REPUBLIC OF ESTONIA
MINISTRY OF JUSTICE

European Rule of Law Mechanism: input from Member States – ESTONIA

I. Justice System

A. Independence

1. Appointment and selection of judges

Guarantees for the independence of the judiciary are provided for at constitutional level. Pursuant to § 146 of the Constitution, the courts shall be independent in their activities and shall administer justice in accordance with the Constitution and the law. Pursuant to § 147, judges shall be appointed for life, the grounds and procedure for the release of judges from office shall be provided by law, and judges may be removed from office only by a court judgment. The Constitution also requires that the legal status of judges and guarantees for their independence be provided by law. Further, §153 prescribes that criminal charges may be brought against a judge during his or her term of office only on the proposal of the Supreme Court and with the consent of the President of the Republic. Criminal charges may be brought against the Chief Justice and justices of the Supreme Court only on the proposal of the Chancellor of Justice, and with the consent of the majority of the membership of the *Riigikogu (*parliament).

According to the Courts Act, only a citizen of the Republic of Estonia who is able to communicate in the Estonian language at the level C1 and who has a Master's degree in law or an equivalent foreign qualification can become a judge. The person must be of high moral character and must have the abilities and personal qualities required for the job of a judge, which is assessed by the judge's examination committee. The judge's examination committee is comprised of sixteen members and is formed for a term of three years. By law, the judge's examination committee shall be comprised of four judges of the courts of first instance and four judges of the circuit courts elected by the general assembly of judges, four justices of the Supreme Court elected by the Supreme Court *en banc*, a jurist designated by the council of the Law Faculty of the University of Tartu, a representative of the Ministry of Justice designated by the minister responsible for the area, a sworn advocate designated by the Board of the Bar Association and the State Prosecutor designated by the Prosecutor General. The judge's examination committee shall elect the chairman of the judge's examination committee from among its members.

A person who has at least five years' law work experience or has worked for at least 3 years as a law clerk or judicial clerk may become a judge in a county or administrative court. A person who is an experienced and recognised lawyer and has passed a judge's examination or has been exempted therefrom, may be appointed as a judge of a circuit court. A person who is an experienced and recognised lawyer may be appointed as a justice of the Supreme Court.

All judges are appointed by public competition. The Minister of Justice announces a public competition for a vacant position of judge of a county court, administrative court and circuit court. The Chief Justice of the Supreme Court announces a public competition for a vacant position of justice of the Supreme Court.

A competition for a vacant position of judge is announced in the official publication *Ametlikud Teadaanded*. An application has to be submitted to the Chief Justice of the Supreme Court within one month after the publication of the notice concerning the competition.

If the vacant position of judge is filled pursuant to the procedure provided for in § 57 or § 58 of this Act, a competition will not be announced. The Courts Act § 57 concerns the transfer of a judge (see more in next section) and § 58 concerns employment of judges in state public service and universities in public law and appointment as Prosecutor General and states that a judge may return to the same court to a vacant position of judge by giving at least one month's advance notice thereof to the chairman of the corresponding court (see more in § 58).

The Supreme Court *en banc* shall propose to the President of the Republic the appointment of judges of the first and second instance. Justices of the Supreme Court are appointed on the proposal of the Chief Justice of the Supreme Court by the *Riigikogu* (the Parliament). The Chief Justice of the Supreme Court shall first consider the opinion of the Supreme Court *en banc* and the Council for Administration of Courts.

(Courts Act § 47; § 50, § 51, § 52, § 53; § 55, § 57, § 58)

Appointment and selection of prosecutors

The work of prosecutors is governed primarily by the Prosecutor's Office Act.

A citizen of the Republic of Estonia with active legal capacity, who has attained at least 21 years of age may be appointed as a Prosecutor if he or she has attained a Master's Degree in Law, has proficiency in Estonian at the level of C1, is of high moral Character and has the abilities and personal characteristics necessary for working as a prosecutor, which is assessed by the prosecutors' competition committee where an appointment takes place pursuant to an open competition. The prosecutors' competition committee serves for term of three years and includes the Prosecutor General (chair), one prosecutor from the Office of the Prosecutor General, two prosecutors from district prosecutor's offices, one judge elected by the general assembly of judges, a jurist designated by the Dean of the Law Faculty of the University of Tartu and an official of the Ministry of Justice designated by the Minister of Justice (§ 43).

There are also restrictions as to who can be appointed as prosecutor. The law prohibits the appointment of any person who is unable to work as a prosecutor due to their state of health; any person in respect of whom a conviction for an intentionally committed criminal offence has entered into force; who has been released from the public service for a disciplinary offence; who has been disbarred from the Estonian Bar Association or expelled from the notarial profession; a person who is a spouse, cohabitant or grandparent of the person who exercises direct control over the position of or of direct superior of a prosecutor, or who is a parent or a relative in descending line of the person exercising direct control over the position of or direct superior of a prosecutor or their spouse or cohabitant, including a child and grandchild. A parent is also deemed to include an adoptive parent and foster parent, and a relative in descending line is also deemed to include an adopted child and foster child. The specified restriction also applies to filling of the position of the person exercising direct control over the position of or direct superior of a prosecutor (§ 15).

Other professional qualifications may be taken into consideration, such that a person who has been employed for one year as a prosecutor or for three years as a judge, police officer, sworn advocate or in another position which requires in-depth knowledge of penal law and procedure may be appointed as a district prosecutor. Similarly, a person who has been employed as a prosecutor, except an assistant prosecutor, before appointment to office may be appointed as a specialised prosecutor, and a person who has been employed as a judge, prosecutor, police officer or sworn advocate for three years before appointment to office may be appointed as a chief prosecutor or senior prosecutor. A person who has been employed in a position which requires high qualification in law for at least two

years may be appointed as a chief state prosecutor and a state prosecutor. A person who is an experienced and recognised lawyer may be appointed as the Prosecutor General.

The Prosecutor General is appointed to office by the Government, on the proposal of the Minister of Justice after considering the opinion of the Legal Affairs Committee of the *Riigikogu* (parliament). The Minister of Justice appoints chief state prosecutors, state prosecutors and chief prosecutors to office on the proposal of the Prosecutor General. The Prosecutor General appoints senior prosecutors on the proposal of chief prosecutors, and specialised prosecutors, district prosecutors and assistant prosecutors on the proposal of the prosecutors' competitions committee (§ 16).

The Prosecutor General and chief prosecutors are appointed for a term of five years, while other prosecutors are appointed to office for an unspecified term (§ 17).

Specialised prosecutors, district prosecutors and assistant prosecutors are appointed to office on the basis of a public competition. The Prosecutor General, chief state prosecutors, state prosecutors and senior prosecutors may be appointed to office without a public competition (§18).

2. Irremovability of judges, including transfers of judges and dismissal

See the first paragraph in point 1 for information on constitutional guarantees regarding the removal of judges. Judges are appointed for life and they may be removed from office only by a court judgment.

A judge may be released from office:

- at the request of the judge;
- due to age – a judge will be released when he or she turns 68 years old, but in exceptional cases, the maximum age of a judge may be increased by up to two years, but not more than four years in total. The judge shall be dismissed when the maximum age for service is reached;
- due to unsuitability for office – within three years after appointment to Office by decision of the Supreme Court en banc. Once a year, the chairman of a court submits his or her opinion concerning a judge with less than three years length of service employed in the court to the judge's examination committee;
- due to health reasons which hinders work as a judge;
- upon liquidation of the court or reduction of the number of judges;
- if after leaving the service in the Supreme Court, the Ministry of Justice, an international court institution or after returning from an international civil mission, a judge does not have the opportunity to return to his or her former position of judge, and he or she does not wish to be transferred to another court.
- in a situation where a judge takes up a position that is incompatible with the restrictions on services of judges;
- if facts become evident which according to law preclude the appointment of the person as a judge.

The President of the Republic shall dismiss the judges of the first and second instance upon the proposal of the Chief Justice of the Supreme Court.

(Courts Act § 3, § 99)

A judge may be transferred to the office of another court of the same or lower instance. This can only be done on the proposal of the Minister of Justice and must be agreed upon by the Supreme Court *en banc* and the judge himself or herself. A judge of the first instance may also be transferred to another courthouse operating as part of the same court. The above procedure shall not apply when a vacant position of the chairman of a court is filled pursuant to the procedure provided for in § 12, 20 and 24 of the Courts Act. Within the same locality, a chairman of a court in the interests of the organisation of

administration of justice may appoint a judge to permanent office without his or her consent to another courthouse of the same court. The chairman of the court has to consider the opinion of the full court.

(Courts Act § 57)

3. Promotion of judges

In Estonia, it is not possible to simply promote a judge to a higher position. In order to become a higher level judge, a lower instance judge must apply for this position through an open competition together with other experienced lawyers.

