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THE COUNCIL**

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RESTREINT

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REPORT

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| from : | German Presidency |
| to : | Collective Evaluation Working Party |
| Subject : | Preliminary draft country report on Estonia |

A. Introductory remarks:

In its surveys and assessments the Working Party has dealt with the progress made by each acceding country and also examined shortcomings which still have to be eliminated in order to catch up with the EU acquis in the justice and home affairs sphere.

On the basis of the information available it is not yet possible to make a definitive judgement, which means that only provisional and, to some extent, non-exhaustive findings can be established at present.

The data collated by the Collective Evaluation Working Party are being constantly further added to and updated, mainly through the information network set up at the foreign representations using the structured checklist adopted under the German Presidency, so that a sort of "evaluation library" is gradually being built up. However, it will not be altogether possible to avoid a situation where the extent of the information produced on individual subject areas varies. Certain imbalances cannot therefore be completely ruled out.

The main aim of the report is to make clear where measures are still needed before the EU standard can be achieved in the applicant States. The list of improvements required cannot however be considered exhaustive at present.

B. Alignment with the EU acquis in certain areas

Considerable improvements have been achieved in various fields. This applies especially to some aspects of border security. Here Estonia has achieved marked progress, although there are still shortcomings as regards other aspects of border protection.

One major achievement has been the creation, from virtually nothing, of a properly structured border guard, which clearly has capable management and highly-motivated staff. The organisation and structure have clearly been designed to achieve a sensible combination of checks at border crossings and surveillance of land and sea borders, together with balanced deployment of human and technical resources, including the use of modern radar installations in the vicinity of the border with Russia.

By pursuing a pragmatic policy, in March 1999 Estonia also succeeded in concluding an agreement with Russia on the course of their common border and in laying the foundations for solid border-police co-operation, including informal agreements on readmission arrangements for illegal entrants apprehended in the border area.

Positive factors that may have a favourable bearing on the security situation in Estonia are to be seen in a 1994 agreement on co-operation between the four law-enforcement bodies: border guard, customs, police and state security, as well as a 1998 police and customs agreement to improve drugs co-operation. Amongst other things, the arrangements are designed to avoid duplication of effort and facilitate the flow of information.

In the customs service, things are looking up. Staff is being thoroughly trained at the new training college. Customs clearance posts at the main border crossings with Russia and Latvia have reportedly been modernised, bringing a higher standard of inspections, especially for goods traffic.

In the field of legislation, too, Estonia has already brought in a large number of necessary innovations as regards, for example, developing structures to guarantee the rule of law, respect for human rights, the land register and notarial functions, and controlling corruption.

In addition Estonia has put in hand draft legislation designed to modernise, for instance, the law on aliens and asylum and the police, as well as criminal law and criminal procedure, and civil law and civil procedure.

Another noteworthy initiative is the establishment, with effect from 1 June 1999, of an Ombudsman, who will provide an additional means of protecting human rights. It remains to be seen what practical effect the link with the Estonian Ministry of Justice will have on the Ombudsman's activity.

The European Union and its Member States are supporting Estonia in its progress towards meeting EU requirements with numerous aid projects, a list of which is annexed hereto. Estonia has accepted these offers of partnership and is showing itself to be extremely co-operative.

C. Shortcomings

I. Safeguarding the external frontiers

Tasks and organisation

The Estonian border guard grew out of Estonia's organised self-defence at the time of breaking away from the former USSR. When it was part of the Soviet Union, Estonia as currently constituted did not have any external land borders. Its internal borders with Russia and Latvia were not guarded. In 1990 building began with a mere 70 staff members. Today there are almost forty times that number working for the border-guard service.

Estonia's borders measure some 1 445 km, 648 km of which are sea borders. The border with Latvia is 343 km long, that with Russia 455 km (76 km of rivers, 126 km of lakes, 132 km of land border and 121 km of sea border).

The number of border crossings has continued to grow in the last few years and reached a new record high point at 10,5 million in 1998.

Civilian in status, the Estonian border guard, displaying military-like discipline, is a tightly knit unit which enjoys high public regard. Its responsibility extends to control of the 39 border crossing points (of which 20 are ports) and surveillance of land and sea borders. It is organised in eight border-control regions and 42 border-guard stations. In addition to disaster prevention and relief work, the border guard is also responsible for sea rescue operations, a factor working to its advantage in surveillance of the sea border.

