Implementation of Better Regulation Measures in the Internal Security Policy: the case of Estonia

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Abstract. The paper analyses the implementation of better regulation measures in the internal security (IS) strategies, draft legislation and administrative routines of the Estonian Ministry of Interior.

The paper includes the results of related substudies: (a) the research problem emerged from the studies of the explanatory memoranda of draft laws 2004-2009 according to which the Ministry has some deficiencies in fulfilling the better regulation requirements; (b) mapping of better regulation and internal security policy concepts; (c) a content analysis of Estonian IS strategic documents; (d) systematization Estonian IS laws; and (e) a sociological e-survey of ministerial officials.

Theoretical framework integrates the concepts of institutional theory, discursive democracy, realistic legisprudence, better regulation, risk society, internal security and the adaptive strategic management. Main conclusions: the analysis of the knowledge of draft legislation and the excessive amount of laws in IS field gives evidence of lack of systematic regulatory impact assessment (IA); the concept of better regulation is not integrated into IS policy documents (insufficient planning and budgeting of IA); and a sociological e-survey of the officials of the Ministry indicates discontent with the management of the IA of policies and draft legislation. According to institutional analysis this shows readiness for changes in the context of risk society challenges and adaptation with budgetary contractions.

Keywords: better regulation, internal security policy, impact assessment, participation, institutionalization, EU, Estonia

INTRODUCTION

Security is a basic public good and it is difficult to overestimate the importance of internal security (IS) in the society and the quality of its policy design and the law behind it. On the other hand there are only a few academic articles available where the vital connections between better regulation measures (e.g. impact assessment, consultations, simplification) and internal security policy are discussed.

This discussion paper will give a short overview of the general context and theoretical approaches (p. 1-4) and then analyses the implementation of better regulation guidelines in the IS policy on the basis of substudies. The paper includes a pre-study, normative content analysis of the explanatory memoranda of draft laws (p. 5-6); a methodology design and literature overview (p. 7-10), a content analysis of strategic IS policy documents (p. 10-11); a systematization of Estonian IS law (p. 12-13) and a sociological e-survey of officials working in the Estonian Ministry of the Interior (p. 14-15). Finally, a synthesis with integrated conclusions and proposals are added (p. 16-18) asking how to learn from the past and to optimize and compensate the limited resources with help of better regulation in a small state like Estonia?

I. CONTEXT, THEORETICAL FRAMEWORK AND STUDY DESIGN

The general context of the paper is related to the institutionalization of Organization for Economic Co-operation and Development (OECD) and European Union (EU) good governanace, better regulation, and ohter concepts, and also to the recent impacts of financial crisis to the state budget and strategic planning of public policies (hard structural reforms, budgetary cuts and adaptation agenda since 2008).

OECD has since the beginning of the 1990's had the leading role in enhancing principles of better regulation and quality standards for regulation collecting experiences and research data from its member countries on the basis of which OECD has formulated programs, recommendations and policy guidebooks for the successful adoption and implementation of regulatory impact analysis/assessment.[2]

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[2] OECD Recommendations 1995-2012: www.oecd.org/regreform/principles; also M.Ben-Gera (1999). Impact Assessment: Role, Procedures, Methods and Good Practices in OECD and CEE Countries –in *Society, Parliament and Legislation* – eds. A. Kasemets *et al*, Riigikogu Kantselei, Tallinn, p. 27-35; J. Tala (2010). Better regulation through programs and quality standards – are new perspectives needed? – *Legisprudence*, p. 197; C.M.Radaelli (2010). Regulating Rule-Making via Impact Assessment. – *Governance* vol 23, no 1, p. 90.

In the EU, the subject matter of better regulation started to be considered more intensely after the OECD member states regulatory reforms in 1990ies and the EU Lisbon Summit where the high-level advisory group chaired by M. Mandelkern was formed. The Mandelkern Group Report serves as the first agreement aimed at better regulation on the EU level. This report includes seven recommendations with the aim of achieving better regulation (see also box 2).[3]

Estonia joined the third wave of regulatory reforms in OECD countries and in many aspects this wave is still on the way.[4] Many critical observations can be found in recent writings on transitional problems of Central an Eastern European countries and in most cases they also apply to Estonia. For example, Paul Blokkers' (2009) argumentation based on Jürgen Habermas' ideas of a 'catching-up revolution' and a 'rewinding revolution': "...for the former communist countries, 1989 signified a kind of rewinding revolution that allowed them once again to catch up with the West, after the interlude of the failed modernizing project of communism. This meant that these societies were to adopt traditions of the *Rechtsstaat* as well as those of capitalist market economies *à la* the West."[5] Similar viewpoint on regulatory policy was expressed by Claudio Radaelli (2010), who noted "...the emulation perspective, which is concerned with the imitation of OECD templates for regulatory oversight by legitimacy-seeking governments."[6] Matt Andrews (2010) explores the OECD good governance programmes from an other point of view. He shows that one-size-fits-all approach to effective models of good governance does not exist. Often models with similar names mean different things in different countries, because "variation is one of the world's core characteristics, manifest in our abilities to categorize things on the basis of uncountable variables and in the many manifestations of global inequality".[7] In brief, the evolution of democracy in Central and Eastern Europe over the past 20 years has offered scholars an opportunity to observe the effects of different institutional choices on political behaviour and democratic governance. The scholars making comparative studies and policy recommendations must know the context.

Estonia started the developmental activities to build up preconditions for better regulation and regulatory impact assessment in co-op with OECD in mid 90ies. Considering the experience of OECD (e.g. EU) member states, there was no reason to think that better regulation and other good governance practices will start to function without political commitment in regulatory policy, guidelines, systematic training and surveillance mechanisms.[8] To answer those challenges the Concept of Regulatory Impact Analysis was developed by the Ministry of Justice in 2007–2009 and a Development Plan for Legal Policy until 2018 was adopted by the Riigikogu (Parliament) in 23.02.2011.[9] In this context the present paper offers an overview of long transition process, institutional problems and some learning and research ideas for the next stage of Estonian regulatory governance in the field of internal security.

Theoretical approaches behind the substudies (e.g. the concepts of rule of the law, discursive democracy, good governance and better regulation, realistic legispridence, risk society, internal security policy and adaptive strategic management in the broader framework of institutional theory) enable to evaluate the connections between the invisible system of values, better regulation concept, terms and routines dominant in policy design and its materialisation in strategies and laws.

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[3] OECD (2000). Reducing the risk of policy failure: challenges for regulatory compliance. Paris: www.oecd.org/dataoecd/23/37/46466287.pdf ; Mandelkern Group on Better Regulation. Final. 13.11.2001: http://ec.europa.eu/governance/better_regulation/documents/mandelkern_report.pdf

[4] A. Kasemets (2006). The institutional preconditions for knowledge-based and sustainable policy-making in Estonia – *Riigikogu Toimetised* (J. of Estonian Parliament) 2006/14, pp. 152-160 (in Estonian): http://www.riigikogu.ee/rito/index.php?id=10991&op=archive2

[5] P.Blokker (2009). 1989, Democracy, and Social Theory: A Return to Normality? - European Journal of Social Theory 12(3): 307–320 – p.307 and 309. Similar 'habermazian' approach: M.Lauristin and P.Vihalemm with K.E. Rosengren and L.Weibull (1997) "Return to the Western World. Cultural and Political Perspectives of the Estonian Post-Communist Transition – Tartu University Press, pp 77-84

[6] C.Radaelly (2010) p. 90, see Note 2

[7] M.Andrews (2010). Good Governance Means Different Things in Different Countries. - Governance, vol 23, no 1, pp 7–35, see p. 7

[8] M. Ben-Gera (1999) - see Note 2; A. Kasemets (2006) – see Note 4.

[9] Ministry of Justice. General Description of impact assessment system. Legislative Policy Department 2008 http://www.just.ee/41314 (in Estonian); Development Plan for Legal Policy until 2018. – RT III, 07.03.2011, 1 (in Estonian). Since 2011, Estonia is also a member of OECD - the following substudies reflect the baseline for socio-legal follow-up studies in the field of internal security policy.

Those theoretical concepts are releated to different social science subdisciplines analyzing the relations of society, power and law. Some examples given here are focusing on discursive democracy and institutional theory.

