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REPORT

From : the Collective Evaluation Working Party

To : (CATS, Coreper) Council

No. prev. doc. : 6842/1/01 REV 1 EVAL 6 ELARG 32 RESTREINT

Subject : Revised country report on Estonia

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 reports¹.

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.

¹ I.e. docs 6079/1/01 REV 1 EVAL 4 ELARG 16 ; 6843/01 EVAL 7 ELARG 33 ; 7026/01 EVAL 8 ELARG 39 ; 7065/1/01 REV 1 EVAL 9 ELARG 40, 7287/01 EVAL 10 ELARG 48, SN 2559/01

1. Formal Acquis

Adoption of the formal acquis in relation to border security has been very fast in Estonia and the country 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. A 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 foreigners' 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 be able 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 complete demarcation¹ 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 each other's behalf. This model deserves closer scrutiny. It is however not fully in line with the Schengen principles.

¹ E.g. the Estonian border poles are not yet in place.

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 points are performed either by Estonian or Latvian authorities, i.e. 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 to 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 because of 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 where a continuing decline of the capacity of the Russian Border Troops is foreseen, resulting in increased pressure on the EBG. There are indications that the planning made by the EBG and the budget provided by the Government do not coincide and that 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 corresponds 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 limited and the number of dogs used to perform green border surveillance is small.

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 a number 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 emphasise the importance of sea border surveillance. Given the fact that smuggling of drugs, cigarettes and illegal immigrants to the EU by sea is on the increase, there is a need to develop a general and complete sea surveillance concept. This concept should include the harbours and the sea area, making use of sophisticated risk analysis and especially promote 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 diminished, as well as the risk of discovery of unauthorised border crossings. 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 a 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 quality and amount of equipment is also good. The lack of real second level border checking systems at crossing points is damaging to 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 in this area. In the coming years, Estonia must modernise equipment, transportation means¹ (the working resource of some aircraft and some ships will become obsolete in the next 4-5 years) and infrastructure (optimisation of command, operative and logistical structure).

The excessive role of the Border Guard in the asylum procedure gives rise to concern.

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.

¹ The total number of aircraft is 2, helicopters 5 and ships 10.

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" (approx. 12% of the population). Notably, access to citizenship and to permanent residence permits has been eased. However, there are still 20 to 30 000 persons "undocumented", most of whom have lived in Estonia for at least 11 years (often more), but who for various reasons missed the legalisation process. Therefore around 2% of the population of Estonia still remains in an illegal situation. The Citizen and Migration Board (CMB) and several Estonian Ministries are at present discussing measures to increase confidence in the authorities among those illegally residing in the country and to further encourage people to legalize.

This being said, the formal Acquis is already in place as regards visa policy, general rules on aliens and the fight against illegal immigration. 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 does or does not apply to foreign spouses of Estonian citizens, depends on the marriage's fertility. Therefore the speed, to say the least, of family unification depends on a very debatable criterion¹, having in mind the "right to respect for private and family life" (Art 8 ECHR).² The same goes for families of EU citizens: whether or not the quota applies, depends on the nationality of the family members, leading to possible and random separations.³

¹ 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.

² Even though this criterion may favour the birth rate and be helpful in the fight against marriages of convenience.

³ This is also contrary to Art ECHR 8 and 12.

- The time-limit, after which the family member's residence permit becomes autonomous, is unclear and too long for spouses.¹ For other members, there is no time-limit at all². This is not in accordance with the Resolution of 1993 on family unification.

In addition, the lack of a definition of the minimum income required for a change from a temporary to a permanent residence permit, may lead to arbitrariness; provisions on workers also need adjustments.³

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.⁴ 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.⁵ But the stage of preparation of 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.

¹ 5 years apparently, a too long time according to EU standards

² 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.

³ 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 this indefinite possibility of revocation goes beyond the acquis (Council Resolution of 20 June 1994 on limitation on admission for employment, C, v), not to mention human rights.

