

Guidelines for Procedure for Handling European Union Affairs

These *Guidelines for Procedure for Handling European Union Affairs* (hereinafter ‘the Guidelines’) are set out pursuant to § 28 of the Government of the Republic Regulation No 10 of 13 January 2011 ‘Rules of the Government of the Republic’ for the purpose of the implementation of Clause 77 (1) 12) of the Government of the Republic Act and Clause 2 4) of the Statutes of the Government Office.

In the event of any discrepancy or inconsistency between these Guidelines and any other guidelines for preparing the decisions of the Government of the Republic (hereinafter ‘the Government’), these Guidelines shall apply to the affairs of the European Union (hereinafter ‘the EU’).

These Guidelines are addressed to all ministries and communicated for information to constitutional institutions and local government associations, and made available on the website of the Government.

These Guidelines shall enter into force on 1 January 2015.

I. GENERAL PROVISIONS

1. Scope of Application

(1) The Guidelines provide a basis for the preparation of EU affairs for Government sessions, the procedure for preparing documents required in the work of the EU working group or committee and measures to ensure timely transposition of directives.

(2) The handling of EU affairs concerning the Common Foreign and Security Policy shall be subject to the requirements of these Guidelines, taking into account the exceptions established by the Ministry of Foreign Affairs.

2. Principles of Procedure for Handling European Union Affairs

The following principles shall apply to the procedure for handling European Union affairs:

- 1) Any matter relating to EU legislation, the EU decision-making process, the implementation and enforcement of EU law, or EU institutions shall be considered as an EU affair. Both the EU legislative initiatives (draft directives, regulations and decisions, delegated and implementing acts) and other initiatives (recommendations, communications, reports, green and white papers, Commission's consultative documents) shall be EU affairs within the meaning of Chapter 2 of these Guidelines. Similarly, exploratory opinions of the Council of the European Union and European Council, infringement proceedings brought against Estonia as well as the cases of the Court of Justice of the European Union and the Court of the European Free Trade Association (hereinafter ‘EFTA’) are considered to be EU affairs.
- 2) Compatibility with national decision-making processes: The preparation and submission of EU affairs to a Government session or a Cabinet meeting shall comply with the requirements laid down by the Government of the Republic Regulation No 10 of 13 January 2011 ‘Rules of the Government of the Republic’, Government of the Republic Order No 401 of 13 September 2012 ‘Establishment of the European Union Coordination Body’, Government of the Republic Regulation No 180 of 22 December 2011 ‘Rules of good legislative practice and legislative drafting’ and Government of

the Republic Regulation No 302 of 12 December 2005 ‘Types of strategic development plans and the procedure for the procedures for the preparation, amendment, implementation, assessment and reporting thereof’. The Guidelines are based on the above legislation.

- 3) Compatibility with national competence: The ministry within the area of government of whom an EU matter falls shall prepare the EU matter for discussion at a Government session or Cabinet meeting, taking into account the provisions of Chapter 18¹ ‘Rules for proceedings regarding European Union matters’ of the *Riigikogu* Rules of Procedure and Internal Rules Act.
- 4) Compatibility with the state’s external competence: The EU’s international agreements that are subject to shared competence between the EU and the member states are also international agreements concluded by the Republic of Estonia and shall be handled pursuant to the Foreign Relations Act. International agreements that fall within the exclusive competence of the EU shall be handled in accordance with these Guidelines as ordinary EU matters.
- 5) Compatibility with the existing statutory provisions and strategic development plans: When forming an opinion concerning an EU matter, applicable national law and proposed draft legislation, national strategies and development plans, the Government’s action programme, policy documents approved by the *Riigikogu* and the Government as well as other strategies, development plans and proposals therefor shall be taken into account. Positions on the EU matter must be compatible with Government policy on the EU. It is not necessary to submit an EU matter to the Government for discussion and decision-making if the proposed EU level amendment is in line with the national instruments referred to above, approved by the Government, the amendment has no significant impact or the Government has already adopted a view on the matter.
- 6) Compatibility with state budget availabilities: Any EU matter shall be prepared and submitted to the Government by taking into account the state budget and national budget strategy, indicating the impact on the state budget as well as the potential sources for covering the expenditure. The budgetary impact is evaluated by taking into account the eligibility of measures and actions as well as access to finance through the EU budget.
- 7) The concept of openness of positions: Any EU matter shall be prepared and submitted to the Government by taking into account the requirements of the Public Information Act; the Government’s objectives and positions concerning an EU matter shall in principle be formulated as public information.
- 8) The principle of early intervention: If an amendment proposed at EU level may necessitate amendments to legislation or have a significant economic, social, budgetary or other impact, the Government’s positions and follow-up actions (such as consultations with stakeholders, supplementary impact assessments, cooperation with the Commission and other member states, etc.) shall be prepared in the early stages of the proceeding concerning the EU matter (communications, consultation documents, etc.).

