REPUBLIC OF ESTONIA
MINISTRY OF JUSTICE

Follow-up Questions after Country Visit to Estonia – Response

<u>Anti-corruption</u> – Could you please send us the following guidelines and a short explanation of their objectives.

- **Guidelines for procurement and vaccination**
- **Guidelines for good practices as to lobbying**
- **Guidelines for conflict of interest**
- **Could you please send us a contribution on the tasks of the Anti-corruption network and how it will support the implementation of the new action plan.**

Guidelines for procurement: The purpose of the guidelines is to give guidance to the authorities on how to proceed with procurement in the case of a negotiated procedure without prior publication of a contract notice due to special circumstances or an urgent situation: https://www.rahandusministeerium.ee/et/koroonaviiruse-korduma-kippuvad-kusimused & https://www.rahandusministeerium.ee/et/juhised-riigihangete-kohta-seoses-eriolukorraga-ja-selle-tagajargedega.

Guidelines for vaccination: The purpose of the guidelines is to prevent the risk of corruption and increase the transparency of COVID-19 vaccination (attached).

Korruptsiooni ennetamine tervishoi

Guidelines for good practices for lobbying: the Good Practice in Communicating with Lobbyists for Officials was approved by the government on 18.03.2021 (please see attached). The purpose of the guidelines is to increase the transparency of policy making.

GOOD PRACTICE IN COMMUNICATING W

Guidelines for conflict of interest: the Guidelines for Ministers and their Advisers to Avoid Conflicts of Interest were also approved by the Government on 18.03.2021 (please see attached). These are a set of ethical principles for ministers and their advisers to help prevent conflicts of interest. These are the principles that shape the culture of transparency at the highest levels of the Estonian public administration.

GUIDELINES FOR MINISTERS AND THEI

Could you please send us a contribution on the tasks of the Anti-corruption network and how it will support the implementation of the new action plan.

In order to manage the anticorruption policy more successfully, a person co-ordinating corruption prevention has been assigned in every ministry to act inter alia also as the contact person regarding implementation of the action plan (AP), to ensure the implementation of the activities in his or her ministry and its area of government, implement the anti-corruption policy, and also propose new measures and activities. The contact details of the coordinators can be found here: https://www.korruptsioon.ee/en/anti-corruption-activity/corruption-prevention-contacts-ministries . These contact persons form the core of the network. In order to gain an overview of the implementation of activities planned in the Action Plan (AP), the AP's implementation status will be assessed continuously in a broader network. For that purpose, a broader anti-corruption network (including contact persons and other stakeholders such as Transparency International Estonia, the Police and Border Guard, Internal Security Service, Prosecutors Office, State Audit Office, the Parliament's Anti-corruption Select Committee, etc.) was established. The meetings will be convened by the Ministry of Justice up to 4-5 times a year, and information is regularly exchanged in e-mail lists.

Checks and Balances

- **Questions related to the enacting of laws to be answered by the Parliament.**
  - **Are there rules of procedure for stakeholder consultation between readings? If yes, could you please elaborate on them?**
  - **Are there rules preventing major changes to the legislation through amendments between readings?**
  - **Is there a practice to use final and transitional provisions to introduce major or non-related amendments to other legislations?**
  - **Could you please send us the powerpoint presentation (and additional notes if available) of the new project for co-creation of legislation.**

Are there rules of procedure for stakeholder consultation between readings? If yes, could you please elaborate on them?

Pursuant to Subsection 36(2^1) of the Riigikogu Rules of Procedure and Internal Rules Act (RRPIRA), committees are required to invite the interest groups that were invited to participate in the preparation of a bill and who wish to continue to take part in discussing the bill to participate in discussion of the bill.

To this end, the Director of the Chancellery of the Riigikogu has included a specific chapter on stakeholder consultations in the guidelines for legislative proceedings. The guidelines state that all officials must organize stakeholder consultations with the objective of ensuring that the legislative proceedings in the Riigikogu are transparent, in order to gain additional information and proposals from stakeholders regarding the regulatory choices made in a bill and to specify details regarding any proposals made. Officials are to recommend that stakeholder consultations be based on the principle of equal treatment, regardless of any earlier stakeholder consultations by the initiator of the bill. Stakeholder participation may be in the form of information regarding a bill, requests for opinions about a bill or participation in a committee meeting to express positions on a bill. To ensure that stakeholders have enough time to make proposals and to allow for the parliamentary committees to review these proposals, the responsible official is to send a letter to stakeholders once a decision has been made to table a bill before the plenary for its first reading in parliament. The deadline for submissions should be set in time for the deadline to submit amendments to a bill. If stakeholders indicate that they wish to participate in a discussion on a bill, the responsible official will inform the chair of the committee for approval and coordination of such invitation.