The chairmen of county courts and administrative courts are appointed from among the judges of the court of the first instance or circuit court in question for a term of seven years. The chairmen are appointed by the Minister of Justice after having considered the opinion of the judges of the court in question (Courts Act § 12).

Promotion of prosecutors

See above point 1 regarding the regulation for appointment of prosecutors.

4. Allocation of cases in courts

According to clause 4 (1) of the Courts Act, the jurisdiction of the courts is provided by law. Pursuant to § 24 of the Constitution of the Republic of Estonia, no one may be transferred, against his or her free will, from the jurisdiction of a court specified by law to the jurisdiction of another court. Clause 4 (2) of the Courts Act foresees that a case may be transferred from the jurisdiction of one court to the jurisdiction of another court only on the bases and pursuant to the procedure provided by law. This is permissible in extraordinary situations only, such as if for some reasons none of the judges in the court of jurisdiction could hear a case, due to illness, a natural catastrophe or where to fulfil an obligation to recuse oneself.

The courts of first instance include the county and administrative courts. Civil, criminal and misdemeanour matters are heard in a county court in accordance with the Code of Civil Procedure, the Code of Criminal Procedure and the Code of Misdemeanour Procedure, respectively, which also regulate the principles of jurisdiction. The Administrative Court, which is also a court of first instance, deals with administrative matters assigned to it by law pursuant to the Code of Administrative Court Procedure.

Where this expedites dealing with matters or otherwise renders it more effective, the law may provide that certain types of matters be dealt with exclusively by a certain county court (subsection 2 of clause 11 of the Code of Civil Procedure). For example, actions arising from an agreement on intellectual property rights are under the jurisdiction of Harju County Court (§ 91^1) or matters subject to expedited procedure for orders for payment are dealt with by the Haapsalu courthouse of Pärnu County Court (§ 108).

Circuit courts are courts of second instance and have the task of reviewing the decisions of the county and administrative courts by way of appeal. The highest court in Estonia is the Supreme Court, whose task is to review court decisions by way of cassation. In the cases and pursuant to the procedure provided by law, the Supreme Court also reviews also decisions by way of proceedings for revision or proceedings for the correction of court errors, and performs other duties arising from law.

The territorial jurisdiction of the courts of first instance is determined by a regulation of the Ministry of Justice. The territorial jurisdiction of the courts of second instance is regulated in Subsubsections 22(3) and (4) of the Courts Act. According to subsection 37(1) of the Courts Act, the division of tasks between judges of courts of first instance and courts of appeal shall be prescribed in the division of tasks plan, which is approved by the full court (every court shall comprise a full court which is comprised of all the judges of the court).

Tasks shall be divided between judges on the basis of the following principles:

- each matter received by the court for hearing shall be divided between judges according to the division of tasks plan;
- matters shall be divided between judges at random and on the bases determined in the division of tasks plan;
- in the distribution of matters, as many matters as possible shall be distributed between the judges serving in the courthouse where the matter will be heard.
- the distribution of matters must ensure the specialisation of judges;
- the distribution of matters shall ensure an equal work load for the judges within a court;

The Council for Administration of Courts shall establish the specific bases for the preparation of the division of tasks plans of judges, including the principles of specialisation of judges. A division of tasks plan shall ensure the specialisation of judges in matters involving minors. Cases are allocated automatically through the electronic courts information system.

(Courts Act: § 4, § 9, § 18, § 22, § 25, § 36, § 37)

5. Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

The courts of first and second instance are administered in co-operation between the Ministry of Justice and the Council for Administration of Courts. This means that these courts are financed through the budget of the Ministry of Justice and their day to day administration falls within the competence of the Ministry of Justice. However, the Ministry of Justice does not intervene in any decisions that concern the substantive work of the courts. The Council for Administration of Courts (see Section 40 of the Courts Act) discusses all the important issues concerning the administration of court system, as well as all the legislative initiatives concerning the judiciary and court proceedings or the functioning of the courts, and has to give its consent to or its opinion on every such decision or initiative.

The Supreme Court is self-administered and is financed directly from the state budget. The Supreme Court also performs some functions with regard to the overall court system, such as the organisation of public competitions for judges' positions.

The Council for Administration of Courts is not a permanently operating body but a council that has regular sessions 4 times a year and extraordinary sessions whenever there is a need. The Council sessions are usually convened by the Chief Justice of the Supreme Court and the Council is chaired by the Chief Justice of the Supreme Court. The Ministry of Justice is responsible only for the organisational support of the Council, but does not intervene in the work and decision-making of the Council. The administration of the Council is financed from the reserve budget of the courts.

The Council is comprised of 11 members who are:

- the Chief Justice of the Supreme Court;
- 5 judges elected by the general assembly of judges for three years;
- 2 Members of Parliament – *ex officio* the chairman of the legal committee of parliament and the chairman of the constitutional committee of parliament;
- the Chief Public Prosecutor, or his or her representative

- the Chancellor of Justice (ombudsman), or his or her representative
- the Board of the Bar Association has to appoint a sworn advocate as a member of the council, currently the Chairman of the Bar Association
- the Minister of Justice or his or her representative, but the Minister can participate only with the right to speak but without the right to vote.

Main functions of the Council:

First, the Council has the right to grant or refuse to grant its approval for most of the important decisions made by the Ministry of Justice in relation to the courts, e.g.

- determination of the territorial jurisdiction of courts, structures of the courts, the location of courts and courthouses;
- determination of the number of judges in the courts and courthouses;
- appointment to office and premature release of chairmen of courts;
- a decision to allow a judge to continue to serve after attaining the age of retirement;
- determination of the number of lay judges;
- the establishing of the composition of the register data of the courts information system and the procedure for the submission thereof.

In addition, the Council has the right to give its opinion on:

- the principles of the formation of annual budgets of courts;
- the conformity of the funds allocated to courts in the budget of the Ministry of Justice with the principles of the formation of annual budgets of courts;
- candidates for a vacant position of justice of the Supreme Court;
- release of a judge from office due to extraordinary reasons.

Finally, the Council discusses all the important matters regarding the administration of courts:

- all important ideas and proposals regarding development of the court system;
- all legislative initiatives concerning the judiciary, court proceedings or the functioning of the courts;
- other issues at the initiative of the Chief Justice of the Supreme Court or the Minister of Justice.

(§§ 39 and 41 Courts Act)

6. Accountability of judges, including disciplinary regime and ethical rules

According to Subsection 45 (1) of the Courts Act, the chairman of a court is a person with the competence to perform supervisory control over the administration of justice pursuant to the requirements, over the performance of duties by judges and over the forwarding of the data of the courts information system pursuant to the established procedure. The chairman of a court has the right to demand explanations from judges, inspect compliance with the operations procedure and collect other necessary information to resolve any issues relating to the administration of justice, the supervision of the judge and the initiation of disciplinary proceedings. The chairmen of circuit courts shall also exercise supervisory control over judges of the courts of first instance.

The legality of legal proceedings can only be assessed by a higher court through appeal proceedings. A disciplinary punishment will be imposed on a judge if he or she commits a disciplinary offence, pursuant to the procedure established in Sections 87-98 of the Courts Act. A disciplinary offence is a wrongful act of a judge which consists of failure to perform or inappropriate performance of official duties. An indecent act of a judge is also a disciplinary offence. A disciplinary offence of a judge may also consist of a violation of the Estonian Judges' Code of Ethics.

Depending on the severity of the disciplinary offence, punishment can be a reprimand, a fine in an amount of up to one month's salary, a reduction in salary or removal from office. In a situation where elements of a disciplinary offence are evident, disciplinary proceedings are initiated by drawing up a disciplinary charge.

The Chief Justice of the Supreme Court and the Chancellor of Justice have the right to initiate disciplinary proceedings against all judges. The chairman of a circuit court may initiate disciplinary proceedings against judges of courts of first instance within his or her territorial jurisdiction. Each chairman of a court has the right to initiate disciplinary proceedings against the judges of his or her court, and the Supreme Court *en banc* has the right to initiate disciplinary proceedings against the Chief Justice of the Supreme Court.

The disciplinary matters of judges are heard and disciplinary punishment is imposed by the Disciplinary Chamber at the Supreme Court, which is comprised of five justices of the Supreme Court, five circuit court judges and five judges of courts of first instance.

The Disciplinary Chamber may remove a judge from service during the hearing of a disciplinary matter by an order, of which it must immediately notify the judge and the chairman of the court. If circumstances related to a judge that significantly damage the reputation of the court are ascertained, the Disciplinary Chamber may remove the judge from service until the commencement of disciplinary proceedings is decided. If it is established that no basis exists for the commencement of disciplinary proceedings against the judge, the judge may resume service on a decision of the Disciplinary Chamber. The chairman may, however, assign duties other than the administration of justice to a judge who is temporarily removed from service. The provisions regulating sessions of the Disciplinary Chamber are provided for in Section 96, and the provisions regulating decisions of the Disciplinary Chamber are provided for in Section 97 of the Courts Act.