1. Additional staffing requirements

Despite the reinforcements already received, the Estonian border guard is still understaffed in terms of its own objectives. It has a mere 2 900 staff, of whom approximately 2 000 are border guard personnel, 520 civilian employees and 380 conscripts. The target complement is estimated at 3 500. Recruitment is set to run at 100 per year, so that it will be approximately 9 years before the service is up to strength (the use of conscripts will be phased out at the same time).

Although recruitment is not a problem at present, a more rapid increase in staff is scarcely feasible, chiefly for lack of training capacity.

However, these staff shortages are not a fundamental handicap to the efficiency of the Estonian border guard. This is particularly true of the Russian border, where the Estonian authorities' task is made easier by the geographical conditions. It is an area of marshland and dense forest, impassable in the summer months and in winter only passable to a limited extent. Moreover, the Russians enforce a strict border régime on their side, another reason why large-scale illegal entry is unlikely.

Although an increase in unlawful immigration into Estonia in future cannot be ruled out, for the present, at least, the country lies off the international migration routes and is not to any appreciable extent a country of either destination or transit. In 1998 only 450 aliens were caught attempting to cross the border illegally.

2. Inadequate equipment

The equipment of the Estonian border guard has already been modernised in parts, but there are still deficiencies and it is still in need of further upgrading to the EU standard. Border guard personnel do have 413 vehicles, 24 patrol boats, 37 speedboats, 2 patrol aircraft, 5 helicopters and 19 radar surveillance stations, and specifically for the eastern border 1 infra-red detector and 9 mobile and 5 stationary motion detectors. While the equipment is well-maintained and in working order, however, it is partially outmoded and therefore in need of replacement. This applies especially to the radar installations on the Baltic coast, which for the most part date back to the Soviet period. There are insufficient aircraft and vessels available for deployment on patrol and systematic surveillance of the sea border. The boats and aircraft available display technical defects.

In spite of rapid renovation and modernisation work, the border guard still lacks suitable offices and buildings for processing traffic.

There is not yet any online-access central data and search system covering all the law-enforcement agencies. In some areas officers make do with partial, stand-alone systems, but these do not meet modern requirements. Computerised search facilities are due to become available in the year 2002.

3. Backlog of building work at ports and airports

Estonian ports and airports do not meet the strict standards of the EU acquis. A strict physical separation is required between travellers travelling within the Community and those travelling to and from third countries. However, Estonia has already begun work to convert the buildings at the main airport in its capital.

4. Training shortcomings

The length of basic training is to be extended from five to ten months; special courses lasting several months supplement this for duties on the land or sea frontiers or in controls at border crossings. The difficult and demanding subject-matter nevertheless demands a greater training effort. Attention must also be given to training in foreign languages in this context.

5. Weak points in border security with regard to Latvia

Control of travellers at two crossings on the border with Latvia is not exercised by the Estonian border guard alone; the work is shared with the Latvian border-guard service. Each side checks only those entering its country. The Estonian border guard considers this form of border control adequate to requirements. However, Article 6 of the Convention implementing the Schengen Agreement provides that exit checks must also be conducted by national staff. If Estonia were to retain this practice it would be in breach of its duties under the EU acquis during the period in which Latvia was not yet a member of the EU or was unable to make the requisite searches because it was not linked up to the SIS. Estonia should be informed quickly and clearly of the Union position on this legal question.

II. Migration (visas, admission and deportation/expulsion)

1. Necessary adjustments to visa policy

Estonian visa policy is basically in line with EU policy, one exception being the extension of visa exemption to Bulgaria. Adoption of the EU acquis is also planned in this area, although no date has been set.

The arrangements for Russian nationals living in border areas are not in keeping with EU rules, since these people do not require a visa to enter Estonia, merely a special permit. We do not have any information on the conditions for issuing these permits. It remains to be seen whether they meet the strict requirements of the EU acquis for the issue of visas and represent a fully adequate substitute for visas.

2. Shortcomings in the visa-issuing procedure

Estonian foreign representations use a computerised system for processing visa applications but, like the border-guard stations, they do not as yet have online access to data bases on personal details or for criminal investigation purposes. Direct data retrieval for embassies and consulates will not be possible until 2002 onwards.