The guidelines also state that proposals received from stakeholders are to be forwarded to the initiators of the bill and to representatives of the relevant committees in parliament. The guidelines (in Estonian) are attached below:

Eelnõu-menetlemise-juhend.pdf

The Board of the Riigikogu, which consists of the President and Vice-Presidents of the Riigikogu, has also issued recommendations on best practices for legislative proceedings. These include a recommendation that legislative proceedings should be scheduled to ensure that a reasonable amount of time is available for the different stages of proceedings (including discussion in the parliamentary committees, preparation of documents and debate in the plenary), which will allow members of parliament to form a position on a bill and any proposals for amendments, as well as allow the relevant stakeholders to communicate their positions. The recommendations (in Estonian) are attached below:

Juhised-Riigikogus-seaduseelnõu-menetle

Are there rules preventing major changes to the legislation through amendments between readings?

The law does not specifically prevent this. Subsection 99(1) of the RRPIRA provides that members of the Riigikogu, committees and parliamentary groups can submit proposals for amendments to a bill within 10 days after its first reading. This has been interpreted to mean only amendments that relate to the bill itself, i.e. the amendments must pertain to the issues regulated in the bill, based on the objective of the bill. For example, the published Commentary on the RRPIRA supports the view that the leading committee has the right to refuse to review proposals that broaden the scope of regulation. This position is also expressed in the legislative practice guidelines issued by the Board of the Riigikogu and the guidelines for officials issued by the Director of the Riigikogu Chancellery. The practice in this regard is inconsistent.

Is there a practice to use final and transitional provisions to introduce major or non-related amendments to other legislations?

As noted above, this is not considered good practice, but does occur. In such cases, the Riigikogu may face the possibility that the President of the Republic will refuse to promulgate the Act in question due to unconstitutionality. In 2009, the then President of the Republic expressed the position that it is unconstitutional to amend a bill with matters that have no relevance with regard to the objective of the bill, and this essentially amounts to initiation of a new bill. Failure to initiate a new bill in such case significantly distorts the parliamentary decision-making process.

Could you please send us the powerpoint presentation (and additional notes if available) of the new project for co-creation of legislation

Co-creation-workspace_09.03.2021_K.Vilm

Justice

Could you please provide us with more detailed information on virtual court rooms – the tool developed by the Estonian authorities.

Estonia uses Cisco Meeting Server (CMS) for virtual court hearings as well as other secure video conferences, https://www.cisco.com/c/en/us/products/conferencing/meeting-server/index.html. It is a fully functional solution from our data centres, which means that no commercial cloud is used like some other applications do. It allows users to connect from most platforms without first installing any software (video conferencing equipment, PCs, telephones). In addition to ongoing video conferencing, this solution also allows users to stream, record, etc. Every virtual court hearing is unique, which means that it is not possible to use the same room name and passcode for entering the virtual court room after the hearing is over. The possibility of holding video hearings has been widely used in the courts since the beginning of the pandemic. How it works in practice can be seen in the video Digital Justice in Estonia starting at 1:52.
Hybrid court hearings are also common, where the judge and most of the people invited to the hearing are in an actual courtroom, but for example a social worker and interpreter participate via the virtual court room application.

Could you please send us the draft legislation related to the openness of courts (when available).
To be advised.

Media

- **Could you please elaborate on the figure of the media Ombudsman?**
- **Could you please send us the media services act draft (when available).**
- **Could you please send us the data presented in relation to the number of cases for defamation offences.**

Could you please elaborate on the figure of the media Ombudsman?

The term "Media Ombudsman" was used during the country visit to denote the Ethics Adviser working within the framework of the Estonian Public Broadcasting Act.

According to Section 31 of the Estonian Public Broadcasting Act, the ethics adviser shall monitor the conformity of the operation of Public Broadcasting with the professional ethics and good practices of journalism, review objections and challenges submitted against the content of a programme or programme service of Estonian Public Broadcasting and monitor the balance of the programme service. The ethics adviser is appointed by the Management Board of Estonian Public Broadcasting with the consent of the Council. The Management Board shall decide on the creation of an ethics board on the proposal of the ethics adviser. The ethics adviser shall report on his or her activities to the Council twice a year and shall make proposals on the elimination of deficiencies and prevention of errors to the Management Board and the Council as and when necessary. The decisions and proposals of the ethics adviser made to the Management Board are advisory in nature, but the Board is required to provide reasons for non-compliance with such decisions and proposals.