⁴ Bureaucratic delays have been noted where "non-citizens" are concerned.

⁵ Estonian authorities declare they cover 70% of the needs.

3. *Implementing performance*

Estonia controls its migratory fluxes. Figures on refused entries and on arrested illegal entrants are relatively substantial, while figures on illegal entries are deemed low. Each case is investigated. Illegal work is not sufficiently combated. Not a single figure is available. Sanctions are weak and poorly implemented due to lack of staff and investigative powers.¹ 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, which is unsatisfactory in many respects. An active process is however under way to legalise these persons.

¹ Administrative liability of legal persons was only introduced in 2000. Confiscation of the proceeds is not provided for. New provisions in the Code of Administrative Offences provide for the liability for unauthorised employment of aliens. Sanctions have become stricter. 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.

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. 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 required in the *Acquis*. Their "full qualification" is all the more dubious as there are at present no cases which are dealt with at the border. This situation may lead, and has led allegedly, to summary refoulements and to cases not being processed.¹

The "safe third country" notion is not well-defined. There is no formal list, and it is used as a criteria for rejecting asylum, rather than as a tool for readmitting the alien to a country where his application will be properly processed. The applicant may be rejected because he comes directly from a third country where in fact his application will not be properly processed. Allegedly such a case has already occurred. Therefore a formal difference should be made between admissibility and accelerated procedures.

Estonia should focus on legislation and create proportionate tools therein.

- 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*² and not merely left to practice only.

¹ The current draft amendment, providing for a non-binding advice given by the Ministry of Interior prior to the decision taken by the border guard, does not solve the problem.

² Resolution of 20 June 1995 on Minimum Guarantees Art 3.

In addition, provisions on non-refoulement must take into account the risks related to torture and bad treatments¹, exclusion clauses need amendments², provisions on sending data abroad³ are lacking, the refugee has poor rights concerning family unification⁴ and access to permanent residence permit, and an alternative protection (temporary, subsidiary) regime should be established.

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. Improvement of integration efforts for refugees is needed.

¹ ECHR and Convention Against Torture, Art 3

² 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.

³ For preparing the implementation of the Dublin Convention.

⁴ The minor "shall" be granted a residence permit, whereas the spouse "may" be granted one; furthermore a minimum income is required.

4. *Summary*

The Estonian asylum institutions cannot yet be considered as fully qualified and competent, mainly due to lack of sufficient experience (because of the low number of applications) and lack of correct application of several concepts of international refugee and asylum law.

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. The Republic of Estonia is well prepared to meet the challenges of and the more specific needs for fighting organised crime, drug-related crime, money laundering, corruption and other forms of serious crimes and has developed an effective organisational structure to combat organised crime. 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 3,633¹. The current Estonian population stands at around 1.370.500. This means that, on average, there are 265 police officers for every 100.000 citizens.

¹ Beginning of February 2001

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 recently assigned one to the Russian Federation (April 2001). It intends to send one also to Finland, who would be responsible for all the Nordic countries.

3. *Implementing performance*

There is still a need to enhance police officers' abilities to address new types of crime such as economic crime and money laundering. Crime control in these areas, to some extent, also 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.¹ There have also been instances of contract murders during the last year.²

¹ UNDP Estonian Human Development report, 2000. However, the EU embassies' answers to the Swedish questionnaire indicate that the number of homicides has decreased considerably, although still high.

² Answers to the questionnaire sent by the Swedish Presidency

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.

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 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.

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 recruited 110 officials. One third of the Customs staff has been working for customs over 6 years.

Organisational structures are developing satisfactorily, however Estonian Customs still lack a central intelligence structure. Estonia should strengthen its administrative capacity, in particular by creating mobile surveillance units.

The year 1999 was marked by a regional reform in the Customs, 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 and the number of management levels has decreased.