The autors argue that some liberal constitutional principles like freedom of information (as a right), access to public socio-legal information (e.g. explanatory notes of draft laws) and the quality of this public information can be observed as universal principles in political theory and there are no remarkable tensions between different left-right ideologies (Habermas, Rawls, Hayek, etc). This is a common ground of universal human rights. On the other hand, one of the few issues on which both scholars of sociology of law and public administration, agree in theory is the centrality of the moral issues. Jürgen Habermas's late-modern theory of communicative action (1984, 1987) and democratic discourse (1996) differentiates the imperative demands of the system from the rationality of the person's everyday *lifeworld* in order to analyse the integration of the changing social and law systems. He also sees a mental danger in many social welfare programs that have a tendency to colonise our everyday life with their pre-care. The goal of Habermas´ *communicative ethics* is a society made up of the dialoguing subjects and striving to achieve a consensus acceptable to the majority. If the legal act functions as an instrument of some elite/lobby group, the market, or state interests, the *lifeworld* of the people has been colonised because of the systematically *distorted communication*. [10]

The model of discursive democracy has clear moral requirements - persons should be treated not merely as objects of legislation, as passive subjects to be ruled, but as autonomous agents who take part in the governance of their own society. In the market area concerning legislation and public services the extent of biased, *asymmetric information* should be reduced. This means also that the impact assessment (IA) of political options in economic, social and also ecological and cultural terms will be more important - if the political objectives and IA are not clear and measurable, we cannot speak about rationality, responsibility and communicative ethics. The quality of public information, a guaranteed equal access to the results of IA and the possibility to participate in the law-making, are deeply related to human rights. [11]

The political institution, its legitimization and the behaviour of politicians, officials and ordinary citizens are a part of cultural subsystems. The legal system (culture) is largely made up of informal norms, including upbringing values, customs and moral traditions, socio-economic relations, also the government procedure, the actual court decisions, the behaviour of the police, etc. In this context the wide-range translation/implementation of a foreign governance and legal systems is not possible too quicly, the massive transposition of international regulations and insufficient public debate can increase the level of 'systematically distorted communication' and harm the institutional mechanisms of social cohesion. [12]

A central idea in Hart *Concept of Law* (1961) is that law is a system of rules that officials accept. Acceptance means that they regard the rule as creating obligations. The activity of interpretation is also the acceptance of the requirements of law and law-making (e.g. better regulation) rules in the daily affairs of officials. According to Denis Gallighan the central question of *law and society* studies is why an official recognizes the normativity or obligations, because a legal system exists when the officials as a whole accept the validity of the rule of recognition. Research in some of the new democracies of Europe show that the law is recognized as law, but as a matter of practice simply not applied in many situations. [13]

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[10] J.Habermas (1984). The Theory of Communicative Action. Cambridge: Polity Press; J. Habermas (1996). Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy. Cambridge: Polity Press; J.Habermas (1976). On Systematically Distorted Communication – in Critical Sociology, ed. P.Connerton – Polity Press; also B.Carlsson (1995). Communicative Rationality and Open-ended Law in Sweden - J. of Law & Society, 1995: 475-503

[11] *Ibid* Habermas 1996: 4-6, 183; also Verschraegen 2002: 259 and Magnette 2003: 144 – source: Kasemets and Liiv 2005 – see Note 20)

[12] A.Kasemets (2003). Sociological and public opinion polls as reflection to parliament and civil society – The annual conference of the European Sociological Association '*Ageing Societies, New Sociology*', Murcia, Spain 22-27.IX. Paper: www.um.es/ESA/papers/St9_61.pdf; also Cotterrell, R. (2004) Law in culture – Ratio Juris Vol. 17 No. 1, 1-14

[13] D.Galligan (2005) Legal culture or how to take law seriously? - University of Oxford, Centre for Socio-legal Studies. Seminar Series 2005: Legal Cultures. Working paper, 13 p., e.g. H. L. A. Hart, *The Concept of Law*; H.Kelsen, *The Pure Theory of Law*, p. 3; D. Galligan and M. Kurkchiyan (2003). Law and Informal Practices: The Post-Communist Experience - Oxford University Press; also Note 22.

The institutional theory is providing various opportunities for the explanation of politico-administrative behaviour of individuals and organisations dealing with regulatory governance issues. Institutional theory may also explain why actors who identify in policy documents and better regulation quidelines the opportunities to improve regulatory management may be unwilling to do so in practice.[14] Scott (2001: 48) asserts that 'Institutions are social structures that have attained in a high degree of resilience. Institutions are composed of cultural-cognitive, normative, and regulative elements, that, together with associated activities and resources, provide stability and meaning to social life.' Institutions operate at different levels of jurisdiction, from the world system to localized interpersonal relationships (see Table 1).

Table 1: *Levels of institutional analysis*

Level	Examples
World system	OECD, NATO and EU countries: *values, concepts, rules, norms, routines etc*
Societal	Estonia: *values, concepts, rules, norms, routines etc* (see Scott 2001: 77)
Organisational field	The public sector (e.g. Government, Parliament, State Audit Office, National Court, ministries etc): *values, concepts, rules, norms, routines, etc >>>*
Organisational population	Politicians and civil servants, contractual experts
Organisation	Ministry
Organisational subsystems	Ministerial departments and agencies

Adopted from W.R.Scott 2001: 85 by A.Kasemets 2005[15]

Since institutions do not exist empirically, we have to look for instances where they 'materialize'. Scott (2001: 77) identifies four types of institutional carriers: *symbolic systems* (rules, laws, values, expectations, terms, categories etc); *relational systems* (governance systems, regimes, authority systems, structural isomorphism, identities etc); *routines* (protocols, standard operating procedures, jobs, roles etc); and *artefacts* (objects complying with mandated specifications, objects meeting standards, etc).[16]

In most European countries, the analytical information on social, budgetary, economic, environmental, security and administrative objectives and impacts of proposed legislation has to be given in an explanatory memoranda (note, letter) accompanying a draft law. The explanatory memoranda of the draft law is (has to be) a normatively structured legal document, which includes also the results of public consultations.[17] In other words, the explanatory memoranda of draft laws are documented 'materialization' of politico-administrative behaviour, a "policy window", to show the dominating values, norms, terms and thinking routines in policy/law-making "black boxes".

The research problem of Estonian internal security regulatory policy emerged from the normative content analysis of the explanatory memoranda of draft laws proposed by the Cabinet to the parliamentary proceedings in 2004-2009, according to which the Ministry of Internal Affairs has remarcable problems with observing the better regulation requirements in the draft legislation. This pre-study (see box 1) reflects the problem of selective obedience to rules of draft legislation, showing that the quality of public information on impact assessment and involvement of stakeholders in the explanatory memoranda of draft laws is questionable and the preconditions for knowledge-based (also responsible, moral) internal security political debate are not sufficiently fulfilled (see Table 2). [18]

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[14] W.Powell & P.DiMaggio (1991). The New Institutionalism in Organizational Analysis - University of Chicago Press; P. Selznick (1992). The Moral Commonwealth, University of California Press; D. C. North (1990). Institutions, Institutional Change and Economic Performance - Cambridge University Press; OECD 2000, p. 70-73, Note 3. W.R. Scott (2001). Institutions and organisations. Thousand Oaks: Sage, p. 40;

[15] A.Kasemets (2005). The quality of legislation and the role of impact assessment - The Quality of Legislation: Estonian Perspectives. European Commission Legal Drafters. Brussels 11.10.2005: http://ec.europa.eu/dgs/legal_service/seminars/es_kasemets20051011.pdf

[16] Scott 2001 – see Note 14

[17] A.Kasemets (2001). Impact Assessment of Legislation for Parliament and Civil Society: a Comparative Study (22 countries).- Ed. A. Kasemets. Legal and Regulatory Impact Assessment of Legislation. Proceedings of ECPRD seminar. Tallinn: Riigikogu, pp 47-104. Usually there is a lack of adequate socio-legal information (evidence) and it is hard to understand what will happen after the enfocement of a law to the stakeholders living under this regulations. In this context for the authors the lack of impact assessment is first of all a moral problem.

[18] A. Kasemets (2009). The gap between law-making norms and facts 1998-2009 in the field of impact assessment and civic engagement. *Riigikogu Toimetised* 19: 104-115 (in Estonian).

Box 1: *The method of normative content analysis of draft laws (bills) explanatory memoranda*

Background. The methodological concept proceeds from the thesis that the problems of legitimacy and administrative capacity of public policy often arise from the shortcomings of impact assessment and law-drafting. This concept for reflective socio-legal studies of draft legislation was developed in 1997 to measure the gap between normative requirements of draft legislation and facts of fulfilment of those requirements which must be documented in the explanatory memoranda of draft laws before the parliamentary proceedings. The guidelines of method are proceeding from the structure of regulatory impact assessment related requirements for the draft-legislation in Estonia,[19] general recommendations of OECD (1995, 1997, 1998), and academic literature (Galligan 1995; Tala and Korhonen, 1998; Wintgens, 1999; Dorbeck-Jung, 1999, etc).

