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Strengthening Access to Information and Public Participation in Government Decisionmaking in Latvia:

An Assessment of Current Institutional Processes and A Suggested Program to Implement the Laws on Administrative Procedure and Information Access

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Final Report

August 16, 2001

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Strengthening Access to Information and Public Participation in Government Decisionmaking in Latvia:

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Malcolm L. Russell-Einhorn, Jeffrey Lubbers, and Vedat Milor

Executive Summary

Latvia is in the midst of a major reconstruction of its system of public administration. Among other reform efforts, the country has sought to promote transparency and public participation in executive branch decisionmaking through the adoption of several mutually reinforcing institutions – government-civil society councils or other consultative mechanisms, a law affording the public access to government information, processes facilitating public input into the rulemaking process, and a new administrative procedure law strengthening citizens' ability to challenge bureaucratic decisions within agencies or in the courts.

By limiting bureaucratic discretion, such institutions have the potential simultaneously to increase the predictability and fairness of regulatory processes. In theory, information asymmetries can be reduced and regulatory transaction costs lowered, strengthening the kind of supportive roles for civil society – emphasizing 'voice' and partnerships – that are emblematic of so-called Second Wave public sector reform.

This report represents an effort to assess the steps that the Latvian Government has taken to strengthen these public accountability mechanisms. It also presents specific recommendations on how to implement two laws – the existing Law on Information Access (LIA) and the soon-to-be enacted Administrative Procedure Law (APL) – in a manner in that will maximize their potential benefits to citizens, businesses, and the government. The recommendations include a suggested government program and action plan that would guide

the implementation process for the two laws over an 18-month period beginning around October 1, 2001 and extending through March 31, 2003.

The Broader Context of Administrative Law Reform in Latvia and Other Transition Countries

The ability of individual citizens and businesses to obtain information about Government operations generally and the impact of particular government programs, policies, and decisions represents a fundamental element of accountable governance. So too is the ability of the public to challenge administrative actions, and to have a say in the development of policies, laws, and regulations. These rights are especially important in engendering trust between the state and civil society and in legitimizing a country's various regulatory systems. This is where the state's fidelity to the Rule of Law or lack thereof is most likely to be experienced by the average citizen or business.

Many of these topics can be subsumed under the rubric of administrative law and procedure. The defining objective of administrative law and procedure in Western democracies is controlling administrative discretion. The mechanisms under consideration seek to curb such discretion through direct civil society oversight (so-called 'vertical' accountability) rather than through the checks and balances of other state institutions (so-called 'horizontal' accountability). This accountability challenge looms even larger in the former communist countries where the state's share of the economy was often all-encompassing, the bureaucracy dominated the lives of individual citizens, and civil society was extraordinarily and purposefully enfeebled.

Steeped in civil law traditions and having largely adopted parliamentary or quasi-parliamentary systems, most transition countries have tended to embrace a formal framework for bureaucratic control that favors legislative oversight supplemented by judicial review in

individual cases. Among the Central and East European countries seeking EU membership, these general preferences have been bolstered by various EU directives and general guidance from EU administrative law experts.

Even in the case of a transition country willing to rely more heavily on vertical accountability mechanisms, however, there exist a number of background impediments to this kind of reform – some conceptual, some bureaucratic, some political. In many ways, the most entrenched obstacles are conceptual in nature: despite its importance in establishing certain rules of the game in state-civil society interactions, administrative law and procedure are often viewed as mundane, fragmented, and highly idiosyncratic subjects that even public administration specialists routinely ignore in favor of more heavily-publicized topics such as the New Public Sector Management.[1]

Despite these potential obstacles, administrative law reform may actually represent a relatively cost-effective legal reform investment for those transition countries that have demonstrated significant progress toward democratization. Many processes that fall under the rubric of administrative law may simply consolidate and formalize institutional patterns or rules of the game that have already emerged on a voluntary, quasi-self enforcing basis (e.g., various consultative processes). Moreover, because administrative law and procedure can be implemented on a sectoral or agency-by-agency basis (even after a national framework law is passed), favorable political economies can produce individual 'islands of reform' that can have important local or demonstration effects. Finally, administrative law reform can advance

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1 This blind spot extends to the bureaucratic politics that drive the design and implementation of reform programs. Among government reformers and donor agencies alike, administrative law does not fit neatly into democracy and governance or economic development stovepipes. Insofar as administrative law and procedure embody cross-cutting procedural principles, they also lack natural, concentrated constituencies among a country's regulators and/or regulated subjects. Finally, each ministry or agency has special procedural norms and its own way of conducting regulatory business that tend to obscure the massive collective impact that such processes have on the daily lives of millions of citizens. Harmonizing or eliminating dozens or hundreds of such special norms to bring them into conformity with common democratic principles involves considerable legal and bureaucratic spade work.

sectoral regulatory reform efforts that are broadly popular (e.g., telecommunications, energy, or agricultural reform) and therefore carry significant support. Many of these factors are at work in Latvia.

Assessment of Mechanisms Facilitating Access to Information and Public Participation in Executive Branch Decisionmaking

This assessment concentrates on five discrete types of vertical accountability mechanisms: (1) advisory councils and other consultative mechanisms; (2) affirmative ('active') provision of information; (3) public participation in ministerial rulemaking and legislative drafting; (4) responsive ('passive') provision of information upon request; and (5) administrative procedure. The foregoing sequence represents an ascending order that roughly reflects the increasing time, resources, and legal formality (sophistication) that may be necessary to institutionalize their effective use.[2]

Consultative Mechanisms. In the interest of improving the technical quality of policy and rulemaking and adding some stakeholder participation, government officials often turn to formal or semi-formal consultative mechanisms (CMs) to gather information and elicit opinions from knowledgeable and interested individuals or organizations. Because they can, at their very simplest, involve a handful of individuals functioning as an advisory body with little institutional infrastructure or budget, CMs may be one of the least costly accountability investments that a government (or individual ministry) can make as it seeks to obtain additional expertise. On the other hand, empowering CMs to serve as more truly representative forums for diverse sectoral or social interests can involve a much greater expenditure of time and resources, not to mention political risk.

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2 For example, consultative processes can function quite effectively in the absence of formal procedures or abundant funding. By contrast, even a modestly functional responsive information access system or administrative procedure regime requires large outlays of money, large numbers of trained individuals, and a significant level of legal sophistication.

CMs describe a very broad range of public-private bodies. They extend from formal councils established by statute to address specific policies and draft legislation at regularly scheduled meetings, to informally chartered groups that are convened from time to time to discuss general topics like the climate of government-business relations. The potential benefits of such consultation include improved information for public and private decisionmaking; greater consensus about the ownership and credibility of policy reforms; and reduced costs of business-government transactions through habitual interaction and the generation of social capital.

Risks also attend such bodies, however, including possible reinforcement of the power of existing elites and insiders; their use as vehicles for rent-seeking; and their circumvention of broader and possibly more transparent forums for policy dialogue. CMs around the world have been organized on a national basis (e.g., South Africa's National Economic Development and Labor Council (NEDLAC)), sectoral basis (e.g., Ghana's Private Sector Roundtable), or industry or functional basis (Latvia's Road Traffic Safety Council).

Successful CMs seem to share five important characteristics:

- They have a specific and well-defined set of objectives
- They have transparent internal procedures and strong public participation
- They have an effective secretariat that streamlines the organization's work
- Membership is drawn from broad sectoral or functional constituencies rather than industries whose narrow interests may skew the work of such bodies
- They feature follow-up and monitoring procedures that enable CM participants to know what happens following any formal or informal agreements produced during CM discussions.

Latvia has a wide range of CMs, from those with well-defined objectives and significant policymaking duties (e.g., the Tripartite Coordinating Commission that takes up most matters of social policy and legislation) to those whose agendas are looser and

government commitment possibly weaker (e.g, the National Economic Council). Among the most important ways to strengthen CMs in Latvia may be the following:

- Create greater public awareness of the work of CMs generally, as well as pressure for greater accountability
- Develop a greater appreciation by NGOs and the business community of the need for greater technical expertise and professionalism in working with CMs
- Encourage the government to adopt a concerted CM improvement strategy
- Encourage greater CM reliance on working groups and subcommittees
- Adopt uniform basic guidelines for CMs.

An important consideration in improving the functioning of CMs is the need to avoid usurping the powers and legitimacy of official decisionmaking organs. CMs should complement, not substitute for, formal policy- and decisionmaking organs.

Affirmative ('Active') Provision of Information. Government accountability depends critically on access to information. Indeed, general information about executive branch organization, processes, and substantive policies represents the basic currency of government accountability. Such transparency enhances control of administration, helps create more efficient public sector program delivery, and contributes to more vibrant and informed political life. The absence of such information may increase opportunities for abuse of authority, corruption, and poorly-informed decisionmaking.

Access to government information may be largely informal, haphazard, and dependent on the preferences of current officeholders – as it is in most countries around the world – or it can be formalized in law and institutionalized in practice. In discussions about democracy and individual rights, the responsive, or 'passive' provision of information upon request invariably garners the most attention. Yet establishment and maintenance of such a system of information access requires considerable time and resources, as well as legal expertise. By contrast, the affirmative, or 'active,' provision of information by the government can be

prioritized and routinized along more predictable budget and human resource parameters by making available certain classes of official information regarded as the most vital to the economy and political discourse.

Several countries have laws on access to information that include affirmative provision requirements, including the United States, Ireland, Australia, Canada, Hungary, and the Netherlands. These laws mandate that information about government agencies, including policies, decisions, interpretations, and staff manuals and instructions be made public. Other countries may have a custom of making such information accessible.

Latvia's Law on Information Access (LIA) does not have an affirmative information access requirement, although several individual laws (e.g., Law on State Statistics) require specific kinds of disclosure. The only significant nationwide affirmative publication requirement comes from the Cabinet of Ministers Instruction on the Procedure for Preparing Annual Public Statements. It mandates that national agencies annually disclose information about their mission, activities, budgets, and key accomplishments. Other disclosure occurs through the initiative of individual agencies, e.g., the State Enterprise Registry, which has published many brochures about its work, and which maintains a listserv by which it disseminates commercial law information.

As the phenomenon of voluntary information disclosure expands, the Latvian government should consider adoption of more expansive and uniform principles for affirmative information provision, including a more encompassing list of the types of documents that must be provided in hard copy and electronically; minimum requirements for agency web sites, and general policies on the commercial re-use of public sector data.

Public Participation in Government Rulemaking and Law Drafting. In most countries around the world, the drafting of rules and legislation represents a relatively closed affair carried out by a small working group composed of agency personnel and a few outside experts. In many cases, however, their work product may contain impractical provisions, conflict with other normative acts, and fail to address the actual needs of intended beneficiaries. To remedy these problems, some countries have sought to open up their regulatory and legislative drafting processes at the agency level by permitting some degree of public comment. Among the transition countries, only Hungary has a comprehensive law requiring such public input; other countries in Central and Eastern Europe have informal arrangements for inviting knowledgeable and interested NGOs to participate in consultations or provide comments on draft regulations and/or legislation.

Latvia has generally treated the issue of public participation in ministry rulemaking and legislative drafting on an *ad hoc,* ministry-by-ministry basis. In the past year, however, the government has moved to adopt two related formal mechanisms that seek to elicit public comments on all regulations and legislation passing through the Cabinet of Ministers. One requires ministries proposing new rules or legislation to document the extent to which they have consulted with NGOs or foreign experts on their proposals. The other requires proposed rules and legislation to be posted on the Cabinet of Ministers web site for comment shortly before the Cabinet takes action on them.

Despite their potential to promote greater public participation in lawmaking and rulemaking, both mechanisms fall short of their promise. The annotation process not only provides little guidance as to how the consultations are to be conducted (posing the danger that the process will be treated as a mere formality) but does not even by its terms require that

consultations be held (although they are obviously expected). The website posting requirement, though laudable, is hostage to the country's low Internet connectivity and occurs at a relatively late stage in the drafting process.

In moving toward a more participatory drafting regime, the government should consider reforms that would encourage or require ministries and administrative bodies to devote substantial time to public consultation and solicitation of comments closer to the beginning of the legislative or regulatory drafting process. This could involve more precise guidance as to the time and manner by which consultations or public comments will be invited (e.g., website posting, email or mail distribution to interested parties, etc.).

Responsive ('Passive') Provision of Government Information. In recent years, a number of transition countries have enacted access to information laws, including Hungary, Lithuania, Slovakia, Bulgaria, and Georgia. Latvia's LIA became effective in 1999, but it suffers from several textual and conceptual deficiencies, including these:

- The law may not apply to all state administrative bodies
- Many definitions are unclear
- The law does not clearly take precedence over other laws concerning the disposition of government information and its access by the public
- There is no clear right of public access qualified only by a limited number of legislatively-defined exemptions
- There is no public interest or other balancing test governing disclosure of otherwise restricted information
- The right to appeal to court a refusal of access may be artificially limited.

Many of these impediments have been documented in a study conducted in 1999-2000 by the nongovernmental organization *Delna.* The study depicted government officials as poorly informed about citizens' rights under the law and hostile to information requests.

The law's shortcomings on paper and in practice necessitate not only amendments to the LIA but the designation of a state organization to serve as a central source of expertise

and enforcement authority on the law. Presently no such organization exists. Plans are now underway, however, to grant such powers to the State Data Protection Inspectorate. The new Inspectorate could have the following kinds of duties:

- Commenting on draft legislation and regulations affecting access to information across the government
- Serving as a source of expertise on interpretation and application of the law through formal guidance to executive branch agencies
- Serving as a central coordinator for public information and education on access to information, as well as training of government officials
- Investigating public complaints about information access
- Serving as a first- or second-instance informal decisionmaker able to issue non-binding yet authoritative appealable decisions on disputed access matters

Decisions about these functions must be made in the coming months and translated into legislation and subsequent internal government guidance by the Inspectorate.

. ***Administrative Procedure and Judicial Review of Agency Decisions.*** All non-totalitarian societies need a mechanism to resolve disputes that arise between the government and its citizens. Common law countries, with less faith in bureaucrats' technocratic expertise and capacity for fairness, have tended to ensure that appeals of agency decisions within the bureaucracy are bolstered by formal adjudicative procedures and presided over by independent, often quasi-judicial, hearing officers. Civil law systems, less steeped in adversarial procedure and more deferential to administrative authority, have neither the legal tradition nor the political inclination to judicialize agency appeals procedures. Moreover, most civil law systems (with key exceptions like Germany and Austria) feature appeals processes that may vary widely from agency to agency.

Latvia's draft Administrative Procedure Law (APL) has determined to pattern its new system of administrative procedure on a relatively unified German model. Like the *Verwaltungsverfarhengesetz,* the German Administrative Procedure Act of 1976, the Latvian

law is designed to provide a uniform framework of general principles and guidelines by which agency decisionmaking must be conducted. Under this German approach, judicial review tends to focus less on whether the correct procedures were followed, and more on the appropriateness of substantive outcomes.

The draft APL effects the following key changes over current practice:

- The principles of law to be applied by administrative bodies and the courts are enumerated (e.g., equality, proportionality, legality, etc.)(Arts.1-17).
- There is an explicit requirement that the petitioner have an opportunity to be heard at the agency level (Art. 60)
- The form and elements of an administrative decision are explained in detail (Art. 65), along with the right to demand a decision in this form (Art. 67).
- The principle of allowing damages for harms suffered as a result of an administrative act, omission, or decision is clarified (Arts. 90-93)
- The state's burden of proof under judicial review is made explicit (Art. 140)

Despite these impressive changes, the draft law has a few ambiguities that may require modification, including its relationship to other legal norms, the precise nature of the 'hearing' to be afforded citizens at the agency level, and the grounds for waiving the formal elements of an administrative decision. At the same time, implementation of the APL will require a comprehensive education strategy combining the efforts of the government, the legal community, the judiciary, and nongovernmental organizations.

A Suggested Implementation Program for the Laws on Administrative Procedure and Access to Information

The Latvian Government seeks to take an active approach to implementing the LIA and the APL. Few laws are so modest in their apparent import, yet have the potential to play such an important role in the lives of ordinary citizens and in the development of a favorable business environment. Due to low public and government consciousness about the two laws, however, a special government-wide commitment to implementation is required, something that can only come from the Cabinet of Ministers. *Accordingly, we recommend that an 18-*

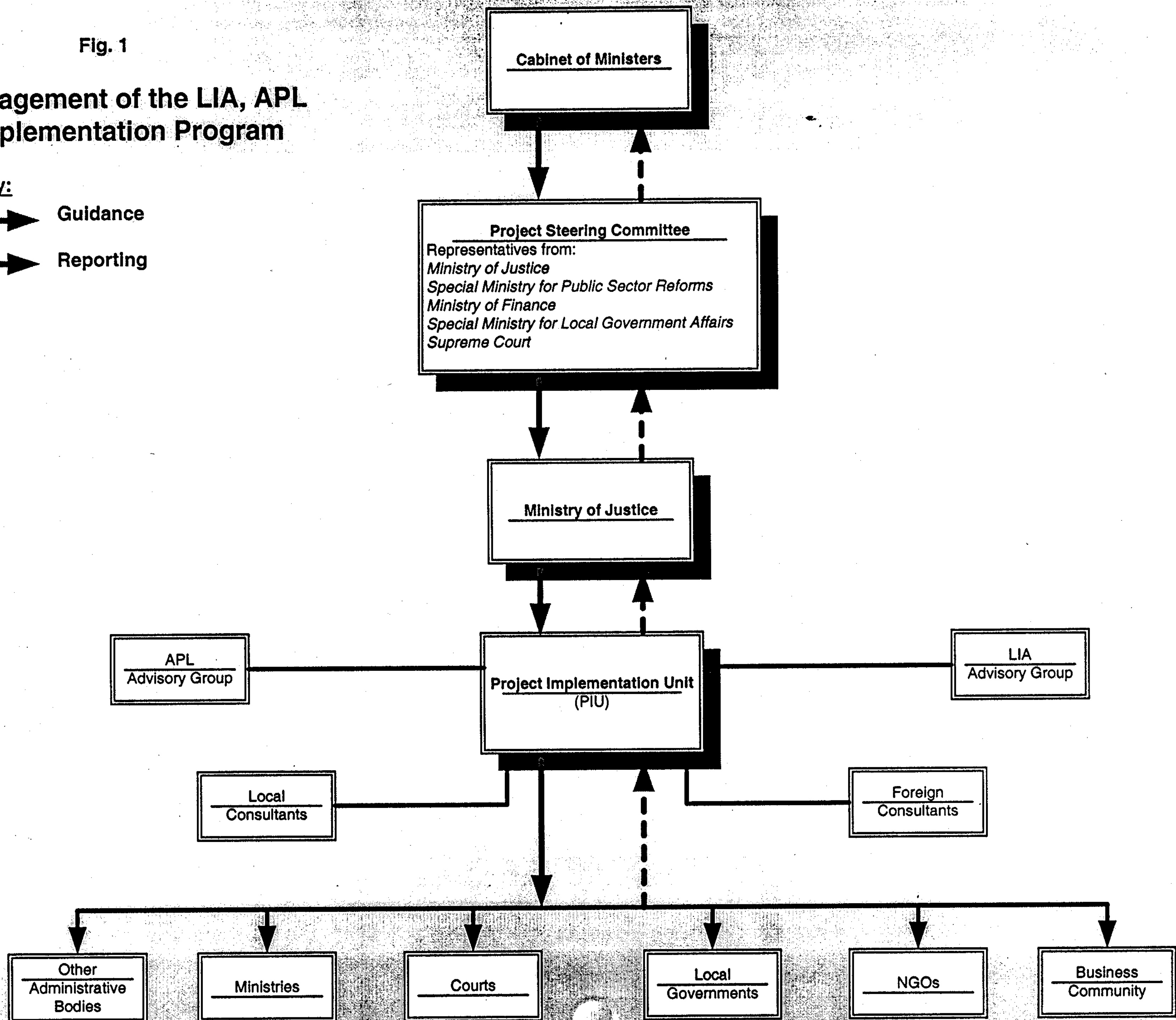
month implementation program (from October, 2001 to March, 2003) be designated as a formal program of the Government. A useful model is the current program on *Improvement of the Business Environment in Latvia.*

Program Organization and Management. Under this implementation framework, we envision overall program coordination residing with the Ministry of Justice (MoJ). Significant other responsibilities would be carried out by the Secretariat of the Special Ministry for Public Sector Reforms (guidance and training for civil servants by the Secretariat, the State Civil Service Administration, and the School of Public Administration), the Special Ministry for Local Government Affairs and the Union of Municipalities (guidance and training for local government officials), the Legal Department of the State Chancellery (oversight over harmonization of other relevant laws, regulations, and other normative acts with the APL and LIA), the Ministry of Finance (creation of a feasible compensation scheme), and the Supreme Court and Latvian Judicial Training Center (guidance and training for judges). *Representatives of these institutions should sit on a program-wide central task force structure (or 'Steering Committee') to be created at the outset of the initiative.*

The Committee would function as a kind of board of directors of the program, providing high-level guidance to an executive group at the Ministry of Justice comprising the Program Implementation Unit (PIU). The PIU would in turn be led by the Deputy State Secretary for Legislative Matters and would include a representative of the Ministry's Division on Legislation and Regulations, the Director of the State Data Inspectorate, a person responsible for public affairs at the Ministry, and a consultant charged with day-to-day management of the program. The PIU would guide the program across the government while serving a central monitoring body (*see Fig. 1).*

Fig. 1

Management of the LIA, APL Implementation Program



Key Conceptual/Strategic Considerations. A number of key strategic considerations must be weighed in the course of discussing and approving the program:

The different implementation contexts of the two laws. Because the State Data Protection Inspectorate must be given new powers in order to enforce the LIA in a more vigorous manner, implementation activities for the LIA will end up on a slower timetable than those for the APL. Amendments to the LIA, in turn, will be developed by the newly-empowered Inspectorate based on empirical evidence.