The Estonian government issued administrative instructions for the visa-issuing procedure in early 1998; it has not been possible to discover whether they are in accordance with the EU's Common Consular Instructions.

All EU Member States have concluded visa agreements for visa-free entrance with Estonia, the one concluded by the BENELUX-countries and Austria had not yet entered into force, but is already applied in practise by the Netherlands.

According to Estonian information, visas are also issued at the border (41 494 visas in 1998); **these are mainly regular visas: Holders of passports from Canada, Israel and South Africa and of the BENELUX-countries and Austria - as long as necessary - can obtain a visa at the border.**

3. Weaknesses in document security

Up until 1995 the passports issued by Estonia were particularly open to the risk of forgery. The subsequent generation of passports include higher quality security features but are still not up to the requisite standard. Further improvements should therefore be made in the foreseeable future. At present the old passports are gradually being exchanged for second-issue ones.

The visa stamp used by Estonia to a large extent contains security features which meet the EU standard.

4. Administrative structures to be tailored to the new alien's legislation

New aliens legislation is to enter into force on 1 October 1999. In keeping with the requirements of the EU acquis, the new legislation will supplement existing regulations, including the Law on Expulsion of 1 April 1999 (204 expulsions in 1998), and establish residence requirements for aliens, regulate provisions on admission for study purposes and access to the labour market, make smuggling aliens in or out of the country a criminal offence and introduce sanctions for carriers which bring inadequately documented passengers into Estonia. In addition, the Council's recommendations on combating illegal employment of 27 September 1996 will be incorporated into national law in 2000.

Suitably qualified authorities and co-operation structures will be required to administer this additional legislation, and these are not yet sufficient to meet the need. Establishing them will be a costly exercise, taking a number of years. **In 1997 a central authority in this area has been established, namely the KMA (Estonian Citizenship and Migration Board).**

5. **Lack of Readmission agreements or procedural arrangements**

To be able to return people who have no right to stay in the country, to date Estonia has concluded readmission **agreements or other procedural arrangements** with EU Member States and applicant countries. It has no agreements or other procedural arrangements with any of the third countries from which illegal immigration might be likely to originate. Even though Estonia is not yet a favourite country of destination or transit for migrants, it should modify its expulsion policy to make sure that there is a basis for repatriation available, should there be any change in the situation. Such a change of approach would also have a preventive effect. **Given Estonia's shared border with Russia**, in particular, a formal readmission agreement/arrangement with Russia is needed to supplement the existing unofficial piecemeal arrangements for settling expulsion **matters in terms** of international law.

III. Asylum

1. **Completion of the law on asylum**

Asylum law is already broadly in line with the requirements of the EU acquis. The 1997 Law on Refugees is the principal legal foundation. It contains the major substantive and procedural rules, including a multi-stage appeals procedure. **In practice there is suspensive effect in the appeals procedure.**

Amending legislation is to be brought in as of 1 September 1999 to round off the legal framework and, in particular, to regulate the treatment of manifestly unfounded applications and introduce the instrument of safe third countries and countries of origin.

It is not clear whether identification data are recorded in the course of asylum procedures.

2. Inexperienced decision-making bodies and limited logistics

One person sought asylum in Estonia in 1997 and 23 applications were made in 1998. No asylum seekers have yet been granted refugee status; 20 cases are still pending. These low figures show that the relevant authorities and courts cannot have gained much experience in dealing with asylum applications yet, which cannot be held against them.

The low incidence of asylum applicants also explains why Estonia provides only limited reception facilities at present. It is, however, intended to create further accommodation facilities, plans for which have already been completed in part.

3. Inadequate preparation for accession to the Dublin Convention

Estonia has hitherto not yet made the necessary administrative and legal arrangements to enable it to accede to the Dublin Convention and fulfil the obligations arising out of the Convention.

According to information from the Estonian Government, appropriate procedural rules and central records are particularly lacking.

Given the considerable importance of the Dublin Convention, it should be pointed out to Estonia that better preparations for accession are urgently required.

IV. Police (including customs)

Police

1. Negative manning trends

While the target strength of the Estonian police force is put at 4 930 officers, the actual strength in February 1999 was well below that with 4 064. The reason for this is probably above all poor remuneration, which on the one hand means that it is increasingly difficult to recruit qualified applicants and on the other hand that many officers leave the police force.

