

## TERMS OF REFERENCE

Programme title:	Approximation of Laws & Judiciary
Programme number:	ES-9604
Project title:	Estonian Administrative Law Reform

### 1. BACKGROUND INFORMATION

#### *1.1. Description*

The Phare programme has provided technical assistance since August 1995 to help Estonia to incorporate the "acquis communautaire" into its legislation. This assistance has covered support in establishing new and adapting current legislation, harmonisation of standards and norms, and assistance in developing the judicial and institutional framework.

The Estonian Government established a structure within the Government to co-ordinate EU-Integration in Estonia. In this context a national strategic programme was drafted, led by the European Integration Office under the supervision of the Council of Senior Civil Servants and an Interministerial Commission for European Integration. In order to fulfil on a sectoral basis the approximation tasks a number of working groups were created in each ministry matching more or less the White paper areas involved in harmonisation. A Steering Committee was set up in order to manage and direct the assistance provided on a legal approximation, so as to make it fit in with the national priorities programme.

Nevertheless the Ministry of Justice has the **principal responsibility** for the legal aspect of the European Integration Process. This responsibility is in particular focused on global legal planning and methodology, supervision and control and on the final checking of compliance. Furthermore the Ministry of Justice plays a specific role in the law making process and so has had to contribute to the implementation of the relevant provisions of the Europe Agreement and the legal aspects of the accession programme. In the context of helping to bring about the necessary enhancement and upgrading of skills in the public sector to facilitate implementation, regulation and enforcement of the newly harmonised legislation, and more generally to enhance the levels of good governance in Estonia, the Ministry of Justice, now wishes to carry out a thorough and detailed examination and drafting of a new **Administration Code for Estonia**.

#### *1.2. Partner Institutions and Beneficiaries Involved*

Two levels of beneficiaries of the project "Estonia Administration Law Reform" can be identified:

- (a) **The first level** beneficiary of the project is Ministry of Justice (and in particular the Public Law department), which benefits directly from the project as it will prepare the draft of the General Principles of the Administrative Law. The draft will be prepared in co-operation with experts from EU member states and local experts. It is hoped to create a synergy effect from pooling the foreign and local expertise and knowledge, with a sustainable impact on skills in legislation drafting and analysis.

- (b) **The second level** beneficiary of the project is more abstract, indirect and thus also perhaps more difficult to describe. However, the General Principles of the Administrative Law will contribute to more effective and responsible operation of public institutions (incl. central and local governments, judiciary, executive structures and public foundations). The main output of the project will create a reliable basis for further discussions and institutional development, and therefore, one can say that indirect beneficiaries are all public institutions. This is of profound importance to the Accession Programme.

### *1.3. Recent Developments and Identification of Problem Areas*

The necessity for administrative law reform, especially for drafting the General Principles of the Administrative Law, has been clear from the reassertion of independence. Over the last few years much work has been done at that direction, but, because of the pressures of legislative harmonisation to meet the *acquis*, there are so far few results in the form of enacted laws. Nonetheless, it is widely recognised that the Government of the Republic Act, which is currently the main law regulating the organisation of administration, needs to be changed. The reform of administrative court proceeding has also been started. The Police Act, guaranteeing public order, requires amendment, since it does not establish effective regulations for the protection of fundamental rights. The entire organisation assuring public order must be reorganised. Regulations for administrative procedure basically do not exist, and consequently the efficiency of administrative enforcement is not sufficient. These problems are generally known, but resolving them without significant external assistance would be too time-consuming and therefore would seriously impede the overall European legislative harmonisation and integration process.

One of the primary problems currently challenging modernisation of the Estonian public administration is the lack of a unified and comprehensive set of principles of the Administrative Law which would create preconditions for effective and accountable governance in the Republic of Estonia.

Agenda 2000 and the Accession Partnership both highlighted this issue.