The starting idea of this method for the quality control of socio-legal information required in the explanatory memoranda of draft laws (see table 2) was the reason that socio-legal information in the explanatory memoranda of a draft law is an input for informed parliamentary/public debate, and secondly, it is one of the few public documents, a "policy window,"- which must describe information about social, economic, environmental, legal etc problems, policy objectives, results of impact analyses, consultations, etc. Third, a critical reflection functions as „informal sanction" (negative publicity) for learning. The guidelines (e.g. checklist) of studies include the legal/normative basis, criteria for preliminary selection of draft laws, description of information categories for the content analysis and comments (Kasemets 2000; Kasemets, Liiv 2005; Kasemets 2009). [20]

Aim: to explore and reflect the gap between constitutional rule-making norms and socio-legal information in draft legislation.

Method(s): normative content analysis

Socio-legal information categories of content analysis:

1.0. References to EU directives and international conventions (transposition and harmonisation of laws) as background.

2.1. Social impact assessment,e.g. identification of target groups and their socio-economic situation, demographic behaviour*

2.2. Economic & Business impact assessment, e.g. analyses based on cost-benefit, standard cost model, etc methods.*

2.3. Environmental impact assessment, e.g. issues of sustainable development (*"no direct impact" was codified "yes"*).

2.4. Organizational and administrative changes and impacts, e.g. reorganization of work, action plans, training plans etc.*

2.5. Fiscal & budgetary impact on state and local authorities level (*clear statements "no additional costs" was codified "yes")

2.6. References to studies, analyses, expert opinions, reports, official statistics etc on impacts related to impact assessment

2.7. Consultations with public sector, e.g. names of ministries, executive agencies, unions of local authorities, experts, etc.

2.8. Consultations with private and third sector, names of representatives of interest groups, NGO-s, names of researchers etc.

SUM 2.1.-2.8. in numbers [number of draft laws x 8 categories / results of content analysis] and % (see Table 2).

Period: 1998-2009 (seven studies), in given paper 2004-2009 [background: Estonia became a member of EU in 2004]

Data: The overall number of draft laws (bills) submitted by Cabinet to the proceedings of the Riigikogu (Parliament) during the seven periods of study was 1131. According to the criteria of selection the number of draft laws requiring the impact assessment was 907, e.g. in sixth period (2004-05) 86 draft laws and in seventh perieod (2007-09) 170 draft laws.

Main research questions: 1) To what extent the initiators of draft laws follow the law-making reguirements reflecting the social, economic and environmental impact analyses, references to social science studies and involvement of NGO-s?; **2)** How are the constitutional collective decisions about rules governing and regulation of draft legislation internalised in practice? What is the extent of selective legal behavior in law-making in differnt ministries?; **3)** To what extent are the law-making practices of the Estonian legislation in line with the declared better regulation principles, if examined through the lenses of normative content analysis? (e.g. Min. of Internal Affairs); **4)** To what extent the information on impacts has been made available for the public and can we talk about informed participants as a precondition of the discursive democracy?

In addition, the aforementioned problems with quality of draft legislation included the following political, legal and/or social problems: (a) the principles of the rule of law and good governance (e.g. legality, equality, transparency, accountability) are not followed in a level required, it means also that the preconditions for the evaluation of the validity of constitutional rules and the quality of law (e.g. proportionality, necessity) are not fulfilled;[21] (b) Estonia like other CEE countries, may have quite a good and well-structured normative basis for regulatory impact assessment and draft legislation, but it is not yet fully internalised in organisational norms and routines of the ministries; (c) access to the regulatory

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[19] The Cabinet adopted "The rules of the normative technique of drafts of legislative acts" in 1996. The Board of the *Riigikogu* adopted "The Rules for Draft Legislation in the Legislative Proceedings of Riigikogu" in 1993. The rules are established on basis of constitutional laws.

[20] Source in English: A.Kasemets and M.-L. Liiv (2005). The Use of Socio-legal Information in the Explanatory Memoranda of Draft Acts: a Precondition for Good Governance . *Eds* G.Janey *et al* - in Institutional Requirements and Problem Solving in the Public Administrations of the Enlarged European Union and Its Neighbours. Bratislava: NISPAcee, pp 142-165, e.g. Dorbec-Jung B. (1999) Realistic Legisprudence: A Multidisciplinary Approach to the Creation and Evaluation of Legislation - Associations, 2, 211-237 // draft paper: http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan018453.pdf

[21] Even more – if the target groups and impacts on their lives are not specified in the memorandas the EU better regulation assessment principles cannot be applied. The Mandelkern Group Report describes a comprehensive overall EU approach with a set of seven core principles: necessity, proportionality, subsidiarity, transparency, accountability, accessibility and simplicity. In Estonia those principles are further supplemented by legality, legal certainty, openness and responsibility (Estonian Ministery of the Justice, 2008). The same applies *a fortiori* to internal security regulations. On the other hand, Ministry of the Interior (e.g. Police) has a special role in law enforcement.

impact assessment information is not guaranteed to MPs, NGO-s and the public (ordinary citizens); (d) lack of impact assessment information decreases the effectiveness of parliamentary and public debates and may create different administrative, budgetary, social and even legal, security or political problems in the implementation stage of adopted laws.

Table 2: *Results of the analysis of exploanatory memoranda to draft laws 2007-2009. Accordance with normative requirements on impact assessment, references and involvement of stakeholders (%)*

Responsible ministry and the number of draft laws analysed (n) [2 opposite examples and avarage]	Link with EU laws	The presence of specific required impact assessment [IA] information in the explanatory memoranda of draft laws (bills)					References to information sources used (studies, etc)	References to civic engagement and public participation		**SUM** avarage fulfillment of requirements
Categories of information and analysis	**1.0**	**2.1** Social impact	**2.2** Econo mic	**2.3** Environ mental	**2.4** Adminis trative	**2.5** State budget	**2.6** [transparency of analysis]	**2.7** Public sector	**2.8** NGO-s	**2.1–2.8**
The Ministry of Social Affairs (n=15)	80	80	47	13	100	100	60	100	60	**70**
The Ministry of Internal Affairs (n=18)	33	39	6	6	94	89	28	94	28	**48**
Cabinet – 10 ministries (avarage, n=170)	61	**31**	**32**	**16**	**91**	**96**	**35**	**97**	**49**	**55**

Source: Kasemets 2009, 109 (excerpt).

The Ministry of the Internal Affairs had the similar 'presecutor' position also in an earlier study (2004-2005), where an average sum of the Estonian Cabinet was 52% and the sum of Estonian Ministry of the Internal Affairs was 47%.[22]

As high-quality legislation is the means of achieving the political aims of the state, and the planning and budgeting of regulatory impact assessment in the state takes place through strategic policy documents, the following statement became the **research hypothesis:** the reason for the problems connected with the quality of legislation is that **in the concepts, aims and measures of the Estonian internal security policy documents (strategies), the guidelines for better regulation (e.g. impact assessment, consultations, simplification) have not been taken systematically into account**.[23]

To analyse preliminary research problems and test the research hypothesis a combined research methodology was designed with related research questions (see Table 3).

Table 3: *Methodological design and research questions*

Aim, methods, period and data	Main research questions
General aim: to ivestigate and find evidence on why the Ministry of Interior may have difficulties in the implementation of constitutional better regulation requirements for draft legislation?	Why does the Eestoninan Ministry of the Interior have difficulties in meeting the requirements of better regulation (e.g. impact assessment, public consulations, simplification, etc) in the law-making process?
1. Analysis of literature and policy documents **Aim:** Clarification of key definitions, etc **Period:** 2010-2011 **Method:** mapping, analysis and systematization of related topics in the articles and documents. **Data:** Bibliographical databases (social sciences)	What definitions of better regulation and internal security policy are more common in the academic literature and international reports? How the concepts (e.g definitions) of better regulation and internal security policy are (and/or would be) integrated according to literature?
2. A content analysis of strategic internal	How systematically are the elements of better regulation (e.g. terms,

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[22] K.Staroňová, Zs. Kovacsy and A. Kasemets (2006). Comparing Experience of Introducing Impact Assessment Requirement to Draft Legislation in CEE: The Case of Slovakia, Hungary and Estonia – in "Implementation - the Missing Link in Public Administration Reform in Central and Eastern Europe", eds K.Staroňová, B.Dunn, S.Pushkarev. NISPAcee, pp. 165-197