- 9) The principle of cooperation and coordination: If the subject matter of an EU matter also concerns, besides the responsible ministry, the areas of government of other ministries or the duties of the Government Office or constitutional institutions, the EU matter shall be submitted to them for taking a position. If an EU matter concerns the rights, obligations and duties of a local government or the organisation of local life, the EU matter shall be submitted to the local government association for taking a position. Such cooperation includes the development of Estonia's positions on the matter, further proceedings in EU institutions and the implementation of the EU matter.
- 10) The principle of inclusion: The responsible organisation, and those jointly responsible, shall include the relevant stakeholders in establishing Estonia's positions in accordance with the good inclusion practice. Such cooperation includes the development of Estonia's positions on the matter, further proceedings in EU institutions and the implementation of the EU matter.
- 11) The principle of procedural economy: All EU matters shall be handled by taking care that the time of all participants and other resources are used efficiently. All EU matters that concern the same subject or have the same objective should be submitted in a package to the Government for discussion; also, related EU and national matters (e.g. when an EU matter necessitates the Government to give an order in addition to approving a position). An EU matter with regard to which the Government has already approved positions is only resubmitted to the Government for discussion and decision-making if the positions adopted earlier need to be amended. The formulation and submission to the EU Coordination Body of the materials on an EU matter shall be based on the same requirements of these Guidelines that are applicable to the submission of EU matters to a Government session.

3. European Union Coordination Body

(1) The EU Coordination Body shall discuss EU matters in accordance with the Government of the Republic Regulation 'Rules of the Government of the Republic' and the Government of the Republic Order 'Establishment of the European Union Coordination Body'. The EU Coordination Body shall, inter alia, make proposals to the Government Office for the appointment of the responsible organisation and those jointly responsible for EU matters and for the determination of deadlines for discussing the matters by the Coordination Body and the Government.

(2) The EU Coordination Body shall approve the positions regarding EU matters prior to their submission to the Government for discussion and decision-making and confirm that the documents comply with the requirements.

4. Adoption and communication of EU documents

(1) All documents communicated by the General Secretariat of the Council of the European Union to Estonia electronically (via Extranet) are received by the Government Office, registered and forwarded to the responsible ministry through the Draft Information System (Eelnõude Infosüsteem – EIS).

(2) All documents received via the extranet network of the General Secretariat of the Council of the European Union are normally registered automatically. Any document that is not automatically registered shall be registered by the Government Office no later than on the first working day following the day of receipt.

(3) All restricted documents communicated by the General Secretariat of the Council of the European Union to Estonia electronically (via Extranet-R) are received by the Government Office, registered and forwarded to the responsible ministry no later than on the next working day. Restricted documents are received and forwarded in accordance with the provisions of the Public Information Act and the State Secrets And Classified Information Of Foreign States Act.

(4) All documents concerning the EU Common Foreign and Security Policy that are made available to Estonia through the Courtesy network of the General Secretariat of the Council of the European Union are received, registered and forwarded by the Ministry of Foreign Affairs in accordance with the procedure established by the Ministry of Foreign Affairs.

5. Handling of EU matters within the Draft Information System (Eelnõude Infosüsteem – EIS)

(1) To establish a position on an EU matter, the Government Office shall make the EU matter and all related documents available within the Draft Information System EIS.

(2) If an EU matter is submitted to the EU Coordination Body for approval and/or to the Government for discussion and decision-making, the Government Office shall send the resolution to the e-mail addresses or document management systems of the responsible ministry and the organisations jointly responsible for handling the EU matter.

(3) The organisations jointly responsible for handling the EU matter shall submit their opinion on the EU matter to the responsible ministry via EIS.

(4) To include stakeholders, public consultations may be held via EIS on the public consultation website. If public consultations are held by using a different method, the responsible ministry shall gather the stakeholders' responses in the relevant dossier on the EU matter in EIS.

(5) The restricted documents referred to in paragraph 4.3 are not processed in EIS.

(6) The EU Coordination Body's decision on the EU matter is entered in EIS by the Government Office.

(7) The EU matter is submitted to a Government session via EIS.

(8) The positions of the Government on the EU matter are entered in the relevant dossier in EIS by the Government Office.

(9) Based on the organisation of work of the *Riigikogu*, the positions of the *Riigikogu* on the EU matter are entered in the relevant dossier in EIS.

II. PREPARING EU MATTERS FOR SUBMISSION TO GOVERNMENT SESSION

6. The EU matters to be submitted to the Government of the Republic for discussion and decision-making

(1) The positions on an EU matter shall be submitted to the Government for discussion and decision-making if:

- 1) the implementation of the EU matter requires the adoption of, amendments to or repeal of a law or a decision by the *Riigikogu*;
- 2) the adoption of the EU matter has a significant economic, social, budgetary or other impact on Estonia;
- 3) the plenary assembly of the *Riigikogu*, the European Union Affairs Committee or the Foreign Affairs Committee requires the EU matter to be referred for the Government's opinion;
- 4) The Prime Minister or a minister considers the taking of a position important;
- 5) the position adopted by the *Riigikogu* differs significantly from that of the Government; or