A judge on whom a disciplinary punishment has been imposed may file an appeal with the Supreme Court *en banc* within thirty days after the decision is pronounced. Disciplinary proceedings shall not be commenced if more than one year has passed from the commission of the disciplinary offence or more than six months have passed from the discovery thereof. A disciplinary sanction will expire if the judge does not commit a new disciplinary offence within one year after the entry into force of the decision of the Disciplinary Chamber. The Disciplinary Chamber may also cancel a disciplinary punishment before the prescribed time.

(Courts Act §§ 87, 88, 91, 93, 94)

Accountability of prosecutors, including disciplinary regime and ethical rules

The regulation of disciplinary measures for prosecutors is provided for in §§ 31-42 of the Prosecutor's Office Act. Disciplinary offences include wrongful non-performance or unsatisfactory performance of duties; and indecent act – a wrongful act which is in conflict with the generally recognised moral standards or which discredits the prosecutor or the prosecutor's office, regardless of whether such act is committed in the performance of duties or not. Disciplinary punishments include a reprimand, reduction of salary of up to 30% for up to one year, and release from service.
Disciplinary proceedings shall be initiated at the request of an interested person or on their own initiative by the Prosecutor General with regard to all prosecutors, chief prosecutors with regard to the prosecutors of the district prosecutor's office subordinate to him or her, and the Minister of Justice with regard to the Prosecutor General, a chief state prosecutor or chief prosecutor.

The expectations for the conduct of prosecutors have been agreed in the Prosecutors' Code of Ethics, which includes provisions for a Prosecutors' Ethics Council, which assesses whether the activities of a prosecutor are in line with the Code of Ethics. The Council comprises five prosecutors with at least

ten years' experience, elected by the prosecutors of the District Prosecutors' Offices and Office of the Prosecutor General from among themselves.

7. Remuneration/bonuses for judges

The salary of judges is established by law in the Salaries of Higher State Servants Act. Additional remuneration for judges is regulated in Section 76 of the Courts Act.

A chairman of a court of the first instance or court of appeal shall receive additional remuneration for the performance of the duties of chairman of the court depending on the number of judges in the court, and the court in question (see the amount in subsection (1) and subsection (1^1)).

The chairman of a chamber of the Supreme Court or a circuit court shall receive additional remuneration for the performance of the duties of chairman of the chamber in the amount of 15 per cent of his or her salary. The additional remuneration for the manager of a courthouse is regulated in subsection (3) based on the number of judges who are permanently assigned to the court. The chairman of a court shall determine additional remuneration for the deputy chairman of the court in the amount of 15 per cent of his or her salary.

Judges supervising judges and persons completing the preparatory service plan of an assistant judge shall receive additional remuneration equal to 5 per cent of the salary for each supervised person during supervision. At the time when the completion of the preparatory service plan of an assistant judge is suspended, no additional remuneration shall be paid to the supervisor. A judge who performs official duties at an international institution or who participates as an expert in an international program of co-operation or in any other form of international co-operation is entitled to receive remuneration therefor.

A judge of a court of the first instance shall be paid additional remuneration for on-call time during public holidays and weekends. The on-call time shall be deemed to cover the entire length of the on-call time in hours. The amount of the additional remuneration for one hour of the on-call time shall be 10% of the remuneration for one working hour of the judge.
The Chief Justice of the Supreme Court shall be paid 20 per cent of his or her salary on a monthly basis for representation expenses (Courts Act Section 76^1).

If a judge of a higher court is appointed, due to liquidation of the court or reduction of the number of judges, as a judge of a lower court with his or her consent, he or she shall retain the salary of the previous position together with additional remuneration during one year (Courts Act Subsection 86 (3)).

Remuneration/bonuses for prosecutors

The remuneration of prosecutors is regulated in §§ 22-24 of the Prosecutor's Office Act. The salary of the Prosecutor General is provided in the Salaries of Higher State Servants Act, and the salary of other prosecutors are defined in relation (generally as a percentage) of his or her salary.

The Prosecutor General, being guided by the principles provided for in the Civil Service Act, may determine a performance pay to a prosecutor as a variable salary on the basis of established criteria for a specific job or a period, a bonus for exceptional service achievements or additional remuneration for the performance of supplementary service duties. No variable salary shall be paid to the Prosecutor General. Performance pay is based on the assessment of the work of a prosecutor, or collective contribution of a structural unit. The terms and conditions of and procedure for payment of prosecutors' variable salaries and the grounds for formation of the salaries of assistant prosecutors are set out in the salary guide for prosecutor's offices, which is established by the Minister of Justice.

8. Independence/autonomy of the prosecution service

Pursuant to the Prosecutor's Office Act (POA), the prosecution service (*prokuratuur*) is independent in the performance of its functions arising from law, and it acts pursuant to the Prosecutor's Office Act, other parliamentary Acts, and legislation adopted on the basis thereof. Prosecutors shall be independent in the performance of their duties and act only pursuant to law and according to their conscience (§§ 1 and 2 POA). This means that the prosecution service is autonomous from outside influence. While the prosecutor represents the state in bringing charges against accused persons in court, in pre-trial proceedings, the prosecutor has the duty to protect the interests of all persons and to ascertain all facts that may prove a suspect's innocence or guilt. The bringing of criminal charges against a person that a prosecutor knows to be innocent, unlawful termination of criminal proceedings by a prosecutor or unlawful authorisation by a prosecutor to withdraw charges are punishable criminal offences (§§ 310, 311[3] Penal Code).

The Prosecutor General exercise supervisory control in the prosecutor's office, and chief prosecutors exercise supervisory control in district prosecutor's offices. The Ministry of Justice exercises supervisory control over the prosecution service, however this does not extend to the activities of the prosecutor's office in the planning of surveillance, pre-trial criminal proceedings and representing the public prosecution in court (§9 POA). Further guarantees for the independence of the prosecution service are provided for in the Code of Criminal Procedure (CCP), which provides that the authority of the prosecution service in criminal proceedings is exercised by prosecutors in the name of the prosecution service independently, being subordinated only to the law (Subsection 30(2) CCP). The ministry cannot in any way assess or interfere with any specific ongoing proceedings.

9. Independence of the Bar (chamber/association of lawyers)

The Estonian Bar Association is a self-governing professional association acting on local government administration principles, for the organisation of the provision of legal services in the private and public interests and to defend the professional rights of attorneys. The Bar Association Act provides for the organisation of the Bar Association, and the legal bases for the activities of attorneys (advocates), associated members of the Bar Association and advocates of foreign states. The Bar Association organises its work through its bodies. The Bar Association has the exclusive competence to admit members to and exclude members from the Bar Association, to elect members of its bodies, the conduct proceedings of its court of honour and imposing disciplinary punishments on its members.
The independence of the Bar Association is guaranteed, as the state has only very limited connection with any of its activities. This is limited to situations such as where the Bar Association is involved in providing state legal aid, and the activities of attorneys acting as a trustee in bankruptcy or patent attorney.
The Bar Association Act provides for guarantees for the independence of attorneys (advocates), including:

- In the provision of legal services, an advocate shall be independent and shall act pursuant to law, the legal acts and resolutions adopted by the bodies of the Bar Association, the requirements for the professional ethics of advocates, good morals and his or her conscience.
- Advocates must refrain from conflicts of interest and other actions which may compromise their independence.
- The management of a law office and an advocate shall be solidarily liable for damage caused through the provision of legal services.
- The management of a law office is required to have professional liability insurance.
- The Board of the Bar Association, exercises supervision over attorneys (members), and disciplinary proceedings are conducted and disciplinary punishments are imposed on members only by the independent court of honour of the Bar Association.
- Attorney-client privilege, that is, the confidentiality of communications, is prescribed by law.

- An advocate or employee of the Bar Association of a law office who is being heard as a witness may not be interrogated or asked to provide explanations on matters that he or she became aware of in the course of provision of legal services.
- An advocate shall not be detained, searched or taken into custody based on circumstances arising from his or her professional duties, except on the basis of a court order issued by a county or city court.
- Advocates can only provide legal services through a law office, of which the owner(s) must be (an) advocate(s) (as a sole proprietor or association), and law offices are only permitted to engage in the provision of legal services.

10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

N/A

11. Other - please specify

N/A

B. Quality of justice

12. Accessibility of courts (e.g. court fees, legal aid)

The right of recourse to the courts is guaranteed in § 15 and § 146 of the Constitution. If a dispute cannot be settled, every person has the right to go to court to defend his or her rights. The documents can be submitted to a courthouse, either: 1) on paper directly in person or by post; 2) in a digital format by e-mail, or 3) via the e-File public portal. This is a publicly managed electronic environment which enables the participants in the court proceedings and their representatives to submit the procedural documents to the court electronically and to monitor the course of the court proceedings. An ID card or Mobile ID is required to log into the system, providing access to only those cases which are directly related to the person.

