993 on family unification.

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<sup>1</sup> The provisions may even be too perfect. For instance, judges are competent not only for order expulsion and detention (after 48 hours), but also for the alien's exit from detention centers in order for him to be actually expelled. Another example: an order to leave, necessary prior to expulsion, may be issued with a term of one year.

<sup>2</sup> The quota regime is not applied in presence of a common minor, or in case of the female's pregnancy of more than twelve weeks.

<sup>3</sup> Even though this criterion may favour the birth rate and be helpful in the fight against marriages of convenience.

<sup>4</sup> 5 years apparently, a too long time according to EU standards

<sup>5</sup> For instance, provisions exist in favour of a minor and of a parent or grandparent who needs care which he or she cannot receive elsewhere and the legal income of his or her child or grandchild is insufficient. Such residence permits are revoked if the person with whom the alien settled fails to ensure the support of the alien in Estonia. There is no time-limit.



In addition, the lack of a definition of the minimum income requested for a change from a temporary to a permanent residence permit, may lead to arbitrariness; provisions on workers also need adjustments.<sup>1</sup>

Finally, although the provisions on data protection comply with the Strasbourg Convention (still to be ratified), they may be weakened by the fact that data such as names, deemed not sensitive, are not registered (and therefore less supervised) by the Data Protection Inspectorate. Amendments to the legislation are foreseen for 2002.<sup>2</sup>

## 2. *Administrative capacity*

At consulates, visa issuance conditions are deemed to be close to the EU ones with the exception of the online connection to national databases, which is planned for 2002. In addition, consulates are already trained to deal with the fluxes they will have to cope with after accession, since visa policy has been aligned for several years now and since visas are no longer granted at the border.

Inside the country, the Citizen and Migration Board's ability to deal with the (low) figures on Migration has not raised any concern, as a rule.<sup>3</sup> However, Estonian authorities themselves have recognised the weaknesses of the mechanism for the fight against illegal work. In addition, the lack of formal readmission agreements with Russia, Belarus and Ukraine, (despite Estonia's willingness to conclude them) may hamper expulsion, although there is some readmission practice with Russia.

Police and border guards are equipped with computers and networks.<sup>4</sup> But the stage of preparation the necessary establishment of a national information system is still low: nation-wide databases either don't exist yet, or are not shared. This is planned for 2002-2003.

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<sup>1</sup> On admission of self-employed persons, and on changing of status. In addition, for an alien having entered for work purposes (irrespective of seasonal work), every change in the employment conditions leads to revocation of both the work and the residence permit, without any time-limit, which goes beyond the acquis. (Council Resolution of 20 June 1994 on limitation on admission for employment, C, v)

<sup>2</sup> The whole subject of Data Protection is all the more important in Estonia since the Migration Board is compulsorily kept informed of many events in the alien's life, by employers (e.g. premature termination of an employment contract), educational institutions (i.a. interruption of studies), agencies registering changes in marital status, courts etc...

<sup>3</sup> Bureaucratic delays have been noted where "non-citizens" are concerned.

<sup>4</sup> Estonian authorities declare they cover 70% of the needs.

### 3. *Implementing performance*

Estonia controls its migratory fluxes. Figures on refused entries and on arrested trespassers are relatively substantial, while figures on illegal entries are deemed low. Each case is investigated. Illegal work is not sufficiently combatted. Not a single figure is available. Sanctions are weak and poorly implemented due to lack of staff and investigative powers.<sup>1</sup> Estonian authorities intend to tackle this question.

The Supreme Court's swift reaction to some difficult cases of refusal of family unification has given evidence of justice's capacity to check (and correct) flaws in legislation (see above), and currently the Migration Board, acting according to the Court's case law, no longer takes into account the quota for family unification. (But this practice is fragile, and does not suppress the need to modify legislation).

### 4. *Summary*

The formal Acquis has been broadly adopted, except in the field of admission (notably family unification,).

Administrative capacity does not raise concern, except in the fight against illegal work.

Consulates already work under conditions with which they will have to cope after accession, except for the required online connection to national databases (planned for 2002). Local units are rather well-equipped, but national databases still have to be established. (This is planned for 2002-2003). 2% of the population, consisting of "non-citizens" having missed the legalisation process, are still undocumented.