[23] In ohter words, there has been a lack of systematic politico-admistrative support to implement the better regulation measures which is the first step in the institution building of regulatory reforms – see OECD 1997, Mandelkern Group Report 2001 (box 2), etc

security policy documents **Method:** content analysis. Special codification quidelines are based on the better regulation key areas (Mandelkern Group, 2001 - e.g. impact assessment, consulations, simplification, etc [box 2]; also Radaelli, 2010) and description of policy process (Birkland, 2001).[24] **Period:** 2010-11 **Data:** internal security policy documents (4)	impact assessment, consultations etc) implemented in the strategic planning of internal security policy? What kind of connections can be identified between ministerial strategic planning processes and better regulation measures? In what extent is the national legal policy strategy related to internal security strategy?
3. Mapping and systematization of internal security law in Estonia **Method:** comparative legal analysis based on the Estonian IS policy documents and the categories of EU IS law (ESRIF 2009, see box 3) **Period:** 2010-11 **Data:** Estonian database eLaw (eÕigus)	How does the system/architecture of EU internal security policy and related internal security law look? How does the system of Estonian security law look and how many separate laws and other regulations we can find in it (mapping of 'big picture')? Can we see the 'rise of regulatory state' and overregulation? Which kind of regulatory management problems and solutions can be identified on the basis of current Estonian internal security law?
4. A sociological e-survey of the Estonian Ministry of Interior officials **Methods:** The e-questionnaire had about 500 closed and 33 open questions, e.g. ca 50 questions were related to better regulation issue. **Period:** 21.02.-8.03.2011 **Data/sample:** n=104 officials, general sample ca 160 officials. Statistical variables: male/female; 4 management levels; subdivisions; departments (in if n>10); 4 working periods; 5 periods of birh etc.	What kind of connections can be identified between ministerial regulatory management practices and organisational values and norms? How are the adaptive strategic management processes related to the better regulation measures and in which way the answers of respondents (n=104) are reflecting the tensions/problems in regulatory management? What are the key problems and solutions to develop internal security policy desaign and regulatory management (e.g IA) routines? In what extent is the Ministry ready for the institutionalisation of better regulation principles and measures? (in what extent the officials values, attitudes and free answers reflect the readiness for institutional change?)
5. Conclusions and synthesis with proposals Aim of authors: preparation of the paper for the ECPR Standing Group for Regulatory Govenace Conference (basis for further academic article) Period: Spring 2012 Data: substudies 1-4	Which legal (e.g. better regulation) policy implementation problems need the further discussions and why? How to integrate better regulation and internal security policy measures in effective way (the case of Estonian Ministry of Interior)? What kind of ideas for further policy research (e.g. comparative studies) and policy recommendations would be done on the basis of studies 1-4?

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This combined complementary research methodology enables to study the better regulation' implementation and institutionalization complexity issues from different perspectives.

II. RESULTS OF SUBSTUDIES

The general aim of the four substudies is to investigate and find evidence on why the Ministry of Interior may have difficulties in the implementation of constitutional better regulation requirements for draft legislation? To answer this question, first, we have to clarify the concepts and definitions.

1. *Mapping the concepts of better regulation and internal security policy*

The implementation and institutionalization of better regulation measures in the internal security policy processes have got a little attention in the academic literature.

Analysis of *better regulation* and *internal security policy* literature and mapping of definitions and research problems open the complexity and structural variability of both concepts and 'umbrella' terms. Also, it is important to emphasize that the better regulation, also regulatory management, measures (see box 2) are seen as the instruments of quality management and input for effective internal security policy.

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[24] Radaelli 2010 – see Note 2; Mandelkern Group Report – see Note 3; T.A.Birkland (2001). An introduction to the policy process: Theories, concepts, and models of public policy making. Armonk, NY: M. E. Sharpe

The concept of better-regulation

During the last decades governments in most well-developed OECD countries have made increasing efforts to improve the quality of legislation by various better regulation programs.[25] Better regulation as a concept lacks a universal definition and therefore acts as an umbrella term to cover a myriad of initiatives, such as: deregulation, reducing administrative burdens, improving the quality of impact assessment, reducing the quantity of legislation and simplification. According to Radaelli (2010), better regulation is a *process* dealing with the whole life-cycle of the regulations, laying down general rules for determination, assessing, enforcing, implementing and *ex post* assessment of legal rules. Consequently, the guidelines for better regulation may embrace a vast array of measures, including simplification of administrative procedures, consolidation of legal acts, alleviating the administrative burden, using of market-friendly alternatives, risk-based review, funds allocated for rule-making, standards for consulting interest groups, assessment of the sustainability of the existing as well as of the new regulation, and *ex post* review of the impacts. Out of the elements of the better regulation „package", the regulatory impact analysis (RIA) has to be regarded as the most important.[26]

RIA is a set of procedures to be followed in order to appraise regulation. It can be used both *ex ante* (i.e., at the stage of policy formulation, to appraise proposals) and *ex post*. It typically revolves around the steps of problem definition, the identification of options, consultation, the classification of costs and benefits, a plan for monitoring, and the choice of an option on the basis of decision-making criteria such as cost effectiveness, minimization of administrative burdens, cost–benefit analysis ratios, or thresholds.[27] The fact that RIA has been considered the most important element of better regulation programs could be explained by the strong instrumental view on legislation, which is the predominant way to understand the role and functions of regulation for politicians, within governmental bureaucracies, and also for most stakeholders. First and foremost legal regulations are simply understood as means for those in power to achieve the desired goals. Therefore the outcome of regulation is currently perceived as the basic issue, linked to the quality of legislation, and not for example the question of the legitimacy and justification of the government to intervene in the behaviour of ordinary people or companies.[28] But it also has a strong potential in terms of evidence-based policy, accountability and transparency of policy formulation.

The Mandelkern Group Report serves as the first agreement aimed at better regulation on the EU level. This report includes seven recommendations with the aim of achieving better regulation (see box 2).

Box 2: *Seven key areas of better regulation measures*

1) *policy implementation options* to consider by policymakers;
2) *impact assessment* (IA) as an effective tool for evidence-based policy making, providing a structured framework for handling policy problems;
3) *consultation* is a key for open governance, it can avoid delays in policy development due to late-breaking controversy;
4) *simplification* to update and simplify existing regulations, it is aimed at preserving the existence of rules while making them more effective, less burdensome, and easier to understand;
5) *access to regulation* - those affected by EU or national regulation have the right to be able to access it and understand it. This means the coherence and clarity of regulations must be enhanced through consolidation (including codification and recasting) and access improved by better practical arrangements;
6) *structures* - better regulation needs the appropriate supporting structures charged with its promotion to be successful. The best arrangement will depend on the relevant circumstances and charging a single unit at or near the centre [..];
7) *implementation of EU regulation* - high quality regulation forms a chain from the earliest stages of its preparation through to its implementation; more attention should be paid at European level to implementation concerns to ensure that the full consequences are understood and considered.

Source: Mandelkern Group Report 2001, pp 13-52

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[25] OECD (1997, 2008) ; Radaelli, 2010: 90; Tala, 2010: 193 – see Note 2.

[26] C. M. Radaelli. 2010: 90 – See Note 2.

[27] Ibid 90-91; Note 2: OECD (1997). Policy Recommendations on Regulatory Reform. Regulatory Impact Analysis: Best Practices in OECD Countries. Paris; OECD (2008). Building an Institutional Framework for Regulatory Impact Analysis: Guidance for Policy Makers. Paris

[28] J. Tala 2010: 203-204 – see Note 2.

The concept of internal security policy

Defining internal security (as a policy area) itself has proven to be a difficult task. It traditionally referred to the territorial state and its geographic border beyond which "inner" should become "outer" and where security is traditionally one-dimensional, military security. Olivier Brenninkmeijer states that security priorities have shifted. They encompass the prevention of crime, of illegal transnational trafficking and smuggling, the control of clandestine migration and the fight against urban juvenile delinquency.[29]

The European Security Research and Innovation Forum (ESRIF) stated in its final report on one hand that its role was not to define security policy, but on the other that it aims for a common understanding of security, research, legislation and innovation to support a more harmonised approach. The report further assures that "the ESRIF took a holistic approach to security, taking the widest definition of security and examining how that can be achieved regarding society itself and the freedoms we want to maintain or enhance."[30] The EU Internal Security Strategy (2010) gives an overall definition: "In this context EU internal security means protecting people and the values of freedom and democracy, so that everyone can enjoy their daily lives without fear." The strategy also emphasises the importance of a wide approach:

> *The concept of internal security must be understood as a wide and comprehensive concept which straddles multiple sectors in order to address these major threats and others which have a direct impact on the lives, safety, and well-being of citizens, including natural and man-made disasters such as forest fires, earthquakes, floods and storms.* [31]