The costs involved must be considered when going to court. As a general rule, a state fee must be paid, the amount of which depends on the requested procedural act. The state fee is the amount of money payable to the Republic of Estonia pursuant to law for the performance of a procedural act. State fees are regulated by the Code of Civil Procedure, the Code of Administrative Court Procedure and the State Fees Act (SFA). Upon the filing of a statement of a civil claim, a state fee shall be paid on the basis of the value of the action pursuant to Annex 1 to the State Fees Act or in a fixed amount (Subsection 59 (1) of the State Fees Act). For example, the fee for filing for a divorce in court is one hundred euros (Subsection 59 (2) of the State Fees Act). The fee for filing a complaint to the administrative court is fifteen euros (Subsection 60 (1) of the State Fees Act), etc. In response to a 2015 decision of the Supreme Court of Estonia that held that excessively high state fees infringed the right of recourse to the courts, the maximum state fee in civil matters has now been established at 3400 EUR. The many provisions regarding reduction and release from the obligations to pay the state fee are prescribed in §§ 19-52 SFA.

The state fee must be paid in advance for performing the act. If the state fee is not paid, the court shall set a term for payment of the state fee, and if the state fee is not paid by the term, the application shall not be processed or reviewed.

In the courts of first and second instance (unlike the Supreme Court), it is not always necessary to use the assistance of professional legal counsel, although a representative will allow a person without legal education to better defend his or her interests in proceedings.

Several organizations offer free legal advice in different locations throughout Estonia, including for example the non-profit Estonian Lawyers' Association.

In order to guarantee access to justice, natural persons who due to their financial situation are unable to afford professional legal services have the right to receive state legal aid, under the conditions provided for in the State Legal Aid Act (SLAA). Legal aid can be applied for in relation to all forms of proceedings: criminal proceedings misdemeanour proceedings, civil court proceedings, administrative court proceedings, administrative proceedings and enforcement proceedings. Such legal services are provided by an advocate under the Bar Association Act. The State Legal Aid Act further provides that at the request of a court, the Prosecutor's Office or an investigative body, the Bar Association will promptly appoint an advocate to provide state legal aid. The advocate appointed by the Bar Association must promptly assume the obligation to provide state legal aid and organise their activities in such a manner that it would be possible for the advocate to participate in procedural steps on time. This is done through an e-file system, and it is forbidden for any agreements to be made directly with any advocate (SLAA Section 18). The Bar Association has a duty to ensure the reasonable availability of state legal aid and the continuous organisation and provision of state legal aid.

Depending on a person's financial situation, legal aid may be provided free of charge or with an obligation to reimburse it in whole or in part. Regardless of a person's financial situation, state legal aid is available to suspects and persons who are charged with a criminal offence in criminal proceedings, children in matters relating to child support, victims with restricted legal capacity and victims of terrorist crimes. There is no requirement to apply for legal aid where the use of counsel is mandatory.

There are also possibilities for legal persons to receive state legal aid, such for legal persons that are suspected or accused persons in criminal or misdemeanour proceedings, and for non-profit associations or foundations in the field of environmental or consumer protection as well as in order to prevent possible damage to the rights of a large number of people.

In addition to the provision of legal aid for matters in the Estonian courts and administrative bodies, Estonian citizens and persons who are in Estonia on the basis of a residence permit have the right to apply for legal aid, including for translation, also in relation to civil matters in a court of another European Union Member State.

Estonia also provides state legal aid to persons who wish to file a complaint against Estonia with the European Court of Human Rights for an alleged violation of the European Convention on Human Rights, if the complaint is admissible under Article 35 of the ECHR, up to such time as it is possible for the person filing the complaint to apply for legal aid from the European Court of Human Rights under its Rules of Court.

13. Resources of the judiciary (human/financial)

The total number of persons active in the courts of first and second instance is 925. This number includes 210 judges, 204 judicial clerks (*kohtujuristid*) and 161 court secretaries (*kohtuistungi sekretärid*) (data as of 2019).

The total budget is provided for in the annual state budget. The Council for the Administration of Courts has the right to give its opinion on the adequacy of the budget for the courts of first and second instance to the Government of the Republic, which drafts the budget, and to parliament, which adopts the budget. The Minister of Justice is responsible for drafting and defending the budget proposed, and for submitting requests for additional budget allocations.

The Council for the Administration of Courts gives its opinion on the drafting of the budget, and the Minister of Justice approves the budgets of courts of first and second instance. The draft budget for the following year is drafted by the Ministry of Justice in cooperation with the chairmen of the courts,

and submitted to the Council for the Administration of the Courts. The budget also foresees funding for the central expenses of the courts, which is within the competence of the Ministry of Justice. This includes funding for IT-systems, training, operational expenses for the Council for the Administration of Courts and other meetings.

The salaries of judges and chairmen of courts as well as the minimum remuneration of judicial clerks are provided by law. The salaries of court officials are established and approved by each court itself.

The Supreme Court has an independent budget which is a separate item in the annual state budget and which it negotiates directly with the Ministry of Finance. As at the end of 2019, the Supreme Court employed a total of 107 persons, including 19 justices and 35 legal consultants.

14. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals)

Surveys on the satisfaction of persons who have used the courts are conducted regularly in the courts of first and second instance once every four years, with the last survey held in 2017. In that survey, 80% of persons who had filed a petition or action in court considered the courts to be trustworthy or rather more trustworthy. Eighty percent of those who had been involved in court proceedings and 82% of attorneys responded that they were satisfied or rather more satisfied with the work of the courts.

The Council for the Administration of Courts has approved the procedural objectives of the courts of first and second instance. According to the objectives, it is important that the performance of the courts is positive over a period of at least three years in total (i.e. the court decides at least as many cases during the period as it receives during the same period). It is also important that new cases should be processed within at least 365 days, and no more than 5-10% of cases should be processed in court for a period exceeding 365 days. Each court submits a monthly report to the Ministry of Justice. Once a year, the chairman of each court of first and second instance reports to the Council for the Administration of Court on the proper administration of justice in the court under his or her jurisdiction. In addition to this report, the administration of the courts monitors the reporting of cases that have been active for over 2 years. The purpose of this report is to ensure that no case is delayed in the courts without reason. In cases where the proceedings have lasted at least 2 years by the beginning of the accounting year, the chairman of the court monitors the progress of the proceedings in more detail, i.e. the trial judge will submit a plan for conducting the proceedings to the chairman of the court. A summary of this report is discussed in the Council for the Administration of Courts.

The e-File public portal is a publicly managed electronic environment which enables the participants in the court proceedings and their representatives to submit procedural documents to the court electronically and to monitor the course of the court proceedings. An ID card or Mobile ID is required to log into the system, providing access to only those cases which are directly related to the person.

15. Other - please specify

Estonia continues to develop IT tools to increase efficiency in the administration of justice and improve access to justice and to an effective legal remedy. One such tool is the system for the expedited procedure related to payment orders, which can be initiated online through the secure e-File public portal, as detailed on the e-Justice portal. Over the past two years, nearly three-quarters of all expedited payment orders have been issued electronically through this automated system, with greater ease and lower costs for both creditors and for the justice system.

C. Efficiency of the justice system

16. Length of proceedings

According to the procedural statistics of 2019, civil cases were resolved in county courts on average in 95 days, criminal cases were resolved on average in 226 days in general criminal proceedings, 28 days in simplified proceedings and 46 days in misdemeanour cases. In the first instance, administrative cases were resolved in an average of 123 days. The average processing time for appeals was 162 days in civil cases, 44 days in criminal cases and 197 days in administrative cases.

In four of the past five years, the Supreme Court has operated at a capacity in excess of 100% (and at 97% in the fifth), that is, more matters have been resolved than have been registered. Pursuant to the Courts Act, the Chief Justice of the Supreme Court makes an annual report to the *Riigikogu* (parliament) on the administration of justice in Estonia.

17. Enforcement of judgements

Please refer to the information on enforcement in civil and commercial matters on the e-Justice portal.

The enforcement of administrative court judgments is provided for in §§ 246-248 of the Code of Administrative Court Procedure. See below point 41.

As recently mandated by the Government based on a thorough analysis of the current legal framework and practice, the Ministry of Justice is currently in the early stages of drafting legislation to reform and increase the effectiveness of the system of enforcement proceedings in Estonia, with a view to better protecting the rights of debtors and creditors. Among the amendments envisioned are provisions to increase the professional capacity of bailiffs as well as amendments to address identified shortcomings, such as in the enforcement of civil judgments in matters relating to maintenance obligations. The ministry is also looking to develop an ICT tool that will allow a better overview of claims being processed in compulsory enforcement proceedings.

18. Other - please specify

None.

A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

19. List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Where possible, please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant)

The Estonian official website on corruption is www.korruptsioon.ee, which is one of the main sources for anti-corruption awareness, training materials, studies and all relevant data.