- 6) new important circumstances have arisen and the proceedings concerning the EU matter can no longer be based on the Government's positions.
- (2) The positions on an EU matter shall not be submitted to the Government for discussion and decision-making if:
 - 1) principles that are based on an impact analysis and can be exhaustively used in the specific case have been agreed under a national development plan, strategy or EU policy approved by the Government;
 - 2) the Government has already taken a position on the matter and the EU matter is handled based on that position; or
 - 3) a decision is taken at the level of the EU Coordination Body in accordance with the Government of the Republic Order No 401 of 13 September 2012 'Establishment of the European Union Coordination Body'.
- (3) If the EU Coordination Body takes the view that the grounds specified in paragraph 6.1 are not present concerning the EU matter, the EU Coordination Body may decide that no positions on the EU matter have to be submitted to the EU Coordination Body for approval. In such a case, the establishing and approval of positions on the EU matter is organised by the responsible ministry.
- (4) In the case of EU delegated acts and the implementing act, the responsible ministry shall assess the presence of the grounds specified in paragraph 6.1. If any of the grounds specified in paragraph 6.1 are present, the responsible ministry shall submit the positions on the EU matter to the EU Coordination Body for approval and to the Government for discussion and decision-making.
- (5) The Government Office shall forward the Government's positions on EU matters to the *Riigikogu* for publication or for taking a position. If the positions on an EU legislative initiative, communication, green or white paper or the positions to be submitted to a session of the Council of the European Union are noted by the EU Coordination Body pursuant to paragraph 6.1., the Government Office shall notify the *Riigikogu* thereof.

7. Positions concerning the participation in the work of the Council of the European Union at the level of ministers

Estonia's positions to be presented at a meeting of the European Council, the Council of the European Union (hereinafter 'the Council'), the Euro group or at an unofficial meeting of ministers shall be submitted to the Government for discussion and decision-making if:

- 1) the EU matter under question complies with the grounds specified in paragraph 6.1 and the Government has not taken a position on the matter;
- 2) it is necessary to specify an earlier Government decision;
- 3) Estonia is planning to vote against or to remain undecided. If no grounds specified in paragraph 6.1 exist in the case of a delegated act or an implementing act and Estonia is planning to vote against or to remain undecided, the delegated act or the implementing act shall be submitted to the Government for discussion of decision-making if the responsible minister so decides.
- 4) the Prime Minister or a minister considers the taking of a position important.

8. Briefing the Government on a meeting of the Council of the European Union

(1) The Government shall be briefed on the discussions held at the meetings of European Council, the Council, the Euro group or at unofficial meetings of ministers if:

- 1) the Prime Minister or a minister so requests;
- 2) the results of voting at a meeting do not coincide with Estonia's positions;
- 3) there was an extraordinary discussion of matters relevant to Estonia and the Government had not taken a position on those matters;

- 4) there was an important development at a meeting that requires Estonia to change its earlier positions;
- 5) there is another important reason.

The EU Coordination Body shall always be briefed on the discussions held at the meetings specified in paragraph 8.1. A memo consisting of a summary of discussions and an assessment on whether the outcome of the discussion is in line with Estonia's positions is considered to be a briefing. Upon agreement with the chairman of the EU Coordination Body, a briefing may be given orally.

9. Positions on a draft decision of the Council of the European Union authorising the opening of negotiations over an EU international agreement

(1) Positions on a draft Council decision authorising the European Commission or the High Representative of the Union for Foreign Affairs and Security Policy to open negotiations over an international agreement shall be submitted to the Government for discussion and decision-making if the grounds specified in paragraph 6.1 exist, the proposed international agreement is to be ratified by the *Riigikogu* or the European Commission is authorised to negotiate over issues that fall within the competence of the member state.

(2) If it becomes evident in the course of proceedings concerning a draft Council decision or during negotiations over an international agreement that a ground specified in paragraph 9.1 exists, the draft decision or agreement shall be submitted to the Government for taking a position.

(3) All positions on a draft Council decision shall be submitted to the Government for discussion and decision-making before the approval of the draft decision by the Council.

10. Positions on a draft decision of the Council of the European Union approving a draft international agreement of the European Union and authorising the signing of the international agreement

(1) In the case of an international agreement that falls within the shared competence of the EU and the member states, the responsible ministry shall prepare, in cooperation with the Ministry of Foreign Affairs and pursuant to the Foreign Relations Act, the text of the agreement and the related documents (a draft Government order, explanatory memorandum, the text of the agreement in Estonian, etc.) and submit the documents to the Government for discussion and decision-making before the Council approves the decision on the signing of the agreement on behalf of the EU.

(2) An international agreement prepared pursuant to the procedure described in paragraph 10.1 and a position on the draft Council decision on signing an international agreement that falls within the shared competence of the EU and the member states shall normally be submitted to the Government for discussion and decision-making at the same time. For this purpose, the responsible ministry shall agree in good time on the date when the documents related to the international agreement are submitted to the Government.