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<sup>1</sup> Illegal work is punished by a mere fine. Administrative liability of legal persons was only introduced in 2000. Confiscation of the proceeds is not provided for. An amendment is planned giving immigration officials the right to interview people, visit companies, get acquainted with documents certifying relations, etc.

## C. Asylum

### 1. Formal acquis

The Refugees Act of 1997, as amended in 1999, has set up an asylum procedure, which is broadly compliant with the acquis. However, the following provisions should be modified:

- Estonian legislation makes use of, but also misuses, the concepts of safe third country, of manifestly unfounded applications and of accelerated procedures, notably through a too extensive role of border guard officials.<sup>1</sup> This may lead (and has led allegedly) to summary rejections and to cases not being processed. Estonia should either amend its legislation, or choose not to make use of these sophisticated tools, the need of which is debatable considering the very low number of applicants.

- As the appeal's suspensive effect is a "basic feature of the asylum procedure", it should "be laid down in the legislation" as required by the Acquis<sup>2</sup> and not merely left to practice only.

In addition, provisions on non-rejection must take into account the risks related to torture and bad treatments<sup>3</sup>, exclusion clauses need amendments<sup>4</sup>, provisions on sending data abroad<sup>5</sup> are lacking, the refugee has poor rights concerning family unification<sup>6</sup> and access to permanent residence permit, and an alternative protection (temporary, subsidiary) regime should be established.

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<sup>1</sup> In accelerated procedures, Border Guards (alone) take the decision on asylum. They assess the "manifestly unfounded" nature of the application, and may even decide to apply the exclusion clauses (non-political crime...) However, even at the central level, they can hardly be considered as a "ministry or other central authority ... fully qualified in refugee and asylum matters" as worded in the Resolution on Minimum Guarantees or a "competent authority at the appropriate level fully qualified in asylum or refugee matters" as formulated in the Resolution on Manifestly Unfounded Applications. Their "full qualification is all the more dubious that there are no cases at all dealt with at the border at present.

In addition, the safe third country notion is not well-defined. There is no formal list, and it is a criteria for rejecting asylum, rather than a tool for readmitting the alien in a country where his application will be properly processed. The wording of the Act leads to situations where an applicant will be rejected because he comes directly from a third country where he is not threatened but where his application cannot be properly processed either. Allegedly, such a case occurred. Therefore a formal difference should be made between admissibility and accelerated procedures.

<sup>2</sup> Resolution of 20 June 1995 on Minimum Guarantees Art 3.

<sup>3</sup> ECHR and Convention Against Torture, Art 3

<sup>4</sup> As a ground for exclusion, the non-political crime has to have been committed outside the territory of Estonia. This is not provided for in current legislation.

<sup>5</sup> For preparing the implementation of the Dublin Convention.

<sup>6</sup> The minor "shall" be granted a residence permit, whereas the spouse "may" be granted one; furthermore a minimum income is required.

Some of these shortcomings are likely to be dealt with through amendments currently submitted to Parliament.

## **2. *Administrative capacity***

At central level, administrative capacity is well adapted to the current very low number of asylum seekers. Progress has been made in translation services (creation of a pool of translators among the three Baltic States) but not much in legal aid, where national funding still has to be found. The stage of technical preparations to implement the Dublin Convention (equipment for comparing and transmitting fingerprints, central registers of foreigners and of visas) is still low.

At local level, for Border Guards, training or rather awareness campaigns, are still necessary.

## **3. *Implementing performance***

Despite only 2 to 20 yearly applications, depending on the years, procedures are lengthy (two years including the appeal).

Overall, there is an obvious gap between the figures on refusals of entry (2000 per year) and on attempted illegal entries (several hundreds), on the one hand, and the current asylum influx, in general as well as at the border (2 cases in 1999, none in 2000), on the other hand. Even though NGOs do not give evidence of refoulement at the border, the general conduct of the Border Guard deserves further monitoring.