Although there have been improvements with regard to problems stemming from an ill-defined division of responsibilities in the past, problems still exist concerning co-operation with the Police, the Security Police and the Border Guard authorities. Enhanced co-operation between border guards and Customs in the fight against smuggling is needed. In the area of the fight against drugs, the Customs administration's capacities are limited due to lack of staff and of legal provisions.

The Customs 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.

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.¹

4. 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.

Sustained efforts are still needed in the fight against drug-related crime, economic crimes 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.

¹ Estonian Customs' web-site

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 ratified¹. 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 Procedure². Whilst drafting this Code, Estonia will review all declarations and reservations adopted so far in connection with the relevant conventions.

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 ratified³ or signed (European Convention on the Adoption of Children). Information is needed on a number of instruments⁴. 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.

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

² 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.

³ 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

⁴ 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.

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 department¹ 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, although slightly less, is still of some significance. However, Estonia is making efforts to decrease its effects².

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 improved³, 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.

¹ in charge of the court reform and training of judges

² 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.

³ Fines, compensations, recoveries etc

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 lawyers¹). 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.

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 its is to carry out its tasks efficiently.

3. Implementing performance

As the legal system is relatively "young", a general problem is the lack of precedents in/experience with the new legislation. Allegedly, new legislation was created in a very short time leading to deficiencies in quality.

¹ Further information on universities' contributions to training in/application of EU Law would be desirable.

Judges' uncertainty in applying the law, in particular administrative and criminal law, continues to be a problem. The quality of court decisions varies considerably¹ (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. Inefficiency of the legal system² is 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). Furthermore, 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 independence³, 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.

The courts' handling of criminal cases is reportedly not very good. First-time juvenile delinquents - as well as others - have to wait a long time for their cases to be reviewed. It has been alleged that businessmen and politicians⁴ 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 more effective and trustworthy⁵. 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.

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

² Allegedly inefficiency in the lower courts is worse than in the higher courts.

³ It should be verified whether the draft Court's Act –currently under discussion by Parliament- complies with Article 6 ECHR (independent and impartial justice) where appointment and dismissal of court presidents and the right of the Minister of Justice to attend Supreme Court meetings are concerned.

⁴ It is reported that 'these two functions are often combined in Estonia'

⁵ 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

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 Code¹. 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, in general reports are positive although the requirement to send requests for mutual assistance in Estonian or English has in some cases slowed down co-operation. 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 judicial system are the lack of experience with new legislation and the relatively young system. The confidence in the system still needs to be improved.

¹ 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 signed¹ or ratified². The Estonian constitution (Art. 12) prohibits discrimination as well as propaganda of it.³

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 Legal Chancellor was installed in the beginning of 2001. He reviews the general application of the legislative and executive powers of local governments on their conformity with the Constitution and with Estonian law; his capacities however need to be reinforced.

¹ The UN Convention relating to the Status of Stateless Persons, the Additional Protocol to the European Social Charter (system of collective complaints).

² 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 With regard to the EU Directive against racism, as this directive was adopted on 29 June 2000, there is currently no information available (yet) on Estonia's state of play - Estonia has ratified the International Convention on the Elimination of All Forms of Racial Discrimination.

3. *Implementing performance*

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

The EU embassies state 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, a human rights organisation reports 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

1. Legislation

Estonia has signed the Criminal Law and OECD Convention and ratified the Civil Law Convention on Corruption. In 1999, a new Anti-Corruption Act entered into force which -together with a number of Acts and the Criminal Code- form the framework to define corruption and provide procedural rules. The new Criminal Code, whose entry into force is foreseen in 2002, should reconcile the principles of the relevant EC Conventions that Estonia will join upon accession, with domestic law.

2. National programmes and strategies

National efforts to combat corruption have improved lately, partly due to a well-designed and integrated program of prevention and control of corruption (National Crime Prevention Program); a series of intentions/priorities in the fight against corruption for the period 1999-2003 is listed in its Position Paper of May 2000.