Treatment of municipalities under the program. Because municipalities are among the agencies least attuned to procedural regularity in their decisionmaking, they will require special attention from the program, subject to legal and resource constraints. We recommend that the program integrate municipalities wherever possible into common training and other tasks or create parallel implementation activities that can be overseen by the Union of Municipalities and the Special Ministry for Local Government Affairs.

Basic approach to training activities. The basic approach to training relies on a core group to experienced trainers steeped in the nuances of the APL and/or LIA who can help develop a broader cadre of instructors through a training-of-trainers mechanism. Decentralized training can then occur more flexibly in disparate venues such as agencies, the courts, and the legal community.

Coverage of proposed training and education activities. The program will feature separate training and education modules aimed at agency lawyers and managers, municipal officials, judges, practicing lawyers, law students, procurators, businesses, the media, and NGOs. While supply-side training and education has its limitations, some level of pump-priming in this regard is an absolute necessity. Over time, it is to be hoped that citizen activism

and decentralized agency/municipality initiatives will lead to greater demand for the two laws and more compliance with their letter and spirit.

Suggested Implementation Program Agenda

The implementation program described in the report does not constitute a blueprint, but rather an ambitious and somewhat idealized agenda that is purposely designed to provoke discussion and debate. Its components have been broken down into detailed tasks in the accompanying Gantt chart in Appendix B in order to provide a logical sequence of implementation tasks that can be modified or eliminated after careful consideration. The program consists of three major parts: (1) common program organization and management tasks; (2) implementation tasks for the APL; and (3) implementation tasks for the LIA.

Common Program Organization and Management Tasks. The major tasks here relate to formation of the PIU and Advisory Groups on the LIA and APL. Under the plan as envisioned, the PIU would submit the program to the Cabinet for consideration by early October 2001 based on input from the Steering Committee. A final program would be approved by November. A workshop on the program would also be held for Deputy State Secretaries and the Union of Municipalities in November. Responsible managers and legal staff in each ministry, as well as responsible officials in each municipality, would be designated by December. These individuals would be introduced to the major implementation tasks under the two laws in workshops conducted in January 2002.

Implementation of the APL. Education and training lie at the heart of the implementation program, although significant press attention, as well as business and NGO activism, should spur changes in administrative and judicial practice. The following clusters of tasks comprise the major objectives of the APL implementation program:

- *Creation and/or Harmonization of Legal Frameworks.* After passage of the APL, all special agency norms must be inventoried and then harmonized to conform to the new law's procedural requirements.

- *Development of a Compensation Mechanism.* The Ministries of Justice and Finance must develop a workable compensation mechanism to fund appropriate monetary awards under the APL.

- *Training of Agency Managers and Lawyers.* Focusing on a training-of-trainers methodology, the program should ensure that a knowledgeable core group of trainers instructs a wider group of potential trainers from the ranks of agency lawyers and managers in the practical impact of the APL. This larger cadre of trainers will then carry out decentralized training of rank-and-file agency personnel toward the end of the 18-month program period. A parallel process will be carried out with municipalities. The core group of trainers will receive special training at the German Judicial Training Academy toward the beginning of the program.

- *Implementation of New/Modified Administrative Appeals Procedures.* Through problem-solving workshops, internal instructions, and special manuals, agencies will oversee and report back to the Cabinet of Ministers on implementation of new and modified administrative appeals procedures consistent with the new law. Municipalities will be asked to go through a similar process.

- *Training of Judges.* New and existing judges assigned to administrative cases will be given differentiated training in the APL. Using the training-of-trainers approach, certain members of the core group of trainers noted above will train at least 3 or 4 dedicated judicial trainers in the intricacies of the APL. These trainers will go on to anchor rank-and-file judicial training at the Latvian Judicial Training Academy.

- *Training of Municipal Officials.* Parallel training for municipal officials similar to that given to national government lawyers and managers will be carried out by the Union of Municipalities, using trainers instructed by the core training group noted above.

- *Education and Training for Lawyers and Procurators.* Lawyers' associations, law faculties, and the Procurator General will be encouraged to provide educational materials and training to their respective audiences (practicing lawyers, law students, procurators). Procurators should know how to provide citizens with proper guidance or referrals to other organizations when consulted about administrative appeals.

- *Public Education.* Public education (of individual citizens and businesses) should occur through a combination of targeted press coverage, public education campaigns (with leaflets and brochures), special research, test litigation, and government publication of official brochures and wall posters that will be posted in government offices according to official instructions.

Implementation of the LIA. Implementation of the LIA centers around proper development of an access to information competency within the State Data Protection Inspectorate, followed by empirically-grounded legal revisions to the law, technical assistance and training to government bodies, and a public education program.

- *Empowerment of the State Data Protection Inspectorate.* A new Access to Information Division will be created in the Inspectorate that will have certain advisory and enforcement responsibilities and possibly a non-binding decisional authority on disputed access matters. Appropriate Inspectorate staff will participate in a study tour to Hungary's Ombudsman for Data Protection and Freedom of Information to learn more about achieving a balance between data protection and dissemination in a modern transition country government.

- *Research on Compliance and Development of Legal Reform Proposals.* The Ministry of Justice will commission and/or encourage research on LIA compliance as a basis for developing reform proposals to eliminate ambiguities and loopholes in the law.

- *Provision of Technical Assistance and Training to Agencies.* Relying on a network of designated information access officers at every national-level government agency (which group will also be linked through an email network), the Inspectorate will launch a technical assistance and training program aimed at nurturing a knowledgeable group of information professionals able to manage and opine on government records classification, registration, and dissemination. A parallel network will be developed among the larger municipalities.

- *Public Education.* This work comprises several tasks, including establishment of a central government web site on access to information (with links to every individual agency's web site and respective information access officer); development of official brochures and informational posters, citizens' leaflets and guidebooks; development of press and broadcast campaigns; and the holding of several workshops for NGOs and the business community.

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Appendix A: Persons Interviewed for the Report

Appendix B: Gantt Chart on the Action Plan

Strengthening Access to Information and Public Participation in Government Decisionmaking in Latvia:

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Malcolm L. Russell-Einhorn, Jeffrey Lubbers, and Vedat Milor3

I INTRODUCTION

Latvia is in the midst of a major reconstruction of its system of public administration. In the past several years, the country has sought to overhaul – twice – its framework for public sector agencies, introduce a new approach to civil service administration, and improve policymaking coordination through the Cabinet of Ministers. The government has also launched a comprehensive anti-corruption program. Even more novel, however, has been the effort to promote transparency and public participation in executive branch decisionmaking through the adoption of several mutually reinforcing institutions—government-civil society councils or other consultative mechanisms, a law affording the public access to government information, processes facilitating public input into the rulemaking process, and a new administrative procedure law strengthening citizens' ability to challenge bureaucratic decisions within agencies or in the courts.

These institutions represent fundamental building blocks of a legal framework for public accountability – building blocks that rest on direct civil society oversight (so-called 'vertical' accountability) rather than on intra-governmental checks and balances ('horizontal'

3 Malcolm Russell-Einhorn is the lead author of the report, and wrote Sections I, II, III.B, III.C, III.D, and IV. Jeffrey Lubbers wrote Section III.E, while Vedat Milor authored Section III.A.

accountability through executive branch control, legislative oversight, or special audit bodies).4 By limiting bureaucratic discretion in this complementary, potentially more cost-effective fashion, such institutions have the possibility simultaneously to increase the predictability and fairness of regulatory processes across the full spectrum of public sector agencies. In theory, information asymmetries can be reduced and regulatory transaction costs lowered, strengthening the kind of supportive roles for civil society – emphasizing 'voice' and partnerships – that are emblematic of so-called Second Wave public sector reform.5 This has important implications for economic growth and democratic reform alike.

A recent report by the Latvian Development Agency (LDA) underscores the importance to regulatory reform of improved administrative procedures and access to information. In an LDA survey conducted under the *Improving the Business Environment in Latvia* Program, two of the six most frequently cited problems by businesses operating in Latvia were a lack of predictability concerning regulatory actions, and insufficient information about administrative procedures.6

The Latvian Government's attention to these problems reflects an understanding of the negative impact that poorly-functioning regulatory systems can have on domestic and foreign investment. The World Bank's willingness to underwrite public sector reform activities

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4 The terms 'vertical' and 'horizontal' accountability were first coined by Guillermo O'Donnell. A thorough discussion of these concepts appears in Andreas Schedler, "Conceptualizing Accountability," *in* Andreas Schedler, Larry Diamond, & Marc Plattner, eds. 1999. *The Self-Restraining State: Power and Accountability in New Democracies,* pp. 12-28 (Boulder: Lynne Rienner).

5 *See, e.g.,* The World Bank, 2000. *Reforming Public Institutions and Strengthening Governance: A World Bank Strategy,* pp. 22-27 (Washington: The World Bank).

6 Latvian Development Agency, *2001 Survey on the Business Environment in Latvia: Analysis,* p. 30 (Riga: Latvian Development Agency).

focused on increasing the predictability and regularity of regulatory processes and on raising the quality of public agency decisionmaking similarly indicates a heightened sensitivity to the need for highly practical legal frameworks to channel and mediate public participation. The current Programmatic Structural Adjustment Loan (PSAL), spanning activities from anti-corruption initiatives to efforts to streamline business regulation, clearly reflects this broader, more holistic conception of public sector reform.

A. Background and Organization of the Report

Under a Population Human Resources Development (PHRD) Grant from the World Bank, this report represents an effort to document the steps that the Latvian Government has taken to strengthen various institutions that enhance public access to information and public participation in governmental decisionmaking. It also presents specific recommendations on how to implement two laws – the existing Law on Information Access (LIA) and the soon-to-be enacted Administrative Procedure Law (APL) – in a manner that will maximize their potential benefits and ensure that both government officials and individual citizens and businesses understand their rights and responsibilities under these new regimes. The recommendations include a suggested government program and action plan that could guide the implementation process for the two laws over an 18-month period beginning around October 1, 2001 and extending through March 31, 2003. That program will be funded in part by a proposed World Bank International Development Fund (IDF) grant focused on various capacity-building activities.

There are three major parts to the report. The first part (Section II) represents a brief conceptual discussion of administrative law and procedure, a field that defines many of the contours of the subject matter of this report. This conceptual section also speculates about

why administrative law and procedure have tended to attract relatively little attention and support from legal reformers and foreign assistance donors, and why this could change in the future. The second part (Section III) consists of an assessment of the legal framework and operational practice governing five major types of government-civil society interaction in the regulatory sphere: (1) government-civil society councils and other consultative mechanisms; (2) affirmative (or "active") provision of information to the public by government agencies; (3) public participation in the development of agency regulations and draft legislation; (4) government provision of information to the public upon request (responsive or "passive" provision of information); and (5) a system of administrative procedure affording rights to challenge government decisions within public sector agencies and in the courts.

The third part of the report – the proposed program for implementing the LIA and APL(Section IV) – describes the purpose of the program, various strategic and management considerations, and the specific tasks necessary to achieve solid preliminary implementation of the two laws. The program is accompanied by action plan tasks and a Gantt chart designed to assist government representatives in understanding the scope of reform activities involved and the time and resource needed to carry out various tasks simultaneously. The action plan and chart should also help government officials better appreciate the tradeoffs involved in modifying or rescheduling various tasks at different points during the 18-month duration of the program.

The basic approach to the implementation program was shared with the Ministry of Justice in an *Aide Memoire* submitted on June 29, 2001 at the conclusion of an information-gathering mission. That mission in turn was informed by an earlier investigative mission

conducted over a two-week period in early March.[7] We understand that this Final Report, and the earlier *Aide Memoire,* will be used by the Ministry of Justice to inform its overall approach to implementing the LIA and APL, and that the *Aide Memoire* has already been utilized to help shape the thrust of a concept paper to be delivered by the Ministry to the Cabinet of Ministers in support of the program. We welcome the opportunity to help inform the content of the concept paper, and stand ready to clarify any of the contents of this report that bear on the paper's development and consideration by the Cabinet.

7 The earlier mission was supported by research monies from the World Bank under a grant from the Danish Trust Fund for Governance and the World Bank Research Committee.

II THE BROADER CONTEXT OF ADMINISTRATIVE LAW REFORM IN LATVIA AND OTHER TRANSITION COUNTRIES

The ability of individual citizens and businesses to obtain information about Government operations generally and the impact on them of particular government programs, policies, and decisions represents a fundamental element of accountable governance. So too is the ability of the public to challenge administrative actions, and to have a say in the development of policies, laws, and regulations through means other than indirect pressure through elected representatives. These rights are especially important in engendering trust between the state and civil society and in legitimizing a country's various regulatory systems. This is where the state's fidelity to the Rule of Law or lack thereof is most likely to be experienced by the average citizen.

Although many of these topics are often subsumed under the rubric of administrative law and procedure, in fact they implicate a wide range of sometimes disparate laws and concepts, only some of which bear on administrative law as it is understood in most civil law systems, especially those with a parliamentary system of government. Consequently, in evaluating the strength of various kinds of public participation and transparency mechanisms in Latvia and planned improvements thereof, it is critical to appreciate their legal, historical, and cultural context. It is also worth asking why administrative law – broadly conceived – has received relatively little attention from domestic reformers and donor agencies as an important component of legal reform in transition countries.

A. Controlling Administrative Discretion: Western Approaches and the Situation Facing Transition Countries

The defining objective of administrative law and procedure in Western democracies is controlling administrative discretion. This involves "reconciling technocratic knowledge with the concerns of ordinary citizens," and rendering "democratic values operational in modern states where hierarchy and expertise cannot avoided."[8] This struggle to harmonize technical competence and democratic legitimacy has grown throughout the Twentieth Century as the state has assumed enormous power and influence over the production, consumption, and redistribution of material resources. The legal challenge has grown commensurately as the state's expanded regulatory role has manifested itself in a steady stream of decrees, regulations, and other legal norms.

This challenge of democratic legitimacy looms even larger in the former communist countries, where the state's share of the economy was often all-encompassing, the bureaucracy dominated the lives of individual citizens, institutional checks and balances were largely nonexistent, and civil society was extraordinarily and purposefully enfeebled. In most communist countries, 'administrative law' came to be primarily associated with an Administrative Violations Code, a wide-ranging collection of quasi-criminal infractions whose primary purpose was to regulate a wide range of personal behavior and enforce lower-level norms promulgated by administrative agencies. The emphasis was on enforcing social control of the population through the agency of regulatory inspectors and the police rather than on holding bureaucrats accountable for their actions. Citizens' procedural protections were limited, and only some appeals could be taken to the courts, whose effectiveness was itself compromised. While the institution of the Procuracy was charged with rooting out

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8 Susan Rose-Ackerman, 1995. *Controlling Environmental Policy: The Limits of Public Law in Germany and the United States,* p. 1 (New Haven, CT: Yale University Press).

administrative abuses, in fact the exercise of such power was rare and subject to political manipulation by the Communist Party. Even in the post-communist era, as the right to bring a wider range of administrative appeals to the courts became available in most transition countries, problems of legal coverage,9 conflicting norms,10 and court weakness11 continued to undermine tentative efforts toward administrative law reform.

In the West, two broad methods of institutional control of the bureaucracy have presented themselves: control by representative institutions (legislative oversight) or review by the courts or specialized administrative tribunals. A third option, not necessarily formalized, and usually considered supplemental in nature, involves direct citizen pressure on the bureaucracy through consultative mechanisms and various forms of activism and lobbying informed by a vibrant news media.

Based on historical and cultural traditions and the strengths of their particular institutional endowments, Western democracies have relied on different combinations of these

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9 For example, while the 1993 Russian Law on Citizens Appeals permits full judicial appeal of most administrative decisions, it specifically excluded the Russian Administrative Violations Code as falling within a category of existing legislation that already provided for judicial review, albeit only *first instance* review. The Law also by its terms applies only to appeals by individuals, not legal or judicial persons. *Ved.* RF 1993, No. 19, item 685, "Law of the Russian Federation on Appealing to Court Actions and Decisions Violating the Rights an Freedoms of Citizens of 27 April 1993.

10 In many transition countries, there has been piecemeal administrative law reform in which new norms (esp. those in the commercial or business regulatory sphere) have been superimposed on an existing legal infrastructure without adequate efforts toward harmonization having been taken. This is also true in the case of new procedural norms that may conflict with Administrative Violations Code norms still on the books. *See* Howard Fenton, "Administrative Law in the Former Soviet Union," *The Journal Of East European Law,* vol. 7, pp. 75-77 (2000). In some cases – Latvia is such an example -- a Cabinet-level regulation purporting to govern general aspects of an agency's administrative procedure might often gives way to procedures governed by special regulations of that agency.

11 There is a vast literature on the challenges of reforming transition country judiciaries to rid them of the lack of professionalism, corruption, and political dependence that characterized the Soviet era. One particularly good volume in this subject area, addressing the Russian judiciary, is Peter Solomon and Todd Foglesong, 2000. *Courts and Transition in Russia.* (Boulder: Westview Press).

control mechanisms to rein in bureaucratic discretion and provide more popular input into policymaking and regulation drafting. Most continental European countries with parliamentary systems and strong civil service traditions rely principally on legislative and executive oversight. Judicial review is largely available to dispute individual administrative decisions on substantive grounds; challenges to the promulgation or enforcement of regulations by interested parties on procedural grounds are generally not facilitated by the legal system. In the United States, by contrast, a culture with less faith in civil service expertise and intra-governmental oversight has come to rely on the courts and special interest groups to curb administrative overreaching.[12] The judiciary not only figures as a forum for redress of individual grievances but a battleground for outside groups to challenge the development of rules on largely procedural grounds.

Steeped in civil law traditions and having largely adopted parliamentary or quasi-parliamentary systems, most transition countries have tended to embrace a formal framework for bureaucratic control that favors legislative oversight buttressed by judicial review in individual cases. Among the Central and East European countries seeking EU membership, these general preferences have been bolstered by various EU directives and general guidance from EU administrative law experts.