## **4. *Summary***

The asylum procedure is compliant with the *acquis*, with some exceptions mainly related to the appeal's suspensive effect (to be formalised in legislation) and to the (mis)use of the concepts of safe third country, manifestly unfounded applications and accelerated procedures.

Progress still has to be made in the field of legal aid and of preparation to the Dublin Convention.

The conduct of border guards requires further monitoring, since there is an obvious gap between the figures on refusals of entry and on attempted illegal entries on the one hand, and the current asylum influx on the other hand.

## **D. Police and Customs**

### **a) Police**

#### **1. *Formal acquis***

Estonia continues to make progress in the field of justice and home affairs, particularly in aligning its legislation in this area. Impressive results have been achieved in the establishment of administrative and organisational structures, adequately corresponding to the requirements for general policing and the more specific needs for fighting organised crime, drug-related crime, money laundering, corruption and other forms of serious crimes. Also training and professional qualifications have improved.

#### **2. *Administrative capacity***

Recurrent reforms introduced since 1991 have been less effective than hoped for. The end of 1999 witnessed a new reform of police structures. The number of policemen was reduced from 4,255 in November 1999 to 3,738. The current Estonian population stands at around 1.370.500. This means that, on average, there are 273 police officers for every 100.000 citizens.

The overall aim of the police reform was to create a smaller but more efficient and motivated police. The restructuring intends to reinforce the operational capacity of the police by reducing the size and increasing the efficiency of the current administrative departments. These measures have been accompanied by a plan to substantially increase police salaries, in particular at the lowest level of the chain of command.

The police reform has led to the strengthening of the police and the efficiency of their daily work is improving. Essential positions are filled in a more effective manner. The increase in wages in police prefectures has provided good results in increasing the competitiveness of police work in the labour market and has enabled the selection of better qualified staff for the police. As a consequence police officers do not move to the private sector as frequently as before. The results of the police reform are promising however they should be closely monitored.

Organisational stability within the Estonian police could also assist in attaining their objectives. It is the view of the EU Embassies that there are no longer major problems concerning lack of continuity and professional experience within the Estonian police.

There is still need for specialist training in the fields of drugs and modern criminal intelligence work, especially when it comes to strategic and operative analyses. There is a general need for training in the field of economic crimes and in the areas of enforcement of intellectual property rights and confiscation of pirate products, etc. New training methods should be established and implemented.

The State budget does not allow large investments for technical equipment. However, the level of technical equipment is satisfactory in Tallinn but sometimes unsatisfactory in the countryside. There are several bilateral programs to invest in technical equipment.

At the beginning of July 2000, a project on an information system for investigation and analysis was presented for financing under Phare 2001. The objective of the project is to improve the effectiveness of police work in detecting and analysing crimes and for forensic investigation.

Public confidence in the police is still far behind that of other European countries. In October 2000, a Gallup research poll found that 47% of the population trusted the police. Public opinion concerning the professional level of the police forces has consistently improved. In 1995, 29% of persons evaluated it as satisfactory; by 2000 this figure had increased to 51% (on the basis of victimisation surveys). While opinion polls should be treated with caution, they however give some indications of trends.

Estonia does not have liaison officers in other countries yet but intends to send such officers to Russia and Finland. The latter will also be responsible for other Nordic countries. The liaison officer to the Russian Federation will be assigned in the beginning of 2001.

### 3. *Implementing performance*

There are still need to enhance police officers' professionalism and their abilities to address new types of crime such as organised crime, drug-related crime, economic crime and money laundering. Crime control in these areas, to some extent, reflects the implementing performance of the law enforcement agencies.

Together with the quantitative changes in crime, significant shifts in the structure of crime can also be discerned. Property crimes and economic crimes have become more frequent and their share in total crime is increasing steadily. Compared to 1998, the number of registered crimes increased by 13% in 1999. The biggest increase is in drug-related crime. Whilst the figures show this increase, they also reflect the higher rate of detection of such crimes by the police.

In the UN annual statistical report, which deals with general trends in Europe and North America, special attention is paid to the fact that Estonia has an exceptionally high criminal homicide rate.<sup>1</sup> There have also been instances of contract murders during the last year.<sup>2</sup>

Organised crime groups are known to operate in Estonia and include persons of various national origins, including Russians, Chechens and Azerbaijanis. These groups are thought to be involved in drug trafficking, theft, robbery, prostitution and traffic in contraband. They are also thought to be involved in money laundering.

