

ANNEX TO RESOLUTION OF THE RIIGIKOGU
"Guidelines for Development of Legislative Policy until 2018"

GUIDELINES FOR DEVELOPMENT OF LEGISLATIVE POLICY UNTIL 2018

I. General principles

1. "Guidelines for Development of Legislative Policy until 2018" (hereinafter *guidelines for development*) defines common principles of legislative policy and long-term principles that the public sector shall take into account upon planning its activities.

2. In a democratic state based on the rule of law, law is the principal means for implementing political decisions. Success in implementing political decisions shall therefore highly depend on the quality of a legal solution.

3. The objective of the guidelines for development of legislative policy is to define an activity plan for improving the quality of legislation, in particular:

3.1. to assess the development of legal environment and improve legal system in terms of social well-being and international competitiveness of Estonia;

3.2. to assess and analyse impacts of globalisation on the development of legal system;

3.3. to set principles for periodical review of the quality and operation of valid laws.

4. Political criteria can be used for assessing political choices. Assessment criteria for legal choices can be standardised and taken to the level of legal studies. Legislative drafting process shall therefore focus on making quality political decisions and thereafter, create legal means for quality implementation of such means.

5. Quality of legislative policy decisions shall be ensured by proceeding from the principle of differentiating between and treating together political and legislative technical choices, based on the following activity plan.

II. Design of policy and political decisions

6. Legislative drafting process shall be foreseeable and open.

6.1. The Government of the Republic shall establish a procedure which provides that a substantive policy document describing an intention to elaborate a draft act shall be drawn up prior to drafting a draft act (analogous to the green paper in the European Union decision-making process), which shall include a comparative analysis of laying down legal provisions and other possible solutions together with a primary analysis of the impacts of the preferred regulation. An intention to draft a draft act shall outline, in particular:

6.1.1. description of the problem to be solved and reason for the state to act and urgency of the issue;

6.1.2. description of the objective or the desired situation;

6.1.3. overview of alternative solutions to the problem, comparative analysis thereof and reasons for selecting the preferred alternative;

6.1.4. overview of how similar problems have been resolved in states legally, culturally and institutionally similar to Estonia;

6.1.5. general description of the developed regulations and foreseeable period of validity;

6.1.6. preliminary overview of potential risks that may impede or impair solving the problem in the proposed manner and impacts that may accompany implementation of an act;

6.1.7. overview of further stages of elaborating the legislation and the activities taken during the process (a need for further assessment of the impacts related to the implementation of the legislation shall be considered inter alia) together with a detailed schedule and list of responsible persons.

6.2. By the end of 2012 at the latest, a procedure shall be established by the Government of the Republic, which provides that regulation for a draft legislation initiated by the Government of the Republic may commence only after political decisions of principle have been made recognising establishment of the relevant legislation as the most desirable course of action. It shall be established, in principle:

6.2.1. elaborating a draft legislation with substantial impact shall begin after an intent to prepare a draft act has been approved by relevant ministries and, in case of dissension among ministries, discussions at cabinet meeting of the Government of the Republic shall be held;

6.2.2. drawing up of intent to prepare a draft act and related discussions can be abandoned only in case:

6.2.2.1. The Government of the Republic has decided to urgently introduce draft legislation to the legislative proceeding as an exemption (in this case, analysis shall certainly be decided to be takes ex post facto) or

6.2.2.2. the amendments planned in the draft act are of technical nature or no significant legal changes or impacts are involved.

6.3. By the end of 2012, the Government of the Republic shall establish procedure for participating in European Union legislative drafting and procedure for taking-over European Union legislation that comply with the principles valid in national legislative drafting, help ensure high quality of legislation and participation in European Union legislative drafting and transpose it later.

III. Standard of legislative quality

7. A law shall suit in the Estonian legal system and ensure international competitiveness of Estonia. To that end, alternatives of legal realisation of politically desirable solutions shall be considered.