Defining internal security through threats posed to people and measures taken to avoid these threats is quite common. All of the Estonian internal policy documents take this approach. Internal security is not defined precisely; rather a number of threats, activities or actors are listed and analysed. The EU Internal Security Strategy also tries to unveil the concept by describing the measures encompassed in it. A horizontal dimension of security is described: "to reach an adequate level of internal security in a complex global environmental requires the involvement of law-enforcement and border-management authorities, with the support of judicial cooperation, civil protection agencies and also of the political, economic, financial, social and private sectors, including non-governmental organisations"; and a vertical dimension: "international cooperation, EU-level security policies and initiatives, regional cooperation between Member States and Member States' own national, regional and local policies."[32]

The notion of security, in particular as it concerns the expression "internal security", has also become increasingly diversified in the sense of both the overall security that the state offers to society and the feeling of personal safety of the citizen. It contrasts with what used to be major security concerns of both state and citizen, namely external aggression by a foreign power. Rather than that internal security is now considered to encompass such diverse issues as economic security, the prevention of all forms of crime and violence as well as social security.[33]

The vice chancellor of Estonian Ministry of the Interior Erkki Koort categorizes in short *a problem as being part of internal security if a certain act brings with it danger to people's life and health*.[34] In today's Europe those acts are considered to be terrorism, serious and organised crime, drug trafficking, cyber-crime, trafficking in human beings, sexual exploitation of minors and child pornography, economic crime and corruption, trafficking in arms and cross-border crime.[35] Many of those cannot be considered merely internal threats. This might be one of the reasons why it is so hard to separate the "internal" from the "outer" security (or defence) and give a clear definition to both. As the EU Internal Security Strategy (ISS) action plan states: "Internal security cannot be achieved in isolation from the rest of the world, and

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[29] O. Brenninkmeijer (2001). Internal Security Beyond Borders: Public Insecurity In Europe And The New Challenges To State And Society. Peter Lang Pub Inc 2001, pp. 30-31; see also P.Lægreid and S.Serigstad (2006). Framing the Field of Homeland Security: The Case of Norway. – Journal of Management Studies, vol 43, issue 6, pp 1395–1413; L.Zedner (2003). The Concept of Security: an Agenda for Comparative Analysis. – Legal Studies, vol 23, issue 1, pp 153–175

[30] ESRIF (2009). European Security Research and Innovation Forum. Final Report, p.11-12 www.esrif.eu/documents/esrif_final_report.pdf

[31] Council of the European Union. Internal Security Strategy for the European Union. Brussels. 25.2.2010. 6870/10 (Presse 44).

[32] *Ibid.* See also A.Talmar, R.Narist, A.Kasemets (2011). Applying the Concept of Better Regulation in Internal Security – Juridica International XVIII, pp 35-43, p. 39, where the aspects of systematization of IS law are discussed.

[33] O. Brenninkmeijer 2001: 42 – see Note 30.

[34] E. Koort (2010). Security or Homeland Security. - L.Tabur, E.Koort (eds). Internal Security Policy 2010. Tallinn, pp. 39-43 (in Estonian).

[35] Internal Security Strategy for the European Union (2010) - see Note 32.

it is therefore important to ensure coherence and complementarity between the internal and external aspects of [EU] security."[36]

Problems in the application of better regulation in the internal security policy

But why should politicians, civil servants and different stakeholders be interested in better regulation? One potential function of better regulation programs and quality standards for legislation, based on positivist and realistic legisprudence approach, could be that following them increases the legitimacy and acceptance of the proposed rules.[37] These in turn are preconditions for a state based on the rule of law. The legitimacy of rules is especially sharp in internal security policy because here the rules are directly constraining the constitutional rights of people.[38] Another approach, based on political economy framework, emphasises that the system of better regulation has mainly two roles in OECD countries– political control over bureaucracy and minimization of uncertainty.[39]

We can state here, that the minimization of uncertainty and related legitimate expectations are central for both realistic legisprudence and political economy approaches.

It is worth mentioning here that many of the Estonian internal security policy documents described below emphasise in general both the importance of the rule of law and the importance of cost-effective regulations. Therefore if a cap exists between the rule of law principles and actual better regulation measures (e.g., impact assessment, civic engagement, simplification etc.) it indicates serious problems in governance, because without regulatory impact assessment information it is difficult to talk about knowledge-based, rational (e.g. effective) and responsible law-making and public administration.[40]

To sum up, in this discussion paper the better regulation key areas/measures (see box 2) are seen as the instruments/tools for the effective and sustainable internal security policy cycles and law-making. The authors are interested in structural connections between better regulation and internal security policy.

2. *Better regulation and internal security: a content analysis of internal security strategy documents*

To analyse the extent of integration of better regulation and internal security policy, the content analysis of the *National Security Concept of the Republic of Estonia (2004)*, *Main Objectives of Security Policy of Estonia until 2015* and the *Development Plan for the Area of Government of the Ministry of Internal Affairs for 2011–14* was made.

In view of the authors, this contribution better regulation is especially important in the internal security policy. Rules concerning people's security, their rights and obligations towards a state and infringements on their constitutional rights must be very clear and thoroughly analysed. We will now turn to some of the Estonian key policy documents of internal security in order to find out whether or not they embrace the concept of better regulation. Policy documents are analysed because they form the basis for ministerial activities in internal security – including policy design, planning and allocation of resources (people, budget) and legislation; if better regulation measures (e.g. information on impact assessment) are not included on that level, it cannot be transformed to knowledge-based draft legislation routines, adequate laws and/or effective law enforcement, e.g. internal security services.

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[36] European Commission. The EU Internal Security Strategy in Action: Five steps towards a more secure Europe. Brussels. 22.11.2010. COM(2010) 673 final /See also U.Beck 1992; U.Beck and E.Grande (2010) in *The British Journal of Sociology* Vol 61, No 3, pp 409-443/
[37] OECD 2000: 70-71 – see Note 3; J. Tala 2010: 207 – see Note 25.
[38] D. Bigo, S. Carrera, E. Guild & R. Walker. The changing landscape of European liberty and security – *International Social Science Journal* 2008/59, pp. 283-308.
[39] According to C.Radaelli (2010: 91-92), ex ante, mid-term and ex post RIA can function for the government as 'firealarm' – see Note 2./ Radaelli's statement is similar to the Peter Aucoin argumentation that New Public Management wrestled with a tension between empowering public servants and tightening political control over them. In many cases the drive for political control has won out, producing what he calls the New Political Governance, e.g. the harnessing of administration to a "continuous campaign" for reelection (*Governance*. May 2012)
[40] Rule of law, i.e., legal certainty and predictability of administrative actions and decisions, which refers to the principle of legality as opposed to arbitrariness in public decision-making and to the need for respect of legitimate expectations of individuals. Openness and transparency, accountability and efficiency are also specified as common standards for action within public administration - OECD Sigma (1998). Preparing Public Administration for the European Administrative Space. Sigma No 23. Paris (pre-accession messages of EU☺).

Three policy documents are analysed here. The analysis focuses on whether and to what extent are better regulation measures (impact assessment, consultations, simplification, etc – see box 2) related to the concept of internal security policy, its objective and measures.

The National Security Concept of the Republic of Estonia (2004) [41] specifies that:

Estonia's Internal Security Policy encompasses the functions of the state's internal security agencies and the general structure of the system as well as participation in activities ensuring international security. The main functions of the Internal Security Policy, for achieving the goal of the National Security Policy, are the ensuring of domestic stability, and the protecting and saving of human lives.

The importance of a government based on the rule of law is also emphasised, but the policy process and better regulation measures are not mentioned in the document.

The Main Guidelines of Estonia's Security Policy Until 2015 develops this policy further and "specifies the standard principles, vision, directions and long-term objectives of the security policy – principles which must be adhered to, and objectives which must be facilitated by the public sector, non-profit sector and the private sector." Three policy planning phases are described in the definition of security policy ― development, improvement and implementation of legal acts, development plans and activity plans with the aim of preventing threats to public order; and in case of a suspected threat, ascertaining and eliminating them.[42]This is amended by the definition of security:

[…] a social state of affairs which is created with the help of many, which allows individuals to feel protected, and which ensures a truly safe living environment by reducing the probability of hazardous situations as well as enhancing the ability to react to threats and alleviate the damage caused by realisation of the threat.

The generally accepted principles of involvement of stakeholders and public consultations are also stressed as a method for preventing deviant behaviour, which is a positive step towards better regulation.[43] Some guidelines for impact assessment, involvement and better regulation are specified in the implementation parts of the policy document but their emphasis remains on the implementation of the said policy itself not its quality as a whole (in short – the results of content analysis are showing the lack of ex ante IA and public participation in policy design).