Estonia has become one of the largest suppliers of amphetamines and ecstasy in the Nordic countries; especially Finland and Sweden are concerned. During the last few years, Estonia has also developed into a large cocaine receiving country.

During the year 2000, the Narcotic Division of the Central Criminal Police succeeded in uncovering four clandestine laboratories where synthetic drugs were produced.

However, it is the opinion of the EU-embassies in Tallinn that organised crime does not have a major impact on State and Society.

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<sup>1</sup> UNDP Estonian Human Development report, 2000

<sup>2</sup> Answers to the questionnaire sent by the Swedish Presidency

b) **Customs**

1. ***Formal acquis***

With regard to Customs, Estonia continues to make progress in its alignment with the acquis and a new Customs Code is underway. A strategic plan of the Estonian Customs Board has been developed, outlining the core objectives for Estonian Customs for the years 1998 - 2002. It comprises five strategic components: human resource, infrastructure, customs technology, legislation and international co-operation, and corresponding goals.

Organisational structures are developing satisfactorily.

2. ***Administrative capacity***

The number of Customs staff on 1 May 2000 was 1342 (on 31 December 1999 it was 1381). In 1999, 146 officials resigned and the Estonian Customs Board recruited 110 officials. One third of the Customs staff has been working for customs over 6 years.

The year 1999 was marked by a regional reform in the Customs Board, which reduced the number of regional customs houses to five instead of the former eight. Several functions have been taken over by the customs houses from the departments of the Customs Board and the number of management levels has decreased.

Overall, many of the problems in the past, resulting from an ill-defined division of responsibilities between the Police Board, the Security Police Board and the Board of Border Guards' authorities, have been solved and the co-operation between these authorities is increasingly effective. However, enhanced co-operation between border guards and customs in the fight against smuggling is needed.



The Customs Board intelligence units deal with risk analysis. A computerised information system is in place. Two levels of intelligence network have been created, while on the regional level it is currently being set up. There is no uniform selective criteria or analysis system in place for selection of the companies for customs auditing. Selection is done relying on practical experience and on the information and trends that have been identified from previous audits.

Whereas the number of staff working for customs control has reached planned full capacity, other areas involved in audit, intelligence and, in particular, criminal investigation still need substantial reinforcement to reach their planned full staffing.

Salaries in the customs are on average lower than in other sectors, e.g. the Police Board.

### **3. *Implementing performance***

In 1999, the number of detected customs offences was 4.261, which is 43% more than in 1998. The proportion of smuggling among the revealed customs offences has increased from 21% to 37%. The rate of discovering offences involving cigarettes and alcohol has tripled. The seizure of counterfeit and pirated goods has also increased. During the first five months of 2000, the Customs authorities discovered 1680 offences.

There were seizures of drugs as well, but detected quantities were relatively small and the results were not satisfying. One reason is that surveillance activities have not yet formally been implemented.<sup>1</sup>

#### **c) Summary (Police and customs)**

Recurrent reforms introduced since 1991 have been less effective than hoped for. The end of 1999 witnessed a new reform of police structures. The police reform has led to the strengthening of the police and the efficiency of their daily work is improving. Overall, the results of the police reform are promising however they should be closely monitored.

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<sup>1</sup> Estonian Customs' web-site

Sustained efforts are still needed in the fight against drug-related crime and economic crimes, organised crime and money laundering. The efforts in the fight against corruption within police and customs should continue.

There is still need for specialist training in the field of drugs and modern criminal intelligence work, especially when it comes to strategic and operative analysis. There is a general need for training in the field of economic crimes.

With regard to customs, Estonia's administrative capacities to prevent, investigate and enforce violations of customs laws are still weak and need to be strengthened. Efforts to fully develop risk analysis should continue. Staff turnover is high and a substantial part of the staff has been recruited in recent past and still needs training and practical experience.