In reality, however, the institutional endowments of these countries, and particularly those of the former Soviet republics, make excessive near-term reliance on such mechanisms

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12 Some observers, like Susan Rose-Ackerman, believe that even European countries could benefit from a greater emphasis on special interest group monitoring at the regulatory agency level, since incentives are weak for citizens to inform themselves about the stakes of regulatory policy generally, and to attempt to conduct such monitoring through efforts directed at elected representatives in the legislature in particular. Susan Rose-Ackerman, "American Administrative Law Under Siege: Is Germany a Model?" *Harvard Law Review,* vol. 107, pp. 1279, 1280 (1994). Others point out that European parliaments may in fact be quite responsive to citizen concerns, so that most substantive disputes over policy are waged in the legislative branch rather than at the agency level. *See, e.g.,* Peter Lindseth, 1996. "Comparing Administrative States: Susan Rose-Ackerman and the Limits of Public Law in Germany and the United *Columbia Journal of European Law,* v. 4, no. 1 (Spring/Summer 1996).

problematic. Parliamentary structures and party organizations may both be immature, leading to less than robust oversight practices. Moreover, the very nature of parliamentary governance may in certain contexts lead to a form of clientelism where dominant political parties are rewarded with leadership of certain ministries and it is understood that executive branch agents are to be left to their own devices with minimal or no political supervision. Even were such supervision to assume more vigorous forms, disorganized, demoralized, and underfunded civil service systems in most transition countries would complicate or subvert parliamentary intentions. Meanwhile, similarly weak judicial capacity and the significant human and material resources necessary to overcome it, renders meaningful judicial review of administrative action a longer-term prospect in many transition countries.13

Based on these institutional deficiencies – and on the low esteem in which government institutions are held generally by the public – it is perhaps not coincidental that many transition countries have consciously or unconsciously benefited from formal or semi-formal mechanisms to strengthen direct civil society oversight of public sector agencies. These mechanisms include legally-sanctioned consultative commissions, more extensive intra-agency appeals procedures, increased opportunities for public comment on draft regulations, and various access to information requirements. By facilitating governmental transparency and public participation, such mechanisms have bolstered various kinds of public-private partnerships in policymaking and policy execution that have emerged in many Central and Eastern European countries to try to close the gap in public sector resources and expertise. In

13 Based on the need for high levels of technical expertise and significant expenditure of funds, the judiciary may not be a feasible option as the centerpiece of accountability in transition countries, although in the longer run, its effectiveness seems to be unchallenged. *See, e.g.,* Paul Brietzke, "Democratization and…Administrative Law," *Oklahoma Law Review,* pp. 24-27 (1999).

some cases, these mechanisms are more progressive than those existing in Western Europe, at least on paper. To realize their promise, however, requires the building of capacity in state institutions and non-governmental organizations to enable them to interact responsibly and intelligently in the regulatory arena. In most cases, NGOs (ranging from public interest groups to business associations) have farther to travel in this regard: there are numerous organizational and financial obstacles to sustainability, as well as deep public skepticism about most NGOs' professionalism and political independence. Much of the public in these countries views present-day NGOs as front organizations for political interests in a manner reminiscent of the highly manipulable 'social organizations' of the communist era.

While the weights accorded the foregoing types of control mechanisms may vary from one transition country to another during the reform process, it makes intuitive sense that none should be neglected in a reform program portfolio. Support for formal or quasi-formal mechanisms that encourage more direct civil society interaction with, and oversight over, executive agencies may, however, represent the type of reform initiative deserving of the greatest relative increase in government and donor funding. One might base such a conclusion on (1) the cost of such legal frameworks and implementation activities relative to more expensive civil service or judicial reform initiatives (although to be sure, the latter may be necessary in order to ensure the ultimate success of the former in any given country); (2) the relative neglect of programs strengthening bottom-up civil society engagement with state institutions, particularly in countries with strong statist traditions and compartmentalized bureaucratic routines; and (3) the collateral benefits and incentives that such programs can generate in terms of greater participatory democracy, performance-based service delivery by public agencies, and investor-friendly regulatory processes.

B. Background Impediments to Administrative Law Reform in Transition Countries

Even in the case of a transition country willing to invest more heavily in improving its administrative law framework and various vertical accountability mechanisms, however, there exist a number of background impediments to this kind of reform – some conceptual, some bureaucratic, some political. In many ways, the most entrenched obstacles are conceptual in nature. That is, the focus of this type of reform agenda – various process-oriented mechanisms strengthening public participation and transparency – tends not to attract much interest relative to loftier or more technocratic subjects such as judicial or commercial law reform. Despite its importance in establishing certain rules of the game in state-civil society interactions, administrative law and procedure are often viewed as mundane, fragmented, and highly idiosyncratic subjects that even public administration specialists routinely ignore in favor of supposedly more engaging topics such as the New Public Sector Management (which incidentally, may not be appropriate for transition countries if a proper administrative law framework is not already in place).14

This blind spot extends to the bureaucratic politics that drive the design and implementation of reform programs. Among government reformers and donor agencies alike, administrative law does not fit neatly into democracy and governance or economic development stovepipes. Insofar as administrative law and procedure embody cross-cutting procedural principles, they lack natural, sectoral constituencies among a country's ministries and agencies and among diverse individual and business interests focused on particular bureaucratic interactions. Each ministry or agency has special procedural norms and its own way of conducting regulatory business that tend to obscure the massive collective impact that

14 A good introduction to the NPM is Ferlie, Ewan, Lynn Ashburner, Louise Fitzgerald, and Andrew Pettigrew, 1996. *The New Public Management in Action* (Oxford: Oxford University Press).

such processes have on the daily lives of millions of citizens. Harmonizing or eliminating dozens or hundreds of such special norms to bring them into conformity with common democratic principles involves considerable legal and bureaucratic spade work.

Precisely due to the intimate connections between regulatory reform and administrative law and procedure reform – and the magnified impact that the latter may have on regulatory processes if implemented on a national scale – it is not surprising that the political prospects of such a reform program may also be quite unfavorable in most countries. Subscribing to more uniform, generally clearer procedural norms may involve the surrender of special knowledge and information asymmetries that are especially conducive to rent-seeking opportunities.[15] There may be additional costs involved in expanding participation, insofar as it usually enlarges the number of participants in, and lengthens the process of, policy formulation. At the most basic level, administrative law reform in transition countries usually involves the systematic transfer of some monitoring and control functions away from the executive and legislative branches (which may be closely aligned with one another in parliamentary systems) and over to the judicial branch or to civil society. One would not expect bureaucrats to cede such power readily; indeed, according to one specialist in comparative administrative law, only in polities with significantly contested government might one expect to find adequate political support for administrative law reform, as competing

15 Bureaucrats will tend to resist and resent such reforms because they provide superiors with alternative sources of information concerning their behavior. Blanca Heredia & Ben Ross Schneider, 1998. *The Political Economy of Administrative Reform: Building State Capacity in Developing* Countries, p. 12 (unpublished manuscript in possession of the author).

political parties that imagine finding themselves out of power in the near future seek to alter and strengthen the tools that constrain bureaucratic agents.16

All of these factors suggest that administrative law reform may be not be among the highest priority legal reform investments in transition countries whose progress toward democratization has been slight, and whose professional bureaucracy, civil society, and media organizations remain significantly underdeveloped. A culture of impunity cannot be expected to change based simply on the enactment of certain formal or semi-formal rules and procedures promising to constrain certain types of bureaucratic behavior. Indeed, their passage and subsequent non-enforcement may tend in some cases to camouflage such behavior and increase public cynicism about government abuses of authority. In the near term, reform monies might be better spent in some countries on developing a more pluralistic political party system and fostering the growth of civil society organizations, particularly grass roots groups.

On the other hand, for transition countries that have in fact demonstrated significant progress in the direction of democratization and produced a reasonably vibrant and pluralistic political system, administrative law reform may represent an especially cost-effective legal reform investment.

First, many processes that fall under the rubric of administrative law may simply consolidate and formalize institutional patterns or rules of the game that have already emerged on a voluntary, quasi-self enforcing basis, e.g., various consultative mechanisms with key business and other civil society representatives. Placing these mechanisms on a more durable,

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16 Tom Ginsburgs, 2000. *Comparative Administrative Procedure: Evidence from Northeast Asia,* University of Illinois School of Law Working Paper No. 00-66 (Champaign, Ill.: Law and Economics Working Paper Series).

legal footing may prove highly cost-beneficial and help inculcate greater reciprocal respect for procedural regularity.

Second, because administrative law and procedure (at least intra-agency procedures) can be implemented on a sectoral or agency-by-agency basis (even after a national law is passed), favorable political economies can produce individual 'islands of reform' or political openings that can have important local or demonstration effects.

Third, administrative law reform may advance particular sectoral regulatory reform efforts that are broadly popular (e.g., telecommunications, energy, or agricultural reform, depending on the circumstances), and may draw certain segments of the business community – especially new entrants in particular markets – into broad-based reform coalitions. Such sectoral reforms and the social capital they generate may prove much more tangible than abstract democratization programmes targeting parliamentary or judicial reform at the highest levels of government.17

C. Prospects for Administrative Law Reform in Latvia

Against this backdrop of potential legal, cultural, and political influences, Latvia finds itself in relatively favorable circumstances for administrative law reform among the various transition countries. The country has an extensive 'usable past,' whereby its pre-war independence, well-developed civil society and relative legal sophistication all provide an important foundation for democratic governance generally. The country's aspirations for European accession and the seriousness with which it has embraced the *acquis communitaire*

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17 This argument for initiatives aimed at "democratization with a small 'd' appears in Stephen Golub, 2000. *in* M. McClymont & S. Golub, eds., *Many Roads to Justice: the Law Related Work of Ford Foundation Grantees Around the World,* pp. 208-212 (New York: The Ford Foundation). *See also* Stephen Golub, 2000. "Democracy as Development," *in* M. Ottaway & T. Carothers, eds., *Funding Virtue: Civil Society Aid and Democracy Promotion,* pp. 138-148 (Washington: The Carnegie Endowment for International Peace).

also reflect a relatively strong political will for reform. The country exhibits a vibrant and pluralistic political culture. At the same time, the country's strong ties to Germany and the Nordic countries have provided public administration reformers with some of the world's best expertise and reform models in the administrative law sphere.

Many other preconditions for administrative law reform appear strong. As reflected by support for the PSAL, the government has shown an interest in putting public administration and regulatory processes on a fair and stable footing and reaping the benefits of reconciling the country's initial efforts toward administrative devolution with more uniform rules and processes for budgeting and civil service administration. There is at least some proven capacity for coordinating and implementing policy across diverse bureaucracies, as demonstrated by the Government's anti-corruption program and the program for improving the business environment (both programs also reveal considerable sensitivity to the core issues of governmental transparency, regulatory predictability, and public participation that underlie administrative law reform). Meanwhile, civil society in Latvia shows increasing vibrancy in terms of its willingness to monitor and participate in policymaking (particularly in the welfare and environmental sectors), and some organizations – most notably *Delna* – have demonstrated a particular interest in matters of governmental transparency and administrative procedure.18 The media in Latvia are reasonably free and vigorous19 and the Government is increasingly committed to improving the public relations function in each ministry and agency.

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18 *Delna* has undertaken inquiries into the functioning of both access to information processes and consultative mechanisms in Latvia. It has also played a significant role in monitoring the privatization of large enterprises, the government's anti-corruption program, and the drafting of the state and municipal procurement law.

19 Freedom House recently ranked Latvia as 34th out of 149 countries in its ranking of the degree of press freedom around the world. That ranking was close behind Hungary (29th), Poland (30th), Lithuania (31st) and the Czech

Whether the product of contested government, EU accession pressure, and/or a mixture of the other foregoing factors, a significant collection of progressive laws and regulations have been, or are about to be passed in the administrative law sphere, including the Law on Information Access and its implementing regulation, a Governmental instruction requiring the publication of annual reports by government agencies, a regulation requiring all Government-generated legislation and regulations to be accompanied by an annotation documenting public consultations, and a comprehensive new Law on Administrative Procedure affording more liberal court challenges to administrative acts.

Despite these positive indicators, there are also a host of formidable obstacles to effective administrative law reform, some of which have already been referenced. These include the following:

- The general confusion surrounding the country's public administration framework (devolution of authority), which may make it difficult to secure the full attention and cooperation of numerous public sector agencies and civil servants.

- The prevalence of scattered, often contradictory and inaccessible existing legal norms covering the principal subjects of administrative law and procedure (i.e., access to information, public consultation, agency appeals procedures).

- High turnover among civil servants, which may render continuity in the implementation of administrative law reforms elusive.

- Resistance by many civil servants, and especially municipal officials, to reforms that would generally diminish their power relative to the public and their superiors, and that might threaten numerous opportunities for rent-seeking.

- The lack of accountability and weak capacity of the country's municipalities, whose respect for administrative law and procedure is notoriously low.

- The generally weak capacity of most NGOs and business associations which, despite their interest in participating in government policymaking and regulatory drafting, tend to lack professionalism and an understanding of how to aggregate

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Republic (32nd), although more distant from Estonia (24th) and Slovenia (26th). *See* World Audit Press Freedom Table, http://www.worldaudit.org/press.htm.

constituent interests, promote internal democracy, and appeal to broader associational or industry-wide concerns.

- The weak capacity of the judiciary to handle administrative cases, both in terms of inadequate numbers of judges and their lack of understanding of administrative principles and procedures.

- The weak capacity of NGOs and the public aggressively to demand compliance with applicable legal norms by bureaucrats.

- The continuing tendency for the public to approach the Procuracy for assistance with administrative complaints when the Procuracy has neither the means nor the willingness to do anything about such grievances.

These potential impediments to administrative law reform suggest that individual reform programs or targets – e.g., the government's current intention to devise a cross-sectoral plan for implementing the LIA and APL – must be approached holistically. The government must pay adequate simultaneous attention to intra-governmental coordination, regulatory drafting and harmonization, government and civil society capacity-building, and expert monitoring and evaluation.

III. ASSESSMENT OF MECHANISMS FACILITATING ACCESS TO INFORMATION AND PUBLIC PARTICIPATION IN EXECUTIVE BRANCH DECISIONMAKING IN LATVIA

Many different types of formal or semi-formal institutions exist to enhance executive branch accountability and improve bureaucratic decisionmaking. Some principally focus on horizontal accountability between the branches of government. Others facilitate more direct, or vertical, accountability to the citizenry. Still others could be considered hybrid in nature; for example, the institution of an ombudsman, which focuses and often aggregates direct citizen complaints while lodging such grievances in a formal, yet non-binding manner with other government institutions.

For purposes of this assessment, we concentrate on five discrete types of mechanisms promoting vertical accountability that currently exist in some form in Latvia. These include (1) affirmative, or so-called 'active' provision of information by the government to the public; (2) systematic gathering of public comments on draft legislation or regulations by the government; (3) use of various advisory councils or other consultative mechanisms to help inform the development of policy, legislation, and regulations; (4) so-called responsive, or 'passive' provision of information by the government upon request through a formal access to information regime; and (5) a system of administrative procedure affording the public both administrative appeals of agency decisions and if desired, court appeals thereof.

Each of these types of mechanisms can influence and restrain executive branch decisionmaking at distinct stages of an agency's regulatory process. Active information provision represents an ongoing background effort by a regulatory agency to provide the public with basic information about the agency and the regulatory process. The public's

provision of comments on draft legislation or regulations represents an opportunity to influence the terms of a new departure in the legal framework. Advisory councils and consultative mechanisms constitute channels of communication whereby stable, knowledgeable interest groups provide input into the application of new rules and the execution of policy by the agency. Responsive provision of information permits the transmittal of even more detailed information about an agency's execution of policy. And administrative procedure permits affected parties to challenge concrete regulatory decisions in specific cases. The themes of transparency and participation run through each of these mechanisms, which supplement efforts to ensure accountability through pressure on elected officials.

There is another way of viewing these mechanisms, however, which is of some consequence to transition countries. One can conceive of them in an ascending order that roughly reflects the increasing time, resources, and legal formality and/or sophistication that may be necessary to institutionalize their effective use.[20] According to this perspective, one might consider each of the mechanisms in the following sequence: (1) advisory councils and other consultative mechanisms; (2) affirmative provision of information; (3) public participation in rulemaking; (4) responsive information provision; and (5) administrative procedure. This is the order in which this paper will address these subjects. As will be seen below, in many cases, there is no single law or normative act that defines or corresponds to

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20 These are rough judgments based on what is necessary to create even a modestly functional process or institution. However, in gross terms, this ranking of capacity needs seems intuitively persuasive. For example, consultative processes can function quite effectively in the absence of formal procedures or decent funding. Capabilities and resources necessary to support the active provision of information can also be relatively modest in magnitude assuming the scope of voluntary information disclosure is relatively well circumscribed and commensurate with available government resources. Even a process of some kind of notice-and-comment rulemaking can prove relatively simple where draft regulations are published on a web site and comment opportunities (and interested parties) are easily identified at key junctures. By contrast, even a modestly functional responsive information access system or an administrative procedure law requires government-wide centers of expertise, the involvement of significant numbers of lawyers (and information and IT specialists in the case of a responsive information access system), and relatively large numbers of cases going to court. These all can require a considerable outlay of funds.

each subject; rather, multiple laws and other legal norms underlie each of these types of vertical accountability mechanisms in Latvia.

A. Consultative Mechanisms

In the interest of improving the technical quality of policy and rulemaking and adding some stakeholder participation, government officials often turn to formal or semi-formal consultative mechanisms (CMs) to gather information and elicit opinions from interested individuals or organizations. Because they can, at their very simplest, involve a handful of individuals functioning as an advisory body with little institutional infrastructure or budget, CMs may be one of the least costly accountability investments that a government can make as it seeks to broaden public participation in its executive policymaking functions.

On the other hand, empowering CMs to serve as more truly effective and representative forums for diverse sectoral or social interests can involve a significantly greater expenditure of time and resources, not to mention political risks. The greater commitment of resources could require employment of an executive or secretariat staff, formation of working groups or subcommittees, and establishment of various communication and publication channels. While genuine disagreement and debate can in some cases slow down and complicate policymaking, the injection of new views and information may justify such tradeoffs, particularly in areas where government capacity is weak and technical expertise from outside is critically needed.

In a number of contexts, market-oriented reform programs may particularly benefit from a focused dialogue between government and business leaders on reform priorities, strategy, and specific legislative proposals. In developing or transition countries with weak public sector capacity, CMs may serve a critical function as a supplemental source of technical

expertise and political legitimacy. At the same time, there is the danger that such mechanisms may serve narrow individual interests and provide political cover for various forms of rent-seeking. Much depends on the background strength of the political environment and civil society and the particular design of such mechanisms.

Depending on their formality and the extent of their use, CMs may reflect an underlying corporatist model of state-society relations that is quite common in many parts of the world, including Western and Eastern Europe. Under this model, the government selects or gives a privileged place to certain interlocutors for policy dialogue from the array of key interest groups (most notably labor unions and employers' associations, but also in many cases groups with various other social agendas). This corporatist model is generally distinguishable from an American interest group pluralism model. In the former case, one of the benefits of CMs from a government perspective is that they help to lower the costs of citizen participation and make it more manageable. In the latter case, depending on the extent of participation permitted, public participation can actually cause delay and additional costs to accrue in decisionmaking, creating administrative "ossification."

Consultative mechanisms describe a very broad range of public-private bodies. They extend from formal councils established by statute to consider specific policies and draft legislation to informally chartered groups that are convened from time to time to discuss general topics like the climate of government-business relations.[21] Prominent examples of CMs around the world include Japan's deliberation councils, Mexico's economic solidarity pacts, and South Africa's National Economic Development and Labor Council (NEDLAC).

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21 Some consultative mechanisms may form around particular policy issues on a more or less provisional basis. For example, in Bulgaria, a national coalition of business associations, the National Forum, came together in 1997 to engage in a 'trialogue' with the government and think tanks on national small- and medium-enterprise reform. *See* Derick Brinkerhoff, William Colletti, and Russell Webster, *Small and Medium Enterprise Policy Reform in Bulgaria.* USAID Implementing Policy Change Project, Case Study No. 7 (Washington, USAID).