In particular, Agenda 2000/the Commission's opinion on Estonia highlighted the necessity to address (4.2) Administrative and Juridical capacity, and the Estonian Government has responded with a comprehensive set of measures in its National Programme for Adopting of the *Acquis* (NPAA).

National Programme specifically, the proposed Administrative Code is designed to integrate the laws regulating five aspects of state administration:

- organisation
- administrative procedures
- administrative enforcement
- administrative police activities (law governing administrative supervision)
- administrative jurisdiction.

The absence of an Administrative Code is having a detrimental impact on the process of administrative reform of the administration in Estonia and hence is a constraint on the programme for integration into the European Union. The project "Estonia Administrative Law Reform", will play a major role in removing this constraint.

## 2. RATIONALE AND OBJECTIVES

### 2.1. Overall objectives

The overall objective is that the new Administrative Code should be enacted by the end of 2001 in order to reinforce current and future ongoing practical reorganisation of administration structures. Training for officials will be launched after the Administrative Code has passed the Parliament. By the end of 2004 following objectives will be achieved:

- 1) General Principles of the Administrative Law
  - fair and efficient administrative structures
  - administrative procedures are effective and have due regard for fundamental rights
  - modern administrative court proceedings
- 2) structures of administrative authorities are upgraded and reformed;
- 3) relevant officials are suitably trained following a detailed training need analysis, where this has not already been done under other programmes;
- 4) public administration has become effective: governmental authorities serve economically and efficiently the interests of the people.

Ministry of Justice has already made some essential preparations to develop administrative law reform. The concept of the reform has been developed in the Ministry. The biggest problem is organising foreign expertise and assistance that is necessary to transfer outside experience and knowledge (of EU member States) and adapt this to local circumstances. In addition, it can be admitted that the concentration of local expertise for effective reform, development, and implementation, requires considerable resourcing, currently beyond the in-house capacity of the Ministry of Justice, both in staffing, organisation, and project management and implementation skills.

### 2.2. Specific Objectives

In general the project is expected to contribute to strengthening the rule of law and administrative capacity of public institutions in Estonian Republic. The specific objective is to draft the General Principles of the Administrative Law, which will settle regulations for all fields of public administration:

- organisation of the public administration
- administrative procedure
- administrative court procedure
- administrative enforcement
- public order (protection of freedom and fundamental rights of individuals, definition of the role of Police)

The first phase results of these specific objectives should be successfully achieved by the contractor's experts and the Ministry of Justice in the period January 1999 to December 1999 so that the wider objective of enactment in 2000 is met.

**2.3. Activities in the period January 1999 to December 1999:**

**a) Expert opinions**

- of member States' advisers in developing recommendations for the General Principles of the Administrative Law, two (2) **foreign long-term experts**, (in total 7 man/months);
- developing expert opinions on every part of the General Principles by five (5) **foreign short-term experts**, as there five separate parts of the General Principles of the Administrative Law. The experts in their respective fields are selected to approach critically the draft laws from the perspective of international experience (in total 4 man/months);
- developing expert opinions from the **local advisers** to approach the draft of the General Principles of the Administrative Law from the perspective of local experience, needs and possibilities Local advisers are also responsible for compiling contributions from concerned local institutions and persons, and sustaining the drafting process, (in total 10 man/months).

**b) Back-up information for experts and Ministry of Justice**

- providing literature on administrative law (books, periodicals), statistical information and specialised analyses;
- providing translation and interpretation.

**c) Study visit**

- Organise 2 x 2 weeks study visits for 8 officials of the Ministry of Justice. The aim is to provide an opportunity to examine comparable laws in operation. Based on acquired theoretical and empirical experience this experience and knowledge transfer will allow the Ministry of Justice to develop alternatives and solutions for Estonian administrative law reform.

A parallel objective under later separate programmes is to create enhanced conditions for training of public officials.