- *The Ministry of Justice* is responsible for the coordination of anti-corruption policy in Estonia. According to the § 8 of the Anti-Corruption Act, the Ministry of Justice is responsible for co-ordinating anti-corruption activities.
- The budget of anti-corruption coordination is 7000-15 000 € for anti-corruption projects, besides personnel costs and extraordinary costs.
- *Anti-corruption network:* each ministry has a corruption prevention co-ordinator who is appointed to manage the implementation of the anti-corruption policy in the relevant ministry and its area of government. The co-ordinators have other tasks assigned to them besides anti-

corruption responsibilities. The network convenes annually around four to five times. The network includes also representatives from the police, civil society, parliament, the state audit office and other stakeholders who are invited to attend the meetings dependant on the topic chosen.

- *The parliamentary Anti-Corruption Select Committee* exercises parliamentary scrutiny over the implementation of anti-corruption measures and discusses and assesses the potential incidents of corruption involving officials specified in the Anti-Corruption Act.
    - The Committee consists of 5 members of parliament and 2 permanent officials.
- *The Prosecutor's Office* directs pre-trial criminal proceedings, ensuring lawfulness and effectiveness thereof, and represents the public prosecution in court.
    - There are 2 state prosecutors + 1 assistant prosecutor in the Office of the Prosecutor General and 6 specialised prosecutors + 4 assistant prosecutors responsible for corruption investigations in the district prosecutor's offices.
- *The Corruption Crime Bureau of the Central Criminal Police* is responsible for the corruption investigations – it is specialised unit, which specialises on target-based investigations.
    - There were 33 persons working in the Bureau in 2019.
    - The budget of the Bureau in 2019 was 1 156 132 € (including social tax).
- *The Internal Security Service* has been assigned the task of proceeding corruption offences committed by higher state and local government officials (the latter concerns only six biggest municipalities). The personnel and budget of the Service is classified information.

B. Prevention

20. Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)

Asset disclosure rules are stipulated in the Anti-Corruption Act, Chapter 3. See also the Government's Good Practice of Engagement and Rules for Good Legislative Practice and Legislative Drafting.

Currently Estonia does not have lobbying rules, however stemming from the recommendations of the GRECO's Fifth evaluation round, the Government is in the process of preparing a draft regulation on lobbying for public officials working in the executive branch.

Rules on revolving doors apply to officials in the meaning of Civil Service Act, according to which 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 with such legal person in private law over which he or she has exercised direct or constant supervision during the last year. Please see (5) of § 60 of the Civil Service Act. *The connected person in this context means legal person in which at least 1/10 of the holding or the right to acquire a holding belongs to an official or a person connected to him or her; and legal person in which the official or family member is a member of the management or controlling bodies.

An overview of rules on transparency of decision-making can be found in GRECO's report paras 79-81.

21. Rules on preventing conflict of interests in the public sector

The rules on conflicts of interest stem from the Anti-Corruption Act § 10-11 and Civil Service Act § 60.

22. Measures in place to ensure whistle-blower protection and encourage reporting of corruption

According to § 6 of the Anti-Corruption Act, an official is not permitted to conceal incidents of corruption known to the official and that the confidentiality of the fact of notification shall be ensured.
Practical central measures include:

- a dedicated website and email address of the Ministry of Justice www.korruptsioon.ee and korruptsioon@just.ee, where incidents can be reported and additional advice asked;
- a dedicated e-mail address of the Police: korruptsioonivihje@politsei.ee; the phone number: +372 612 3827; and a special form for reporting.

Estonia is also preparing a legislative intent to implement the EU whistle-blower directive to the national legislation by 2021.

23. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption in these sectors (e.g. public procurement, healthcare, other).

The list of high-risks of corruption has been translated into priority sectors in the anti-corruption strategy 2013-2020 and currently includes health-care and education. Public procurement is considered as a horizontal corruption prone area through various sectors in Estonia. For more specific priority areas please see the current anti-corruption strategy.

Immunity of the public sector as a whole to corruption; healthcare sector (links between beneficiaries and procurement winnings, conflicts of interest); corruption in sports; transparency of decision making in municipalities and political sphere (lobbying); awareness of young people and the general public; business ethics and transparency and whistle-blower protection will be considered as priority areas in the forthcoming anti-corruption action plan.

24. Any other relevant measures to prevent corruption in public and private sector

Examples of latest activities:

- E-learning course on prevention of conflict of interest: “Prevention of Corruption and Conflict of Interest in the Public Sector” - available in English. It would be complicated to organise anti-corruption training for all public sector employees (about 130 000 in Estonia) in the classroom. We have chosen e-learning which is much more cost-effective and flexible, as one can take the course at any time and the materials can be viewed again and again. The e-course provides an easy way to acquire basic knowledge of conflict of interest and prevention of corruption in the Estonian context. The course consists of eight Moodle modules (Moodle is an open-source learning platform) and short YouTube videos. Each module and the entire course can be completed by a test. Thus, the organisations can import the course into their e-training environments and adapt the course according to their needs. For individuals there are two ways to complete the course:
  1) To watch the videos on YouTube (https://www.youtube.com/playlist?list=PL5JI001vz8bOi09N3PabBK2ogjrf0k03V), but it is not possible to do the tests here.
  2) To take a course in the Moodle and take the tests. For doing this, one has to go to Moodle (https://moodle.hitsa.ee/login/index.php); create a user account (e.g. with an ID card - contact mari-liis.soot@just.ee or korruptsioon@just.ee for the course password); register for the course as a student with a registration key. As the Moodle enables logging in only with a personal identification code, those who do not have a personal identification code

(e.g. foreigners), please write an application during logging process. The application should include your name, affiliation and justification to complete the course. For example: "I am „name", affiliated with „organisation" and would like to participate the course „Preventing corruption and conflicts of interest in public sector".

- An e-tool / questionnaire for companies to assess the risks of corruption: meant for large or medium-sized company (manager, risk manager, auditor, etc.) that can quickly assess whether and to what extent anti-corruption measures are in place in the company. It also provides tips on how to make the company more corruption resistant by answering 10 questions, which will take 7 minutes. Also available in English.
- Municipal corruption risk assessment e-tool and introductory trainings: https://www.kovriskid.ee/ - only available in Estonian currently.
- Initiative for organising corruption-related lessons to pupils in high-schools and secondary schools, using anti-corruption training materials designed for prevention. Together about 1000 high school students were trained in 30 schools in 2019.

C. Repressive measures

25. Criminalisation of corruption and related offences

For incriminations see the Penal Code § 288; 201 (2) 3; 209 (2) 2; 294-300'.

We also refer to GRECO's IV round report and compliance reports, and to OECD's monitoring reports.

26. Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)

The latest data is available in the Estonian language only: https://www.kriminaalpoliitika.ee/kuritegevuse-statistika/korruptsioon.html.

27. Potential obstacles to investigation and prosecution of high-level and complex corruption cases(e.g. political immunity regulation)

Hereby we refer to an analysis of parliamentary immunity conducted by the Ministry of Justice (available only in Estonian) and GRECO's IV round report and compliance reports as referred to previously.

III. Media pluralism

A. Media regulatory authorities and bodies

28. Independence, enforcement powers and adequacy of resources of media authorities and bodies

Estonia ranks number 14 in the 2020 World Press Freedom Index, published by the Reporters Without Borders.

The Estonian media landscape is governed by two media-specific legislative acts: Media Services Act and Estonian Public Broadcasting Act. The Media Services Act is currently under revision with the aim of transposing the audiovisual media services directive into national law.

The Estonian media regulatory authority is the Consumer Protection and Regulatory Authority ("CPRA"), whose structure can be found here. The CPRA is a governmental agency, operating in the area of administration of the Ministry of Economic Affairs and Communications ("MEC"), according to § 1(1) of the Statute of the Consumer Protection and Technical Surveillance Authority.

In the Estonian legal system, authorities of executive power are: 1) governmental authorities, and 2) state authorities administered by governmental authorities (§ 38 (1) of the Government of the Republic Act, "GRA"). Governmental agencies are institutions which are financed from the state budget and entrusted by law or by legal instruments stemming from laws with the primary task of exercising executive power (§ 39 (1) of GRA). Governmental agencies are accountable to the Government of the Republic or their respective ministers or to the Secretary of State (i.e. the Director General at the Prime Minister's Office), who direct and coordinate their activities and exercise supervision over them pursuant to the procedure provided by law.

The CPRA is more specifically an executive agency. An executive agency is a governmental authority established pursuant to law which operates within the administrative area of a ministry, has an executive function, exercises state supervision and applies enforcement powers of the state on the basis and to the extent prescribed by law (§ 70 (1) of GRA). An executive agency is directed by the director general who is appointed to and released from office by the minister on the proposal of the secretary general, unless otherwise provided by law (§ 70 (2) of GRA).