CMs may have a national (e.g., the Malaysian Business Council), sectoral (e.g., Ghana's Private Sector Roundtable and Private Sector Advisory Group), or industry or functional orientation (e.g. Latvia's Road Traffic Safety Council). By design or circumstance, they may have limited lifetimes (e.g., Latvia's Customs Tariffs Council) or have a certain degree of institutional permanence (e.g., many of the East Asian policy CMs).

The potential benefits of such consultation in particular contexts can include improved information for public and private decisionmaking; greater consensus about the ownership and credibility of policy reforms; improved transparency of government decisions and functions; greater accountability of public decisionmakers; potentially more resources for implementation of agreed-upon actions; and reduced costs of business–government transactions through both habitual interaction and the generation of social capital.

Risks also attend reliance on such bodies, however, including possible reinforcement of the power of existing elites and insiders; their use as vehicles for rent-seeking; their circumvention of broader and possibly more transparent mechanisms for policy dialogue; and their degeneration into mere speechmaking forums. In all of these cases, CMs may end up sapping the energy and motivation of stakeholders and undermine the credibility of public policy.

Latvia has a relatively active collection of CMs – numbering at least 40, although some may not be active[22]-- and their experience points up both the promise and dangers of such bodies in a transition country. Indeed, the most active and well-known CMs in the country are generally well-regarded and effective, yet a number of them exhibit some of the problems that have caused CMs elsewhere to fold or to lose credibility. It is important for these CMs to

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22 The number was offered by representatives of *Delna* in an interview conducted on March 19, 2001. However, the exact number of such bodies is unknown.

consider various reforms that would raise their stature and improve their partnership with the government. To understand the rationale behind such reforms, it is helpful first to examine certain tentative conclusions about CM design that have come from World Bank-sponsored CM case studies in Ghana, Malaysia, and Mexico.

1. Tentative Conclusions About Effective CM Design

Successful CMs seem to share five important characteristics: (1) they have a specific and well-defined set of objectives; (2) they have transparent internal processes and procedures and feature strong public participation; (3) they have an effective secretariat that improves and streamlines the work of the organization; (4) their membership is drawn from broad sectoral or functional constituencies rather than from narrow individual industries; (5) they feature follow-up and monitoring procedures that enable CM participants to know what happens following any formal or informal agreement produced during CM discussions.

Specific and Well-Defined Objectives. A well-defined mandate *and* well-defined agendas for individual meetings of a CM seem to generate the most productive results. Often, CMs will have a relatively clear general mission, but will be unable to translate this into sustained, focused work due to the lack of a targeted or sequenced agenda. Open-ended consultations may help generate mutual respect and trust, and a shared sense of purpose, but little in the way of concrete proposals or agreements. In these cases, often some kind of working groups must be established to engage in defined problem-solving with a definite end product in mind, e.g. preparation of legislation or a report. For example, in Malaysia, the Malaysian Business Council often engaged in open-ended discussions characterized by critics as little more than photo opportunities for the participants. However, once working groups of

the Council began to tackle specific policy issues, the Council's discussions could be more charitably understood as setting the stage for the working groups' more focused deliberations.

The benefits of a secretariat. An effective secretariat can provide a CM with many advantages. For example, a secretariat may provide an objective information collection and analytic capacity. Careful studies or reports compiled by a secretariat or consultants retained thereby can help eliminate uncertainty or confusion about the scope, timing, duration, and impact of policy decisions. The ability to collect information may also help monitor the extent of participants' compliance with CM decisions. Finally, a secretariat typically helps with coordination of meetings, definition of agendas, distribution of minutes, and otherwise addressing the group's administrative functioning.

Such tasks may be critical to ensuring a CM's financial and other independence from particular groups or points of view. However, the issue of committing resources to a professional and relatively independent secretariat has been tackled with differing degrees of success in around the world, including reliance on institutions not necessarily connected directly to the CM. In Malaysia, government support for the Institute for Strategic and International Studies provided the working groups of the Malaysian Business Council with the ability to commission studies and assessments, even though the Institute's independence was questioned. In Mexico, the government created a secretariat-equivalent to a CM in the form of a follow-up commission to the Economic Solidarity Pacts that had united public and private sector representatives in the deliberation of economic policy from 1987-1994. The follow-up commission (Commssion de Seguimiento y Evaluacion del Pacts, or CSEP) involved major stakeholders and published detailed minutes to strengthen the perception of professionalism and independence.

Broad and diverse membership representing associational or sectoral interests rather than simply companies or groups. Insofar as CMs are designed to help generate collective solutions to problems, and thereby vindicate the public interest, it becomes problematic when CM members do not represent most affected interests or are chosen on the basis of individual company affiliation rather than by virtue of association membership. Such representatives, who may not even be selected on an *ex officio* basis (but rather simply based on their individual prominence or connections) may end up lobbying within the CM to curry favors for a particular firm rather than tackling sector-wide, macro concerns. For example, in Malaysia, the high-profile Malaysian Business Council has been widely criticized for featuring only token representation from labor and civil society groups, thereby making it easier for patronage-based 'money politics' to flourish and to reinforce links between the ruling political elite and favored business organizations. Well-designed membership rules can curb such problems, but in the end, much depends on the degree of democratic culture existing within civil society and the business community. Unless NGOs and business organizations find it possible to aggregate their interests and form truly broad-based professional associations, the risk of narrow interest-group representation dominating CMs remains significant.

Transparent and participatory processes. The transparency of CM's matters greatly to participants and the broader public. CMs are more likely to be effective when participants understand and support the 'rules of the game.' Participants often enter into consultations with a certain degree of distrust, as well as misgivings about the potential costs and risks associated with participation. Participants also worry about reform outcomes and the long-term prospects of how their firm, office, and/or association will fare following implementation of changes discussed in the council. Participation by CM members in the establishment of

internal procedures represents one means of addressing members' legitimate concerns and of encouraging participant "ownership" of the group. A well-functioning secretariat can also help in this regard by keeping all participants well-informed with minutes, reports, and other information, and by organizing meeting agendas with subjects for orderly discussion and voting.

Follow-up and monitoring procedures. In addition to wanting significant transparency in CM procedures and operations, CM participants want to know about the results of their work, i.e., whether sincere efforts take place to implement agreements reached in the council and whether such efforts prove successful. At the same time, participants require follow-up and monitoring as a means of bolstering commitment credibility: the creation of procedures to track--and even reward or sanction--participants based on their post-decisional conduct can create a helpful linkage between particular actions and individual or group reputations.

A well-known example of successful institutionalization of follow-up procedures in the context of policy reform comes from Mexico. There, the Economic Solidarity Pacts formalized agreements in writing. Government compliance was largely demonstrated via information disclosures regarding commitments such as pledges to reduce public spending. The Pacts also created the above-mentioned CSEP, a formal follow-up mechanism. CSEP met weekly and was constituted as a high-level board in which government ministers, top labor leaders, and business association heads all took part. CSEP monitored the extent of compliance on the part of the government and labor and businesses communities with the commitments made in the Pacts. As CSEP made information available to participants on

compliance efforts, it facilitated associated efforts by those active in the Pacts to sanction firms or unions that had violated wage and price controls or other pledges.

In addition to these critical design considerations, CMs also require several other background characteristics in order to succeed, such as highly motivated constituents, professional work habits, and substantial technical expertise. In many developing and transition societies, civil society may be poorly developed and unable to sustain significant levels of public interest in policy debates or participation in associations. This represents a major problem in transition countries where skepticism about the honesty and effectiveness of government runs high and many associations or NGOs may be associated in the public mind with weak, government-controlled or –directed 'social organizations.' Association representatives who are unable to conduct themselves in a professional manner or who display ignorance about the details of important policies or pieces of legislation potentially forfeit a good deal of credibility and the opportunity for meaningful input into policy debates.

Finally, even where most of the fundamental design and membership issues are in order, other background circumstances may act to limit the effectiveness of CMs. For example, sufficient political will may not exist in either the government or civil society to produce serious consultations. Usually, effective CMs feature strong government participation at high-levels and a willingness on both sides to talk realistically about the generation of winners and losers in certain reform processes. Another background requirement typically involves the ability of government or civil society organizations to make credible commitments. Thus, a public official's promise to cut taxes or reform regulations may lack credibility if a scheduled election may remove him or her from office in the near future. Similarly, a business association representative's pledge may mean little if he or she

lacks the ability to persuade or compel association members to comply. Finally, a CM may not be able to generate action in the absence of compelling shared concerns or a focused societal need or crisis. Thus, when policy concerns are clear, compelling and potentially resolvable, participants are more likely to be motivated to seek collective solutions. In the absence of crisis or other circumstances forcing compromise, 'free rider' problems may limit the participation in or sustainability of CMs.

2. Consultative Mechanisms in Latvia

Latvian CMs function reasonably well, and can generally be expected to evolve in a positive way in the future. Interviews with individuals involved in CMs in the country, as well as a recent report on councils by *Delna,23* paint a picture of most councils as organizations operating well on paper, but needing to mature and adopt more democratic processes if they are to gain a reputation for effectiveness in the years ahead. Some improvements need to occur in the structure and operation of the CMs; others need to come into play based on better organization of constituent members and better aggregation of their interests.

The *Delna* report reflects the tremendous diversity of CMs in the country in terms of membership, organization, and transparency. Some CMs, like the Council of Higher Education, which advises on educational policy and makes some accreditation decisions, features 11 members exclusively drawn from NGOs and the private sector. Others, like the Corruption Prevention Council, charged with monitoring the government's anti-corruption program, has a more government-oriented tilt, with 13 members from state institutions and only two members drawn from civil society organizations. In some instances, as in the case of

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23 The English translation of the Report obtained by *Delna* is entitled "Enhancing Greater Decisionmaking Transparency and Delegation of Functions to Nongovernmental Organizations." (undated). The report covers both advisory and consultative bodies as well as certain officially constituted boards with active regulatory decisionmaking powers. Only those aspects of the report focused on advisory or consultative bodies that supplement formal decisionmaking institutions are discussed here.

the Council on Foreign Economic Policy, charged with advising on foreign trade, the complement of private participants in a CM has been reduced in response to concerns that some of the private sector representatives were seeking only to protect their narrow economic interests.24

The transparency of most CMs appears to be reasonably good, although the report is missing data on the information and communications practices of many of the councils. Most councils have open meetings and publish the agendas and actions taken at the meetings in official or popular news publications. Some of the CMs maintain web pages. Still others (e.g., the Higher Education Council, the Latvian Science Council) publish special informative booklets on their organization and work.

The most useful and illuminating section of the *Delna* Report deals with the organization of members and their nominating policies. According to the Report, most CMs do not require participants to be *ex officio* members representing broad and stable institutional or associational interests. Instead, many participants are technical experts or politically well connected individuals who are respected primarily for their personal views and stature. Such individuals may be appointed by a Minister for a definite term, but there is no necessary continuity from one member to the next, nor any rotation premised on the kind of competitive process that should exist within certain NGOs, businesses, or associations. In some instances, the Report acknowledges, this may lead to the promotion of narrow individual or organizational interests. In other cases, outright conflicts of interest may present

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24 Currently, the Council only has one private sector representative, from the Chamber of Trade and Industry, as compared with 16 representatives from state institutions. Reportedly, several other private sector representatives had originally been given slots, but these positions were dropped following complaints that these representatives had lobbied solely on behalf of their own foreign economic opportunities. *Delna* Report, p. 3.

themselves.[25] Only if the CM consists of diverse civil society representatives whose individual or organizational interests go in potentially opposite directions is there a possibility of bringing the broader public interest to bear on various policy questions.

Anecdotally, Latvian CMs exhibit both positive and negative attributes relative to the five characteristics of successful CMs experience described above. These attributes operate against the backdrop of frequent changes of government in Latvia (on average every nine months since 1993) that have made it difficult for public officials' promises to carry much weight with the public.[26] For example, neither the Tripartite Cooperation Council nor the National Economic Council has well staffed or well-funded secretariats,[27] although the Foreign Investors Council has an exemplary executive body in the form of the Latvian Development Agency. As for representativeness, there is evidence of both stagnation and progress: many segments of civil society and the economy, for example individual trade unions and small businesses, are underrepresented in councils.[28] On the other hand, *Delna* has been

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25 The Report cites as an example the Science Council of Latvia, whose majority is made up of individual members of the Latvian scientists' community who pass on decisions affecting the allocation of monies to scientific colleagues throughout the country. In the absence of stringent conflict-of-interest guidelines or significant numbers of representatives from outside the scientific community, there is a distinct danger that decisions will be made on the basis of narrow self-interest or the interests of particularly well-connected scientists. Report, p. 5.

26 Unstable coalition governments have also had a negative impact on the flow of information within some councils, such as the National Economic Council and the National Tripartite Coordination Council. Rival business groups and trade unions that sit on the councils have been reluctant to disclose crucial information, since they fear that other parties can use the information to suit particularistic interest to the detriment of the party that disclosed the information.

27 An inspection of the minutes of these two organizations revealed a very rudimentary communications capacity, ostensibly the result of understaffing and poor funding. Further reflecting its low level of funding, the NEC's Secretariat lacks even a permanent office.

28 Labor is reportedly underrepresented generally in CMs, with the notable exception of the Tripartite Coordinating Council. However, individual unions are conspicuously absent from CMs throughout the country. The Latvian Merchants' Association is not represented on the National Economic Council and reportedly has had problems even

invited to serve as an observer to the commission that will undertake the privatization of Latvian shipping.

Most CMs appear to have well-defined objectives and some of the larger ones (e.g., the Tripartite Coordinating Commission) have established subcommittees to undertake concrete problem-solving.[29] Others, however, like the National Economic Council, are regarded in many quarters as mere debating societies with insufficient commitment from the government. Transparency and monitoring processes are improving steadily, for the most part – the legislative/regulatory Annotation process described in Section III.C below is a notable transparency feature at the macro level – but day-to-day reporting of activities lags in many CMs, as does dissemination of basic information about CM structure and operations. The biggest overall problems generally remain the low level of professionalism of many public interest representatives[30] and the frequent turnover of state and public representatives,[31] which both have a detrimental effect on institutional continuity.

3. Possible Ways to Strengthen CMs in Latvia

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gaining 'observer' status at the Council's meetings. Another prominent example of a lack of public representation concerns the Pharmaceuticals Working Group, which has representation from three government agencies and the pharmaceutical industry but no consumer representatives.

29 The three working groups concern themselves with social security, professional education and employment, and labor policy.

30 For example, we were told that associations championing the rights of pensioners have been criticized for being represented in public forums by individuals who fail to understand many of the policy implications or legislative details of pension policy, and who often show a disinclination to seek such understanding.

31 For example, we were told that the Ministry of Welfare loses on average 30 out of 170 people each year, and that this has had a detrimental impact on continuity in the Tripartite Coordination Council's working groups.

Adoption of several short-term strategies may lead to stronger CMs and a more robust state-civil society dialogue on key reform issues. Some of these strategies are more formal and structural in nature; others more symbolic and political.

Create Greater Public Awareness of the Work of CMs Generally and Pressure for Greater Accountability. Through press coverage and workshops or conferences, NGOs can create better public understanding of the work of individual CMs and the need for better rules and procedures governing issues of representation and transparency. Such workshops could build pressure for better government commitment to particular CMs (including better funding), and the delivery of more timely government data and follow-up information to the participants.

Develop a Greater Appreciation by NGOs and Business Community of the Need for Professionalism and Technical Expertise in Working with CMs. Through seminars and workshops that generally address NGO capacity-building, a special emphasis can be placed on developing skills in negotiation, presentation, and report-writing that can command respect in the context of day-to-day CM work.

Encourage the Government to Develop a Concerted CM Improvement Strategy. A government strategy aimed at improving the functioning of CMs generally but focused on a few high-profile or influential CMs could pay significant dividends in terms of concrete achievements in particular contexts (e.g., the Corruption Prevention Council) and spin-off effects elsewhere (e.g., in the policy dialogue of CMs addressing domestic and foreign investment like the Tax Legislation Advisory Council). The government commitment could take the form of increased funding or higher-level government representation within CMs.

Greater Reliance on Working Groups and Subcommittees Where Relevant. Subject to monetary constraints, those CMs that could benefit from greater delegation of research or analytical work should be encouraged to find ways to locate and retain such resources, including the use of unaffiliated research institutes to provide such services. Such practices could have the practical effect of increasing the seriousness and productivity of many CMs.

Adopt Uniform Basic Guidelines for CMs. Depending on how CMs are defined (a significant task in itself, but eminently feasible if such bodies are generally limited to policy or advisory bodies rather than official decisionmaking commissions or boards), uniform guidelines could be adopted (via legislation, regulation, or resolution) as to certain parameters affecting the operation of CMs, including issues like size, types of representation, ethical requirements (including guidance on financial disclosure and recusal decisions), the taking and dissemination of minutes, public access to meetings, and the publication of basic factual information about the body.

An important consideration in improving the functioning of CMs is the need to avoid usurping the powers and legitimacy of official decisionmaking organs. Particularly in a transition environment where formal authority may not be well institutionalized, certain CMs may easily become too powerful and serve as a means of circumventing formally elected or delegated agencies. The quest to achieve consensus in CMs that are imperfectly constituted and to produce more streamlined policymaking could retard the development of democratic accountability in certain contexts.32 Ultimately, both government ministries and civil society

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32 Moreover, the quest for consensus generally may be overvalued; some argue that public feedback and input can be cultivated adequately through more formal agency rulemaking channels (although arguably such channels may be in limited supply in transition countries), and that consensus can actually cause participants to focus on the most easily resolvable (rather than the most important) problems of the day. A focus on consensus may also lead to lowest common denominator policy outcomes. *See, e.g.,* Cary Coglianese, "Is Consensus an Appropriate Basis for Regulatory Policy?" (unpublished paper, 2000). *See also more generally* Susan Rose-Ackerman, "American Administrative Law Under *supra* note 10, pp. 1287-97 (arguing that some consensus-based policymaking processes in German lack sufficient transparency and representativeness to lay claim to representing the public interest).

representatives must seek to find the right "fit" between CMs and more traditional and formal channels of policymaking.

B. Affirmative ('Active') Provision of Government Information

Government accountability – and particularly regulatory accountability – depends critically on public access to information. Indeed, general information about executive branch organization, processes, and substantive policies represents the basic currency of government accountability. Such transparency can enhance control of administration, help create more efficient public sector program delivery, and contribute to more vibrant and informed political life. Without adequate access to government data, mechanisms of external bureaucratic restraint may be handicapped (e.g., legislative oversight, audit body oversight) and the views of otherwise interested parties – public and private – may end up carrying much less credibility. As a result, opportunities for abuse of authority, corruption, and poorly-informed decisionmaking have a greater chance of persisting or even proliferating.

1. Comparative Approaches to Active Information Provision

Access to government information may be largely informal, haphazard, and dependent on the preferences of current officeholders – as it is in most countries around the world – or it can be formalized in law and institutionalized in practice. The legal underpinning of the right to information finds its source in international law. Since the United Nations General Assembly unanimously adopted a resolution in its first session in 1946 affirming that freedom of information is a fundamental human right and "the touchstone of all the freedoms to which the United Nations is consecrated," various international documents have sought to define this right in a broader or narrower sense. Perhaps the most important is Article 19 of the

Universal Declaration of Human Rights, which provides that "[e]veryone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers." The right to information has also gained strength from Articles 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR), and Article 10 of the European Convention.