### 3. INPUTS AND ANTICIPATED RESULTS

#### 3.1. *Estimated Inputs*

Team-leader, 45 m/days

Project administrator, 200 m/days

Foreign long-term experts, 7 m/months

Foreign short-term experts, 4 m/months

Local advisers, 10 m/ months

Study tours, 2\*2 weeks for 8 officials of the Ministry of Justice

Literature, etc.

Conference of Experts' opinion

#### 3.2. *The anticipated/designed short-term results of the project:*

(a) draft General Principles of the Administrative Law and explanatory memoranda ready by the end of December 1999.

(b) officials of the Public Law Department of the Ministry of Justice complete study visits in the EU member States with duration 2 weeks by September 1999. Study visits should enable the officials of the Ministry of Justice better evaluate the content of the reform process, thereby complementing the drafting process.

### 4. BUDGET

Item	Donor	Recipient	Total
<i>Project management costs</i>			
Team-leader	-	5500	5500
Project administrator	-	3500	3500
Foreign long-term experts	105000	-	105000
Foreign short-term experts	60000	-	60000
Local advisers	-	50000	50000
Training expenses (study visits, books, translation costs)	55000	-	55000
<b>Total</b>	<b>220000</b>	<b>59000</b>	<b>279000</b>

### 5. ASSUMPTIONS

#### 5.1. *Assumptions in the project intervention*

It is assumed that the agreement on outcome and results between concerned institutions and persons is achieved during the implementation of the project through an appropriate choice of experts and sufficient flow of information through a Steering Committee specially constituted and mandated for this project

## 6. IMPLEMENTATION

### 6.1. *Administrative activity*

The project will be administrated through the Steering Committee. The members of the Steering Committee: officials from the Ministry of Justice, the Ministry of Internal Affairs, Public Service Academy, Law Faculty of Tartu University, members of Parliament and judiciary. The Steering Committee is responsible, inter alia, for:

- 1) developing a working plan
- 2) developing a financial control plan
- 3) selection of the experts
- 4) decisions about organisational and working methods
- 5) selection of the relevant books and periodicals
- 6) endorsement of the regular project reports
- 7) endorsement of study tours/training programmes.

### 6.2. *Project leader*

The **project leader** will be Ms. Ülle Anton, Acting Head of Public Law department of Ministry of Justice (Tõnismägi 5A, EE0100 Tallinn, Estonia, tel. (372)6208205).

The **project leader** will be assigned the central role in the project and will co-ordinates and evaluate the process of project implementation. The project leader will contribute 45 days to the project. More specifically, the project leader will:

- establish internal rules of communication and reporting in the project process for effective operation;
- co-ordinate the activities and communication between administrative team, foreign and local experts Steering Committee;
- evaluate, analyse and give opinions on all aspects of implementation of the project; solve logistical, co-ordination and consultation problems in the framework of the project for experts in Estonia and abroad.

### 6.3. *Project administrator*

The **project administrator** will contribute 200 days to the project. The administrator is responsible for:

- support the project implementation in daily management;
- organise collection and dissemination of required information for experts and local support group;
- organise timely expert opinions, analyses etc. from and for the experts concerned;
- guarantee effective communication plan between participants of the project;
- guarantee reporting on project implementation, when required;
- organise seminar and workgroups during the project;
- represent the project in everyday transaction when need arises.

#### 6.4. Role of experts in implementation (see also Activities)

**Foreign short- and long-term experts** should preferably have previous knowledge of the Estonian, Baltic and/or CEEC administrative structures and the current situation. Experience in drafting or advising in the field of administrative law in Germany, in Austria or in Dutch at least 10 years is necessary. Foreign experts will be expected to contribute to the process of developing the General principles of the Administrative Law through their detailed knowledge about the relevant experience in EU member countries.

#### 6.5. Local advisers

**Local advisers** will be expected to contribute to the process of developing the General Principles of the Administrative Law through their knowledge about the current situation and real needs of Estonian Republic in the sphere of administrative law, organisation and procedures.