In 1994 the governmental "Crime Prevention Council" was established, elaborating a corruption strategy and tactics and leading i.a. to the establishment of an internal audit capacity. The Act Amending the Government of the Republic Act (2000) introduced an internal government control system, whose training programme is planned for 2000-2003, and an internal auditor.

Internal audit units have been established within a number of government services. The Ministry of the Economy launched the project "Good practice in internal audit" in May 2000, targeting the Estonian public sector.

A Code of Conduct of Police Officials was drafted, dealing i.a. with professional ethics and communication with the public, and the recent police reform lead to an increase in police salaries across the board as well as enhanced career planning including training opportunities. There are plans to increase police anti-corruption staff by 6 officers.

A further training programme in co-operation with foreign police and justice authorities to study the investigation methodology of corruption and fraud and offences in office, is ongoing (2000-2003), a Phare project for EU integration expertise and training in the fight against corruption was approved and a bilateral project (1999 - 2001) with Finland on the fight against financial crimes and shadow economy is ongoing.

Finally, the Estonian Law Centre's (Foundation) programme "Measures against corruption in transition society" (1999-2001) will aim to define the risk-areas and propose a legally sound measurement of corruption.

3. Current trends

3.1 Border Management

Corruption was a serious problem until 1996/1997 but has declined since then. There have been only very few corruption or smuggling cases involving border guard staff, who enjoy high public esteem and common trust. The growing smuggling of drugs from Estonia to Sweden and Finland without many seizures by the Estonians may however be a signal of corruption. The EBG successfully engages in several tactics to prevent corruption at local level; besides, its organisational structure and internal discipline is an effective obstacle to corruption. Only in some cases have border guards tried to use their position to benefit from special treatment. The EBG has a special unit responsible for internal security.

3.2 Migration and asylum

Whereas in the past there were blatant cases of (high-level-)corruption, no reports on corruption were made recently, except concerning documents proving citizenship (there are many "non-citizens" in Estonia in comparison to real immigrants).

3.3 Police and customs

The situation in this field has improved, partly thanks to the National Crime Prevention Program; measures taken to date reflect Estonia's commitment to fight corruption.

Due to general poverty, low salaries and insufficient social security offered to policemen, they are prone to corruption and have a low resistance to blackmail. Cases of small-scale corruption within the police have been detected but efforts are being made by the police to correct them; a Code of Conduct of Police Officials has been drafted. There are plans to increase staff by 6 police officers dealing with anti-corruption.

Early 1999, the Security Police concluded pre-trial investigations of numerous cases concerning excise and turnover fraud at the border stations of Ikla and Tallinn, resulting in 50 persons being put on trial. During the first 9 months of 2000, the police solved 4 cases concerning corruption of officials and 40 cases of bribery.

A training program on the differences and problems connected with the investigation methodology of corruption and fraud as well as offences in office is planned for the period 2000 - 2003 in co-operation with foreign police and justice authorities.

3.4 Justice

Integrity of the judiciary is controlled by the Ministry of Justice and the Supreme Court. Disciplinary proceedings can be initiated by the Chief Justice of the Supreme Court and by the Minister of Justice against judges of 1st and 2nd instance. The decision on disciplinary action -taken by a disciplinary commission- is submitted to the Supreme Court. Disciplinary proceedings against the Chief Justice of the Supreme Court may be initiated and tried by the Supreme Court. The grounds and procedure for the dismissal of judges from office are provided by the law. Judges may be removed from office only pursuant to a court judgement. In 2000, disciplinary proceedings were initiated against 2 judges on corruption charges; both left their posts before conviction.

4. International organisations

According to *Freedom House*, estimates on the degree of corruption vary. Public opinion polls show 3 out of 4 Estonians considering corruption to be a serious threat to the country and 1 out of 2 regarding corruption within the police force as a serious problem. There are allegedly clear links between criminality and corruption due to poor training and education of civil servants together with low salaries. Police and courts in general do not have sufficient experience or resources to fight corruption and pursue cases thereof.