(3) If an international agreement that falls within the exclusive competence of the EU meets the criteria specified in paragraph 6.1, the text of the agreement and the position on the draft Council decision concerning the signing of the agreement that falls within the exclusive competence of the EU shall be submitted to the Government for discussion and decision-making before the Council approves the decision on the signing of the agreement on behalf of the EU.

11. Positions on a draft decision of the Council of the European Union authorising the signing of an EU international agreement

Representatives of the EU or of the EU and member states are authorised to sign an international agreement that falls within the share competence of the EU and the member states subject to the approval of the agreement by the Government and the *Riigikogu*.

12. Positions on the participation in infringement proceedings and in the cases of the Court of Justice of the European Union

(1) All positions on infringement proceedings shall be submitted to the Government for discussion and decision-making if:

- 1) the response to a reasoned opinion does not admit the infringement;
- 2) the response to an official letter or a reasoned opinion admits the infringement and promises to amend national legislation, whereas a draft legislation or a draft regulation of significant impact has not yet been approved by the Government;
- 3) an action for the payment of a fine and periodic penalty payment is brought before the Court of Justice, or
- 4) the ministries fail to agree on the position.

(2) All positions in the cases of the Court of Justice shall be submitted to the Government for discussion and decision-making if:

- 1) a position is taken in the case that is contrary to a national law and presumes that the law is amended;
- 2) national law does not regulate the matter on which the position is taken, the national administrative practice or case-law is inconsistent, or if there is no uniform national interpretation of the EU legislation in question, or
- 3) the ministries fail to agree on the position.

13. Time-limits for the procedure of handling European Union affairs

(1) The Government Office shall determine by its resolution the time limits for the submission of EU matters to the EU Coordination Body for approval and to the Government for discussion and decision-making, on a proposal from the EU Coordination Body.

(2) Positions on draft EU legislation are normally submitted to the EU Coordination Body for approval within five weeks and for the Government for discussion and decision-making within six weeks from the publication of all language versions of the initiative (from the beginning of the subsidiarity deadline). The time-limits for proceedings concerning other EU matters shall be determined by taking into account the schedule of the proceedings conducted by the Council, the European Commission or the Court of Justice.

(3) The time-limits for the submission of a response to a European Commission consultation document to the Coordination Body for approval shall be determined based on the deadline set by the Commission for responding to the consultation.

(4) All documents submitted by ministries to the EU Coordination Body for discussion and decision-making shall be forwarded to the Government Office no later than 48 hours before the start of a meeting of the EU Coordination Body. By way of derogation, the documents may be submitted later with the consent of the chairman of the EU Coordination Body. The Government Office shall make the documents available to all members of the EU Coordination Body through the information system of the Coordination Body.

(5) All documents concerning EU matters submitted by ministries to the Government for discussion and decision-making shall be submitted to the Government Office via EIS no later than four calendar days before the date of the Government session; all positions on the matters on the agendas of EU meetings and discussions shall be submitted to the Government Office no later than two calendar days before the date of the Government session. If a question is put to the Government requesting fast discussion of the matter at a Government session or a Cabinet meeting and the required documents are submitted with a delay, reasons shall be

given as to why the documents were submitted with a delay and what the potential consequences are if the matter is not discussed immediately.

14. Obtaining an opinion, inclusion of stakeholders and approval of positions

(1) Before an EU matter is submitted to the EU Coordination Body and the Government, it shall be submitted to other ministries, the Government Office and constitutional institutions in order to obtain their opinions on whether the draft imposes any obligations on them or if the EU matter concerns their areas of government or duties. Similarly, if the EU matter concerns the rights, obligations and duties of a local government or the organisation of local life, the draft shall be submitted to the local government association for taking a position.

(2) The responsible ministry shall also include the relevant stakeholders in the establishment of its positions, by taking into account good inclusion practice.

(3) The responsible ministry shall unofficially coordinate the positions on the EU matter with all persons jointly responsible for the EU matter before submitting the positions to the EU Coordination Body and notify the relevant stakeholders. If any dispute arises, options shall be submitted to the EU Coordination Body for discussion.

(4) All positions established on an EU matter shall be approved by the EU Coordination Body.

(5) When coordinating the positions, the relevant ministry shall consult, inter alia, the impact assessment carried out in its area of government in the course of establishing the positions.

(6) The Ministry of Finance shall also provide an opinion about the costs and benefits related to the implementation of the EU matter.

(7) Any unsolved differences between ministries shall be discussed and resolved by the EU Coordination Body. If the EU Coordination Body cannot reach an agreement concerning a matter of dispute, the secretaries general of the ministries concerned shall discuss and try to resolve the differences. If the secretaries general fail to reach a common position regarding the disputed matter, it shall be discussed by the relevant ministers. Any differences between ministries that have become evident in the course of the approval procedure shall be submitted to the Government only after the relevant ministers have reached a common position. The ministry preparing the position shall include an explanation to the documents to be submitted to the Government, describing the conflict, the course of its solution and the positions of the ministers who maintained dissenting opinions.