Could you please send us the media services act draft (when available).

The draft, explanatory memorandum and all relevant documents in the legislative proceedings are available on the website of the Riigikogu (parliament) at:

https://www.riigikogu.ee/tegevus/eelnoud/eelnou/4ba650d7-565f-425c-960b-2ed72b05857c/Meediateenuste%20seaduse%20muutmise%20ja%20sellega%20seonduvalt%20teiste%20seaduste%20muutmise%20seadus.

Data presented in relation to the number of cases for defamation offence

As noted previously, there are very few cases where defamation can potentially result in criminal punishment. There are three relevant crimes provided for in the Penal Code: Defamation of a person with international protection (§ 247), defamation of an official (§ 275^1) and defamation of the court (§ 305^1). The following statistics reflect court judgments that entered into force between 2015-2020.

There were no judgments in relation to defamation under the Penal Code in 2015-2017.

In 2018, there was one conviction under § 275^1, for which a suspended sentence of 6 months imprisonment was imposed (case 1-17-2112). The case primarily involved a conviction for theft.

In 2019, there was one conviction under § 305^1, for which a suspended sentence of three months imprisonment was imposed (case 1-19-1503). There was also one conviction under § 275^1, for which a fine of 1200 EUR was imposed (case 1-19-5123).

In 2020 there was one conviction under § 275^1, for which the aggregate punishment (including for conviction of fraud, forgery, driving while intoxicated) of imprisonment was substituted with community service (case 1—20-6842). The punishment specifically under § 275^1 was 4 months imprisonment. The aggregate sentence was 1 year, 11 months and 28 days of imprisonment, which was substituted by a total of 718 hours of community service to be performed over two years.

Anti-corruption Select Committee

- **As agreed during the meeting, we are looking forward to a written answer to the following two questions:**
  - **What are the weaknesses and strengths identified in the regulation of revolving doors and if additional measures are planned?**
  - **Can you outline which measures are in place to prevent conflicts of interest of MEPs, Ministries and persons with top executive functions and how is monitoring ensured?**
- **We would also like to add this question as a follow up to the discussion on asset declaration:**
  - **Could you elaborate on the framework in place as regards asset declaration/ declarations of interests? Which officials are covered by this framework? What are the concrete measures to monitor the compliance and to check the implementation?**

What are the weaknesses and strengths identified in the regulation of revolving doors and if additional measures are planned?

Subsection 60(5) of the Public Service Act provides that an official who is released from office may not become, within one year from the day of release, a connected person for the purposes of clauses 7(1)

2) and 3) of the Anti-corruption Act (ACA) with such legal person in private law over which he or she has exercised direct or constant supervision during the previous year.

It would be relevant, however, to make the principle more efficient and more broadly applicable, not just to persons in the public service.

Can you outline which measures are in place to prevent conflicts of interest of MEPs, Ministries and persons with top executive functions and how is monitoring ensured?

There are 4 documents for members of Parliament establishing the principles and good practices for preventing corruption and communication with lobbyists. These documents were drafted in 2014-2017 and will be revisited to safeguard the common transparent lobbying practices of MPs, public servants and government authorities.

Good Practice of Members of the Riigikogu:

Good-Practice-of-Me
mbers-of-the-Riigikoç

Good Practices – practical examples:

hea_tava_kaasused_E
N.pdf

Recommendations of the Anti-corruption Select Committee (in Estonian):

Korruptsioonivastase
-erikomisjoni-soovitu

Examples of potential conflicts of interest (in Estonian):

Näidiskaasused-võim
alikest-huvide-konflik

The rules on the prevention of conflicts of interests are provided for in the Anti-Corruption Act. Pursuant to Section 3, officials (including MEPs, ministers and persons with executive functions) are prohibited from:

1) demanding, intermediating and receiving income derived from corrupt practices;
2) corrupt use of official position;
3) corrupt use of public resources;
4) corrupt use of influence;
5) corrupt use of inside information.

The Anti-corruption Act provides for misdemeanour sanctions for the corrupt use of official position, public resources, influence or inside information and violations of restrictions on activities or actions.

Section 60[1] of the Civil Service Act provides for restrictions on the activities of civil servants as well as guidelines on how to establish whether obligations deriving from the Civil Service Act are in conflict with other activities and establishes the conditions under which civil servants can engage in other activities.

In March 2021, the Government adopted rules on the prevention of conflicts of interests and rules on lobbying (these materials have been provided by the Ministry of Justice above).