## **E. Justice**

### ***1. Formal acquis***

Estonia has ratified a large number of criminal law conventions. The new (draft) Criminal Code whose entry into force is foreseen for 2002, should further align Estonian legislation with regard to inter alia trafficking in human beings and sexual exploitation of children, making it a criminal offence to participate in a criminal organisation, corruption and fraud. On the latter, some conventions remain to be ratified<sup>1</sup>. Estonia has not yet signed the Council of Europe Agreement on Illicit Traffic by Sea, implementing Art. 17 of the UN Convention. The current Code of Criminal Procedure has been amended through introduction of the provisions for "Mutual Assistance in Executing the Court Judgement of a Foreign State" defining the extent of assistance (in seizure). Compliance of the legislation with the Schengen acquis concerning judicial co-operation is foreseen with the adoption of the new Code of Criminal Procedure<sup>2</sup>. Whilst drafting this Code, Estonia will review all declarations and reservations adopted so far in connection with the relevant conventions.

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<sup>1</sup> OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Council of Europe Criminal Law Convention on Corruption

<sup>2</sup> As for the Estonian Criminal Code and Criminal Procedural Codes, both drafts have been submitted to Parliament. In both cases, the entry into force is foreseen for 2002.

Estonia has also ratified a great number of civil law conventions which, according to the Constitution (Art. 123) take precedence over national provisions. As a consequence, such provisions are rarely transposed into national law. A number of conventions still need to be ratified<sup>1</sup> or signed (European Convention on the Adoption of Children). Information is needed on a number of instruments<sup>2</sup>. Estonia acknowledges that in order to implement the civil law acquis, it must join the relevant acts and create the capacity for their implementation. In order to fully comply with the acquis regarding data protection (including Schengen) including its implementation, Estonia must ratify the 1981 Convention and prepare and implement amendments to the Personal Data Protection Act and the Databases Act. An independent supervisory authority was established in 1999.

## 2. *Administrative Capacity*

The Ministry of Justice, in co-operation with judges, has prepared a draft Courts' Act pursuant to which the administration of the 1st and 2nd instance courts will remain within the Ministry. As additional tasks emanate from the Act, the courts department<sup>3</sup> at the Ministry needs to be strengthened.

One of the main problems affecting the efficiency of the judicial system is the backlog of court cases, mainly due to the heavy workload of judges. The backlog in courts in criminal and civil cases has slightly decreased, but the figures are still considerable<sup>4</sup>.

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<sup>1</sup> the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, the Hague Convention on the Civil Aspects of International Child Abduction of 1980, the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents

<sup>2</sup> the Hague Convention on the Recognition of Divorces and Legal Separations of 1970, the 1961 Hague Convention on the Competence of Authorities and Applicable Law relating to the Protection of Minors, the European Convention on the Exercise of Children's Rights, the Convention on Civil Procedure (The Hague 1954), the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitration Awards.

<sup>3</sup> in charge of the court reform and training of judges

<sup>4</sup> Criminal cases

Pending cases per judge/per month (1999):	13.6
Estimated backlog (2000):	21.7%
Average proceedings length (1999):	3 months and 20 days

Civil cases

Pending cases per judge/per month (1999):	42.4
Estimated backlog (2000):	5.7%
Average proceedings length (1999):	4 months and 24 days

Administrative cases

Pending cases per judge/per month (1999):	26.9
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However, Estonia does not consider the magnitude of the backlog alarming and efforts are made to decrease its effects<sup>1</sup>.

Several reports mention that a career in the judiciary and judges' salaries remain unattractive to young qualified lawyers. There are 14 vacancies out of a total of 238 judge posts. Due to the heavy workload there is a need to increase the number of judges as well as the number of their assistants. The average professional experience of Estonian judges is rather short as the majority of today's judges were appointed only after 1992. However, most of them had previous experience as a lawyer. The number of prosecutors and notaries are reportedly not quite sufficient.

Enforcement of civil-law judgements needs to be improved<sup>2</sup>, bailiffs allegedly not always being reliable in their work, slow and insufficiently trained. More information is needed on this point. According to the planned reform, the number of bailiffs will be reduced from 150 to 90-100. The authorities plan to establish an institution of free-lance court enforcement officers in the near future, which should reduce the state costs of the enforcement procedure.