15. Compliance of documents with the requirements

(1) All positions on an EU matter shall be submitted to the Government in the form of a draft decision together with an explanatory memorandum; the decision is recorded in the minutes of the Government session.

(2) The draft decision to be recorded in the minutes and submitted to the Government shall comply with the Constitution and other legislation, meet the requirements of these Guidelines and be accurate in terms of legislative technique, language and terminology.

(3) Documents necessary for deciding on the matter, including the opinions of stakeholders and coordinating bodies, shall be added to the materials of the EU matter or made otherwise available.

(4) If any substantive or linguistic changes or changes in the legislative technique are required in the draft decision to be submitted to the Government and recorded in the minutes of the Government session, the Government Office shall make the necessary changes in cooperation with the ministry that has prepared the draft.

(5) The Government Office shall verify the compliance of the documents concerning the EU matter to be submitted to the EU Coordination Body with the requirements of these Guidelines.

16. The preparation of a decision to be entered in the minutes

(1) A draft decision on an EU matter that is entered in the minutes shall include:

- 1) a proposal for the Government's general opinion about the EU matter, including whether the Government agrees with the objectives pursued by the adoption of the EU matter and which amendments are proposed to achieve those objectives;
- 2) briefly stated positions on the main proposals made in relation to the EU matter that necessitate amendments to legislation or have a significant impact. The positions shall specify Estonia's preferences, proposed amendments and, if necessary, the boundaries of negotiations;
- 3) proposals made in the EU matter that are not in line with the principles of subsidiarity and proportionality;
- 4) a notation concerning the necessity to communicate the approved Government positions to the Board of the *Riigikogu* and Estonian members of the European Parliament, the Economic and Social Committee and the Committee of the Regions.

(2) Paragraph 16.1 4) shall not apply to the positions to be submitted to a Council session or Council meeting. In the case of the positions to be submitted to a Council session or meeting, the earlier positions approved by the Government are normally not repeated in the draft decision that is recorded in the minutes of a Government session (with the exception of the General Affairs Council); a reference is made to these positions and the positions approved by the *Riigikogu* in the explanatory memorandum.

(3) Paragraphs 16.1 3) and 4) and 14.1 to 14.3 shall not apply to the positions concerning infringement proceedings initiated by the European Commission and the cases of the Court of Justice and the EFTA Court. The preparation of positions is coordinated by the Ministry of Foreign Affairs in accordance with the principles set out in these Guidelines.

17. Explanatory memorandum for the draft decision to be entered in the minutes

The draft decision submitted to the Government for discussion and decision-making shall be accompanied by an explanatory memorandum that consists of the following parts:

- 1) introduction;
- 2) subject matter and comparative analysis of the EU matter;
- 3) an analysis concerning the compatibility of the EU matter with the principles of conferral, subsidiarity and proportionality;
- 4) a summary of a preliminary impact assessment;
- 5) an explanation of the Government's position;
- 6) the procedures for obtaining opinions and approval.

18. Introduction

The introduction of the explanatory memorandum shall briefly, without using jargon or abbreviations, describe the contents of the proposed regulation or amendment and give reasons why the regulation or amendment is necessary, including:

- 1) the objective of the EU matter and assessment whether the issue to be resolved by an EU legislation is topical in Europe and Estonia as well as whether the desired objective can be achieved by the proposed changes;
- 2) legal basis for the adoption of the EU matter and the required majority of votes in the Council, subsidiarity deadline and the procedure and time-limit for handling the EU matter in the EU institutions;
- 3) for EU international agreements it is specified whether the proposed international agreement falls within the exclusive competence of the EU or within the shared competence of the EU and the Member States;

4) the data concerning the person(s) preparing the position and the explanatory memorandum, including the data about the deputy secretary general who has participated in establishing the positions. .

19. Subject matter and comparative analysis of the EU matter

The part of the explanatory memorandum titled ‘Subject matter and comparative analysis of the EU matter’ shall:

- 1) explain the subject matter of the EU matter by provisions or chapters;
- 2) assess the suitability of the proposed solutions for the existing legal system and analyse the compatibility of the EU matter with the constitution and other legislation of the Republic of Estonia and with the international agreements signed by the Republic of Estonia as well as with the Government’s EU policy and national development plans and strategies and specify which legislation needs to be amended or adopted to implement the EU matter (it is recommended to prepare a table of equivalences, comparing Estonian and EU law).

20. The compatibility of the EU matter with the principles of subsidiarity and proportionality

(1) The part of the explanatory memorandum titled ‘The compatibility of the EU matter with the principles of subsidiarity and proportionality’ shall include an analysis concerning the compatibility of the EU matter with the principles of conferral, subsidiarity and proportionality (see also the guiding questionnaire attached to these Guidelines).

(2) The following aspects are analysed and assessed to verify the compatibility of the EU matter with the principle of conferral:

- 1) is the competence concerning the EU matter conferred in the Treaties;
- 2) is the legal basis of the EU matter relevant;
- 3) does the EU matter fall within the exclusive competence of the EU or within the shared competence of the EU and member states or within the complementary (coordinating) competence of the Union.