The Development Plan for the Ministry of Interior for 2011-2014 states that the field of internal security includes the creation of internal security policy that is comprised of crisis management, rescue, migration, border guard, law enforcement and criminal justice policies and the internal security education.

Better regulation concept (see box 2) is not included in the body of this document in spite of the fact that more "effective and transparent processes" are foreseen as one of the objectives of the Plan. However some elements of the concept e.g., consultations, risk analysis and optimation of administrative burdens are mentioned in the annexes ("Overview of the current situation") of the document.[44]

The analysis of given internal security policy documents confirms that better regulation measures (e.g guidelines for draft legislation) are not yet systematically integrated in the concept or development measures (action plan) of Estonian internal security policy. Some elements of better regulation are however occasionally mentioned in annexes or background information. Unlike many other ministries in Estonia, the Development Plan of the Ministry of Interior does not include a special part for organisational development measures where better regulation measures usually belong (see Conclusions).

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[41] Eesti Vabariigi julgeolekupoliitika alused (The National Security Concept of the Republic of Estonia). – RT I 2004, 49, 344 (in Estonian). Available at http://www.vm.ee/?q=node/4107.

[42] Eesti turvalisuspoliitika põhisuunad aastani 2015 (Main guidelines of Estonia's security policy until 2015). – RT I 2008, 25, 165 (in Estonian). English text available at http://www.siseministeerium.ee/29744/.

[43] Kaasamise hea tava (The good practice of public participation - 2005, new edition 2011). Available at http://www.valitsus.ee/et/riigikantselei/valitsuskommunikatsioon/kaasamine/kaasamise-hea-tava (in Estonian).

[44] Siseministeeriumi valitsemisala arengukava 2011-2014 (The development plan of the Ministry of Interior 2011-2014). Available at http://www.siseministeerium.ee/17410/ (in Estonian).

3. *Systematization of internal security law in Estonia*

In 2004 Estonia became a member of the EU, in 2011 the EUROzone and is meeting all formal criteria for the membership, but is still facing with many informal regulatory management capacity problems in terms of implementation of better regulation principles in daily work of ministries.

The main functions of the democratic parliament and government are similar in different countries, and in this context the existential question of smaller parliamentary democracies like in Estonia (population ca 1.3M) have been *how to optimize the regulatory management and how to compensate for the limited resources of regulatory governance in the ministries and in the parliament?* In 1990ies the question was frequently answer in the framework of New Public Management (NPM) Theory[45] and after joining to EU in the framework of good governance and better regulation.

The tools for rationalisation and democratisation of public policy, provided by better regulation measures, are quite variously interpreted in most European countries and also on the level of different ministries of the same country.[46] We also know that not only the great interaction between different policy domains is characterizing the legal frame for internal security in the EU, also the large variety of national practices and the diversity across the EU member states in translating and implementing EU rules and regulations into national law contribute significantly to the complexity of internal security regulations.[47]

In order to improve the understanding of the state of play for all ministries and their regulatory agencies and also for all nongovernmental stakeholders in specific security-related situations, it is important to have an overview of all EU and national regulations and their interaction related to internal security.
Authors mapped both EU and national internal security law based on a vision that a database with legislation in force in the EU and national level might contribute significantly to this understanding and would facilitate the national process of identifying potential bettet regulation gaps, conflicts, averse effects, of the rules, conditions and regulations in use.[48]

According to ESRIF (2009) the EU internal security law includes ca 20 sub-categories (see box 3).

Box 3: *General structure of the European Union internal security law*

1. Dual use, export control,	11. Classification of documents and information
2. GATT, WTO-rules	12. Public procurement
3. International public law	13. Data protection, privacy rules
4. Space law, law of the Sea	14. State Aid law,
5. Airtransport law	15. Competition law
6. Road transport regulations	16. Citizen's rights, loss of privacy, infringement of liberty
7. Handling of dangerous items, sensitive materials	17. Digital evidence, electronic signatures, litigation
8. Intellectual property rights	18. Criminal law
9. Liability, e.g. contractual liability, product liability and absolute liability	19. Technical standards, safety regulations
10. Insurance issues	20. Art. 296 EC Treaty

Source: ESRIF 2009: 198

The mapping and systematization of Estonian regulations in the field of internal security reveals that there are roughly 150 laws in force today.[49] This is an overwhelming amount considering that almost all of those laws have lower (implementing) acts as well. We call this bulk of laws and regulations the internal security law. This situation is not new or recently developed.

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[45] A.Kasemets (2000). Implications of new public management theory in parliamentary research services. *In: IFLA Proceedings: Section of Parliamentary Libraries and Research Services; Jerusalem, Israel;* No 073-98(WS)-E http://ifla.queenslibrary.org/IV/ifla66/papers/073-98e.htm
[46] K.Staroňová, Zs. Kovacsy and A. Kasemets (2006) – See Note 22.
[47] ESRIF 2009: 197-199 – see Note 31 (EU 'problem': variety & fragmentation of national practices in the context of global risk society).
[48] A.Talmar-Pere; A.Kasemets (2011). The structure Estonian internal security law – Draft Report of Better Regulation and Internal Security Research Group – Estonian Academy of Security Sciences (in Estonian). Sources of structure: Notes 30 (ESRIF 2009:198), 41, 42 and 44.
[49] *Ibid*

For example, a case of EU-Russia border area and crossing points regulations in Estonia to analyse the work processes optimization of border police officers (Ministry of the Interior) and customs officials (Ministry of the Finance), who perform different tasks (see box 4).[50]

Box 4: *Estonian/EU Border Protection and Customs regulations in border area (an example):*

1. Police and Border Guard Act;
2. Law on State Border;
3. The Customs Act;
4. Law on animals and animal products trade and veterinary supervision of import and export;
5. Government of the Republic Regulation No. 176 of 17.09.1997 "Approval of the Rules of Border Regime";
6. Government of the Republic Regulation No. 205 of 25.06.2002 "Border crossing points for international traffic";
7. Government of the Republic Regulation No. 194 of 19.05.2004. "Of ships and small ships entering and exiting internal waters, ports, and transboundary waters belonging to Estonia";
8. Minister of Finance Regulation No. 100 of 27.04.2004 "Requirements for the customs warehouse, terminal and storage place";
9. Minister of Finance Regulation No. 38 of 06.05.2009 "Additional instructions for executing the formalities of entering and exiting of goods";
10. Minister of Finance Regulation No. 41 of 17.06.2009. "On executing customs formalities on Stocks";
11. The Statutes of Police and Border Guard Board and the prefectures;
12. The Statute of Tax and Customs Board and charters of its subsidiary bodies;
13. European Parliament and Council Regulation No 562/2006 of 15.06.2006 on establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and amendments thereto;
14. CISA - Convention of Implementing Schengen Agreement
15. EU Customs Code and its implementing provisions.
16. Etc

The box 4 gives just one example of internal security regulatory management subsystems and illustrates that every different sub-category of the law branches out to almost enumerable different laws, secondary regulations, decrees, EU guidelines, and so on. All and all the wide definition of internal security law encompasses well over 150 laws and regulations, many of them are overlapping, some even contradictory.

As a French scholar E. Catta states many deficiencies exist in the laws of virtually every state today. Those are: overabundance (usually it is uncertain how many laws there are in a state); pileup of laws (usually the legislative does not summarise former laws nor abolish the contradicting, excessive or expired thus useless texts); and instability (many laws or even paragraphs are changed many times in a year).[51] All of these deficiencies seem to hold true in Estonian internal security law.

Problems like these can be solved through better regulation instruments enumerated above. Along with these instruments E. Catta suggests a few practical steps: 1) compilation – the grouping of texts by subject fields or in a chronological order; 2) consolidation – amendments are inserted to the initial law to achieve a uniform and up to date text; 3) codification uses the two aforementioned solutions to classify norms and integrate them by areas of law.[52]

The Development Plan of the Estonian Ministry of the Interior for 2011-2014 and the Main Guidelines for Estonia's Security Policy until 2015 foresee the codification of crisis management area.[53] But it is of vital importance to map out the whole internal security area before work is started on codifying a specific part of it. If an overall analysis is not conducted the codification will probably have caps and contradictions in it[54] (see Conclusions and Appendix).

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[50] The study was carried out by Estonian Ministry of the Interior in May 2012.

[51] E. Catta (2002). The importance of proper codification and systematization of the law – *Juridica* 9, pp. 588-589 (in Estonian).

[52] *Ibid.* – Catta 2002: 589; see also Mandelkern Group Report 2001 – box 2.

[53] See Note 42

[54] R.Narits (2005). Systematization of Objective Law in Estonia: From Codification to Reformation of Law – Riigikogu Toimetised 12, pp 71-79 (in Estonian).