The *Baltic Sea Task Force's* Situation Report on Corruption in the Baltic Sea Region of March 2000 provides useful information i.a. on the number of reported corruption cases (statistics reveal that the number of registered corruption offences has stayed at relatively the same level over the past years), national programs and legislation.

The Bank of Finland (*OECD Paper*, March 2000) indicates that corruption is among the greatest problems that investors encounter in Estonia.

The *EC*, in its Regular Report on Estonia, indicates that in spite of many legislative efforts, the fight against corruption continues to need political attention.

Transparency International ranked Estonia no. 27 on the CPI in 2000 with a score of 5.7.

III. CONCLUSIONS

A. Border security

Estonia has been very successful in fulfilling the formal *acquis* in the field of border security. The stable and determined work has proven its success but is now jeopardised due to the low budget. Some legal changes are necessary before full implementation of the Schengen requirements is possible. The role of the EBG in the asylum process is somewhat questionable. The lacking border agreement with Russia causes some practical problems but is not an obstacle for effective border security. The basic concept of the EBG is very good and in principle all the elements for effective and Schengen-like border security exist although many of these will be in need of a necessary modernisation in the near future.

Despite very positive comments in the EU's different evaluation forums and its de facto achievements, there is still work to be done before the Estonian border security system meets the EU-requirements. The necessary further improvement and even the level achieved is now in danger since the budget allocated to the EBG is far too low. The patrol intensity along the borders has lowered. This gives a rise to concern since at the same time the border situation may worsen and Estonia's role as a transit country for drugs is increasing. Especially the sea border control concept, consisting of harbours and sea surveillance, is still ineffective. The shortage of funding entails risks for the necessary development and may cause serious problems in the future. The co-operation between the authorities has formally improved but the results are still poor.

Co-operation between the Police, Customs and Border Guard should be more intensive, coherent and practical. Special attention should be paid to sea border surveillance and joint operations at the harbours. There is also a need to increase the number of border guards at the Russian border. The budget must be large enough to guarantee operative efficiency along the whole borders. There is a need to change some of the existing border crossing procedures at the Estonian - Latvian border if Estonia and Latvia join the EU, especially if and when they start to implement Schengen at different points in time.

B. Migration

Migration trends are low in Estonia.

The formal Acquis has been broadly adopted except for certain provisions on admission which do not fully respect human rights (see below, Human Rights). Administrative capacity is adequate, except for still non-existing national databases and for the fight against illegal work.

Estonia has to create its migration-related national databases and the online connection of consulates thereto, which is planned for 2002-2003, and to establish the tools necessary for fighting against illegal work.

C. Asylum

Legislation, though recent, is still very imperfect as regards accelerated procedures, manifestly unfounded applications and safe third country, the appeal's suspensive effect, non-refoulement, exclusion clauses, refugees' rights concerning family unification and access to permanent residence, and alternative protection. In addition, 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. Finally, despite the low number of applications, procedures are lengthy.

All this may be due to the fact that Estonian asylum institutions cannot yet be considered as fully qualified and competent, mainly due to lack of sufficient experience (because of the low number of applications) and lack of correct application of several concepts of international refugee and asylum law.

Estonia should focus on legislation and create proportionate tools therein. Lack of experience, which cannot be entirely held against the authorities, also leads to recommend simpler procedures, as well as close association with NGOs and EU Member States. Training, or rather awareness campaigns, are still necessary for Border Guards.

D. Police and customs

Despite continuous improvements in the alignment of its legislation and the impressive results in the establishment of administrative and organisational law enforcement structures, Estonia's administrative capacity and implementing performance still need improvement. The results of the ongoing police reform which, inter alia, aims at strengthening police structures and the efficiency of their daily work are promising, particularly with regard to the consequences of increased salaries, leading to higher competitiveness of police work and selection of better qualified staff for the police.