Executive agencies are not legal persons but rather administrative bodies. Public law legal persons must be formed pursuant to a parliamentary Act (e.g. Estonian Public Service Broadcaster and Estonian Public Library), and executive agencies cannot be made into legal persons in the Estonian legal system. The independence of executive institutions is guaranteed by other means, e.g. their separate budget, the head of the institution and its own employees. The authority is not accountable to the Parliament.

The CPRA has its own separate budget, but media services are not distinguished in this budget.

29. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies

The CPRA is headed by Director General (§ 5 (1) of the Statute), who is appointed for a term of five years (§ 23 (2) and (3) of the Civil Service Act). The selection procedure for the post of Director General of the Authority is conducted by the Selection Board for Senior Public Service (§ 18 (4) Civil Service Act) and appointed by the Minister. The dismissal of the Director-General is regulated in the same way as other officials in Chapter 11 of the Pu Service Act, "Termination of an official's service".

The Statute of the Authority provides for specific tasks of the Authority (§ 4) and of the Head of the Authority (§ 5).

B. Transparency of media ownership and government interference

30. The transparent allocation of state advertising (including any rules regulating the matter)

Allocation of funds for advertising by the state is not regulated by any specific legal instruments. As with all allocation of financial resources, they must adhere to the rules of Public Procurement Act.

31. Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)

Please see response to question 30.

32. Rules governing transparency of media ownership

There are currently no explicit legal provisions governing transparency of media ownership, but the draft Media Services Act includes a provision whereby providers of media services must publish their ownership structure, including the names of beneficial owners.

C. Framework for journalists' protection

33. Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities

§ 15 of the Media Services Act includes a provision on protection of source of information. Pursuant to this provision, a person who is processing information for journalistic purposes shall have the right not to disclose the information that would enable identification of the source of information. Moreover, a person who is processing information for journalistic purposes shall have no right, without the consent of the source of information, to disclose the information that would enable identification of the source of information. This prohibition shall not apply if the source of information has knowingly provided false information to the person processing information for journalistic purposes.

The provisions mentioned above are applied to a person who is professionally exposed to information that enables identification of the source of information of a person who is processing information for journalistic purposes.

34. Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

There are also safeguards for the protection of journalists in the Code of Criminal Procedure, whereby persons processing information for journalistic purposes regarding information which enables identification of the person who provided the information, have a right to refuse to give testimony as a witness. In addition, it is prohibited to conduct a search on the Prosecutor's Office's order on the premises of the persons processing information for journalistic purposes.

35. Access to information and public documents

The Estonian Public Information Act serves as the cornerstone of transparency of governmental activities and to ensure that the public and every person has the opportunity to access information intended for public use, based on the principles of a democratic and social rule of law and an open society, and to create opportunities for the public to monitor the performance of public duties.

Information which is recorded and documented in any manner and on any medium and which is obtained or created upon performance of public duties provided by law or legislation issued on the basis thereof can be accessed by the public. That includes government documents relating to executive function decision-making. Thus, as a rule, all documents relating to executive function decision-making are public. § 4 (1) of the Act stipulates that in order to ensure democracy, to enable public interest to be met and to enable all persons to exercise their rights and freedoms and perform their obligations, holders of information are required to ensure access to the information in their possession under the conditions and pursuant to the procedure provided by law.

According to § 8 of the Public Information Act (1) access to information shall be granted by a holder of information by: 1) complying with a request for information; 2) disclosing information. § 28 lists the types of information to be disclosed, including draft acts prepared by ministries and draft regulations of the Government, together with explanatory memoranda; draft regulations of ministers and local governments together with explanatory memoranda before such drafts are submitted for passage; draft concepts, development plans, programmes and other projects of general importance before such drafts are submitted to the competent bodies for approval, and the corresponding approved or adopted documents.

§ 34 of the Public Information Act lists the grounds of restrictions to the public information: the head of an agency may establish a restriction on access to information and classify information as information intended for internal use. For example, information which contains sensitive personal data; information whose disclosure may violate a business secret; reports of an internal audit before approval thereof by the head of the agency, etc.

The supervision of implementation of the act is carried out by Data Protection Inspectorate***.***

36. Other - please specify

None.

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

37. Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).

The Ministry of Justice is responsible for legislative policy and is specifically tasked with ensuring good legislative practice. Legislative drafting in Estonia is guided by the Rules for Good Legislative Practice and Legislative Drafting. The process generally begins with the drafting of a „legislative intent", which details the issue that is being addressed, the potential target group, an analysis of the current situation and policy options, as well as the potential impact of any possible action. If the content of planned draft legislation is of fundamental significance in the Estonian legal system, the ministry concerned will after approval of the legislative intent draw of a concept of the draft Act and indicate the different legal options possible together with an impact assessment. When a draft Act is subsequently drafted, it is accompanied by a detailed explanatory memorandum.

Access to all of these documents is freely available to the public through the draft legislation and policy information system *(Eelnõude infosüsteem* or EIS*,* available at http://eelnoud.valitsus.ee/main#ANx6shIc.

Any person or organisation can upload their comments and suggestions regarding a particular proposal on this website, and this is visible to the public.

Interest groups and the public are involved in the preparation of legislative intents, concepts and draft Acts, and coordination is carried out in compliance with the provisions of the Rules of the Government of the Republic and the Good Practice of Involvement established on the basis of subsection 4 (2) of the Rules of Procedure of the Government of the Republic. Interest groups are also engaged in ex-

post impact assessments of Acts in accordance with the Good Practice of Involvement, which is published on the Government's website.

Ministries are required to identify the stakeholders to be engaged as early as possible, and at the latest during the stage of drafting a legislative intent or a proposal to draft a development plan. Stakeholder consultations must be conducted in at least two stages: when deciding whether to draft legislation (intent) and when legislation has been drafted before submission to parliament. All draft legislation, legislative intents, proposals to draft a development plan or other potentially significant matters are published in EIS for consultation. Stakeholders are also regularly engaged directly with requests for input. Requests for input clearly indicate which stakeholders are being engaged, what issues in particular input could address, as well as deadlines and guidelines for input and information on subsequent steps in the legislative process. In all matters related to judicial reforms, the Ministry of Justice engages with the judges, chairmen of the courts and Justices of the Supreme Court at the earliest stages for input on envisioned proposals. The right of the Council for the Administration of Courts to have a say in matters related to the judiciary is also provided for in § 41 of the Courts Act.

Approximately 60-75% of laws initiated by the Government are „expedited", in the sense that the legislation is adopted without the full first stage, the drafting of a „legislative intent". This does not mean, however, that sufficient consultations are not held. Sufficient time must be given for consultations, also with the ministries and the Ministry of Justice, which is tasked with also reviewing the legal-technical and linguistic quality, as well as the quality of the accompanying impact assessment. In parliament, pursuant to the Riigikogu Rules of Procedure and Internal Rules Act, drafts of parliamentary Acts generally must undergo three readings, and there are only very limited cases where this is not required (for example to adopt a law to ratify an international treaty pursuant to § 155).

The Ministry of Justice is currently working on a project to create a new law-making environment that will be more user-friendly, with innovative ways for better and more inclusive legislative drafting. The first prototype of the system is scheduled for early 2020. Further, the draft Guidelines for the Development of Legislative Policy 2030 prepared by the Ministry of Justice is currently being debated in parliament. This strategy builds on the Guidelines for Development of Legislative Policy 2018 and has the purpose of renewing the standard for good legislative policy and to serve as a guide for policy-making, including with regard to engagement with stakeholders.

38. Regime for constitutional review of laws

Pursuant to § 15 of the Estonian Constitution, everyone whose rights and freedoms are violated has the right of recourse to the courts, and everyone has the right, while his or her case is before the court, to petition for any relevant law, other legislation or act procedure to be declared unconstitutional. The courts are also obliged to observe the Constitution and to declare unconstitutional any law, other legislation or procedure act which that violates the rights and freedoms provided by the Constitution or which that is otherwise in conflict with the Constitution. In such cases the courts initiate concrete constitutional review.

The Supreme Court is both the highest court and the court of constitutional review. The Constitutional Review Chamber of the Supreme Court reviews the constitutionality of laws and other legislation of general application pursuant to the Constitutional Review Court Procedure Act (CRCPA). The Supreme Court adjudicates constitutional review cases either at the sessions of the Constitutional Review Chamber in a panel of at least three members or sitting *en banc*. Every year, on the proposal of the Chief Justice, the Supreme Court *en banc* appoints two new members to the Constitutional Review Chamber and releases two most senior members of the duties of the members of the Constitutional Review Chamber, taking into account the opinion of and bearing in mind, as much as

possible, the equal representation of the Administrative Law, Criminal and Civil Chambers within the Constitutional Review Chamber.

Constitutional review proceedings can be initiated by a court, the President of the Republic, the Chancellor of Justice, a local government council or the *Riigikogu* (parliament).