7.1. Prior to designing all procedures for draft legislation of principal meaning, draft act concept reflecting legal choices of the draft act shall be developed (analogous to the white sheet in European Union decision-making process), which:

7.1.1. describes the chosen legal measure in a manner that completely reveals its content;

7.1.2. analyses relevant impacts that are related to the draft act planned on the basis of the concept;

7.1.3. explains legal situation valid at the time of elaborating the regulation and arising from constitution, international law and legislation and suggestions established by international organisations;

7.1.4. the solution considered the best shall be compared to how such problems are solved in the legal order of states legally, culturally or institutionally similar to Estonia;

7.1.5. international competitiveness of the solution selected in the draft Act shall be assessed on the basis of methods used by international organisations or are generally recognised methods;

7.1.6. Compatibility of the solution selected in the draft act with the valid legal order shall be assessed, for example, compatibility of the draft act with the general principles valid in Estonian legal order, and with approved solutions.

7.2. In order to ensure quality of the content of a draft act, Chancellery of the Riigikogu, in liaison with the Government of the Republic, shall harmonise the existing rules of legislative drafting by the end of 2012 the latest and ensure adherence to the rules during the process of legislative drafting.

8. Law shall be efficient.

8.1. Having regard with the relationship of policies and law as an objective and a means, the extent to which the created regulation contributes to the achievement of the expected policy objective shall be assessed before developing a legislation, in particular:

8.1.1. impacts related to the draft Act shall be acknowledged and assessed;

8.1.2. upon analysing the impacts, special attention shall be paid to the impacts of the regulation on undertakings;

8.1.3. a separate assessment shall be conducted on whether the regulation can be established as temporary, the possibility shall be used in particular where assessment of the impacts related to the draft Act proves to be complicated;

8.1.4. together with the analysis of the impacts included in the concept of draft Act, the time and institution to conduct ex post evaluations to review the operation of the regulation shall be determined both in the concept and, if possible, in the draft Act;

8.1.5. By the end of 2012, the Government of the Republic shall develop instructions for analysing the impacts related to the regulation based on internationally recognised principles, and amendments to the relevant legislations necessary for establishing the instructions;

8.1.6. the results of the analysis of the impacts shall be presented to the Government of the Republic and the Riigikogu together with the draft Act after it has been approved by the ministries and discussed with the parties;

8.1.7. The draft acts shall provide for the obligation of the Government of the Republic to submit to the Riigikogu an evaluation of the related impacts within a specified period of time since entry into force of the Act in order to ensure a further evaluation of the actual impacts of the regulation (ex post evaluation report).

9. Law shall be clear.

9.1. Estonian Draft Acts shall be developed in a language as simple as possible, clearly and precisely, primarily in consideration of the persons who are expected to be the main target group for the legislation as to both implementing the Act and being the addressee. In particular:

9.1.1. provisions shall be worded shortly and be as harmonised as possible, avoid provisions and sentences that are too long, complicated wording and use of abbreviations;

9.1.2. terminology used in the draft Act shall be harmonised and consistent with the existing Acts, in particular with legislation of the same area, and also with the generally known terminology of the regulated area;

9.1.3. giving a different meaning to one and the same term shall be avoided both within one legislation and the legal order as a whole;

9.1.4. it shall be ensured that all draft acts submitted for approval have been edited by the ministry that drafted the draft act taking into account the instructions and explanations provided by the Ministry of Justice.

IV. Involvement of stakeholders

10. Discussing the main solutions of the draft with persons affected by the regulation is necessary for both identifying all impacts of the draft Act and adhering to the principles of democracy.

11. Both the intent of developing the draft, concept of the draft and the draft itself shall be submitted for discussion.

12. Involvement is efficient only provided it is carried out by clearly formalised rules of procedure. The Government of the Republic shall therefore develop and lay down a procedure, applying to all governmental authorities, for submitting draft Acts for public discussion and the results of the discussion to the Riigikogu.