In its broadest sense – as in the U.N. General Assembly Resolution – freedom of information is closely linked to freedom of expression and the right to receive and disseminate information. In its narrowest sense, the right can imply the right of individuals to inspect or copy documents held by government bodies. Most advanced democracies that seek to vindicate the right to freedom of information somewhere on this spectrum rely on two kinds of legal requirements: (1) affirmative, or "active" provision of government laws, regulations, and information through official publication and maintenance of professional public affairs offices; and (2) responsive, or "passive" provision of information upon request by individuals or organizations.33

In discussions about democracy and individual rights, the responsive provision of information upon request invariably garners the most attention, conjuring up images of dedicated civil society organizations ferreting out corruption at the highest levels of government. Yet establishment and maintenance of such a system of information access requires considerable time and resources, as well as legal expertise: information must be

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33 Responsive, or "passive" information provision can technically include responses to both written and verbal information requests. Some countries, including Latvia, *see infra,* subsume both types of requests under a single access to information law. Other countries have separate norms for each type of request, or do not regulate the receipt of or responses to, verbal inquiries.

organized, registered, classified, and then made available according to procedures that require civil servant training, careful recordkeeping, and the judgement of legal counsel. Particular requests can prove very time-consuming depending on the obscurity and sensitivity of the information sought. By contrast, the affirmative provision of information by the government can be prioritized and routinized along more predictable budget and human resource parameters by making available a certain class of official documents and other information regarded as among the most vital to political discourse and the economy. Indeed, the active provision of certain types of information can significantly reduce the volume of individual information requests, many of which repetitively seek the same subject matter.

In this sense, the active provision of information is frequently overlooked, particularly in development theory and discussions of legal reform. Even as the topic of openness in government gains more attention and technology potentially makes information infinitely more accessible than in the past, relatively little attention has been paid to government laws and policies *requiring* information to be made available in easy-to-access locations and formats. Yet such laws and policies may have a critical impact on citizens' and businesses' efforts to understand how their national, regional, and local governments are structured, financed, and operated, and how basic government regulatory functions affect them. Affirmative disclosure of basic government information is thus not only logically prior to a system of responsive information provision – insofar as it provides an informational 'road map' necessary for making particular information requests -- but provides a view of government operations that is helpful for individual planning and risk-calculation. Significant affirmative provision of information thus represents one of the first steps toward creation of predictable regulatory regimes supportive of domestic and foreign investment.

In several modern democracies, active provision of government information appears as a distinct element of an overall freedom of information act covering responsive information provision as well. The United States, for example, takes this approach. Its Freedom of Information Act contains an affirmative obligation that government agencies will publish – initially in an official gazette (the Federal Register) – certain types of information,34 including:

- a description of the agency (its organization, powers, and functions)
- substantive rules of general applicability
- statements of general policy
- interpretations of general applicability
- information about where requests for information can be made
- information about where various procedures and forms are available35

Such information may also appear in annual reports and special brochures published by the agency.36 Generally similar provisions on affirmative provision of information within a larger access to information law exist in Australia,37 Ireland,38 Canada,39 the Netherlands,40

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34 Significantly, if the government fails to furnish such materials – i.e., if the public has no notice of their existence – agencies cannot use such information against individuals or businesses in regulatory or other proceedings.

35 Agency regulations that have general applicability and legal effect are also published in a Code of Federal Regulations that is updated annually. Descriptions of pending regulations for most agencies are published twice a year in the Unified Agenda of Federal Regulatory and Deregulatory Actions.

36 5 U.S.C. sec. 552(a)(1). The United States goes even further, in that agencies are also required to make available for public inspection and copying specified additional material (sometimes referred to as "Reading Room also be indexed:

- Agency decisions (adjudicative orders, including final opinions, dissents, etc.)
- Administrative staff manuals and instructions that affect the public
- Other statements of policy and interpretations not published in the Federal Register
- Copies of frequently-requested records released under the FOIA

37 Freedom of Information Act of 1982, Secs. 8-10. The law also requires each ministry to set out the "particulars of any arrangements that exist for bodies or persons…to participate, either through consultative procedures, the making of representations or otherwise, in the formulation of policy by the agency, or in the administration by the agency, of any enactment or scheme." Sec. 8, para. (1)(a)(ii).

Hungary,[41] and to a lesser extent, Bulgaria.[42] In several other countries, most notably Germany, there is no overall access law, but there may exist provincial (Laender)-level,[43] local-level, or ministry-level obligations to make such information available.

Affirmative information provision grows in significance as individual repetitive requests for the same information increase in number and their importance to business needs becomes more apparent. Over time, individual agencies as well as entire governments have become more convinced of the efficiencies to be gained from broader release of commonly requested material.[44] While in years past the adoption of broader affirmative disclosure mandates might have raised serious budgetary concerns, the ability to provide large quantities

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38 Freedom of Information Act, No. 13 of 1997 (came into force 21 April 1998),

39 Access to Information Act, R.S.C. 1985, Sec. 5.

40 General Administrative Procedure Act, June 4, 1992.

41 Act (LXIII) of 1992 on the Protection of Personal Data and Disclosure of Data of Public Interest, secs. 15-16.

42 Access to Information Act, 22 June 2000, Art. 15. The Bulgarian Act covers affirmative disclosure of only the most basic government agency information via annual reports.

43 *See, e.g.* Act of the Land Brandenburg on Access to Documents (GVB1 Nr. 4 of 19 March 1998) and the Freedom of Information Act of the Land Berlin (GVB1 Nr. 45 of 15 October 1999).

44 As part of an official directive from the U.S. Office of Management and Budget, the U.S. Government in recent years has made a strong commitment to releasing more information voluntarily. *See* Office of Management and Budget Circular No. A-130, "Management of Federal Information Resources, 59 Fed. Reg. 37905 (July 25, 1994 (encouraging release of greater amounts of information "at the initiative of the agency").

of documents in electronic form has made it possible even for developing and transition countries to contemplate significant initiatives in this direction.45

These developments have also had an impact on the issue of disclosing government information that has become a prized asset for commercial use (e.g., census data, housing stock information). Many governments, including a number of EU countries, have begun to craft rules for making available certain kinds of commercially valuable data on an affirmative basis. The mobility and low price of electronic information has opened up possibilities for government to relinquish such information to the private sector, which can provide many kinds of helpful value-added services to the public. In the years ahead, countries seeking to become or remain competitive economically will increasingly need to consider such affirmative provision of information in the broader context of government information policy, including the movement toward e-government. As discussed below, Latvia is showing signs of grasping these connections.

2. Affirmative Provision of Information in Latvia

Access to basic information about government structures and operations is relatively scarce in Latvia, as it is in most transition countries. Traditional notions of secrecy, a lack of public service orientation, and scarce public funds combine to limit the amount of information that public authorities make available to the public on a voluntary or mandatory basis. Even without a significant legislative mandate, however, many ministries and administrative bodies are taking it upon themselves to make more information accessible.

45 While technology in no way eliminates the cost of reviewing and preparing documents for disclosure, it nevertheless significantly reduces the overall costs otherwise associated with providing hard copies of materials.

No provisions governing the affirmative dissemination of information appear in Latvia's Law on Information Access (discussed below). This is similar to many other countries, as reflected by the small number of nations noted above that have active and passive information provision requirements contained in the same law. Instead, Latvia has a very modest collection of individual laws that contain publication requirements. According to one source, there are an estimated 30 or more laws that govern affirmative disclosure of information in Latvia.46 For example, the Law on State Statistics requires the Central Statistical Bureau and other state or local government institutions, within the fields of their responsibility, to publish various kinds of economic, social, and demographic information.47 Similarly, the Law on the Bank of Latvia mandates the publication of regulations and regulatory directives on the requirements governing the activities of credit institutions, as well as procedures for calculating credit institution performance indicators and preparing company business reports for the Bank.48

The only significant nation-wide affirmative publication requirement resides in the Cabinet of Ministers Instruction "On the Procedure for Preparing Annual Public

49 This instruction requires ministries and subordinate administrative bodies to

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46 This figure is based on a brief survey of such laws conducted by Inese Voika of the nongovernmental organization *Delna* in 1999.

47 Law "On State Statistics of the Republic of Latvia," 6 November, 1997, Article 20.

48 Law "On the Bank of Latvia," 19 May 1992, Article 42.

49 Cabinet of Ministers Instruction No. 3, 12 December 1998.

prepare annual reports containing a wide range of information of interest to the public, including:

- the institution's legal status and organization
- the institution's mission and priorities
- activities of the institution over the past year, including activities leading to service quality improvement and better internal management
- an analysis of the achievement of program indicators and use of the state budget
- personnel training
- international projects
- research
- a preview of forthcoming goals and objectives

The affected agencies must issue their reports covering the prior calendar year by the beginning of the new fiscal year on July 1. The quality of the reports reportedly varies widely,[50] but they are eagerly read by many businesses and NGOs.[51] Availability is a problem. The terms of the instruction merely require a few free copies to be distributed to the National Library system. However, increasingly, many ministries are putting their entire reports, or excerpts thereof, on their web sites and offering as many copies as they can at a nominal price through their main office locations.

In general, ministries and other administrative bodies have simply taken it upon themselves to make more information available on an affirmative basis. As might be expected,

50 While other annual statements are reportedly less prepossessing, we personally reviewed two annual reports—by the Ministry of Internal Affairs and Ministry of Environmental Policy and Regional Development—that were of uniformly high quality and filled with informative statistics. The Ministry of Internal Affairs' report benefited greatly from the work of the Ministry's Analytical Division and Press and Public Affairs Department. The former produces a very wide range of crime statistics, many of which are contained in the annual report. The latter in turn benefits from a highly skilled staff of 12 people who have a highly sophisticated approach to dealing with the media, including daily press briefings and a daily crime report. They also have a well-developed website and several brochures on citizens and crime. Interview with Normunds Belskis, Director of the Press and Public Relations Department, March 16, 2001.

51 Interview with Inese Voika, March 19, 2001.

the most impressive public education efforts through affirmative information dissemination come from those administrative bodies that are currently self-financing and released from civil service requirements as a result of administrative reforms adopted several years ago (but which are presently being reconsidered). Thus, bodies like the State Enterprise Registry, the State Revenue Service, and the Road Traffic Safety Inspectorate – all of which are financed from their own collection of fees – have established very impressive web sites and created a sizable number of highly readable public information brochures. The State Revenue Service, for example, has extensive information on how to appeal a decision of the service on its web site. The Enterprise Registry even maintains a listserv to which it sends commercial law information of special interest to over 1,500 businesses and individuals.[52] Where some government agencies have not been interested or able to develop abundant stores of online information, others have stepped in. For example, the Soros Foundation has reportedly reached agreement with a number of government ministries and other bodies to place a number of reports, studies, and other documents on a special web site in the interest of fostering greater public policy dialogue.[53]

As this phenomenon of voluntary disclosure expands, the government may come under greater pressure to prescribe with more clarity and uniformity the types of information that must or may be released. As discussed earlier, this matter cannot be discussed independently

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52 Interview with Maija Celmina, Director of Public Affairs, State Enterprise Registry, March 16, 2001. This listserv was utilized extensively in the process of drafting the new Commercial Code, and approximately 50-60 extremely useful comments were received back from various parties and responded to. The Registry also set up a chat-room to encourage discussions about the new Code (this adds weight to the recommendation that draft laws be placed by ministries on their web sites at an earlier stage of the drafting process for public comment. *See* Section III.C. below.

53 Interview with Vita Terauda, Executive Director, Soros Foundation-Latvia, June 25, 2001.

of a more integrated approach to the commercial use of public information and the management of electronic information. Work on the current draft Law on Electronic Documents is helping to provide some answers to questions about electronic publication of information, but many more questions remain about dissemination policies and how electronic public mailing lists will be established and maintained in a transparent manner. While it may be inadvisable, in a very rapidly changing environment where government agencies should be encouraged to innovate, to impose too much uniformity on Latvian administrative bodies concerning their information dissemination practices, adoption of some common principles and minimal requirements may be in order. These could include a description of certain basic categories of documents that shall be made available to the public in hard copy and/or electronic form according to a certain time and fee schedule, minimum guidelines for the establishment of government web sites and public mailing lists, and general policies on the exploitation or commercial reuse of public sector information. Ideally, some of these subjects would be incorporated or cross-referenced in the existing Law on Access to Information, but in any event they should be elevated to the level of national legislation in order to ensure compliance by all government entities, including municipal bodies.

C. Public Participation in Government Rulemaking and Law-Drafting

In recent years, much attention has been paid to the need for regulatory policy to take greater account of the impact of new rules on the economy and society – to ensure that regulatory proposals advance societal welfare, are as non-intrusive as possible relative to key government objectives, and do not conflict with existing laws and regulations. Despite this sensible approach – which carries greater significance for transition countries seeking to attract desperately-needed investment and minimize contradictory regulatory commands in

their legal framework – remarkably few countries have sought to open up their ministerial legislative and regulatory drafting processes[54] to public comment by those businesses and NGOs potentially most affected by the adoption of new rules.

Even in most Western democracies, such open procedures at the agency level are relatively rare as a formal matter, with most public consultation or input into legislative or regulatory drafting occurring on an informal or *ad hoc* basis. Countries like Norway and the United States are relatively rare exceptions: In Norway, ministers are required to send all legislative and regulatory proposals out for public comment to all interested institutions and interest groups, which have 90 days to provide written opinions. In the U.S., the Administrative Procedure Act requires that agencies publish in the *Federal Register* a notice of proposed rulemaking stating (1) the time, place, and nature of any public rulemaking proceedings; (2) the legal authority under which the agency proposes the rule; (3) the language of the proposed rule or a summary thereof; and (4) an invitation to interested persons to submit comments within a certain time frame.[55] If an agency can give personal notice to all affected persons (e.g., ten affected companies), individual notice is sufficient.

1. Public Participation in Government Rulemaking in Transition Countries

54 These two distinct phenomena are considered together in this discussion, insofar as most legislation in civil law countries originates in ministry working groups and passes through the same initial review and approval channels (through a Cabinet) as regulatory proposals. This is the case in Latvia, as discussed below. This executive branch leadership in legislative initiative is distinct from later consideration of draft laws in the parliament, which may or may not consider holding public hearings.

55 Administrative Procedure Act, 5 U.S.C. sec. 553.

Among the transition countries, only Hungary has adopted a comprehensive approach to public participation in legislative and regulatory drafting. Hungary's Act XI (1987) on legislation requires that lawmakers examine potential civil rights concerns and social welfare problems and allow citizens to participate directly or through representative organizations in preparation of all legislation and regulations. The act outlines several practical requirements, including an obligation by the Ministry of Justice to seek input from NGOs, chambers of commerce, municipalities, and state institutions. The NGOs and professional associations have a right to provide opinions on draft legislation and regulations falling within their areas of expertise, and all legislative drafts are sent to those who have indicated an interest in participating.56

Elsewhere in Central and Eastern Europe, governments have generally taken an informal approach to the matter of soliciting public comment on legislative or regulatory proposals. Governments in Albania, the Czech Republic, Poland, Slovakia, and Slovenia reportedly regularly invite NGOs to comment on draft legislation and participate in drafting committees, although these practices are not formalized and the circle of NGOs invited often varies. Generally, government ministries keep formal or informal lists of NGOs as a way of identifying recipients of draft proposals.57

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56 *See generally* Denis Galligan & Daniel Smilov, *Administrative Law in Central and Eastern Europe, 1996-1998,* pp. 211-219 (1999). The law also gives NGOs and professional organizations the right to initiate legislation and guarantees that their proposals will be sent to the leaders of parliament and to parliamentary committees that have jurisdiction over the issues in question.

57 Regional Environmental Center, 1998. *Doors to Democracy: Current Trends and Practices in Public Participation in Environmental Decisionmaking in Central and Eastern* Europe, pp. 40-41 (Budapest, REC)(quoting from the Aarhus Convention).

Due to the high level of environmental activism in the region and the signing by most European countries of the Aarhus Convention, which promotes freedom of environmental information (but which has not yet been ratified by most of its signatories), the environmental arena has seemed to generate the greatest degree of public participation activity in lawmaking and rulemaking. The Convention requires that governments have a legal obligation "to promote effective public participation at an appropriate stage, and while options are still open during the preparation by public authorities of executive regulations and other generally applicable binding rules that may have a significant effect on the environment." The Convention also suggests that governments adopt a definite procedure to take into account public participation "as far as possible."[58]

Despite the Convention's provisions, most public participation in the environmental area in Central and Eastern Europe takes place on an *ad hoc* basis.[59] For example, in Croatia, Serbia, Lithuania, Montenegro, and Bulgaria, NGOs are invited on a largely individual basis to participate in consultation or discussions of draft environmental laws and rules. In Albania, Slovenia, and Romania, NGOs reportedly informally initiated a cooperation agreement with each of those countries' Ministries of Environment to provide information and involve them in the preparation of draft legislation and regulations.[60]

In general, formal and informal opportunities for public participation have increased significantly where policymaking and policy implementation rather than legislation and

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58 *Id.*, p. 40.

59 Reportedly, however, consultation is required by specific statutes in Poland in the case of legal acts related to nature protection and environmental protection. *Id.*

60 *Id.*

rulemaking are at issue. This is especially relevant in the environmental arena, where environmental impact assessments, land use plans, and permitting decisions have significantly involved NGOs in consultations or submission of public comments. Opportunities for public participation are significantly more plentiful at the regional or municipal level, where direct democracy can make itself felt more easily. Yet here too, formal, regular requirements for public notice and comment are rare; *ad hoc* invitations to NGOs form the customary practice.61

2. Public Participation in Executive Rulemaking and Legislative Drafting in Latvia

Until recently, Latvia lacked any general approach to the solicitation of public comments on draft ministry legislation and regulations. Like most other transition countries, Latvia has generally treated the issue of public comment on an *ad hoc,* ministry-by-ministry basis. Some ministries reportedly have one or two privileged NGOs that they occasionally rely on for comments or consultations in connection with draft legislation or rules, while others may have a more systematic list of organizations to which are sent all proposals of any relevance.62 In the past year, however, the government has made efforts to adopt formally two related mechanisms that provide modest opportunities for interested parties to submit comments on draft legislation and regulations as they pass through the Cabinet of Ministers. One seeks to encourage individual ministries proposing new rules or legislation to document

61 *See generally id., pp. 41-53.*

62 For example, the Ministry of Environmental Protection and Regional Development (MEPRD) maintains an e-mail list of various interested organizations (e.g., birdwatching groups, an acoustical noise association, various municipalities) to which it sends legislation or regulations germane to their areas of expertise. Interview with Anita Drondina, Deputy Executive of the European Integration Division, MEPRD, March 15, 2001.

the extent to which they consulted with NGOs or foreign experts on their proposals. The other provides for proposed rules and legislation to be posted on the Cabinet of Ministers website for comment shortly before the Cabinet takes action on them. Each of these deserves scrutiny.

The requirement that ministry legislative or regulatory proposals document any public consultations conducted by the ministry represents an amendment to internal instructions interpreting Cabinet of Ministers Regulation No. 160. Regulation 160, in effect since 1996, requires any ministry or state body that proposes a draft law or regulation for consideration by the Cabinet to attach to the proposal (1) the motivation for the act; (2) possible alternative approaches to the problem; (3) the relation of the proposal to Latvia's integration with the European Union; (4) an assessment of the political and social consequences of implementing the proposal; (5) a financial impact assessment of the law or regulation; (6) a legal impact assessment describing the normative acts that need to be amended or repealed to create consistency with the new law or regulation; and (7) an assessment of the conformity of the draft normative act to corresponding acts of the European Community.63 The Regulation says nothing about public consultation.

In connection with proposed changes to Regulation No. 160 – changes that permit a wider range of policy documents to accompany draft legislation or regulations for consideration by the Cabinet of Ministers 64 – amendments to the interpretive internal

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63 "Regulations on Internal Procedures and Activities of the Cabinet of Ministers," No. 160, April 30, 1996, article III, paras. 12-18.