(3) Compatibility with the principle of subsidiarity is only assessed for EU matters that fall within the shared competence of the EU and member states. The following aspects are analysed and assessed:

- 1) can the objectives of the EU matter be partially or fully achieved by action undertaken at national level;
- 2) if the objectives of the proposed action cannot be sufficiently achieved by the member states, they are, by reason of the scale or effects of the proposed action, better achieved at Union level.

(4) The following aspects are analysed and assessed to verify the compatibility of the EU matter with the principle of proportionality:

- 1) is the action proposed by the EU matter appropriate to attain the proposed legitimate objectives, i.e. whether it contributes to the attainment of the legitimate objectives;
- 2) is the action proposed by the EU matter necessary, i.e. is there any other measure to attain the legitimate objective that is as effective as, but less prejudicial to the rights of subjects of law than, the proposed action and is the chosen action least onerous;
- 3) the necessity to attain the objective and intensity of intervention; are the proposed restrictions overridden by the necessity to attain the objective.

21. Summary of a preliminary impact assessment

(1) The part of the explanatory memorandum titled ‘Summary of a preliminary impact assessment’ shall provide an overview of the significant effects of the EU matter in Estonia by sectors and target groups; indicate which data were used to arrive to the conclusions; note

whether it is necessary to carry out a detailed impact assessment; draw attention to the significant effects for Estonia that the European Commission has not addressed in its impact assessment or the assessments of which differ. The budgetary impact of the implementation of the EU matter is always indicated.

(2) The results of a preliminary impact assessment are presented in the form of a table in accordance with the 'Impact assessment methodology' approved at the session of 13 December 2012 of the Government of the Republic.

22. Explanation of the Government positions

The explanatory memorandum shall include the Government's position on the EU matter together with explanations and a statement of reasons.

23. Procedures for obtaining opinions and approval

(1) The part of the explanatory memorandum titled 'Procedures for obtaining opinions and approval' shall specify:

1) to which government agencies and local governments was the EU matter submitted for an opinion and approval and to which public institutions, stakeholders and experts was the EU matter submitted for an opinion and proposals;

2) who provided feedback and to what extent were the opinions and proposals taken into account when preparing the draft decision.

(2) As regards the comments and proposals that were submitted but not taken into account in the course of obtaining opinions, approval and inclusion, the relevant explanations and statements of reasons are presented in the form of a table attached to the explanatory memorandum.

24. Explanatory memorandum prepared for a meeting of the Council of the European Union

(1) The draft decision prepared for a Council meeting and submitted to the Government for discussion and decision-making shall be accompanied by an explanatory memorandum that consists of the following parts:

1) the objective and summary of the item on the agenda and an assessment of the compatibility of the EU matter with Estonia's positions as well as a short description of the state of play in proceedings;

2) the Government's position and statement of reasons;

3) the procedures for obtaining opinions and approval in accordance with paragraph 23.1.

(2) As regards the items on the agenda of a Council meeting, the explanatory memorandum shall include the date of establishing the Government's position with reference to the date of the opinion by the *Riigikogu*.

25. Explanatory memorandum concerning responses to a Commission consultation document

(1) The responses to a Commission consultation document (consultation, green paper, etc.) submitted to the Government for discussion and decision-making shall be accompanied by an explanatory memorandum that consists of the following parts:

1) an introduction providing a short summary of the consultation, including the objective of the consultation, and a statement of reasons for the Government's position based on paragraph 6.1;

2) general principles of responding to the consultation, indicating the basis for responses to the consultation questions (law, policy, strategy, development plan, etc.);

- 3) a position on the main proposals of the European Commission based on the relevance and impact of the proposals together with a statement of reasons, including the assessment of the compatibility of the proposals with the principles of subsidiarity and proportionality and an overview of the significant impacts of the proposals (in free text);
 - 5) information about obtaining opinions and approval in accordance with paragraph 23;
 - 6) a plan for follow-up action, indicating the necessary further actions, such as a more detailed survey, impact assessment, obtaining opinions from stakeholder or cooperation with other member states or institutions.
- (2) The responses to the consultation document are enclosed to the explanatory memorandum.

26. Explanatory memorandum concerning Estonia's positions on the participation in infringement proceedings and in the cases of the Court of Justice of the European Union and EFTA Court

(1) The draft decision submitted to the Government for discussion and decision-making shall be accompanied by an explanatory memorandum that consists of at least the following parts:

- 1) introduction;
- 2) a summary of the facts of the infringement or court case;
- 3) a summary of the state of play in the proceedings concerning the infringement or court case;
- 4) a description of the legal issue raised within the infringement or court proceedings (legal qualification) and an analysis of possible solutions, including an analysis of the relevant legislation and case-law;
- 5) Estonia's position and statement of reasons;
- 6) approval of the positions.

(2) Estonia's positions in infringement proceedings shall be accompanied by an assessment and explanation of whether a fine or periodic penalty payment can be imposed on Estonia if the Court of Justice finds that the infringement has taken place.