4. *A sociological e-survey of the Estonian Ministry of Interior officials*

The questionnaire of sociological e-survey of Ministry of the Interior includes most important elements of strategic and regulatory management, e.g. planning, objectives, processes, organisational culture, values, expectations, motivation, roles, leadership, hierarchy, participation, workload, training needs, carieer, media, reputation, etc (n=104, see table 3).[55] The following short overview is focused on the better regulation and regulatory management issues.

The implementation of better regulation measures in the Ministry of the Interior is observed mainly via two theoretical frameworks, e.g. institutional theory (II) and the adaptive strategic management theory.[56]
We are considering the organizational strategic management options of the Estonian Ministry of Interior in the international context of regulatory reforms, because on the one hand the EU, NATO and OECD membership calls all Estonian ministries to implement the principles of good governance and better regulation. On the other hand there is a period of complicated financial cuts and all public sector organizations must adapt with the budgetary, human resource and other restrictions. Among other things, this means that the Ministry has often to make contradictory choices despite of earlier promises on good governance etc (many policy documents, developed before 2008, are not valid in practice due to lack of human and financial resources).
The additional role of sociological e-survey was/is to provide for the Ministry as a learning organization a clear reflection and policy recommendations how to improve the regulatory management.
The e-survey helps to explain current organizational problems and find answers to the question of why the Ministry has had difficulties in implementation better regulation principles and regulations of draft legislation (see box 1 and Table 2)? Also, why both legal/regulatory policy and internal security policy tend to fail[57] if they are not systematically integrated (e.g lack of political support, budgetary resources)?
Thus, based on aforementioned theoretical framework and the dynamic changes of external environment, there are two interrelated research questions. First, what are the main obstacles for the Ministry of Interior to implement the knowledge-based public policy design and better regulation measures (e.g. IA methods and working routines)?[58] Secondly, how the patterns of officials values, expectations, working routines and proposals are related to implementation of better regulation principles and how to assess the nature and the officials readiness for change?

Some results related to better regulation principes and key areas/measures
The officials satisfaction with main processes of regulatory management (e.g planning) in the Ministry is quite low (n=104, examples): a) „**law drafting process,** e.g. consultations, legal act design, drafting, implementation and plans of ex post impact assessment" (**35%** very+ mostly satisfied); b) „informing the stakeholders and general public about the initiatives, works and results of Ministry of the Interior" (31%); **c) „the annual updating The Development Plan for the Ministry of Interior**, e.g. design, discussion, impact assessment and budgeting" (**19%** mostly satisfied, 41% hard to say); **d) „ex ante and ex post impact assessment** of policy documents and draft laws in the field of social, economic, environmental, security and othe impacts" (**19%** mostly satisfied); e) „the assessment of personell and **training needs** and its planning" (**12%** satisfied). In all aforementioned cases we can find the "owner" of the process.
From the other side, satisfaction with the quality of decison-making (n=104, examples): a) „descisions made are mostly understandable for the stakeholders and the public" (56% fully + mainly agree); b) **„for**

[55] A.Kasemets, E.Orumaa; L.Tabur (2011). The sociological family photo of Ministry of the Interior 2011: readiness for changes – Proceedings of Estonian Academy of Security Sciences 10, pp. 90-109 (In Estonian). The survey was commissioned by the Chancellor of the Ministry of Interior .
[56] L.E.Paarlberg; W. Bielefeld (2009). Complexity Science - An Alternative Framework for Understanding Strategic Management in Public Serving Organizations. International Public Management Journal, Vol 12, No 2, 236-260; see also J.M.Bryson, B.C.Crosby; J.K. Bryson (2009). Understanding Strategic Planning and the Formulation and Implementation of Strategic Plans as a Way of Knowing: The Contributions of Actor-Network Theory. International Public Management Journal, Vol 12, No 2, 172-207
[57] Kasemets 2009; OECD (2000). Reducing the Risk of Policy Failure: Challenges for Regulatory Compliance. Paris. lk 70-71.
[58] See institutional theory, e.g. Scott 2001 – Note 14

the preparation of important policy documents and draft laws the impact assessment and public participation methods are used" (24% agree);[59] and c) „in the definition stage of the policy problem the seminars and trainings with external experts are usually organised" (12% agree).[60]

Box 4: Organizational culture and human resources: some reflections (n=104, % agree + mainly agree)

- I know the missioon of our organization (70%)
- I can understand how my work objectives are linked to the goals of the Ministry (61%)
- I have enough information to fulfill my duties (54%)

- Our missioon is working in practice (48%)
- My work is well planned (planned vs. 'firefighting' activities) (38%)
- Top management involves ministry staff in the preparation of important decisions (35%)
- Our ministry's top management makes tough decisions on time (28%)
- I have enough time to perform my duties (27%)
- I know how the top managers see the management of the Ministry after 3 years (14%)
- There is sufficient number of officials to implement the political strategy documents (14%).

The adaptive strategic management approach emphasised the importance of participation and flexibility – many questions tested the dominating attitudes and practices related to participation. Some examples.

A large proportion of respondents (42%) felt that in today's Ministry managerial relations is dominating the operational command culture, 33% think that there are an open participation culture and operational command culture more or less balanced, and 7% think (all top executives) that an open particiption culture is dominating in the Ministry (and 18% say "hard to answer").

According to OECD (2001),[61] the framework of inclusion/engagement consists of three components - information, consultation and participation. With work related information flow are satisfied 58% (often + always) of respondents, with consultations 36% and with possibilities to participate in the decision-making process 25%* (*statement: "I feel that I am sufficiently involved and my knowledge, skills and experience find the application"). Free responses (29 answers) have diverse nature, including "I would recommend to top-managers and politicians take into account the opinions of experts [..]", "There is no time to be involved" or "the participatory democratic thinking is missing."

Ratings of the Ministry of Interior on training, information services and career system are predominantly negative, e.g. with ordering and use of statistics, commissioned applied research and analyses in the descison-making process is satisfied only 18% of respondents (lack of strategic data gathering).

This sociological e-survey of the officials of the Ministry of Interior (n=104) indicates discontent with the organisation of the impact assessment of policy documents and draft legislation. One general question of institutional analysis (see Table 1), is on what level the reasons precluding the implementation of better regulation principles in internal security policy are? E-survey clarified that 1) there are no international or national political obstacles or regulatory restrictions to apply better regulation principles in the Ministry of the Interior; and 2) the application of better regulation principles depends greatly of the choices made by vice chancellors and departments, their values, work routines and understandings how to implement the better regulation measures (e.g impact assessment, participation, simplification) in the context of policy-making interactions and budgetary limitations. So, it is first and foremost a question of ministerial strategic management, priorities and political will, and then the question of officials training system, motivation and institutionalized working routines and regulations.

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[59] Free responses show that depending on the unit, the routines of consultations vary in the Ministry. As we know from the pre-study (Table 2), most of consultations are not documented in the draft laws explanatory memoranda (lack of [time], transparency and accountability).
[60] According to European Commission Impact Assessment Guidelines (2005, 2009) its a second stage of impact assessment process
[61] OECD (2001). Citizens as Partners. OECD Handbook on Information, Consultation and Public Participation in Policy-making. Paris

III. CONCLUSIONS AND SYNTHESIS

The case of the Ministry of the Interior shows that the better regulation principles and measures are not systematically integrated with the internal security policy design and draft legislation.

The general hypothesis of the study/paper was confirmed in three substudies (e.g. content analysis of internal security policy documents, mapping of internal security law and sociological e-survey): the reason for the problems connected with the quality of draft legislation in the Ministry of the Interior is that in the internal security policy documents, related action plans and public administration routines, the guidelines for better regulation have not been taken systematically into account.