#### 6.6. Steering Committee

**Steering Committee** will be formed in order to engage representatives of other local institutions in developing and implementing the project, and are expected to assist by representing different approaches and expert opinions.

### 7. DURATION AND TIME TABLE

Present project will be implemented within one year (1999) and detailed time schedule is outlined below.

Activity	Start of project activity	Completion
<b>Project</b>	<b>January, 1999</b>	<b>December, 1999</b>
<i>Continuous advising by Steering Committee</i>	<i>January</i>	<i>December</i>
<i>Local advisers</i>	<i>January</i>	<i>December</i>
<i>First draft</i>	<i>January</i>	<i>April</i>
<i>Study visits</i>	<i>May</i>	<i>September</i>
<i>Foreign short- term experts</i>	<i>April</i>	<i>September</i>
<i>Conference</i>	<i>October</i>	<i>October</i>
<i>Completion and drafts to the Ministry of Justice</i>	<i>December</i>	<i>December</i>

## 8. RELATION TO OTHER PHARE AN/OR BILATERAL PROJECTS

The Phare Estonian Public Development Programme is related to the Administrative Law Reform project mainly as an information source for developers of administrative law reform. During the Phare Estonian Public Development Programme analysis and expert opinions were provided on different institutional and public service aspects of Estonian public administration. It will be useful to share the information in order to transfer the relevant ideas and to avoid duplication of work by this proposed project.

The State Chancellery is responsible for the Phare project "**Public Administration Reform**" which shall end by December 31, 1998. The project is orientated on raising performance in public sector through the training of Estonian public officials.

Both projects will be finished by the time the present project will be activated, so the co-operation can only exist on the basis of a comprehensive exchanging of relevant information.

The objectives of the projects do not overlap, because this current project has a very specific aim to develop the General Principles of the Administrative Law, while those above are orientated mainly to delivering analyses and training to public servants.

## 9. REPORTING

Project manager shall provide quarterly reports both in Estonian and English. Concise reports should detail progress achieved on the programme, nature of inputs by individual experts, difficulties and obstacles in implementation. Quarterly reports will also contain a summary of results of monitoring, evaluation, audit, and impact assessments, which have taken place during the reference period. The quarterly reports will be submitted to the members of the Steering Committee and to the ACU in the Ministry of Finance and to the EU Delegation.

The final report should contain detailed findings, recommendations and conclusions with a statistical supplement and other appropriate information. The final report endorsed by the Steering Committee should be completed within one month after the completion of the project and submitted to the Ministry of Justice, the Delegation of the European Commission in Estonia, and to the Aid Co-ordination Unit in the Ministry of Finance.

## **10. FACTORS ENSURING SUSTAINABILITY**

### ***10.1. Institutional factors***

The Ministry of Justice, which is the direct beneficiary of the current project, is primarily responsible for drafting and monitoring the development of administrative law in Estonia. Therefore, the Ministry of Justice is clearly interested in using the output of this project, whereby it will be provided with a comprehensive and adequate approach toward reform of administrative law in the Republic of Estonia.

### ***10.2. Political environment***

The political environment is advantageous to initiate Administrative Law Reform project as political figures have acknowledged the need for changes. Two additional pressures coming from national and supranational level further stress this demand for change. From the national level there is a demand to develop a unified and comprehensive foundation for public institutions and its control that would create preconditions for more effective and accountable governance. From the supranational level there is the well-known requirement for increasing administrative capability of public institutions of Estonian Republic as one of the main preconditions for successful accession to the European Union.

### ***10.3. Economic and financial factors***

The Ministry of Justice, as main beneficiary, is state financed and therefore it is guaranteed to be financially capable within the limits of its annual budget.

## **11. CONTRACTING PROCEDURE**

This project will be contracted by way of Framework Contractor, under the direct control of EU Delegation and Commission (i.e. not under CFCU aegis), as there are centrally controlled funds.