(3) Estonia's positions in the cases of the Court of Justice of the European Union and EFTA Court, including references for a preliminary ruling, references for an opinion and direct court cases to which Estonia is a party, shall be accompanied by an explanation of Estonia's interests in the proceeding and the potential impact of the judgement of the Court of Justice on those interests.

III. PREPARATION OF DOCUMENTS NECESSARY FOR THE WORK OF THE EU WORKING GROUP OR COMMITTEE

27. Preparation of documents necessary for the work of the Committee of the Permanent Representatives of the Member States

(1) The Permanent Representation of Estonia to the EU (hereinafter the 'Permanent Representation') shall obtain from ministries in a good time and by using electronic communication means the guidelines for the meetings of the Committee of the Permanent Representatives of the Member States (Coreper I and Coreper II). When ordering the guidelines, the Permanent Representation shall submit a proposal to the relevant ministry for a line of conduct and the context of negotiations (the expected context of the negotiations, the expectations and objectives of parties, options and tactics) to establish a position.

The ministries and the European Union Secretariat of the Government Office may approve the proposal in the order sent to the Permanent Representation by default; in such a case, the line of conduct specified in the order shall serve as guidelines for dealing with the relevant item of agenda.

- (2) The guidelines shall be prepared based on Estonia's positions and approved by the relevant ministries and the European Union Secretariat of the Government Office.
- (3) If no guidelines are requested in the order, yet the ministry or the Government Office considers the guidelines necessary, the initiators shall ensure that the guidelines are prepared and communicated and that the line of conduct is approved.
- (4) The Permanent Representation shall ensure that all necessary approvals are obtained even if the changed negotiation situation necessitates the adjustment of the agreed line of conduct or the establishment of new positions.
- (5) After a meeting of the Committee of the Permanent Representatives of the Member States, the Permanent Representation shall prepare a report on the course and outcomes of the meeting and, if necessary, make proposals for amending Estonia's positions no later than within the first working day following the meeting.
- (6) The guidelines prepared by the Committee of the Permanent Representatives and all reports shall be entered in EIS. The guidelines shall be linked to the dossier of the relevant draft decision.

28. Participation in the working groups of the Council of the European Union or the European Commission

- (1) Participation in the working groups of the Council or the European Commission shall be prepared by the ministry responsible for the working group under an agreement with the EU Coordination Body or, at the proposal from the responsible ministry, another ministry within the area of government the issue discussed by the working group falls. Participation in working groups is prepared in accordance with the relevant ministry's internal work organisation rules.
- (2) In the course of preparing for a meeting of a working group, the positions are coordinated with other relevant ministries and in regular cooperation with stakeholders.

29. Reporting on the work and outcomes of the working groups of the Council of the European Union or the European Commission

- (1) After a meeting of a working group, the official who participated in the meeting shall prepare, within two working days, a report on the course and outcomes of the meeting; the report shall include a summary of the decisions adopted at the meeting and, if necessary, proposals for amending Estonia's positions. In the case of important developments, the official who participated in the meeting shall immediately submit a brief summary of the meeting.
- (2) The report shall be forwarded to the Government Office and other relevant ministries and agencies for information and entered in EIS under the relevant working group as well as tied to the dossier of the relevant draft decision. The stakeholders who participated in the preparation of positions are updated on important developments in the working group.

IV. TRANSPOSITION OF EU LAW

30. Timely transposition of directives

- (1) The Government Office shall appoint the ministry/ministries responsible for the transposition of a directive. The ministry responsible for the transposition of the directive shall ensure that a draft legislation transposing the directive is submitted to the Government no later than six months before the deadline for the transposition of the directive.
- (2) The legislation transposing a directive shall normally not address the issues that do not fall under the scope of application of the directive.

(3) The Government Office shall submit a report on the status of the transposition of directives once every three months to the EU Coordinating Body, secretaries general of ministries and the European Union Affairs Committee of the *Riigikogu*.

(4) The EU Coordination Body shall discuss at least once a month the state of play in the transposition of those directives the transposition deadline of which will arrive within the next six months.

31. Delayed transposition of directives

In accordance with the decision on ensuring timely transposition of directives adopted at the Cabinet meeting of 16 June 2011:

1) if the transposition of a directive is delayed, the responsible minister shall submit to the Government an overview of the reasons for late transposition and proposals for preventing further delays. When preparing the overview, the reasons for the delay are analysed: was it the planning errors, cooperation problems, inadequate legal analysis, regulation of issues not falling under the scope of application of the directive or any other reason that caused the delay. Ministers' reports on the reasons for the delay are forwarded to the European Union Affairs Committee of the *Riigikogu* for information.

2) the fines or periodic penalty payments imposed by the Court of Justice will be paid from the budget(s) of the ministry/ministries responsible for the transposition. The Government may reduce the amount to be paid from the budget of a ministry.

