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QUALITY OF LEGISLATION: ESTONIAN PERSPECTIVES

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Summary report

Siim Kallas, Vice-President of the Commission, introduced the seminar by referring to the efforts made by the Commission to improve legislation, in particular as part of its Better Lawmaking programme and by steps to improve drafting quality. He stressed the shared role of the institutions and the Member States in improving European legislation.

Dr Julia Laffranque, Judge of the Supreme Court, spoke of Estonia's experiences as a Member State in transposing, applying and interpreting Community law. It is essential for Community law and any national implementing provisions to be clearly drafted so that individuals can know their rights and obligations and the courts can enforce them.

Estonian courts have long referred to European law in identifying general principles of law, such as legal certainty and specifically the need for clear legislation. They have relied on Community provisions to assist in interpreting national provisions, notably in the fields of environmental rules and value-added tax.

Specific problems encountered by Estonian courts in interpreting Community legislation are that the preambles are too wordy, articles are overlong and ponderously worded, and acts contain inconsistencies, for example between articles and the corresponding recitals or between articles and annexes. Confusion could be avoided by not adopting too many new rules and by paying more attention to consolidation and codification of the existing ones.

Interaction between the Member States and the Community institutions is helpful to promote better understanding of Community law, and also national law in the Community-law context.

Dr Laffranque stressed that high quality legislation should be a state of mind.

Karmen Vilms, Head of the Legislative Drafting Bureau in the Ministry of Justice, explained that in Estonia the Ministry of Justice co-ordinates legislative policy and ensures that the rules are applied. Only if all the procedural steps are followed can substantive quality be achieved.

Any initial proposal must explain precisely why the problem cannot be solved by means other than a law and what the probable impacts of the law will be.

Legislative drafting is a cooperative process between the lawyers, the technical experts, language experts and, very importantly, those who will be affected by the legislation.

Each ministry is responsible for the quality of the legislation it brings forward. It must first consult the stakeholders and the other ministries before submitting its draft to the Ministry of Justice for checking.

Estonia makes extensive use of information technology. From the conception stage to the presentation of a draft law, the eLaw system provides all citizens with up-to-date information and facilitates paperless co-ordination between the ministries. The electronic official journal is as authentic as the paper version and also offers consolidated texts of legal texts and the possibility to navigate between past and present versions of a text.

Great importance is attached to the quality of the drafting of legislation as a way of caring for the Estonian language. In Estonia the following steps are taken to ensure that legislation is clear, understandable and precise: texts are produced by cooperation between lawyers and linguists, with each draft law being reviewed by a language editor; legal terminology is studied and systemised; a journal on legal language and other written materials are circulated; and conferences on legal language are held each year.

Better Regulation needs political support. The quality of legislation is a crucial element in the rule of law.

Aare Kasemets, adviser at the Environment Ministry, traced the development of the concern for better regulation back to the 1970s, an era of oil crisis and economic decline. In Europe milestones in the process were the OECD work on regulatory policy, the adoption by the European Council of the Lisbon agenda, the drawing up of the Mandelkern report on better regulation identifying basic principles and key areas for action, and work on impact assessments in particular by the Commission.

Estonia had the advantages of being a small country and being able to learn from the experience of others. There was also a political commitment to developing a sustainable and responsible regulatory policy. The requisite institutional structure was put in place with appropriate legal bases, a coordination programme, publication of guidelines, training and mechanisms to ensure transparency and quality control.

Impact assessments play a major role in ensuring the quality of social, economic, environmental and fiscal information provided for legislation as the precondition for proper debate on policy options involving all those concerned. Provision of high-quality information should be regarded as a public service and, in particular, helps to make legislation understandable to addressees.

If lessons can be drawn from the Estonian experience, they are that good governance and good lawmaking depend on: political commitment, coordination at a high level, adoption of guidelines, training, quality control and supervision, and feedback.

Bevis Clarke-Smith, Head of the Commission Legal Revisers Group, noted that over 250 participants had registered to attend this seminar. The question and answer sessions testified to the interest provoked. He hoped that what the participants had learned from the outstanding speakers from Estonia would stand them in good stead in their daily work, whether in the Community institutions or elsewhere.

For more information on the Legal Revisers' work contact: Juristes-Reviseurs@cec.eu.int