The average salary of a police officer, which was raised to EEK 4 000 (about EURO 256) on 1 July 1998, is still about EEK 500 lower than the pay of an industrial worker. In 1998 alone, 545 officers left the police force and about half of these did so because the pay was too low.

Estonia is attempting to improve the career structure and social security for officers by introducing a new remuneration system and additional accompanying measures.

However, budget cuts for the Ministry of the Interior in 1999 could undermine such attempts.

2. Lack of continuity and shortage of professional experience

The frequent changing of top officials in the Estonian Ministry of the Interior and the police force – the post of Director-General was occupied by six new people from 1990 to 1997 – and the constant changes to structures have clearly had a negative effect in recent years on the effectiveness of police work. The fact that a country as small as Estonia is divided into 17 police districts – although the number is due to be reduced to about half in the future – means that there are proportionately too many top police officers.

Following the dismissal of police officers with a "dubious" political past, the average age of officers is relatively low so that there is a shortage of experienced investigators. Along with other factors, this is probably one reason why the average clear-up rate is disturbingly low at 28,3% across the country as a whole and 12,7% in Tallinn, where some 50% of all offences are **committed** (in 1998).

3. Lack of financial and technical back-up

The police budget for 1999 accounts for about 4,6% of the total State budget, which is relatively high. The estimated EEK 800 million, i.e. a good EURO 50 million, will however hardly be enough to pay not only for current expenditure but also for the necessary investment, particularly in acquiring motor vehicles, modern means of communication and forensic technology and in fitting out and refurbishing office buildings. Even the Central Criminal Investigation Police, who are primarily responsible for combating organised crime, do not have the means necessary for carrying out their tasks. **Estonia, however, is now establishing a new specialised unit to deal with money laundering. This unit will become effective on 1st of July 1999.**

Estonia does not currently have a central tracing and information system, but intends one to be fully operational by 2002. The planned system will apparently constitute a national solution which, inter alia, does not meet the technical requirements of the Schengen Information System.

4. Negative developments in major areas of crime

Whilst there was a decline in serious crime, 1998 again saw a marked increase of over 10% in overall crime.

The number of motor vehicle thefts has increased continuously since 1993 and doubled since that year. **It should be noted, however, that the number of cars has risen by 40% in the same period.**

There has also been a considerable increase in economic crime, against which the police appear powerless to act.

There is also cause for concern as a result of the frequent violent power struggles between the rival criminal gangs active in the fields of organised crime.

In particular, combating drugs-related crime has long been neglected in Estonia. The small number of cases in the past do not fully reflect the actual situation. They simply showed the inadequate number of staff available. However, since April 1988 there has been a special unit to prosecute drug offences. It is not yet absolutely clear whether the marked increase of more than 100% in recorded drug offences in 1998 is the result of this situation.

5. Corruption

Corruption in the Estonian law-enforcement bodies is a problem. In many departments there are indications that some officers are open to bribery. Officers assigned to traffic duty seem to be particularly susceptible. In particular the low pay of police officers is probably a root cause of the widespread corruption. Estonia accordingly tightened up its anti-corruption law of 1995 by a law of 1 March 1999, under which every officer is obliged, inter alia, to make an annual declaration of his income and assets.

Customs

1. Staff and structural problems

The Estonian customs authorities appear not to have enough staff to deal swiftly with their tasks, particularly in the field of investigation. The reason for this shortage of staff is probably the low pay, which also encourages susceptibility to corruption.

However, the main problems stem from the ill-defined division of responsibilities between the central and regional administrative units. Estonia intends to eliminate these weak points in the near future on the basis of an enquiry and also address shortcomings in the powers of the customs authorities by means of a new customs law.

The border checks carried out by the customs administration are now found to be efficient.

2. International co-operation

No shortcomings have been noted in international co-operation with the Estonian customs authorities. Estonia is a full and active member of the MAR-INFO-NORD-Group and the Baltic Sea Customs Conference. There have been no problems with co-operation. Estonia also participates regularly in the work of the Operational Committee of the BALTIC SEA TASK FORCE.