A major problem appears to be the difficult access to lawyers: there is a considerable shortage of qualified lawyers, and as a consequence, fees are too high for the average citizen. The relatively small number of lawyers can be explained by the fact that barristers have the monopoly of representation only before the Supreme Court. In all other courts, legal consultants can also provide legal assistance. More information on the current fees of lawyers/legal consultants is desirable.

In 1999 training of judges was grossly inadequate and the application of the law one of the main problems facing the justice system (judges and lawyers<sup>3</sup>). Lately, specialist training of judges and prosecutors (in Estonian law, EC law, judicial co-operation in criminal matters, applying EC law and language training) has become a priority. However, the heavy workload might make participation in training difficult for judges.

The courts are well equipped with personal computers, and development of an extensive court information system has started. Legal information is largely available on the internet.

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<sup>1</sup> The authorities intend to amend the rules of procedure by creating alternative dispute-solving bodies. In order make the court system more effective, the Ministry of Justice will make a thorough analysis of the administrative structures which may result in uniting courts or changing their location.

<sup>2</sup> Fines, compensations, recoveries etc

<sup>3</sup> Further information on universities' contributions to training in/application of EU Law would be desirable.

The differences in salaries between the public and private sector are gradually decreasing and judges' salaries have increased, becoming more and more competitive even though they are still lower than in the private sector. Court staff salaries however remain relatively low.

The administrative capacity of the Data Protection Inspectorate authority needs to improve if it is to carry out its tasks efficiently.

### **3. *Implementing performance (reliability and efficiency)***

As the legal system is relatively 'young', a general problem is the lack of precedents in/experience with the new legislation. Allegedly all new legislation was created in a very short time by inexperienced legislators both in the Ministries and Parliament.

Judges' uncertainty in applying the law, in particular administrative and criminal law, continues to be a problem. The quality of court decisions varies considerably<sup>1</sup> (this is also due to the lack of preceding cases from the high court). It is unsatisfactory in some courts of 1st instance. The situation is more serious in the civil and administrative field where less than 50% of appealed cases were upheld in 2nd instance in 1999. In criminal cases, the figure was slightly over 50%.

Reports on efficiency, trustworthiness and integrity of the judiciary vary. Slowness and inefficiency of the legal system<sup>2</sup> are said to be due to low salaries, the fact that part of the staff was trained during the Soviet system, the lack of knowledge of a modern legal system, a lack of resources in preliminary investigations and poor co-operation between the different authorities (police, prosecutors and judges). Further, the extent of procedural freedom gives rise to problems, e.g. delays, non-appearance of parties or their representatives in due time etc.

With regard to the judiciary's independence, some -albeit minimal- political influence has been detected. Reports on the respect of the principle of the rule of law and human rights in all proceedings also vary.

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<sup>1</sup> One report states that in civil cases "almost anything can come out" as a ruling from the lower courts.

<sup>2</sup> allegedly the inefficiency of lower courts is worse than in the higher courts

The courts' handling of criminal cases is reportedly slow and not very good. First-time juvenile delinquents - as well as others - have to wait a long time for their cases to be reviewed. Allegedly, businessmen and politicians<sup>1</sup> accused of various offences have, with virtually no exceptions, all been ultimately acquitted, albeit after lengthy court proceedings.

Referral to courts has become more common. However, the court system must become faster, more effective, humane and trustworthy<sup>2</sup>. Trust in the judiciary is gradually increasing; in October 2000, 45% of the population said they trusted the courts. Alternative methods of dispute solving are used, but are costly.

The current Code of Civil Procedure (1998) has already made the procedure more efficient and the period for trying civil cases shorter. Remaining problems should be solved by the new Civil Procedure Code<sup>3</sup>. The new Code of Criminal Procedure should make the procedures more efficient and less bureaucratic and expensive.

As to judicial co-operation in practice, there seem to be no major problems in the area of civil law, and foreign judgements in civil, commercial and family matters are recognised without any special proceedings. With regard to criminal law, the requirement to send requests for mutual assistance in Estonian or English has allegedly slowed down co-operation, but in general reports are positive. The number of requests has grown considerably over the past years.