ANNEX 1

Guiding questionnaire for the assessment of the compatibility of an EU matter with the principles of subsidiarity and proportionality (TFEU Art. 5(3) and (4))

I. Preliminary questions for the assessment of the compatibility with the principles of subsidiarity and proportionality

The following questions will establish whether the competence concerning the EU matter is conferred upon the EU in the Treaties. Then, in order to assess the compatibility of the EU matter with the principles of subsidiarity and proportionality, it has to be established whether the EU matter falls within the exclusive competence of the EU or within the shared competence of the EU and member states or within the complementary (coordinating) competence of the Union.

- 1) Is the competence concerning the EU matter conferred upon the EU in the Treaties, i.e. what is the legal basis of the EU matter (the issue to be solved by the EU matter must be related to at least one article of the Treaties)?

- 2) Is the EU matter compatible with the objectives of the Treaties (i.e. the issue to be solved by the EU matter must be related to at least one objective of the article of the Treaties established above)?
- 3) Does the EU matter in question fall within the exclusive competence of the Union (see Article 3 of TFEU: areas and certain international agreements)?

II. Assessment of the compatibility with the principle of subsidiarity

The principle of subsidiarity is not applicable to areas that fall within the exclusive competence of the EU. The compatibility of an EU matter with the principle of subsidiarity is only assessed if the EU matter does not fall within the exclusive competence of the EU.

An EU matter is compatible with the principle of subsidiarity if the objectives of the proposed action cannot be sufficiently achieved by the member states and they are, by reason of the scale or effects of the proposed action, better achieved at Union level. In order to assess the compatibility of an EU matter with the principle of subsidiarity, the following questions should be answered. *See also the Commission's impact assessment. If the objectives of the proposed action cannot be sufficiently achieved by the member states (the relevant situations have cross-border implications or restrict the free movement of people, goods, services and capital, the Commission must prepare a statement of reasons.*

- 1) Can the objectives of the proposed EU action be sufficiently achieved by the member states?
 - What measures have member states already taken to achieve the objectives of the EU matter at the member state level?
 - Does the area related to the EU matter include cross-border aspects that cannot be sufficiently covered by measures taken at member state level (e.g. air pollution)?
 - Could the objectives of the EU matter be sufficiently achieved through cooperation between single member states?
 - Would the measures taken separately by member states or the lack of EU action be inconsistent with the requirements of the Treaties (e.g. the need to correct competition distortions, avoid hidden trade restrictions or to consolidate the economic and social cohesion) or have a significant adverse effect on the interests of member states (e.g. constant use of such reservation clauses pursuant to Articles 36, 45(3), 52 and 62 in conjunction with Article 52 of TFEU)?

If it appears from the answers to the above questions that the objectives of the proposed action cannot be sufficiently achieved by the member states, it must be analysed whether the objectives can be better achieved at EU level. The European Commission has to explain in the impact assessment of the EU matter how can the objectives be better achieved at EU level and which are the advantages and disadvantages of an EU level action compared to an action taken at the level of a member state.

- 2) Can the objectives of the EU matter be better achieved at EU level?

- Does the EU matter have a clear advantage over an action taken at the level of a member state by reason of the scale or effects of the proposed EU action?
- Are the European Commission's conclusions that the objectives of the proposed action can be better achieved at EU level substantiated by generally recognised by qualitative and, wherever possible, quantitative indicators (e.g. are the studies on which the Commission's impact assessment is based sufficiently representative to be used as a basis for policy options)?

III. Assessment of the compatibility with the principle of proportionality

The compatibility of an EU matter with the principle of proportionality is assessed even if the EU matter falls within the exclusive competence of the EU. If any of the following questions are answered negatively, the EU matter may not be compatible with the principle of proportionality.

- 1) Is the EU matter proportional to the objectives of the Treaties, i.e. appropriate, necessary and moderate (minimal intervention)?

Assessment of suitability:

- Will the policy tools proposed under the EU matter contribute to the achievement of the legitimate objectives arising from the Treaties?
- Does the EU matter take into account the specifics of member states (e.g. long-term national objectives or the structure of the legal system)?

Assessment of necessity:

- Is there any other measure to attain the legitimate objective that is as effective as, but less prejudicial to the rights of subjects of law than, the proposed action (*to be assessed separately for each policy tool*)?
- Is the selected policy tool least prejudicial to the rights of subjects of law (*to be assessed separately for each policy tool*)?
- Is it necessary to adopt legislation to achieve the objectives of the EU action or can the objectives be achieved by alternative means (e.g. voluntary agreements, the activity of social partners)?
- Is the legal form of the EU matter such as to impose as few restrictions on member states as possible (e.g. regulation vs. minimum harmonisation directive)?
- Will the scope of application and the level of regulation of the EU matter leave sufficient room for national decisions?
- Are the financial obligations and administrative burden of the EU, member states, businesses and citizens as low as possible? Are they necessary for the achievement of the proposed objectives of the EU matter (*to be assessed separately for each policy tool*)?

Assessment of moderation:

- Does the necessity to attain the objective and intensity of intervention override the restrictions proposed by the EU matter?