64 The proposed amendments expand the types of documents that can accompany draft legislation or rules to include diverse policy planning documents and various kinds of briefing documents (e.g. budgetary forecasts, statistical compendia). Currently, only concept papers are legitimate attachments to draft normative acts under consideration, although other types of materials have been forwarded to the Cabinet for years as a matter of custom. Interview with Ugis Sics, Baiba Petersone, Policy Coordination Unit, State Chancellery, Cabinet of Ministers, March 16, 2001.

instructions adopted by Cabinet decree in early 2001 mandated a detailed ‘annotation process’ to inform the package of materials accompanying draft laws or rules to the Cabinet. The annotation process involves the necessity of ministries asking and answering multiple questions across seven major areas of inquiry, including descriptions of how a new law or regulation is to be implemented and what kinds of consultations have been held with nongovernmental organizations and with international consultants. Each draft legal act is also supposed be accompanied by a trenchant cost-benefit analysis conducted by the Ministry of Finance and an analysis of the act's legal impact by the Ministry of Justice. These two critical items are reviewed in the Chancellery by the Legal Department and Policy Coordination Unit, respectively.65

The public consultation annotation, still very much in flux as of this writing, will likely not only address to whom the proposal was sent and the nature of the comments received back from various organizations, but a discussion of how the comments were disseminated (e.g, by what media) and how such comments were utilized and affected the proposal, if any.66 A companion innovation in this regard, instituted by internal instruction over the past several months has been a system of placing on the Cabinet of Ministers' web site

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65 These reviews are supposed to take place over a 7 day period, during which as many as 20 draft legal acts may be under scrutiny. The legal review is working quite smoothly based on good coordination between the Ministry of Justice, the Chancellery Legal Department, and individual ministry legal departments. The financial impact and cost-benefit analysis review is encountering more problems, mostly due to the technical difficulty of the task and insufficient technical expertise within the ministries and the Ministry of Finance. Interview with Elita Ektermane, Deputy Head of the Legal Department, State Chancellery, Cabinet of Ministers, March 13, 2001; Interview with Baiba Petersone and Sandra Klavina, Policy Planning and Coordination Department, State Chancellery, Cabinet of Ministers, June 28, 2001.

66 As of spring 2001, the draft annotation form contained seven major inquiry areas: (1) Why the legislation is necessary; (2) What will be the budgetary impact of the legal act on society and the economy; (3) What will be the impact on state and municipal governments; (4) What is the impact on international agreements; (5) A description of consultations with NGOs or international experts; and (7) How will the legal act be implemented in practice.

(www.mk.gov.lv) all draft laws and regulations submitted to the Cabinet for consideration.67 These draft legal acts, which are also published in the official gazette, remain on the website for a period of between 2-4 weeks and are open for public comment.68

The new consultation provisions and use of the Cabinet of Ministers website as a vehicle for soliciting public comment represent a significant step toward greater public participation in lawmaking and rulemaking. Over time, as the process becomes more regularized, baseline expectations may shift in such a way as to prompt even more explicit and extensive efforts to capture the views of interested parties. For the time being, however, the government and the public should not ignore the modest nature of the current mechanisms. For example, the consultation provisions of the new annotation process do not prescribe any standards for how the consultations are to be conducted, including the numbers of such consultations or how extensive they should be. Indeed, the annotation does not by its terms even require that consultations be held; it merely creates an expectation that some level of

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67 The idea of putting draft laws and regulations on the Cabinet of Ministers' homepage originated as Item No. 28 of the Action Plan to Improve the Business Environment ("Development of institutionalized mechanism for dialogue"). The Plan recommended the website idea as one means of addressing the need for consultations prior to adoption of any legal acts affecting the business community -- in order to avoid the enactment of ill-considered regulations that could create an uncompetitive business environment.

68 This period coincides generally with the period during which all legislative and regulatory proposals are lodged with the Chancellery and are reviewed for purposes of form and content (including the collection of comments and questions by various ministries). This is part of the larger process of Chancellery review of draft legal acts pursuant to Regulation No. 160. Pursuant to this process, every Thursday, the State Secretaries meet to review all of the initiatives of the Ministers. These meetings are attended by Ministers and various senior civil servants. Any ministry can ask for an opportunity to comment on a draft legal act, in which case it is sent through an inter-ministerial comment process. After two weeks, the comments are collected and the consolidated changes are reviewed. Interview with Gunta Veismane, Director, State Chancellery, Cabinet of Ministers, March 13, 2001.

public comment will have been solicited and taken into account.[69] More generally, there is the danger that in the rush to package draft laws and regulations for Cabinet consideration, the annotation process will become a merely formal exercise. Already there is some indication that this occurring as harried civil servants attempt to answer the ever-growing list of subsidiary questions underlying the annotation instructions.[70]

As for the website, although its promise is great, at present it is predictably under-utilized due to lack of publicity and the unavailability of Internet access on the part of many organizations and individuals. While its influence will grow with increased connectivity and gradual movement toward e-government, for the time being it would be a mistake for ministries to rely on the web to the exclusion of other media (e.g., mailed comments) or face-to-face opportunities for consultation and comment.

The common denominator in moving toward a more participatory legislative drafting and rulemaking system is to encourage – or require – individual ministries and administrative bodies to devote substantial time to public consultation closer to the beginning of the drafting process. To avoid the dangers of *pro forma* solicitation of public views, agencies should acknowledge the need to consult interested parties for advice and feedback even as early as the concept paper stage. The gathering of comments and suggestions earlier in the drafting cycle would provide earlier input of helpful technical expertise and help anticipate and address various technical and political problems before they become unmanageable.

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69 If the government takes the annotation process seriously – which it appears to be doing – it is certainly possible that a competitive dynamic may emerge in which ministries find it in their interest not to be perceived by the Cabinet as producing weak or incomplete annotations.

70 Several different versions of the annotation form circulating in the government in the late spring of this year contained many more questions than appeared in a version of the annotation obtained earlier in the spring.

In practical terms, in the absence of a generally applicable Cabinet of Ministers regulation, this would *entail each ministry and administrative body* adopting a system for regular notification of interested parties via multiple means (e.g., website, mail), and organization of public comments in such a way as to facilitate completion of the Chancellery's annotation form. Several ministries and administrative bodies have already taken steps in this direction. For example, in connection with the drafting of the country's new Commercial Code, the State Enterprise Registry invited several waves of comments on various drafts of the law using a listserv containing the names of over 1,500 interested parties. Reportedly, 50-60 high-quality responses were received and given replies by the Registry.71

Over time, the government should also consider ways of making the overall notice-and-comment process more transparent. This should involve more precise guidance (preferably via a new Cabinet of Ministers Regulation) placing explicit requirements on individual ministries and administrative bodies to solicit public comments on draft legislation and regulations according to definite time and manner specifications. The latter should spell out general requirements for website dissemination, as well as special instructions for distributing (via e-mail and/or regular mail) draft laws or regulations to NGOs that have previously indicated an interested in receiving such draft legal acts. It should also anticipate the possibility that some groups would have registered their interest in receiving certain types of draft legislation or regulations via a database registry, and that some of these groups might additionally be invited to join in a drafting or working group (subject to certain disclosure requirements to avoid appearances of ethical conflicts). As noted above, such practices are common in some other Central and East European countries, and recently, Latvia's own NGO

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71 Interview with Maija Celmina, Director of Public Affairs, State Enterprise Registry, March 16, 2001.

Center has advanced a reasonably similar proposal to the Cabinet of Ministers to help maximize the impact of the new annotation process.[72] Implementation of reforms along these lines would place Latvia among the forefront of Eastern and Western European countries in vindicating the public's right to participate in executive branch rulemaking and legislative drafting.

D. Responsive ('Passive') Provision of Government Information

Establishing a system of public access to government information upon request entails a significant government commitment. Specifically, it entails provision of appropriate material and human resources and an adequate legal framework and legal expertise to support such a system. This requires a law embodying not only the general right of the public to access to information held by state bodies, but a clear set of provisions spelling out the coverage of the law, limitations on the right of access, and methods of delivering the information. It also requires a government center of expertise that can act as an authoritative interpreter of the law and possibly a first-instance decisionmaker on disputed matters of access. In recent years, a number of transition countries have enacted access to information laws, including Hungary, Lithuania, Slovakia, Bulgaria, and most recently, Georgia.[73] In many cases, these laws

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72 In a recent proposal to the Cabinet designed to help the Government fulfill the obligations under Part VI of the annotation (public consultation section), the NGO Center recommended establishment of an NGO database that would include various kinds of information about NGOs with particular interest in various substantive areas. This database would form a central repository from which the Cabinet could draw in targeting certain draft laws or regulations for comment. The NGO Center's proposal would also seek to have the Cabinet invite some or all of the NGOs to participate in subsequent working groups on draft legislation as it is turned over to Parliamentary committees for consideration. The Center's proposal is a sound one, but fails to address the problem of having such a system operate at the ministry level – where the impact of public input may be greater – rather than at the Cabinet level.

73 The Georgian access to information requirements are incorporated into that country's new administrative procedure law.

provide more liberal public access to information – on paper, though not necessarily in practice – than similar laws existing in mature Western democracies.

Latvia has enacted a comprehensive law governing responsive, or 'passive,' information provision, but as discussed below, has created neither a clear legal framework delimiting the contours of the public's access rights nor a central institution with expertise and authority to educate and advise the government and public about practical implementation of those rights. Below, we discuss some of the major conceptual and textual problems with the law and its implementing regulation, as well as some of the documented practical problems attending their use. We then suggest changes to the law and regulation, as well as the need to create a central office or agency charged with implementing the law in an intelligent manner and enforcing it.

1. Conceptual and Practical Problems with the Information Access Law and Implementing Regulation

Article 100 of the Latvian Constitution (*Satversme)* provides that "[e]veryone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express their views…." While this constitutional provision does not explicitly provide for access to government information, as is the case with a handful of constitutions around the world, it does provide the constitutional foundation for the public right to government information that was codified in the Law on Information Access (LIA) adopted on October 29, 1998. The right is further strengthened by Article 104 of the Constitution, which provides that "[e]veryone has the right to address submissions to State or local government institutions and to receive a materially responsive reply."

The LIA suffers from several textual and conceptual deficiencies. Some appear to be the result of drafting problems, which have created ambiguities and inconsistencies. In other cases, the entire approach lacks a sound foundation favoring public access.74 The major problems include the following:

- ***The application of the law to all state bodies is uncertain.*** Article 2.1 of the law suggests that the law applies to "state administrative institutions and local government institutions." Yet this definition may leave out a wide range of public institutions for which such formulation does not apply, including the courts, Procuracy, state control institutions, health care institutions, and state-owned or -controlled companies). While the new Laws on Civil Service and State Agencies may have clarified the situation somewhat, there are still possible ambiguities that can only be remedied through a more precise definition that should reference such other laws explicitly.

- ***Certain definitions are not clear, especially the term "documented information."*** Although Article 2.2 of the law purports to cover all information created and maintained by certain state institutions, the legal right to access is in fact limited by definition in Article 1.3 to information that can be 'documented,' i.e., only information whose existence the institution has effectively registered. This places the legal right to access at the mercy of the efficiency of an institution's registration practices and may serve to encourage bureaucrats to avoid systematic documentation of their records.

- ***The law does not take precedence over other laws concerning the disposition of government information and its access by the public.*** To the contrary, the law references the possibility of other laws forbidding or providing more specific direction as to matters of classification and access. Article 2.4 provides that "information shall be accessible to the public in all cases where it is not provided otherwise by law." Based on the principle of *lex specialis* enshrined in the country's Promulgation Act (Article 8, para. 3)75(a more specialized law will take

74 Some of these deficiencies are discussed in detail in a 1999 World Bank report authored by Fredrik Ericsson, entitled *Access to Information in Latvia: Practice, Provisions, and Proposals.* Ericsson's general view is that the law's defects should be cured through greater specificity and explicitness. He does not, however, treat the central problem of the limits to explicitness, i.e., that, even in a civil law system, authoritative interpretation by a commission or the courts may be necessary to create a common understanding of particular terms. Similarly, he does not address how and whether information arguably exempt from disclosure should nevertheless be disclosed (e.g., through a public interest balancing test). This also may reflect a disinclination to entrust such decisions to courts or an authoritative decisional body like an information commission or inspectorate, particularly in a transition country with relatively weak institutions. In fact, resort to such bodies is not only necessary, but potentially desirable as a matter of finality and respect for the law.

75 Law on the Procedure by Which Laws and Other Acts Adopted by the *Saiema,* State President, and Cabinet are Promulgated, Published, Take Effect and Become Valid, Act 115 of 1994.

precedence over a more general law), any number of other, more detailed or specialized Latvian laws governing information access may trump the public's general right to access in the LIA. This emasculation of a general individual right by a more specialized legal norm represents a favored Soviet-era drafting technique and may give rise to an untold number of abuses.76

- ***There is no clear, general right of public access qualified by a limited number of narrow, itemized exemptions written into the law and able to be interpreted authoritatively by the courts***. Instead, there are poorly-defined categories of 'generally accessible information' and restricted ('limited accessibility') information (Articles 4 and 5, respectively) whose imprecise definition invites *ad hoc* interpretations to be made by individual agency managers. Five categories of restricted information are listed, but it is not clear whether they are exhaustive of the scope of restricted information, or whether individual agency managers can creatively justify limited disclosure or non-disclosure on other grounds. This is of particularly grave concern given the imprecision with which many of the restricted categories are drafted.77 Each of these exemptions has significant problems:

  (1) Article 5.2.1 provides that restricted information may be "determined by law," opening up a potentially large, but undefined collection of information arguably covered by more specialized legal norms. At the very least, this category should be restricted to other statutes that specifically and flatly bar disclosure.

  (2) Article 5.2.2 and Article 6 classify as restricted information that "which is intended and determined for the internal use of an institution." This is facially vague and overbroad and goes well beyond what may be needed to protect internal agency decisionmaking. While Article 6 focuses on pre-decisional documents, this exemption may sweep in all manner of general internal guidance documents and manuals.

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76 An illuminating, albeit specious, example of how this principle may be abused is provided by a study of information accessibility in Latvia conducted in 1999-2000 by the nongovernmental organization *Delna (*see discussion below). When a *Delna* researcher sought access to court verdicts in several criminal cases, court authorities justified their refusal to provide such documents on the grounds that the Code of Criminal Procedure (a more specialized law) restricts access to legal materials to those involved in the case. While verdicts arguably do not qualify as legal materials under the law, the reliance on the criminal procedure code indicates the mischief that can be caused to public access by virtue of this provision of the LIA. The *Delna* study is described in the organization's Annual Report for 1999-2000, which appears http://www.delna.lv/english/ar2000.htm.

77 This problem was directly at issue in the influential Constitutional Court case decided on July 6, 1999 "On Conformity of the Cabinet of Ministers 21 January 1997 Regulation No. 46 'On Government Agreements' with the 20 November 1998 Information Accessibility Law." The court affirmed that information non-disclosure may only be justified on the narrowest of legal grounds in particular cases, and not on the basis of an agency's own legal interpretation. The case concerned the accessibility of government contracts.

(3) Article 5.2.3. treats "secrets of entrepreneurial activity" as restricted information, without clearly defining the parameters of that term. Article 7 offers a broad gloss on the exemption by referencing information whose disclosure "can harm the competitive ability" of the author of the information, but this is plainly overbroad, insofar as there is no prior definition of the degree to which the information is confidential in nature.

(4) Article 5.2.4 captures information "on the private life of a physical person," but it is unclear whether this term corresponds exclusively to other legal protections (such as the country's Personal Data Protection Law) referenced in Article 8.

(5) Article 5.2.5 covers information relating to evaluation processes such as examinations and proposals responding to government solicitations, but this is overbroad insofar as it does not distinguish between pre- and post-decisional disclosure or types of information (e.g., information that could pose true competitive harm vs. general organizational information).

- ***There is no reference to the Law on Secrecy or its interaction with the LIA.*** Without such a cross-reference, there may be a tendency (already documented by the press and various NGOs) to treat restricted access information as state secrets.

- ***There is no public interest or other balancing test governing disclosure of restricted information.*** While the LIA provides for the possibility that restricted information may be disclosed upon a showing of purpose, a decision to do so is not guided by any clear legal standard and is left up to the discretion of the head of the agency. This unnecessarily restricts access to information that may be vitally in the public interest.

- ***There are no fixed standards for classifying and registering information.*** Article 9 of the LIA effectively grants to every state institution the right to determine its own record-keeping and information registration procedures. At a minimum, the law fails to reference any other authoritative source of standards (e.g., the State Archives) that could issue uniform regulations on the subject.

- ***It unnecessarily requires an information request to be made 'as precisely as*** Although an August 2000 amendment to the implementing regulation suggested that a refusal of access to generally accessible information could be justified only "if it is not possible to identify [the information] based on the description" [of the information request], the LIA itself still retains the requirement (in Article 11.3) about formulating a request "as precisely as possible." Depending on how this is interpreted, most requests could be deemed 'insufficiently precise,' and thereby rejected. A better formulation would be to require requests to be 'reasonably' precise or specific.

- ***There is no public access to registers of restricted information.*** The LIA only requires that access be granted to inspect registers pertaining to generally

accessible information (Article 9.2). The inability of the public even to understand what kinds of information are classified as restricted represents a potentially dark cloud on government transparency.

- ***The right to appeal a refusal of access to court may be artificially limited.*** Article 15.2 provides for court challenges to refusals to provide information, but appears artificially to limit the grounds for such appeals to (1) refusals to provide *any* answer to a request, and (2) a mere decision to classify information as restricted. This second reason not only implies that court challenges to decisions not to release restricted information are barred, but that agency bureaucrats can in fact attempt to justify nondisclosure simply by designating information as restricted in nature. There is considerable anecdotal information suggesting that this is exactly what most public officials do in responding to other than routine requests.

In addition to these deficiencies, the law's implementing regulation creates problems of its own. Indeed, Cabinet of Ministers Regulation No. 275, adopted on August 3, 1999 and amended on August 1, 2000 ("On Procedure of Disclosure of Information at the Disposal of the State Administration and Municipal Institutions"), creates a number of unnecessary ambiguities and restrictions on the public's access rights:

- ***It confuses the procedure and scope of what may be requested verbally rather than in writing.*** The LIA clearly provides for verbal requests and responses as well as written requests and responses. The problem is that the law (Article 11) and implementing regulation (Article 10) do not clearly define what is permissible to seek via verbal request vs. written request (e.g., some verbal requests may be too complicated or voluminous to address in that form), and the procedure for handling requests is essentially left to cognate provisions in the so-called Petitions Act.[78] This includes the time limits for delivery of information, which, according to the Petitions Act, may be processed in seven days, unless additional time is needed, in which case 30 days are required. It would seem preferable to have clear, specific procedures and time limits for verbal and written requests contained squarely within the LIA to avoid confusion.

- ***It allows for verbal refusal to provide information based on a verbal request, thus jeopardizing an applicant's ability to document such refusal for purposes of appeal.*** The regulation (Article 13) does not explicitly require a refusal of access based on a verbal request to be registered and attached to a written reply. It only explicitly requires that a responsive reply be made in writing if an immediate verbal answer is not feasible. This obviously jeopardizes an individual's ability to document a refusal for purposes of appealing the refusal.

78 Law on the Procedure by Which Applications, Complaints, and Proposals Are Examined in State and Local Government Institutions, Act 201 of 1994.

- ***It allows an institution to refuse access to information if the information has already been 'published.'*** Article 11.5 allows an institution to reject a request for information if the information "has already been published or made public by other means." As a result of the vagueness of this formulation, an institution may refuse access to information merely if some factual element of the information has been made known in the newspapers. The ability of the public to obtain the whole, factual (and perhaps, only correct) basis for purportedly or actually published information is thoroughly undermined by this provision. Instances are known where bureaucrats have denied access to information simply by pointing to a newspaper article that partially referenced an event or topic that was the subject of a request.

Together, the LIA and Regulation No. 275 pose a cascading series of obstacles and loopholes to reasonable public information requests. These impediments do little to ameliorate a state institutional predisposition to deny access to all but the most innocuous and easy-to-locate government information.