The President may file a petition to declare an Act that has been adopted once by parliament, which the President has refused to promulgate, and which has been adopted for a second time by parliament without any amendments, to be contrary to the Constitution (concrete constitutional review).

The Chancellor of Justice also plays a key role in the system of constitutional review of laws, in particular with the right to initiate ex post abstract constitutional review. The Chancellor of Justice is a rather unique constitutional institution that is neither part of the legislature, judiciary or executive. The Chancellor of Justice is an independent official tasked with reviewing the legislation of the legislative and executive branches of government for conformity with the Constitution and laws, and also serves as an Ombudsman. If the Chancellor of Justice finds that legislation passed by the legislature or the executive or by a local government is in conflict with the Constitution or a law, the Chancellor shall propose to the body which passed the legislation to bring the legislation into conformity with the Constitution or the law within twenty days. If the legislation is not brought into conformity with the Constitution or the law within twenty days, the Chancellor of Justice shall propose to the Supreme Court to declare the legislation invalid. The Chancellor also presents an annual report to the *Riigikogu* on the conformity of the legislation passed by the legislative and executive powers and by local governments with the Constitution and the laws.

More specifically, pursuant to § 6 of the CRCPA, the Chancellor of Justice may file the following types of petition with the Supreme Court:

(1) The Chancellor of Justice may file with the Supreme Court a petition:
1) to invalidate a legislative or regulatory act or certain provisions of such an act which has entered into force and which has been adopted by the legislative or executive branch of government or by a body of a local government;
2) to declare an Act which has been promulgated but which has not yet entered into force to be contrary to the Constitution;
3) to declare a regulatory act which has been adopted by the legislative branch of government or by a body of a local government and which has not entered into force to be contrary to the Constitution;
4) to declare an international agreement which has been signed or a provision of such an agreement to be contrary to the Constitution;
5) to annul a resolution of the Riigikogu concerning the submission of a legislative bill or other national issue to a referendum if that bill, with the exception of bills to amend the Constitution, or issue is contrary to the Constitution or if the Riigikogu materially violated the established rules of procedure when adopting the resolution.

Local government councils may file a petition to declare an Act which has been promulgated but which has not yet entered into force, or a regulation of the Government of the Republic or of a minister, which has not yet entered into force, to be contrary to the Constitution, or a petition to invalidate an Act which has entered into force, a regulation of the Government of the Republic or a minister or a provision of such an Act or such a regulation, if it is contrary to the constitutional guarantees of local government (§ 7 CRCPA).
The *Riigikogu* may file a petition with the Supreme Court for an opinion on interpreting the Constitution in conjunction with the law of the European Union if the interpretation of the Constitution is of decisive importance for the passing of a legislative bill which is necessary for fulfilling Estonia's obligations as a Member State of the European Union (§7^1 CRCPA)

An additional layer of review also exists, as, Estonia has ratified Protocol No. 16 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Therefore in a case pending before the Supreme Court in which a party has the right, under Article 34 of the ECHR, on completion of proceedings, to file an individual complaint with the ECHR alleging a breach of their rights, the Supreme Court may, in accordance with Protocol No. 16 to the aforementioned Convention, request an advisory opinion of the ECHR on a question of principle related to the interpretation or application of the rights and freedoms defined in that Convention or the Protocols to it.

The Supreme Court publishes all of its decisions on its website, including through a well-developed search engine of keywords and specific provisions of law. The Supreme Court also publishes regular and thematic overviews of its case law. In the same vein, the online State Gazette (*Riigi Teataja*) also includes information on the case law related to the provisions of Acts published in the State Gazette, including the Constitution. This allows for easy reference to information on interpretation of the Constitution. The online Commentary on the Constitution is available free of charge, and also contains significant information on constitutional review judgments related to the provisions of the Constitution, with direct links to the judgments.

B. Independent authorities

39. independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies

NHRI: The Chancellor of Justice:

Please also refer to points 79-84 of Estonia's common core document forming part of the reports of States parties to the United Nations:
http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=FhOD6sgqgzAhFXD9F%2feKaFMm83LbFY75RhkIFGrig%2b58%2bE5p2aRSpbdS4YXJd8tyA7tLAmaS5xB0i0xY7spNut63c9Ehigk7mrWHd%2bT9u%2bH%2fVOBHkrlWhBNxkl0I43%2bE.

The Chancellor of Justice is a separate and independent constitutional institution and is not part of the executive, the judiciary or the legislative branch of government in Estonia. Pursuant to § 139 of the Constitution, the Chancellor of Justice is in his or her activities an independent official who reviews the legislation of general application of the legislative and executive powers and of local governments for conformity with the Constitution of the Republic of Estonia and the Acts of the Republic of Estonia. The Chancellor of Justice is appointed to office by parliament on the proposal of the President of the Republic for a term of seven years. He or she can only be removed from office by a court judgment, and criminal charges may be brought against the Chancellor of Justice only on the proposal of the President of the Republic, and with the consent of the majority of the membership of the *Riigikogu*. The status of the Chancellor is high. In directing his or her Office, the Chancellor of Justice has the same rights that are granted by law to a minister in directing a ministry. Moreover, the Chancellor has the right to participate in sittings of the parliament (*Riigikogu*) and meetings of the Government of the Republic with the right to speak. The legal status of the Chancellor of Justice and the organisation of his or her office is provided by law, foremost in the Chancellor of Justice Act (CJA).

Pursuant to Section 19 of the CJA, for the protection of his or her rights, everyone has the right to petition the Chancellor of Justice to control whether a state authority or body, legal person in public law or natural or legal person executing public duties, respects the principle of protection of fundamental rights and freedoms and the principle of good public administration.

According to subsection 1(2) of the CJA, the Chancellor of Justice shall analyse proposals made to him or her regarding the amendment of laws, the adoption of new laws and the work of state agencies, and shall make a presentation to parliament if necessary. The Chancellor also assesses ex post the

constitutionality of legislation of general application. Pursuant to subsection 15(1) and (2) of the CJA, any person may petition the Chancellor of Justice to control the conformity of any law or other legislative act with the Constitution and the law. The Chancellor of Justice may also initiate such proceedings on his or her own initiative.

Additionally, in 2018, the Chancellor of Justice Act was amended to authorise the Chancellor of Justice to fulfil the functions of a National Human Rights Institution (NHRI) in accordance with the Paris Principles. This amendment entered into force on 1 January 2019. The Office of the Chancellor of Justice was expanded to include a head of NHRI activities who coordinates the work of the advisors to the Chancellor of Justice and the Chancellor of Justice, who contribute to fulfilling the mandate of the Office as an NHRI. The Chancellor of Justice is currently undergoing accreditation for NHRI status, and had hoped to achieve accreditation during the first half of 2020; however, unfortunately this process has been delayed due to the COVID-19 pandemic. The Chancellor of Justice is already a member of the European Network of National Human Rights Institutions (ENNHRI), and partakes in cooperation between NHRIs and the EU Agency for Fundamental Rights (FRA).

The Chancellor of Justice and the advisors within the Office of the Chancellor of Justice are held in very high esteem in Estonia. The Office is quite substantial by Estonian standards, with a current staff of 49 and a budget in 2020 in excess of 2.8 million EUR.

Equality Body: The Gender Equality and Equal Treatment Commissioner

In addition to the Chancellor of Justice, the Gender Equality and Equal Treatment Commissioner has been given a mandate to oversee the implementation of human rights in Estonia. The Gender Equality and Equal Treatment Commissioner is an independent and impartial expert who acts independently, monitors compliance with the requirements of the Gender Equality Act, and the Equal Treatment Act. The Commissioner accepts applications from persons and provides opinions concerning possible cases of discrimination. The Commissioner advises and assists persons upon filing discrimination complaints, analyses the effect of legal acts on the situation of women and men as well as minorities in society; makes proposals to the Government of the Republic, government agencies, local governments and their agencies for amendments to legislation; advises and informs the Government of the Republic, government agencies and local government agencies on issues relating to the implementation of Gender Equality Act and Equal Treatment Act; takes measures to promote gender equality and equal treatment, also publishes reports on implementation of the principle of gender equality and equal treatment.

The competition for the office of the Commissioner is conducted and the Commissioner is appointed to office by the minister responsible for the policy areas of gender equality and equal treatment area (presently Minister for Social Affairs) for five years. The Commissioner is assisted by the Commissioner's Office. The organisation of the activities of the Commissioner and his or her Office are provided for in the statutes established by the Government of the Republic. Funding allocated to the Gender Equality and Equal Treatment Commissioner from the state budget has increased from 167,116 EUR in 2015 to 506,956 EUR in 2020.

C. Accessibility and judicial review of administrative decisions

40. Modalities of publication of administrative decisions and scope of judicial review

Administrative procedure is regulated primarily by the Administrative Procedure Act (APA). Pursuant to Section 1 APA, the purpose of the Act is to ensure the protection of the rights of persons by creating a uniform administrative procedure that allows for the participation of persons, and also allows for judicial review.