The Republic of Estonia is well prepared to meet the challenges of fighting serious crimes and the police and customs show an improved performance in the fight against drug-related crime. However, Estonia's position as one of the largest suppliers of amphetamines and ecstasy to the Nordic countries gives reason for concern. Sustained efforts are still needed in the fight against drug-related crime, financial crimes and money laundering. Specialist training in the field of modern criminal intelligence work should continue, with special emphasis on strategic and operational analyses.

Generally, the customs' administrative capacities to prevent, investigate and enforce violation of customs laws are still weak. Continued efforts are needed in the areas of risk analysis, training and development of professionalism.

E. Justice

With regard to the formal acquis, a number of civil and criminal law conventions still need to be signed and/or ratified. The new Criminal Code and Code of Procedure should further align legislation with the acquis. Concerning administrative capacity and implementing performance, the heavy workload of judges and backlog of cases hamper the efficiency of the judicial system and there are difficulties with regard to access to justice and enforcement of judgements. The quality of court decisions varies considerably.

The main reasons for this are the shortage of support staff, judges, prosecutors, lawyers, bailiffs and notaries and the relatively low salaries. The main reasons for problems related to implementation are the relatively short experience of the judiciary, their inadequate training and difficulties in applying the law because of the lack of precedents in and experience with the new legislation. Also, there is a lack of resources in preliminary investigations and poor co-operation between the different authorities (police, prosecutors and judges).

Training of the judiciary in general and in applying of the law must remain a priority. The number of members of the judiciary as well as its support staff should be increased. The judicial system must become more effective and trustworthy and the procedures should be simplified. Co-operation between the different authorities needs to be improved. The adoption of the new Civil and Criminal Procedure Codes as well as their functioning in practice should be further monitored.

F. Human rights

A small number of human rights related instruments still need signing and/or ratification. On the other hand, a considerable number of persons still need to be legalised and several provisions on family re-unification do not comply with the European Human Rights Convention. Moreover, there are reports of abuse by police officers and cases of ill-treatment of prisoners in custody. Prisons are still overcrowded and their conditions are poor. The Legal Chancellor was, after some delay, installed in the beginning of 2001 ; his capacities must be reinforced (lack of staff etc.).

As regards the still undocumented "non-citizens", they have missed the legalisation process for several reasons. As to family reunification, despite a number of amendments, legislation is still imperfect on several topics. The new law introducing probation was adopted in 1998 and its implementation, i.e. the establishment of 200 probation offices and the setting up of appropriate training, takes time. Also, the Estonian judiciary has to gather experience with the new system. With regard to the prison situation, there is a lack of financial resources and the training and pay of prison officers is poor. The prison reform has only recently started and the Imprisonment Act was only adopted in June 2000. Training of prison personnel is also relatively new.

As a result, Estonia should present how it intends to tackle the question of the still undocumented "non-citizens", and modify its legislative provisions on family reunification in light of the acquis. Further, Estonia needs to enhance implementation of a number of new laws (e.g. probation, imprisonment). The prison reform -which should substantially improve the situation- should be stepped up and its progress needs to be monitored. Estonia should ensure that implementation of the Language Law takes place in accordance with international standards, and that the institution of the Legal Chancellor is sufficiently reinforced to enable him to perform his tasks in a satisfactory way. Training -of probation officers and prison personnel- should remain a priority.

G. Corruption

Available information and statistics indicate that corruption is a relatively limited problem in the Republic of Estonia, who has made considerable improvements of its corruption-related legislation as well as in the progress in the fight against it. Strong commitment has been demonstrated to efficiently prevent and control corruption through a well-designed and integrated National Crime Prevention Program.

Most of the required legal instruments for efficient actions are in place or under preparation.

In spite of this, Estonian citizens consider corruption to be a serious threat to the country. Many Estonians see corruption within the police, and in particular at the local level, as a serious problem and therefore, the Estonian authorities should continue to strengthen their efforts and to give high priority and political attention to the prevention and control of corruption as well as to adequate training in this field.

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