2. Practical Difficulties in Obtaining Access to Information

It is well understood that most government officials evince significant disregard for an individual's rights to obtain information held by the state. In late 1999 and early 2000, the NGO *Delna* conducted a study on the degree of accessibility of government information to the public. Using student researchers with varied backgrounds and seeking information from different government agencies through a variety of methods (by phone, mail, and personal visit), *Delna* attempted to determine the level of government responsiveness under the LIA in terms of the nature, speed, and justification of replies.79

The results of the *Delna* study depicted national and local government bodies as largely steeped in Soviet-era attitudes about the public's right to information and ignorant of the LIA's requirements, but able to use ambiguities and structural defects in the law to their

79 The *Delna* study is described in the organization's Annual Report for 1999-2000, which appears on the group's web site at http://www.delna.lv/english/ar2000.htm.

own advantage in cases where the law's provisions were (at least vaguely) understood. In 15-20% of the cases, the government agency in question provided no response to requests whatsoever. Of the approximately 80% of the cases in which researchers received a reply, 70% of the requests were refused, and of that total, nearly half of the cases resulted in a satisfactory response after a repeated request with legal justification. In most cases, refusal was justified not on legal grounds, but rather by reference to instructions from supervisors, accepted practices, or a lack of time. Refusals were decidedly more common when requests focused on specific questions about an institution's financial operation, budgets, fees for services, internal regulations, property ownership, or contracts with the private sector.80

Demonstrating both the low legal literacy surrounding the LIA as well as the confusion surrounding the demarcation of generally accessible information from restricted information, most officials refused access because the applicant failed to justify the need for the information. While such justification may be required in the rare case where restricted information is at issue (*see* para. 21 of Regulation No. 275), this is flatly prohibited by Article 10.1 of the LIA in the case of generally accessible information. The *Delna* study also revealed that when three institutions – the State Veterinary Service, the National Police, and the Riga Municipal Police – were asked straightforward questions about the kinds of cars owned by the agencies and the highest and lowest salaries in the organizations, only the Riga Police provided responsive information. The other two grounded their refusal to respond on the basis that the information was restricted. 81

80 *Id.*

81 *Id.*

During the study, researchers encountered many instances in which requests met with disdain, sarcasm, hostility, and even intimidation from public officials. In one notable case in the city of Jelgava, inquiries to city and regional police agencies, and the juvenile offenders inspectorate concerning police employee education and training as well as street operations were met with a visit to the researcher's house by police officers and interrogation of the researcher on two occasions about her motivations in asking the questions.[82] The researcher eventually did receive the information sought, and her case attracted widespread press attention in Latvia, but this and other experiences led the authors of the study to conclude that "it is more difficult to get information if the person looking for information represents 'an ordinary person from the street,'" rather than another government official, politician, or the like. And the situation proves even more difficult if the requester does not, as in the case of the *Delna* researchers, have access to, or an understanding of, the text of the LIA or the implementing regulation.

The *Delna* study points out the need not only for revision of the law, but for a broad-based program of government training and public education. Such training and education programs must not only address widespread problems of ignorance about the law and poor attitudes about public service delivery, but practical ways in which legal mandates can be translated into efficient bureaucratic processes. In particular, the government needs to issue directives and provide training on the classification of information and the creation of easy-to-access and easy-to-understand registers. This in turn will promote the development of default procedures and decision trees that will facilitate the delegation of decisionmaking on

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82 A description of this incident appears in the hard copy version of the organization's Annual Report . *See Delna* Annual Report 2000, p. 9 (Riga, 2000)

information questions; as it now stands, most information requests are placed in limbo as fearful or ignorant lower- or mid-level officials try to stall for time or seek guidance from the highest officials of an agency.

Clear classification guidelines and information processing procedures could lead to substantial efficiencies in responding to public information requests. Given the public's relatively low expectations for the LIA and its modest usage in the near-term, the adoption of clearer standards and more efficient procedures would allow public agencies time to expand those systems in a controlled manner consistent with the steadily increasing demands for information that can be expected in later years. Moreover, the advent of larger amounts of electronic information and the movement toward e-government provide a unique opportunity for information policy generally to be placed on a more realistic and organized footing in the coming decade.

It is clear from the country's fragmented approach thus far to information access policy that in addition to strengthening the LIA and making it more consistent, the government must designate an organization to serve as a central authority on public access to information, and that this body should have significant advisory, investigative, and interpretive powers. This approach prevails in virtually all countries that have a freedom of information law and is particularly helpful in a transition country seeking to overcome the Soviet legacy of secrecy and compartmentalization of even ordinary information. The following two sections respectively suggest ways to amend the LIA to make it more effective and to establish an authoritative access to information office within the Ministry of Justice. Such an office should have the capacity to provide training and guidance on access to information matters, and the

83 These features were recapitulated recently by Thomas Blanton of the National Security Archive, George Washington University, in a talk at the World Bank on May 15, 2001.

- Even where an identifiable harm – and hence a legitimate exemption – exists, the public interest served by releasing the information may nevertheless override the exemption in certain instances.

- An independent adjudicator exists to resolve disputes over access. This can include an information commissioner or ombudsman as well as ultimate recourse to the courts. The former can provide authoritative interpretations of the law that can be given weight by the judiciary in specific cases or controversies.

As noted above, the LIA as presently written lacks robust provisions necessary to vindicate each of the first four features, while the weakness of the Latvian judiciary and the lack of a central access to information office or ombudsman effectively removes the fifth feature from the Latvian landscape. Under these circumstances, serious reforms must be attempted, even if they only succeed in partially in remedying these defects.

While numerous detailed textual changes should be considered, the major changes to the law can be clustered as follows:

- ***Ensuring supremacy of the LIA on matters of access to information.*** The LIA should be amended to eliminate references to access being determined or limited by other laws. The only exception might be a specific exemption referencing other laws that clearly and flatly proscribe disclosure. This, for example, is the approach taken in the freedom of information acts of the U.S., Ireland, and Australia, to name just a few. Without such a change, the presumption in favor of public access may be severely compromised.

- ***Ensuring that agency and information coverage is clear.*** The law should make absolutely clear which public agencies are covered by the law and what kinds of information are within its scope. Coverage of the law should extend to as many executive branch agencies as possible, including government owned- or –controlled corporations. Legal rights to information should not be tied to what is 'documented' or registered information, but simply to information *per se.* On the other hand, for purposes of consistency and careful recordkeeping, *serious consideration should be given to limiting the LIA to written requests for documents or other records. Verbal or other requests for non-documentary information might be better dealt with exclusively under procedures of the Petitions Act.*

- ***More narrowly defining exemptions from disclosure.*** The present exemptions should be clarified and narrowed, particularly those dealing with commercial information, privacy, pre-decisional deliberations, and matters of evaluation (examinations, procurement submissions, etc.). If other exemptions are

required – e.g., a national security exemption or law enforcement proceedings exemption – they should be narrowly and precisely drawn. Moreover, the Law on Secrecy must be harmonized with these provisions.

- ***A public interest balancing test or its equivalent should be included.*** Without such a balancing test, neither agency officials nor independent adjudicative institutions have clear guidance about how to weigh the often competing interests that are at stake when exemptions are not absolute (in both initial access to information decisions or ultimate disputes taken to court).84

- ***Basic uniform standards for the maintenance of information and its registration must be established, and public access to information registers must be safeguarded.*** Given the chaos of recordkeeping in many agencies, minimum standards should be promulgated, and the public must be entitled to inspect information registers (including those dealing with restricted information) to acquaint themselves with the contours of each agency's classification and organization of information.

- ***Clear, uniform documentation of requests and decisions must be required by law, and affirmative assistance furnished to the public.*** Given the heritage of secrecy, poor recordkeeping, and poor provision of public services, the law should be amended to require careful documentation of all requests for information and all responses/decisions (both as a matter of monitoring and evaluation and of establishing an adequate record on which to mount an appeal). The law should also require certain additional kinds of affirmative assistance to the public. The latter could include clearer information about fee waivers, provision of information in the format requested by the applicant, and explicit guidance about where information held by other agencies can be located.

- ***Processing times should be addressed directly in the LIA.*** Rather than referring to the Petition Act's time limits, the LIA should contain its own information processing times. A reasonable set of time limits would be up to 10 working days unless something is immediately retrievable, and another 15 working days if additional processing is required (upon written notice to that effect being

84 It is important that the public interest be explicitly factored into decisions about disclosure where exemptions may not be absolute. Poland and Hungary both have a presumption in favor of disclosure so that information may be refused only if the law explicitly requires it to be withheld. Otherwise, a refusal to disclose must simply be 'reasonable.' This is not as strong a ground for withholding as a determination that withholding outweighs the public interest in disclosure. Interestingly, only Poland among the transition countries has an explicit public interest balancing test, but it is used strictly for trade secret cases. In Western Europe, only Austria and the Netherlands have explicit balancing tests. The U.S. law permits discretionary disclosure of exempted material in most instances and memoranda from President Clinton and his Attorney General have made clear that such disclosure is encouraged unless it would cause a "foreseeable harm."

delivered to the applicant). A refusal of access should also be made within 10 working days. These seem reasonable in comparison with other Western and Eastern European countries.[85]

- ***Penalties for non-compliance should be considered in cases of court appeal.*** Reformers should consider the feasibility and propriety of assessing modest penalties for governmental non-compliance with the law following adverse court decisions. Court costs and legal expenses could also be charged against the government in these cases. This could stimulate a better culture of compliance.

- ***'Active' information provision should be incorporated into the LIA.*** As discussed in Section II.B. above, for purposes of logic, clarity, and symbolic importance, active information provision requirements should be part of the LIA. This is the approach taken in the U.S. and several other countries.

Finally, if a national access to information office is established, the law ought to contain a reference to the basic jurisdiction and operations of that office (specific operations and procedures can be left to regulations). The basic objectives of such an office are discussed next.

4. The Need to Create an Access to Information Office or Inspectorate

Based on the substantial need for some governmental body to monitor compliance with the LIA and to provide authoritative expertise on the law, it makes sense for Latvia to consider the creation of some kind of central access to information office or inspectorate within the government. Reportedly, based in part on our recommendations following our mission to Latvia in March, 2001, creation of such an authority was included as an unconditional requirement under the PSAL. Provisional decisions to create such an office within the Ministry of Justice, and to combine it with the State Data Protection Inspectorate have also reportedly been made. These decisions evidence a good deal of strategic and common sense, as they unite related areas of expertise (data protection and data access) under

85 For example, Denmark, Hungary, the Netherlands, and Portugal all have 15 calendar day processing periods. Hungary and Lithuania both have 8 day periods in which agencies must register a refusal of access.

one roof and promote intellectual and material efficiencies. This model has found favor most strikingly in Hungary, where since 1992 the Parliamentary Commissioner for Data Protection and Freedom of Information has compiled an enviable record of fairness and rectitude in monitoring and enforcing that country's Data Protection and Freedom of Information Law. The Ministry of Justice has several considerations and options to keep in mind as it moves toward establishment of a similar institution in Latvia.

Many countries around the world have vested an access to information monitoring authority – and sometimes enforcement or quasi-enforcement authority – in a central state agency. Australia, Hungary, and Canada are notable examples of countries with freedom of information commissioners or ombudsman that play multiple roles with respect to their access to information statutes. In some countries, the commission reports to the legislative branch. In other countries an executive branch office – in the U.S., it is located within the Department of Justice – informally monitors government agency compliance with the law and provides authoritative guidance on interpretation of the statute. Latvia appears to have made a decision to create an executive branch authority. While in theory this may diminish somewhat the independence that the authority can maintain relative to other executive branch institutions, in fact there is no practical impediment to maintaining independence and resisting political pressures if the office is provided with certain powers and Parliament takes a sufficient interest in overseeing the work of the office and monitoring its ability to function under the Minister of Justice.

A basic choice that the Latvian government must make concerns the range of functions that such an office will execute. Among the many functions that such an office could conceivably handle are the following:

- Drafting of revisions to the LIA and implementing regulations

- Commenting on draft legislation and regulations affecting access to information throughout the government

- Serving as an important source of expertise on e-government and other government information initiative

- Serving as a source of expertise on interpretation of the law through formal guidance to executive branch agencies

- Serving as a source of expertise on practical implementation of the law by agencies and municipalities, including the provision of guidance on maintenance of information registers, classification of information, adoption of fee schedules, development of internal agency manuals, streamlining of agency procedures (including creation of appropriate service delivery desks), and development of public information notices

- Serving as a central coordinator for public information and education about access to information

- Serving as a source of expertise on the design and organization of training for civil servants and other affected government (e.g., municipal) employees charged with executing the law

- Providing regular monitoring and inspection of covered public institutions concerning their compliance with the law.

- Investigating public complaints about information disclosure by state institutions

- Issuing annual reports on overall compliance with the law and activities of the office

- Serving as a first- or second-instance informal decisionmaker (e.g., following an adverse decision by an agency administrator or a higher-level agency authority) able to issue non-binding, yet authoritative, appealable decisions on disputed matters.

In some countries where an ombudsman approach is used, e.g., Canada and Australia, a freedom of information office also may also represent the views of one or more individuals in a judicial proceeding concerning agency non-disclosure. That approach is more likely to prove effective and minimize conflicts of interest where an independent agency exists or is

accountable to the legislature. However, even where such an agency is housed in the executive branch, as is anticipated in Latvia, it could intervene as an interested party in a court proceeding where important individual or government agency positions were at stake.

While most of the above-listed activities constitute critical and non-controversial activities that should form the core of a new freedom of information office's professional responsibilities, a major question concerns whether and how such an office should serve as an informal adjudicator of disputes and issue non-binding decisions. This matter entails careful consideration of legal and financial capabilities as well as the interplay of the agency's functions with the new administrative procedure law and the courts. Important decisions include whether to require individual complaints to be brought to the office only after an agency appeal is taken (to help create a clearer administrative record), whether to provide the office with special investigative powers, whether to treat the office's ultimate decisionmaking procedures in individual cases as adjudicatory or quasi-adjudicatory in nature (thereby providing the parties with certain formal rights that might exceed what is required in the new administrative procedure law), and whether to treat the office's formal decisions as binding or advisory. These decisions will require careful review by the Ministry of Justice.

Answers to some of these questions may come from the existing model provided by the Personal Data Protection Law. For example, under Sections 29 and 30 of that law, the Inspectorate can undertake inspections, take testimony, require document production, access experts, request the assistance of law enforcement agencies, refer cases to law enforcement authorities to bring criminal or quasi-criminal proceedings against individuals or organizations, take decisions regarding the protection of personal data, and bring actions in court for violations of the law. These provisions provide some guidance, but do not necessarily suggest

clear answers to the question of how the office's decisionmaking powers should be organized and what the legal effect should be of the office's decisions on individual access cases.86

Resolution of these questions, as well as guidance on how to organize the office in ways that maximize the efficiencies of the data protection and access to information functions while ensuring their operational independence, may be aided immeasurably by having relevant Data Inspectorate personnel and others visit counterpart agencies in other countries. Such a study tour is already tentatively envisioned as part of the IDF grant, and it also figures as an important feature of the implementation program presented in Section IV of this report. In particular, a study tour to Hungary's Office of the Data Protection and Freedom of Information Commissioner would prove valuable given the combined functions of that office and the years of practical experience accrued by that office in a transition country environment. Such a visit would facilitate what could become a long-term collegial relationship offering helpful exchanges of information on matters of organization, procedure, monitoring and evaluation strategies, resource usage, and other topics.

E. Administrative Procedure and Judicial Review of Agency Decisions

All non-totalitarian societies need a mechanism to resolve disputes that arise between the government and its citizens. The ancient doctrine of sovereign immunity ("the King can do no wrong") has largely given way in most democratic societies to a right to seek redress

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86 Some forward thinking is already taking shape in the Data Protection Inspectorate. In a recent interview, the Director of the Inspectorate indicated that there are plans to hire at least three access to information inspectors. Reportedly the Inspectorate will also be able to charge agencies that violate the law with penalties pursuant to the Administrative Violations Code. Moreover, there will be an IT systems administrator to keep track of each agency's information registries. Interview with Signe Plumina, Director, State Personal Data Protection Inspectorate, June 27, 2001.

against the government for mistaken or wrongful action on its part. This right has grown in importance based on the increasing involvement of the government in many aspects of life—from the pervasive regulation of economic and social behavior to the dispensation of social service and other benefits.

In theory, there are multiple ways to address the claims of persons who claim to have been adversely affected by erroneous, abusive, or illegal government action. One option would be to allow the chief executive's office to handle such claims. However, their limited staff and dislike of becoming embroiled in potentially controversial matters usually leads such offices to maintain an arm's length approach toward such disputes. Although the legislature is often more willing to listen to citizens' complaints as a matter of constituent representation, it too has limited capacity and interest in handling such claims in large volume. Even as a group, legislators may not want or be able to address the varied citizen claims that may arise; they may also wish to avoid legislative 'fixes' that could appear as favoritism. Ultimately, resource constraints and the need for decentralized expertise and closer familiarity with the technical matters in dispute render such options unworkable. Politically as well, it is in the interests of politicians to rely on indirect dispute resolution mechanisms.87

These shortcomings lead to two commonsense alternatives to direct involvement by elected officials: (1) an ombudsman system, and/or (2) administrative review backed up by

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87 As described by Tom Ginsburgs, politicians are motivated simultaneously to monitor and rein in the actions of their administrative agencies:

> Because of the sheer scale and complexity of modern government, political principals must delegate certain tasks to administrative agents. The agents, however, may have their own preferences and where possible, will try to implement their own favored policies rather than those chosen by politicians. Politicians therefore need a mechanism to monitor their agents' performance and to discipline those agents.

recourse to the courts. National and programmatic ombudsmen flourish in many countries as a means of obtaining independent and impartial review of citizen complaints and solving many of them with simple intercession or clarifications. Yet many issues are either too technically complex or intractable to turn over to ombudsmen exclusively. At the same time, the volume of complaints can overwhelm even a large ombudsman system.

Courts offer another independent and impartial decisionmaker. Yet courts are not necessarily the best forums in which to address disputes over the administration of highly specialized government programs. Even when permitted to review the substantive, as opposed to procedural basis, for an agency decision, courts have limited time, resources, and expertise. Significant numbers of cases must also be winnowed before they reach the courts.

As a result, there is no escape from first-instance reliance on administrative review within the bureaucracy, supplemented by judicial review and possibly ombudsman review in particular kinds of cases where requested. Additional modifications of a system of administrative review may include requirements for multiple levels of administrative appeal, exhaustion of administration remedies before appealing to the courts and/or ombudsmen, and multiple levels of judicial review. Other important considerations may concern what kind of 'hearing,' if any, is to be offered to an appellant at the administrative level, what kind of elements an administrative decision should include, who may bring appeals and/or intervene as third parties in administrative or judicial appeals, and what kind of relief may be provided to prevailing parties in court.

These basic parameters for ensuring administrative accountability – with or without certain additional features – benefit citizens and elected officials alike.88 Yet these

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Tom Ginsburgs, *Comparative Administrative Procedure: Evidence from Northeast Asia, supra* note 13, p.2.

88 As Ginsburg notes,

fundamental features may assume significantly different forms and levels of complexity in various countries depending on their history, legal culture, depth of democratization, and background level of openness and public participation. Common law countries, with less faith in bureaucrats' technocratic expertise and capacity for fairness, have delegated administrative review of agency decisions with caution and tended to ensure that appeals of agency decisions within the bureaucracy are bolstered by formal adjudicative procedures and presided over by independent, often quasi-judicial, hearing officers.[89] Civil law systems, less steeped in adversarial procedure and vastly more deferential to administrative authority, have neither the legal tradition nor the political inclination to fully judicialize agency appeals procedures. Within civil law systems, moreover, most countries have been content to live with a variegated landscape of agency appeals procedures that vary from agency to agency and often statute to statute. In recent years, only Germany and Austria have seen fit among the Western European nations to adopt overarching administrative procedure laws that

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[b]y creating a judicially-enforceable procedural right, politicians decentralize the monitoring function to their constituents, who can bring suits to inform politicians of bureaucratic failure to follow instructions. Politicians also create a mechanism to discipline the agents and can use the courts as a quality-control system in judging whether the monitors' claims have merit. Although administrative procedures are sold to the public as a means of ensuring accountability, they are in fact instruments of political control of agents.

Id.