With regard to monitoring, there are internal audit units in all ministries, the Police and Prosecutor's Office are vigilant and the parliamentary Anti-Corruption Select Committee exercises parliamentary supervision over the implementation of anti-corruption measures, discusses on its own the initiative potential incidents of corruption involving officials specified in the ACA, exercises supervision over compliance with the restrictions on activities of the members of the Riigikogu, verifies within the limits of its competence declarations of interests, and informs the Riigikogu and the public of the results of anti-corruption activities within its competence.
Declarations of interests are public and accessible to everyone through the electronic registry of the Tax and Customs Board. This social control is an effective means of monitoring as well. For example, some cases have been discussed by the committee due to information that was first published in the media based on data available in the registry of declarations of interests."

Could you elaborate on the framework in place as regards asset declaration/declarations of interests? Which officials are covered by this framework? What are the concrete measures to monitor the compliance and to check the implementation?

The Anti-corruption Act provides for the obligation to declare interests (not just assets) – i.e. also what the person is involved in besides daily work. There are some 5100 persons who are obliged to declare interests, including about 1/5 of the total number of some 27 000 civil servants in Estonia. However, not only civil servants must declare interests, but also e.g. members of the management bodies of public undertakings, members of management bodies of foundations established by the state, local governments and legal persons in public law and persons to whom the competence to make decisions or perform acts for the performance of public duties has been delegated by law or an administrative contract, if such obligation is established by the minister exercising supervision over the person, local government council or the supervisory board or comparable bodies of the legal persons in public law (See clauses 13 (1)13-15).

There are no sanctioning or other coercive measures for the timely and correct submission of declarations. However, there are monitoring measures: the Anti-corruption Committee is entitled to review all the declarations and is the sole controller of the declarations stipulated in Clause 13(1) 1) ACA. Other declarations are controlled by the Ministry of Justice or other ministries or bodies. Not all declarations are controlled each year; however, they all are public, and thus there is also social control.

See Subsection 13(1) ACA for the full list of persons who must submit a declaration of interests.

Political Party Funding Surveillance Committee

- **We would really appreciate a written input on the strengths and weaknesses of the current Political Party Funding Law and its implementation.**

From the verification point of view, strengths include the substitution of an election campaign report with a periodic reporting requirement for political parties, as well as the use of online reporting, which makes the data machine-processable.

The greatest weakness is the fact that the Committee has no right to request documents from third parties. Some further issues for which the regulation is not ideal are as follows.

Firstly, regarding stakeholder organisations. Although § 126 of the Political Parties Act provides a definition of stakeholder organisations, in practice we do not see the formation of organisations that correspond to this definition. At the same time, a foundation or a non-profit organisation can be linked to a political party, but if it has not been formed under the conditions set out in the Political Parties Act, the restrictions and liabilities set out in the Act do not apply to them.

Secondly, the consequences for accepting a prohibited donation. § 124 of the Political Parties Act sets out the consequences for accepting a prohibited donation. The prohibited donation must be returned immediately to the donor, and if return is impossible, it must be transferred to the state budget. This regulation allows parties to use illegal funds with no charge or additional cost (interest, arrears) and to return it to the donor without facing sanctions when compelled to do so by a precept of the Committee. A better option would be to always transfer prohibited donations to the state budget.

Thirdly, legal consequences of inadmissible crediting. Based on the reports, the Committee checks the long-term arrears of the political parties from the crediting point of view. The Political Parties Act only views crediting as borrowing, and even this in a distorted way – it sets out provisions on the obligation to enter into a loan contract with a credit institution but not on borrowing as such. Subsection 122(1) reads: "A political party may enter into a loan contract only if the lender is a credit institution and the lending and borrowing takes place on market conditions", which means that borrowing is also allowed from non-credit institutions, provided no loan contract is signed. The parties take advantage of this loophole by remaining indebted to creditors for long periods, with a contract for the supply of services replacing the loan contract, and not always with the consent of the creditors. Crediting should be viewed more widely than just receiving a loan, and debts should not be viewed as donations that have yet to be returned, with returning a donation constituting an ex post payment of debts while the benefit from using the credit has already been gleaned – and under favourable conditions, i.e. without paying interest. A better option would be to impose sanctions for inadmissible crediting.

Fourthly, there are no provisions that regulate sanctions and proceedings in cases where a party consistently fails to submit reports or suffers from long-term insolvency and consequently only has funds for administration; or has failed to comply with a precept, including the payment of a consequent penalty because of a total lack of funds or the factual ceasing of its activities. The Political Parties Act should be complemented with additional provisions defining when the Committee could have recourse to the courts to dissolve a political party, and giving the right to initiate a compulsory dissolution to the Committee, in addition to the minister responsible for this area of government.