V. Legal awareness

13. Legal awareness is an essential prerequisite for achieving the purpose of an Act. Legal awareness therefore requires systemic attention.

13.1. By the end of 2013, the Government of the Republic shall establish assessment of legal awareness to be conducted on regular bases. Indicators of legal awareness to be constantly monitored shall be identified.

13.2. With social groups whose legal awareness is not sufficient, means for improving the awareness shall be developed. Studies are therefore conducted to identify these groups; the content of the law as it stands at present shall be explained through channels familiar to them.

13.3. the concept drawn up prior to preparing a draft Act shall include an explanation on how to bridge a potential gap in the awareness of law due to an amendment to a law.

13.4. Giving legal explanations to a person by public authority upon adjudication of a specific matter is also a means of raising legal awareness. It is always recommended with restrictive procedures used on a person.

14. The Government of the Republic shall inform the public of the results of assessment of legal awareness and the Riigikogu shall inform the relevant committees.

15. By the end of 2012, a single legal information system on the basis of several currently available information systems providing legal information, for example, Riigi Teataja (the State Gazette), websites of e-õigus, the Riigikogu and the Supreme Court, involvement website etc. shall be developed by the Riigikogu in order to improve availability of legislations and legal information.

16. In the interests of international competitiveness and transparency of business environment, the continuation of systemic translation of Estonian Acts into the English language under the responsibility of the Government of the Republic shall be guaranteed. By the end of 2014, all laws presently standing shall be translated into the English language within a reasonable time after being published in Riigi Teataja.

VI. Organisation contributing to the quality

17. As the Government of the Republic holds a central role in the development of legislations, regardless of whether they are initiated by the Government of the Republic or by any other institution with a right of initiative, the Government of the Republic shall also stand for the quality of legislations.

17.1. The Government of the Republic shall guarantee high quality of draft legislation introduced to the Riigikogu.

17.2. By the end of 2012, the Government of the Republic shall have started assessing the conformity of draft acts initiated by institutions with a right of initiative and impact analyses annexed thereto with the principles referred to in this activity plan.

18. The Government of the Republic shall also have one institution taking responsibility for legislations and legislative drafting process; as of today, the Ministry of Justice has been the

institution in charge of the processes. Minister of Justice is responsible for implementation the action plan.

19. By the end of 2012, organisational and legal prerequisites shall be developed for the Ministry of Justice, the institution responsible for the quality of draft legislation of the Government of the Republic, to be entitled to give instructions and recommendations to other ministries for developing legislative drafting process and assess the following of these instructions.

20. By the end of 2012, Each Ministry shall have designated a unit that is responsible for legal quality of draft legislation.

20.1. Upon drafting a draft act, lawyers of high qualification and specialists in the field affected by the draft legislation shall be involved in the stage of intent for drafting and concept development.

20.2. Rules of procedure of each Ministry and operations procedure of the Government of the Republic shall guarantee that the units responsible for the quality of legislation, including legislative drafting and language specialists, had enough time for reviewing the draft acts and that their remarks were actually taken into account.

21. Systemic attention shall be paid to legal qualification of the officials responsible for preparation of legislations. In particular:

21.1. By the end of 2012, descriptions shall be drawn of skills, knowledge and experience necessary for managing and implementing a process of preparing a quality legislation, on the basis of which the skills of officials responsible for legislative drafting shall be developed.

21.2. with a view to training lawyers engaged in legislative drafting, implementation of rotation programmes shall be considered that provide, since 2012, traineeship to officials responsible for legislative drafting in the unit of the Ministry of Justice responsible for the quality of legislation; traineeship to lawyers of the Ministry of Justice engaged in legislative drafting in the units of other ministries responsible for legal quality of draft acts; and traineeship provided by other professionals (notaries, prosecutors, advocates, trustees in bankruptcy, judges etc.).

22. With a view to involving academic circles into the legislative drafting process, a suitable form of cooperation between the Government of the Republic, the Riigikogu and research institutions shall be developed by the end of 2013.