#### 4. *Summary*

The main problems of the judiciary are the judges' heavy workloads, the need for more judges and assisting personnel and the uncertainty (and thus need for training) in applying the law. Training in general (language, Estonian law, EC law, judicial co-operation in civil and criminal matters) needs to be continued. The main problems of the legal system are its slowness and the lack of experience with new legislation and a modern system. The trust in the system still needs to be improved.

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<sup>1</sup> It is reported that 'these two functions are often combined in Estonia'

<sup>2</sup> The reputation of the system has improved compared to the early 1990s. However, trustworthiness in the lower courts is allegedly low, but somewhat better in the higher courts

<sup>3</sup> The authorities intend to amend the rules of procedure and create alternative dispute-solving bodies. In order to make the court system more effective, the Ministry of Justice will thoroughly analyse the administrative structures which may result in uniting courts or changing their location. viz. Analysis

## **F. Human rights**

### **1. Formal acquis**

Over the last years, in the legislative field, Estonia has introduced a large number of necessary innovations including the development of structures to guarantee respect for the rule of law and human rights. Estonia has ratified the main human rights related instruments but some others still need to be signed<sup>1</sup> or ratified<sup>2</sup>. Information is needed with regard to racism and xenophobia.

Current legislation still leaves 20 to 30 000 persons "undocumented", often having been in Estonia for several decades, but having missed (for various reasons) the legalisation process.

Despite a number of amendments, several provisions on family re-unification do not comply with Art 8 ECHR. (See Migration).

As regards the integration of minorities, Estonia needs to ensure that the implementation of the Language Law takes place in accordance with international standards and the Europe Agreement.

### **2. Administrative capacity**

More information on the present situation with regard to the understaffing of the public prosecutor's offices and the high fees of lawyers/legal consultants remains desirable.

The institution of an ombudsman has suffered some delay and his capacities need to be reinforced.

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<sup>1</sup> the European Social Charter and its additional Protocol, the Protocol amending the Charter, the UN Convention relating to the Status of Stateless Persons

<sup>2</sup> the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and those articles of the Revised European Social Charter related to the rights to a decent salary, social protection for the elderly, dignified treatment at work, protection against poverty and social deprivation, and shelter

### 3. *Implementing performance*

In general, the principles of the ECHR and the rule of law are reported to be respected in practice.

One report states that the police force in general performs its duties with suitable respect for basic human rights and that efforts to improve the training of police officers are given high priority. However, another (human rights) report states that there have been (credible) reports that some police officers use excessive force and verbal abuse during arrest and questioning of suspects.

In May 1998 a new law was adopted introducing probation in Estonia. The law provides for the establishment of 200 probation offices and for appropriate training. The probation system is continuously improving as the Estonian judiciary is gradually gathering experience with the new system.

One report mentioned that, as regards pre-trial conditions, some isolated cases of ill-treatment suffered by prisoners in custody have been reported, including the use of punishment cells.

The conditions in prisons -despite improvements- remain poor. Prisons are overcrowded and in general not in a state conducive to rehabilitation. The introduction of probation has slightly alleviated the problem of overcrowdedness. There is a lack of financial resources, and the training and pay of prison officers needs to be improved. One report (1999) mentioned that initiatives were needed to reverse the rising tide of violence inside the prisons; more up to date information would be desirable.

The prison system is currently undergoing a reform. One measure has been to bring the administration and control of prisons under the direct responsibility of the Ministry of Justice. The Ministries of Justice, of Social Affairs and of Education agreed on strategies for prison education and prison social work and further actions for 2000 – 2003 are foreseen. In June 2000, the Imprisonment Act was adopted in order to implement further Council of Europe recommendations. In addition, implementation of the existing multi-year plan to refurbish and restructure the prisons has started.



The medical service needs to be improved (lack of trained medical personnel and out-dated medical equipment). The same goes for the living conditions of prisoners (e.g. introduction of green areas, opportunities for leisure and better hygiene/sanitary conditions).

**G. Corruption**

III. CONCLUSIONS

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