V. Justice

Basic and further training

There is a key problem with basic and further training in the field of Justice in Estonia. **After the re-independency great progress has been made within the legal studies field at the Faculty of Law in Tartu. However, there is a general awareness that the legal training might have some shortcomings for the time being.** It would be very useful in this connection if Estonian lawyers were to be made more familiar with the systematic principles of application of the law than they used to be and at as early a stage in their training as possible. This would make it easier for the judiciary to deal in particular with the numerous new legal provisions as well. A reliable assessment cannot be made at present of the extent to which private universities **contribute to training in Estonia.** Post-university training and further training also needs to be improved in practice. Given the considerable number of judges and public prosecutors trained long ago, such training should also cover knowledge of the new reform laws and European law. The fact that Estonia has acknowledged the existing shortcomings in training and is endeavouring to reduce them is to be welcomed. In the Estonian Ministry of Justice work is proceeding on an action plan to improve further training for judges. In addition, a twinning programme **has recently started** between the Estonian Ministry of Justice and the German Länder of Mecklenburg-Western Pomerania and Schleswig-Holstein on the subject of further training for judges. The Estonian system of justice is also attempting, especially in the area of mutual assistance, to acquire know-how from its daily co-operation activities with the Swedish **Ministry of Justice.** In particular in the area of European law, lastly, use is being made of the training available from Stockholm University/the Swedish International Development Agency and from the European Academy of Law in Trier. All the initiatives to improve the training of lawyers and the further training of judges and public prosecutors should be emphatically pursued. **This is especially true for judicial co-operation. Language training is of particular importance in this respect.**

Resources

The question arises whether the public prosecutor's offices are in some cases understaffed. This conclusion might be drawn, for example, from the fact that in Tallinn the public prosecutor's office is sometimes not represented throughout court hearings. The same question arises concerning judges. There are also too few lawyers. One result is that people on average earnings cannot afford lawyers' fees, **especially in civil law cases.**

The material resources of the judicial system in some cases also leave room for improvement. Thus, the courts are often not **provided with sufficient legislative text-books** and legal literature.

Organisation of the courts

It would be desirable for Estonia to push ahead rapidly with its current reform of the administrative courts. The current situation (there are at present only two first-instance administrative courts) has led to problems. **For the time being one cannot predict any further development with regard to specialised courts** beyond the area of general administrative jurisdiction.

Changes also appear necessary in the way work is distributed. At present this is not always done on the basis of objective criteria.

Reform of substantive criminal law

A new draft penal code is still being debated by the competent Estonian bodies. It would be **necessary to analyse the reform plans in detail as soon as concrete results are available.**

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. It would be useful, in the light, for example, of the current overcrowding in Estonian prisons (see the section on prisons below), to learn more about the practical implementation of this law.

Combating money laundering

One of Estonia's major weaknesses in the area of judicial co-operation in criminal matters is that it has not yet ratified the Council of Europe's Money Laundering Convention, though it is understood that it plans to sign and ratify this Convention later this year. It is also to be welcomed that Estonia intends to make provision for confiscating assets of equivalent value. In November 1999 it will be Estonia's turn to be assessed for money laundering by the Council of Europe. Use should be made of the resulting report at the appropriate time. It is also to be hoped that positive results will be gleaned from the relevant Phare programme for the Baltic States, which is still running, and from the know-how gained from ongoing co-operation with the Swedish Ministry of Justice.

Criminal procedure

Estonian bodies are still discussing the new draft code of criminal procedure. **It would be necessary to analyse reform plans in detail as soon as concrete results are available.**

It would be desirable for Estonia to achieve its objective of reducing the time lag between the end of preliminary proceedings and the beginning of main proceedings to two months.

According to current information, that time lag may be up to two years at present. It remains to be seen whether the Law on the public prosecutor's office, which entered into force in May 1998, will contribute to the achievement of this objective in the medium term.

Changes in custody law appear necessary. Automatic judicial reviews of custody should be introduced to ensure that a suspect is not **kept in custody without judicial review.**

The possibility of Estonia establishing special organised crime units within the public prosecutor's offices should be looked at.

Prisons

Conditions in Estonian prisons need to be improved. Prisons are overcrowded and in general not in a state conducive to rehabilitation. The training and pay of prison officers also need to be improved. Initiatives are needed to reverse the rising tide of violence in Estonian prisons.