In the analysis of academic literature, OECD and EU reports and Estonian internal security policy documents and laws, our goal has been to find out and incorporate appropriate good governace and better regulation elements/ideas into our relatively miniature system of regulatory governance.[62]

Some conclusions for internal security policy reflection (learning) and comparative follow-up studies:
- The gap exists between the rule of law principles and actual better regulation key activities (e.g., impact assessment, participation, simplification etc. – box 3) and it indicates serious problems in governance, because without impact assement and participation information it is difficult to talk about knowledge-based and responsible policy debate, law-making and public administration. The selective compliance of law-drafting requirements (Table 2) reflects the informal understanding about 'rules of the game' in the context of recent regulatory reforms before and after joining to EU. To sum up the moral statement - while constitutional institutions, the parliament and ministries (e.g. the Ministry of Interior) do not observe better regulation principles (e.g. current regulation of law-drafting) and thereby violate the principle of *the rule of law* (e.g. law-making), there is no reason to wonder that the awareness of citizens with respect to law issues is comparatively poor, that we have problems with professional loyalty of IS officials, that the general public does not consider legal protection legitimate enough, that many social groups do not believe in the words of politicians nor in their own possibilities to affect political decision-making on national or local level (this situation may create the risks for internal security).
- The aforementioned results of substudies can be interpreted also as a „mimetic behaviour" which is often undertaken by organizations when regulatory management performance measures are ill defined in the strategy documents.[63] Organizations like the Ministry of the Interior can and do deviate from (inter)national institutional norms (Table 1), although the stronger the institutional pressures (e.g. policy research, negative publicity) the less frequently will deviation be observed.
- The planning and budgeting of regulatory impact assessment in the ministries takes place through strategic documents: one reason for the problems connected with the quality of draft legislation is that in the internal security policy documents, the guidelines for better regulation have not been taken systematically into account. In addition – we cannot provide the 'negative' evidence of internal security law enforcement capacity problems (based on the aforementioned substudies), but according to former studies it is obvious that *ex ante* regulatory impact analysis/assessment information with stakeholders (clients) expectations and proposals provides a rich basis for formulation of policy implementation end evaluation guidelines, design of service delivery system, civil servants training programmes, public service marketing campaign, etc.

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[62] H.Brinkmann (2008). Towards a Beautiful New World of Regulation? – EIPASCOPE 2, pp 41–42 (it's a simplified communicative approach where the good governance is defined as a sum of [good] policy design, regulatory impact assessment, law, public administration and communication).// See also Notes 5 and 18*. *Since 1995 the institutional framework and supportive system of juridical analysis of draft laws have quite well been established in Estonia, but having analysed the institutional preconditions related to social, economic, environmental, etc impact assessment (IA), civic engagement and the quality control of given fields, only a slight improvement can be observed in some filegs (like civic engagement) and in some ministries, e.g. The Estonian Ministry of Social Affairs (see Table 2).
[63] See also OECD 2000: 71-72 – Note 3; Radalli 2010: 90 – Note 2.

- Another research problem worth mentioning is the absence of a consistent definition of internal security policy that probably precludes the effective communication between the political-administrative and operational management and effects also to the consultations with target groups. This could consequently lead to much worse results when urgent action is needed.

- The selective obedience to rules of draft legislation in the Ministry shows also that the quality of public information on impact assessment and consultations in the explanatory memoranda of draft laws is weak and the preconditions for evaluating the validity of constitutional legislative rules and the quality of law (e.g. necessity, proportionality, etc) are not fulfilled.

- The mapping of Estonian regulations in the field of internal security reveals that there are roughly 150 laws in force today. This is an overwhelming amount considering that almost all of those laws have lower (implementing) acts as well. In the context of both risk society and budgetary cuts this kind of fragmentation and overregulation can create new regulatory management problems. The analysis of the quality of draft legislation and the excessive amount of laws in internal security field gives evidence of lack of systematic *ex ante* and *ex post* regulatory impact assessment.[64]

- A sociological survey of the officials of the Ministry of Interior indicates a remarkable discontent with the organisation of the impact assessment of policy documents and draft legislation. The officials working in the Ministry of Interior emphasised the lack of human and budgetary resources and on the other hand most of them[65] are critical and unsatisfied with the strategic and regulatory management practices (e.g. planning, use of studies, impact assessment, participation) and training systems. According to analysis this shows readiness for changes in the context of risk society challenges and adaptation with hard structural reforms and budgetary contractions.

It is thus too early at this stage to speak about systematic implementation of better regulation guidelines in the internal security policy design. Some significant improvements have been made in recent years but the importance of quality and sustainability of the whole policy process is still not emphasised enough.

One question of institutional analysis is on what level the reasons precluding the implementation of better regulation principles in internal security policy are? In connection to Estonia three observations could be made: 1) there are no international obstacles nor national regulatory constraints, the better regulation programmes apply to Estonia;[66] 2) Estonia took a step closer to the leading countries of OECD by approving the Development Plan for Legal Policy in 23.2.2011 (e.g guide for regulatory impact analysis); 3) the application of better regulation principles depends greatly of the choices made by vice chancellors and departments, their values, work routines and understandings of the better regulation policy.

It seems thus that political commitment is one of the most important preconditions for introducing the better regulation measures, e.g methods of impact analysis and civic engagement. To be useful, impact assessment should be institutionally linked to decision-making and the creation of laws. According to White Paper on European Governance (2001): "Carrying these actions forward does not necessarily require new Treaties. It is first and foremost a question of political will."[67]

However, the institutional 'rules of the game' are not so much positivist as they could be if examined through the lenses of systematization and standardization of EU internal security regulations. Most researchers are convinced that national political culture, administrative traditions and institutional arrangements play an important role as explanatory factors for the good governance and related better regulation and human resource management initiatives in Europe.[68]

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[64] In addition, the fragmentation of internal security regulation (see box 4) has structural nature in broader context. The OECD analysis of public governance of Estonia "Towards a Single Government Approach" (2011) shows that fragmentation is the greatest problem. The governance of Estonia is built on relatively independent ministries who are responsible for their area of government. All this makes setting and realising common goals (like better regulation) complicated for the Government. The main message of the OECD is that Estonia should move towards a single government approach. See: http://www.oecd.org/country/0,3731,en_33873108_39418677_1_1_1_1_1,00.html

[65] Particularly concerned and critical are middle managers and senior officers/advisers (a valuable feedback for top managers & politicians).

[66] Mandelkern , OECD (Note 2).

[67] European Commission. European Governance. A White Paper. Brussels, 25.7.01, COM(2001) 428; see also OECD 1997, 2008 – notes

[68] Notes 7, 14, 17, 22, 30; also R.E.Mayer, G.Hammerschmid (2010). The Degree of Decentralization and Individual Decison-Making in Central Government Human Resource Management: A European Comparative Perspective – Public Administration Vol 88, No 2, 455-478

Appendix: *some policy recommendations (1-3) and ideas for comparative follow-up studies (4)*

Owing to the fact that implementation of the Main Guidelines of the Security Policy Until 2015 as well as attainment of the objectives is supervised by the Estonian Ministry of the Interior, some suggestions are made by the authors that could be included in the Ministry' development plans in the future:
(1) Regulatory impact assessment guidelines should be drafted for the development plans, policy documents and laws in the field of internal security to increase the analytical and administrative capacities of the concerned Ministries.
(2) Civil servants trainings (if possible, with representatives of stakeholders) before drafting and adopting any new policy document and/or laws on internal security should be conducted.
(3) In connection with the excessive amount of laws in force in the field of internal security, an integral analysis should be conducted before drawing up any new laws. In light of the described imperfections and fragmentations internal security law faces, the authors suggest a comprehensive systematising and/or partial codification this field of law.[69]

(4) In this discussion paper the authors managed just to take a glimpse to the given problem, but hopefully demonstrated that the connection between internal security policy and better regulation deserves further research. Some preliminary ideas for international comparative studies and co-operation:

- The quality of regulatory impact analysis in the EU and its Member States internal security policy design and regulations (we are very interested in a comparative study of smaller states).
- Linking laws legitimation and laws enforcement measures in the field of internal security (e.g. police, rescue, crisis communication, anti-corruption networks, horizontal co-op of agencies, etc).
- Systematization and standardization problems of internal security law, e.g. linking EU innovation & security research agenda,[70] strategic regulatory management and law enforcement capacity.
- The role of political motivation and reputation in the institutional design of security policy.
- Regulatory impact assessment data, civic engagement and politico-administrative communication in the context of global information and risk society.[71]

Tallinn, 23.05.2012

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[69] Systematizing objective law is not merely a technical task, especially in such case where we can see so many interactions between different policy and public administration domains (e.g. police, rescue, customs, transport, environment, etc). Systematization of legal provisions creates and develops the system of concepts that frames all legal thinking – incl. clarification of the content of legal provisions. In its final stage, systematization of objective law is an essential tool in implementing the rule of law as an idea in applied form. The aim on codification is above all creating legal certainty and clarity by making it easier for those applying the law to find the necessary regulation and providing a more general view of the applicable law.

[70] Note 30; European Commission. Proposal for a Council Decision establishing the Specific Programme Implementing Horizon 2020 - The Framework Programme for Research and Innovation 2014-2020, Brussels, 30.11.2011, COM(2011) 811 final, see p. 6.3. Secure societies.

[71] Politico-administrative information products as *a public services* of the Government (e.g. internal security initiatives, speeches, regulatory impact analyses, reports, strategies, laws, etc) compete on the glocal information market for the attention and recognition of people.