Under Section 51 APA, an administrative act (*haldusakt*) is an order, resolution, precept, directive or other legal act which is issued by an administrative authority upon performance of administrative functions in order to regulate individual cases in public law relationships and which is directed at the creation, alteration or extinguishment of the rights and obligation of persons. A general order is an administrative act which is directed at persons determined on the basis of general characteristics or at changing the public law status of things.

For an administrative act to be lawful, it must comply with the formal requirements prescribed by law (Section 55 APA). These requirements include that an administrative act shall be issued in writing, unless otherwise provided by an Act or regulation. An administrative act may be issued in any other form if it is necessary to issue an order which allows no postponement. At the request of a person with legitimate interest, an administrative act issued in other form than written shall be subsequently prepared in writing without delay. An administrative act in writing may be issued in electronic form. The requirements set for written administrative acts apply to electronic administrative acts, taking into account the specifications arising from the electronic form of documents. Pursuant to Section 57 APA, an administrative act must contain a reference to the possibilities and place of and term and procedure for challenging the administrative act.

An administrative act enters into force as of notification thereof or delivery to the addressee, unless a later entry into force is prescribed in the administrative act. Unless otherwise provided by law, an administrative act which is made public enters into force on the tenth day after it is made public (Subsection 61(1) APA). The resolution contained in a document shall be published in a national daily newspaper or, in the cases provided by law, in the official publication *Ametlikud Teadaanded* (Section 31). This is done for example if the document needs to be delivered to more than one hundred persons, if there is no information concerning the address or e-mail address of a participant in proceedings or a natural person does not confirm receipt of a document transmitted by electronic means. Provision is also made for the delivery of documents to persons in foreign states under an international agreement, through diplomatic channels or by post or electronic means (Section 32).

Any person who believes that their rights have been violated or their freedoms have been restricted by an administrative act or in the course of administrative proceedings may file a challenge, although a challenge cannot be filed against an act or measure of an administrative authority over which the Government of the Republic exercises supervisory control. Jurisdiction over such challenges is determined in Section 73 APA. Unless different jurisdiction is provided by law, a challenge is to be filed with the administrative authority which exercises supervisory control over the administrative authority that issued the challenged administrative act. If no administrative authority exercises supervisory control over the issuing administrative authority, then the issuing authority itself shall review the challenge. This issuing authority will also review a challenge where it is a minister that exercises supervisory control over it.

A decision on a challenge must be prepared in writing and must be delivered to the person who filed the challenge and to third parties (section 86 APA). A person whose challenge is dismissed or whose rights are violated in challenge proceedings has the right to file an appeal with an administrative court under the conditions and pursuant to the procedure provided by the Code of Administrative Court Procedure.

While in some cases pre-trial challenge proceedings are obligatory under the law, in all cases a person has the right, as guaranteed under § 146 of the Estonian Constitution, to the adjudication of a matter by the independent courts. The Supreme Court has held that the requirement to undertake challenge proceedings in administrative matters does not violate a person's right to recourse to the courts as long as such challenge proceedings are not overly long and the right to contest the outcome of the proceedings in court is guaranteed (see Decision 3-4-1-5-04, para 22).

The powers of the administrative courts are provided for in Section 5 of the Code of Administrative Court Procedure. In reviewing a complaint, the court may annul an administrative act in part or in full, order that an administrative act be made or an administrative measure be taken, prohibit the making

of an administrative act or the taking of an administrative measure; award compensation for harm caused in a public law relationship; issue an enforcement order requiring elimination of the consequences of the administrative act or administrative measure; ascertain that an administrative act is null and void, that an administrative act or measure is unlawful, or ascertain a fact that is of material importance in the public law relationship. Pursuant to § 15 of the Estonian Constitution, everyone whose rights and freedoms are violated has the right of recourse to the courts, and everyone has the right, while his or her case is before the court, to petition for any relevant law, other legislation or act procedure to be declared unconstitutional. The courts are also obliged to observe the Constitution and to declare unconstitutional any law, other legislation or procedure act which that violates the rights and freedoms provided by the Constitution or which that is otherwise in conflict with the Constitution. In such cases the administrative courts will also initiate concrete constitutional review within the Supreme Court.

41. Implementation by the public administration and State institutions of final court decisions

The execution of administrative court decisions is regulated in the Code of Administrative Court Procedure (CACP). Pursuant to Section 246, administrative court decisions shall be executed generally upon their entry into force, however the court may establish a time limit for execution starting from entry into force. Certain decisions are to be executed without delay, such as decision to reinstate an official in a public service position or a decision which orders payment of remuneration for up to two months, on in other cases provided by law. The court may, on the basis of an application of a participant in proceedings and by a separate order, declare a court decision to be enforceable without delay also in the case that execution of the decision at a later date would materially harm the rights of a participant in proceedings, or would be subject to difficulty or impossible.

Failure to execute a court decision that has become enforceable may result in a fine by a court of up to 32,000 EUR, which does not release anyone from the obligation to execute the decision. The interested party to the proceedings also retains the right to petition for the imposition of another fine if the decision is still not executed. A subsequent fine may be imposed after a reasonable time has passed since the previous fine was imposed. A decision not to impose a fine may also be challenged by the person who petitioned for a fine to be imposed. There is no limit to the number of times a fine can be imposed (Section 248 CAPA). When justified, such petitions have been satisfied by the Estonian courts in practice. In 2018, two such petitions were appealed up to the level of the Supreme Court. In the first case, the Supreme Court overturned the decisions of the court of first instance and court of appeal and imposed a fine on a rural municipality for failure to establish a general plan by the deadline set out in the relevant Supreme Court administrative chamber judgment. In the second case, the Supreme Court upheld the decision of the court of appeal to impose a fine on a rural municipality for the incorrect implementation of an administrative court judgment regarding the processing of an application for a building permit.

D. The enabling framework for civil society

42. Measures regarding the framework for civil society organisations

Civil society organisations (CSOs) are not regulated by any specific legislation in Estonia other than the Non-profit Associations Acts and Foundations Act. Based on the Estonian Civil Society Development Concept, the Government promotes civil society through the Civil Society Development Plan 2015–2020. An extract of the development plan is available here. Since 2018, the Ministry of the Interior has been leading the process of drafting a new Civil Society Development Plan 2021-2030, in close cooperation with and with the active engagement of a wide range of stakeholders, including the umbrella organisations that represent CSOs in Estonia. This process has included multiple stages of working group meetings and stakeholder consultations throughout the different counties of Estonia.

The latest round of online consultations closed on 27 April 2020. Detailed information on the participants, stakeholders, process, meetings, outcomes and schedule of drafting the development is available to the public on the ministry's website.

The work of CSOs is also supported through the National Foundation of Civil Society (NFCS), which is a state financed civil society fund, development and support centre that focuses on helping CSOs build their capacity to function purposefully and effectively. While NFCS is funded by the government, it functions independently under the guidance of its board, of which the majority of the seven members are representatives of CSOs. The NFCS supports over 100 projects and initiatives annually, ranging from regional to international cooperation. The NFCS also has a nation-wide outreach involving all stake-holders. In cooperation with county governments and development centres, NFCS offers expertise and consultations on a variety of topics, including on how to start an NGO, how to apply for funding and how to become a sustainable organization. In recent years, there have been two important initiatives in Estonia to increase participatory democracy: the Estonian People's Assembly and the subsequent Citizens Initiative Portal.

The Estonian People's Assembly took place from 2013 to 2014 and was based in a social movement seeking greater transparency of government. In response, the then President Toomas Hendrik Ilves initiated a process which brought together representatives of political parties, social interest groups and non-profit sector representatives, political scientists and other opinion leaders. This led to two initiatives – an online collection of proposals from citizens and a public day of discussions organised by the Estonian Cooperation Assembly, the Praxis Centre for Policy Studies, the Network of Estonian Non-profit Organisations NENO, the Open Estonia Foundation and the e-Governance Academy, together with representatives of the four parliamentary parties, the Office of the President of the Republic of Estonia as well as several IT and communication professionals.

One of the outcomes of this process was the launch of the Citizen Initiative Portal rahvaalgatus.ee, which allows anyone 16 years of age or older to initiate a discussion or compile and send a collective proposal with at least 1000 digital signatures to the parliament of Estonia, and also to follow how the proposal is dealt with online. As of early 2018, 16 such proposals had been made to parliament, of which two resulted in the enactment of a parliamentary Act. As of April 2020, there have been a total of 230 discussions and 117 initiatives launched through the portal, of which 42 have been processed by the *Riigikogu,* Estonia's parliament, in addition to 19 initiatives that have been delivered to parliament on paper.

Information on the functioning of civil society in Estonia is also available in a 2018 fact sheet on the status of NGOs, and also in the Report of the Conference of INGOs of the Council of Europe on Civil participation in the decision-making process.