Mutual assistance in criminal matters and extradition

Translation problems concerning requests for mutual assistance have apparently led to prolongation of procedures. The embassies of the Member States in Tallinn report good experience of mutual assistance on the whole. But in general there is too little information available to reach any reasoned judgement on the quality of mutual assistance.

There is no legal provision at present for direct contacts between the judicial authorities for the purposes of mutual assistance. Changes are therefore required. The new draft code of criminal procedure contains a number of provisions for the full implementation of the European extradition convention and its additional protocols.

Civil procedure

The existing civil procedure needs to be reformed. Estonia is therefore planning a comprehensive reform, to be completed during the current parliament (i.e. by 2003 at the latest). The reform is intended to link procedural law more effectively with substantive law, many areas of which are new, to remedy existing shortcomings in the law, for example in relation to the hearing of parties, and to introduce the new procedures of summary proceedings to establish a debt, documentary proceedings and judgements given in default.

These reform objectives are also welcome in the light of Estonia's intention of acceding to the Lugano Convention. It is to be hoped that the reform of civil procedure will also make an effective contribution to accelerating proceedings and that it will make it possible for judgements of foreign civil courts to be recognised and declared enforceable, even in the absence of treaties.

The current situation with regard to legal assistance in civil matters is unsatisfactory. Lawyers' fees are virtually out of the reach of average earners (see the section on resources above) and there is a lack of rules on legal aid.

Enforcement of civil-law judgements

The enforcement of civil-law judgements needs to be improved. Bailiffs are not always reliable in their work and they are often slow. They are also not properly trained.

Mutual assistance in civil matters

The comments made above (in relation to mutual assistance in criminal matters) apply here too, mutatis mutandis. Above all, more information is needed on the subject.

VI. Summary conclusions

1. Safeguarding of external borders

Border protection is clearly the area which is most developed in Estonia. The border protection department is regarded as an example to the country's other security authorities and also enjoys a high public reputation.

Its success is mainly the result of efficient organisation and effective central leadership. Favoured by geographical conditions in the east and remote from international migration routes, Estonia is, at least at present, under little pressure from migration, so that the demands on its border protection department are less acute than in other States.

The combating of illegal entry and cross-border crime is, therefore, not noticeably compromised by the shortcomings which still remain, especially in the technical area, where there is a need for catching up.

2. Migration

Although at present relatively little affected by unauthorised immigration, Estonia is nonetheless preparing itself to cope with larger migratory movements via the phased adoption of the necessary legislation and the establishment of appropriate administrative structures. It still has further to go, however. The most urgent tasks for the next few years include bringing visa policy and the issue of visas fully into line with the EU acquis, implementing the relevant provisions in administrative terms and establishing inter-authority co-operation structures.

Efforts will be needed to achieve this.

3. Asylum

Essentially, Estonia complies with the EU acquis in relation to asylum. That said, capacity in terms of staff, equipment and premises is geared to the current level of cases, which is extremely low. A sudden increase in asylum applications might be difficult to cope with.

4. Police (including customs)

The efficiency of the Estonian police is well below the international average. The **disturbingly** low clear-up rate testifies to this. This is in stark contrast to the much more capable border protection department.

The problems arise not so much from shortcomings in the law as from the fact that all efforts to turn the police force into a homogeneous, success-orientated organisation with a solid professional ethos, enjoying public recognition, have so far failed. The appointment of a new Chief of Police for a five-year term of office promises greater continuity of leadership and thus change for the better.

Apart from improving equipment, Estonia must above all increase police pay significantly to reduce staff turnover and the susceptibility to corruption.

The same applies to customs officers.

5. Justice system

The main problem facing the Estonian justice system is application of the law. The standard of training of judges and public prosecutors must be improved. They must be enabled fully to perform their duties, which are complicated by the rapid transition from the old to the new legal system. It is to be welcomed that Estonia has recognised the need for action and is making considerable efforts on training with support from among the Member States. Successful training measures will help reduce the currently excessive burden on judges and public prosecutors, accelerate court proceedings and boost citizens' confidence in the efficiency of the justice system.

The scale of the legislative reforms being undertaken by Estonia deserves recognition and it **should press** ahead decisively with its reform efforts in the field of administrative, criminal and civil procedure.