89 *See, e.g.,* the United States, where the Administrative Procedure Act formalized the transfer of limited adjudicative functions to administrative agencies.

provide uniform principles for structuring agency appeals and judicial review of agency decisions.[90]

1. Background on the Draft Administrative Procedure Law

Latvia has determined to pattern its new system of administrative procedure on a unified German model. Under this conception of administrative procedure, the law is concerned only with individual agency actions, i.e., administrative decisions taken relative to a physical or legal person. Agency rulemaking remains outside of this ambit; challenges to agency regulations on non-delegation grounds must be taken up through political and legislative channels or lodged in the constitutional court where appropriate.[91] Like the German law (the Administrative Procedure Act of 1976, or *Verwaltungsverfahrengesetz, or VwVfG),* the Latvian law is designed to provide a comprehensive solution to administrative review as well as judicial review. Like the German law, however, the Latvian law does not prescribe an actual uniform procedure to be used at the administrative level; rather, it sets forth general principles, or guidelines by which agency decisionmaking must be conducted. Actual agency procedures – though they must be in conformity with the law – are set forth in individual statutes and regulations.[92]

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90 Interestingly, however, pre-Latvia was the second country in the world to enact a comprehensive administrative procedure code, following Austria in taking such an action in 1940. Due to World War II and the annexation of Latvia by the Soviet Union, the law never was given the opportunity to take root. *See* Bisers, Ilmars, 1997. "The Current Problems of Latvian Administrative Procedure," *Latvian Human Rights Quarterly,* v. 2 (*Administrative Procedure and Human Rights),* pp. 7-8 (Riga, University of Latvia Faculty of Law, Institute of Human Rights).

91 *See, e.g.,* Uwe Kischel, "Delegation of Legislative Power to Agencies: A Comparative Analysis of United States *Administrative Law Review,* v. 46, pp. 213, 232, 256 (1994).

92 The Latvian law does not, however, resemble the German law in one important way: the German law classifies and prescribes three basic types of procedures at the agency level based on their formality and differing circumstances:

Under this German approach, then, procedural requirements for administrative bodies are minimized and the courts are relied on to enforce detailed legislation and regulations on substantive issues. In this context, as with other Continental administrative procedure models, judicial review tends to focus less on whether the correct procedures were followed – procedures that are, in any event, quite spare – and more on the appropriateness of the substantive outcomes.93

In settling on this German model, the Latvian drafters considered and rejected a number of different solutions to the questions of procedural regularity within agencies and judicial review of administrative action. One issue concerned the scope of administrative decisions covered by the law; drafters could have covered a subset of all administrative decisions, e.g., decisions taken pursuant to the Administrative Violations Code. However, in the end, the draft law purports to cover any “administrative act. . . . which is issued by an administrative body in the area of public law for the purpose of resolving a specific case, and which applies to an individually specified person or persons, establishing, amending, ascertaining, or concluding concrete legal relations of a public character’ (Article 1.3). As such, the draft law’s coverage is intentionally broad.

A second consideration was whether to draft a law that exclusively dealt with judicial review of administrative acts, rather than agency procedure. Some authorities apparently

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“formal,” “informal,” and “planning” procedures (the latter encompassing various kinds of rulemaking). *See* Edward Eberle, “The West German Administrative Procedure Act: A Study in Administrative Decision Making,” *Dickinson Journal of International Law,* pp. 67-76 (1984). The Latvian approach simply emphasizes a very general procedure for all contexts based on common principles.

93 Koddertizsch, Lorenz, 1991. “Japan’s New Administrative Procedure Law: Reasons for its Enactment and Likely *Law in Japan,* v. 24, pp. 105, 106. In the United States, by contrast, agencies are granted significantly more power to make policy by various substantive laws, but must follow more detailed and more uniform procedural rules set forth in the Administrative Procedure Act (APA). *Id.*

argued that Cabinet of Ministers Regulation No. l54, adopted in 1995,94 was sufficient to provide the basic contours of appropriate administrative procedure, as it set forth fundamental processes for appealing agency decisions and then taking them to court. However, it was felt that Regulation No. 154 was inadequate as a matter of both legal hierarchy (there were questions about its ability to take precedence over certain procedural requirements in other laws, and its non-applicability to local governments), and the prerequisites of a modern democratic society (since it did not contain many of the key precepts thought to safeguard individual rights).95 These precepts, many of which are derived from principles advanced by the Council of Europe,96 were the driving force behind a comprehensive administrative procedure law, whose key principles should be shared and understood by agency officials and judges alike. These principles, which include 'equality,' 'proportionality,' 'trust' (legal reliance), and non-arbitrariness,' are enshrined in Articles 4-15 of the present draft law.

A third consideration concerned court procedure. Some specialists felt that it would be sufficient to maintain the existing system of utilizing civil procedure, with minor

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94 Regulation No. 154 of the Cabinet of Ministers, "On Regulations on Procedure of Administrative Acts," June 13, 1995.

95 Interviews with Prof. Arvid Dravnieks, March 12 and March 14, 2001; Interviews with Prof. Jautrite Briede, March 15, March 17, and June 26, 2001. *See also,* Bisers, Ilmars, 1997. "The Current Problems of Latvian Administrative *Latvian Human Rights Quarterly,* v. 2 (*Administrative Procedure and Human Rights),* pp. 7-15 (Riga, University of Latvia Faculty of Law, Institute of Human Rights).

96 *See* Council of Europe, 1996. *The Administration and You: A Handbook* (Strasbourg: Council of Europe), chapter 2 ("Substantive Principles"), pp. 13-20. These principles proved quite influential with the working group drafting the APL, according to one participant. Interview with Prof. Jautrite Briede, March 17, 2001.

modifications, to govern the review of appeals of administrative decisions.97 Most experts, however, understood that civil procedure envisioned an adversarial process engaged in by two co-equal parties, rather than the situation obtaining in administrative challenges where the individual or organization bringing the appeal is not deemed to have equal expertise or access to information. Hence, it was determined that a special procedure for administrative cases that was more advantageous to the appellant should be established,98 and that the judge should take a more active role in ensuring that all relevant evidence is brought into the proceeding in the interest of objective truth-seeking.99 Under the draft APL, the burden of proof in the court accordingly rests with the administrative body: "An administrative body shall prove the circumstances upon which its objections rest" (Article 140.1), and "may refer only to those justifications that are cited in the administrative decision" (Article 140.2).

In the end, the new draft APL was designed to vindicate the following rights and principles as among the most critical:

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97 Currently, the judicial procedure for administrative appeals is governed by articles 228-244 of the Code of Civil Procedure.

98 Interestingly, however, Latvia has not chosen to rely on separate administrative courts to address administrative appeals. Under the new law, courts of general jurisdiction will continue to handle administrative appeals, although it is envisioned that designated judges on each court will specialize in administrative cases. Interview with Judge Veronika Krumina, Judge, Riga City Court, March 15, 2001. Latvia is not alone in declining to adopt a separate administrative court system. As of 1997, only Croatia among the countries of Central and Eastern Europe had embraced such a system (although Bulgaria and Poland feature Supreme Administrative Courts, and Estonia has special administrative law panels). *See* Denis J. Galligan and Daniel M. Smilov, 1999. *Administrative Law in Central and Eastern Europe 1996-1998* (Budapest: Central European University).

99 Interview with Prof. Arvids Dravnieks, March 14, 2001; Interviews with Prof. Jautrite Briede, March 15, March 17, June 26, and June 29, 2001. *See also* Dzintars Rasnacs, Minister of Justice, "Draft Administrative Process Law: Summary"(translation of Annotation to Draft Administrative Procedure Law submitted to Cabinet of Ministers). At the same time, the use of civil procedure was thought to be inappropriate given the existence in the code of provisions limiting settlements and requiring delivery of an oral decision immediately following trial. These flaws were reported to us in interviews, although we were unable to obtain a translated copy of the civil code to verify them. Interview with Prof. Arvids Dravnieks and Normunds Salnieks, Judge, Riga District Court, March 14, 2001.

- The right to appeal an administrative decision in court under any circumstances

- The right of an individual to express his or her position in person to an administrative body on appeal

- The right of a person to present such a complaint through a legal representative

- The right of an individual to demand a legal justification for the decision of the administrative body

- The right of an individual to be treated on a nondiscriminatory basis under an administrative decision

Some of these rights and principles were not explicitly treated in Regulation No. 154, while many of them were reportedly widely violated in practice.

Members of the APL Working Group identified a number of provisions of the draft law as effecting a substantial change from current practice:

- The principles of law to be applied by administrative bodies and courts are enumerated and clarified (*see* Arts. 1-17).

- The juridical persons (parties to administrative cases) are enumerated (Arts. 21-22), and the Procuracy is omitted as a specifically entitled eligible party.

- The rights of third parties (intervenors) are clarified (Art. 26).

- The concept of 'factual conduct' is introduced, which describes an administrative act or omission – i.e., something other than an actual formal decision – that may cause harm to an individual or result in a failure to fulfill a required responsibility, in either case giving rise to a legitimate appeal (Arts. 87-89).

- The requirement of some kind of opportunity for the petitioner to be heard at the administrative level is explicitly stated (Art. 60).

- The form and elements of an administrative decision are spelled out in detail (Art. 65), as well as an individual's right to demand a decision in this form (Art. 67).

- The state's burden of proof under judicial review is made explicit (Art. 140).

- The principle of allowing damages for harms suffered as a result of an administrative act, omission, or decision is clarified (Arts. 90-93).

These innovations all create a significantly new system of administrative procedure that represents a clear advance over the present requirements covered by Regulation No. 154, even though the basic structure of administrative appeals – an opportunity for a formal decision, followed by appeal to a higher administrative body, followed by court review – remains the same. The overarching change concerns the attempt at creating a unified set of substantive decisional norms that can create a shared understanding of administrative procedural regularity among agency decisionmakers, petitioners, and the judiciary.

2. Possible Changes to the Draft APL

While the existing draft APL represents a substantial step towards inculcation of the rule of law in Latvia, it may yet benefit from certain additional modifications or editing. We discuss the most significant of these in order of appearance.

a. The term 'administrative body' needs to be maintained consistently in the text. Given the significance of this term for purposes of the law's coverage, its usage must be uniform throughout the text. In fact, however, there are several instances where the term 'administrative authority' seems to be used interchangeably, e.g., Articles 78, 79, 86, 89, and 90. This creates confusion, especially with another distinct term, 'higher-ranking authority,' which in the case of Article 90 appears in several paragraphs (as a result of this lack of clarity, in Article 90 the term 'administrative authority' appears to refer in some cases to 'administrative body' and in other cases to 'higher-ranking authority').

b. The relationship of the law to other legal norms should be clarified. Article 3.1 states that "[t]his Law is applicable in administrative bodies, provided that no other order has been specified in special legal norms." While this provision is intended to permit specific procedures to exist in varied administrative settings, its simple phrasing may suggest that, on the basis of *Lex specialis,* specific administrative body norms can modify or supplant *all* general norms promulgated by the law. While direct conflicts with other laws may prove rare, the importance of the APL to democratic governance suggests that this Article should be strengthened. A better solution might be to have a clear statement about the supremacy of the law's general norms and the need for all special norms to accord with the law's fundamental principles and functional purposes. Further clarifying this point, the law could enumerate those principles and purposes (e.g., Art. 4's basic principles, as well as some of the law's primary objectives that are discussed in the bulleted lists presented above).

c. The law's principle of 'legal assumption' may have unintended consequences. While the purpose of making an individual whole who has relied on the mistaken advice of a civil servant or administrative body is a laudable goal, it may have unintended consequences. For example, assume that a farmer is mistakenly told that the crops he or she is planning to plant are insured by a national farm insurance program, when in reality the crops are not covered. If a flood occurs and the farmer tries to collect insurance, under the APL he or she would be able to sue for compensation. However, this could have the effect of permitting or encouraging corrupt civil servants to conspire with people to collect on 'wrong' advice. Also, if compensation is readily available, it might, over time, discourage administrative bodies from giving various kinds of advice in the first place due to fear of legal action. While these may not represent significant risks in Latvia, they are worth considering at

this stage, prior to enactment of the law. In the U.S., this principle of 'legal assumption' (or 'equitable estoppel' as it is known there) is not available against the federal government for the reasons just cited.

d. The requirement of a 'hearing' in an administrative body should be clarified. Article 60's requirement that an individual be heard in connection with the issuance of an administrative decision is one of the most centrally important features of the APL. However, two clarifications may be necessary. First, there perhaps should be more guidance in the law as to *when and how* the right to be heard should be granted in an administrative body. While it is neither necessary nor desirable to impose too many procedural requirements on administrative bodies or to judicialize this 'hearing' requirement, it would seem critical to the law's purpose of vindicating individual rights to set forth a few minimum standards or principles for such situations. These could include further guidance on acceptance of evidence from the petitioner and what it means for an administrative officer to "clarify the arguments and views of the respective participants in the case." Such circumstances will naturally differ depending on whether a decision is taken purely on the basis of written submissions as opposed to a face-to-face encounter with an opportunity for a verbal exchange of positions. Even more important, the law should provide some guidance as to when and how *oral* hearings should be conducted, even if the decision to have an oral hearing is left up to individual administrative bodies based on special norms and circumstances.100

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100 We have been told that by definition, an administrative act in Latvia can only be issued (i.e., formally signed) by a designated mid-level or higher-level official, thereby avoiding a situation where a decision is taken by a lower-level clerk and Article 60's right-to-be heard protections could be ignored or forgotten. Still, it would seem that in the absence of clearer guidance on those protections, it would be relatively easy for the lower-ranking official or his or her superior(s) to circumvent this procedural requirement through recourse to Article 60.2's provision allowing officials to dispense with the procedure based on 'exigent circumstances,' 'impossibility of clarification,' etc. (for further concerns about this provision, see our next comment above).

e. Exemption from the requirements of Articles 60 and 65 should be justified on the basis of more objective criteria. While it makes sense to exempt an administrative body from compliance with all of the requirements of Articles 60 and 65 under certain circumstances (the latter addressing the proper form of an administrative decision), neither Article 60 nor Article 67 provides adequate objective grounds for invoking the exemption. For example, it would seem desirable to require more objective criteria to support a determination under Article 67.3 or 67.4 that Article 65's formal requirements may be dispensed with "if a case is of little importance" or "if the essence of the case suggests that issuance of a written decision is not possible or would not be adequate." The same is true of the similarly phrased grounds in Article 60.2 and 60.3. These grounds can obviously be readily manipulated by lazy or dishonest government officials. Because of the difficulty of providing one-size-fits-all guidance in a law like the APL, an alternative might be for the law to require that each administrative body adopt special norms precisely setting forth the kinds of cases in which the requirements may be dispensed with. By extension, it is thoroughly inadequate and dangerous to leave untouched the exemption in Article 67.2 that the existence of *any* special norm effectively constitutes adequate grounds for avoiding Article 65's requirements.

f. The law should require that a decision by a higher-standing administrative authority adhere to certain formal requirements. We are puzzled by the ostensible lack of precision governing decisions by a higher-standing administrative authority on an administrative appeal. We are mindful of the fact that Article 74.4 provides that a challenge to an administrative decision "is a continuation of the initial administrative case," and that "[a]ll the terms of this law are applicable to it except the provisions on the order of appeal." This suggests that the provisions of Articles 60 and 65 governing an individual's right to be heard

and the form of administrative decision, respectively, should apply to an administrative appeal. However, it seems critical that there be specific provisions governing the manner in which the administrative appeal is conducted, and that there might be special requirements guiding the higher-ranking authority in its review of the original decision, including a searching inquiry of whether the requirements of Article 60 and 65 were in fact met by the original administrative body. Such a searching inquiry could in many cases eliminate the need for court appeal; in other instances, it would facilitate creation of a more complete record of the case for those appeals that do end up in court.

g. The law should explicitly say whether exhaustion of administrative appeals is necessary prior to taking an appeal to the courts. We understand that the law may not require a petitioner to take an administrative appeal to a higher-ranking administrative authority prior to taking an appeal to the courts—even where such a higher-ranking authority exists. While we disagree with this policy choice – we think an exhaustion requirement in the latter case would be useful in terms of winnowing down the numbers of potential cases going to court (esp. given the weak capacity of the judiciary) and creating a better administrative record for those cases that do generate court appeals – it ought to be explicitly stated in the law. Right now, it is unclear.101

h. A new judge assigned to an administrative case need not start the case over. We do not understand Article 103.2's rationale for starting an administrative case completely anew where one judge has replaced another. This seems like an extraordinary waste of time and resources in cases where a trial transcript is clear as to the evidence submitted and the

101 Article 74.2 simply states that a court appeal may be taken where an administrative body does not have a higher-ranking administrative authority above it, or where the higher-ranking administrative authority is the Cabinet of Ministers. It does not explicitly say whether an administrative decision may be immediately appealed even where a higher ranking administrative authority does exist.

fidelity to procedural requirements. We appreciate the importance of the judge in controlling administrative proceedings and issuing a decision based on his or her own unique convictions, but requiring an administrative case to start over in *all* instances, regardless of the specific circumstances, seems ill-considered.

i. Specific rates for filing fees need not appear in the law. Contrary to most practice, the law in Article 115 sets forth specific filing fee amounts. This obviously presents a problem in terms of inflation and the need for possibly frequent amendment of the law. A better solution, it seems to us, would be to leave the matter of fees to a Cabinet of Ministers regulation, or at a minimum to base fees on some objective, dynamic standard (e.g., an amount not to exceed a proportion of the minimum wage, etc.).

j. The evaluation of evidence by a second-instance court should be clarified. While we understand that as a matter of tradition and careful adjudication the evidence compiled in a first-instance court need not be given any "previously determined effect" by a second-instance court (Article 144.2), it would seem useful to provide the latter courts with the latitude to give credence to certain prior-submitted evidence based on the specific circumstances of the case. That is, even though the second-instance court's review of the evidence may be *de novo,* there should be some burden on the appellant to show why this is the case, i.e., *de novo* review should not automatically attach to the entire facts of the case, but should be focused on those facts whose absence or misinterpretation caused the alleged injustice to occur in the lower court. This seems prudent as a matter of fairness and judicious use of court resources.

k. The law should be physically and functionally condensed where possible, even at this late date. Given its enormous bulk – 382 articles taking up nearly 150 pages of

typewritten text – the draft APL clearly represents an intimidating legal document whose absorption by users in administrative bodies and the courts will prove difficult. Even if its key provisions are boiled down into convenient guidance documents or handbooks for rank-and-file civil servants (which will most certainly have to occur as part of the implementation program discussed in Section IV of this Report), the original text itself remains unwieldy for legal professionals who will have frequent recourse to it. This is especially difficult for lawyers in administrative bodies seeking to harmonize special norms with the law. The biggest problem is that related provisions that could otherwise be meaningfully clustered under a single article or grouped under a new subheading are dispersed into multiple one- and two-sentence articles with less meaningful import. The overall impression is of a law that is much more diffuse, complex, and harder to understand than it really is. Although we appreciate the lateness of the hour and the settled expectations that currently prevail in the *Saiema* about the law's structure, we urge that serious attention still be given to condensing even a handful of the related articles in the law or proving new subdivisions or subheadings (particularly among articles 80-86 and the court procedure articles) so as to provide users with an easier 'road

Apart from these textual changes, the APL Working Group should seriously consider the creation of an APL Advisory Group that would include many of the drafting group's members but also incorporate individuals representing key constituencies affected by the law's imminent implementation. The role of the group, which could be led by Deputy State Secretaries from the Ministry of Justice and the Special Ministry for Public Sector Reforms, would be to advise the Ministry of Justice and whatever government-wide Steering Committee is created to direct overall implementation of the law. Additional members could

include representatives from the business community, one or two key legal departments from a ministry and/or an administrative body, an interested NGO, the judiciary, the state civil service administration, and a local government legal department. These individuals could provide ongoing feedback on the overall design and delivery of implementation plans and could help ensure that the implementation approach was ‘balanced,’ – i.e., that it truly was taking into account the circumstances noted by constituencies affected by the law.

This advisory group should see to it that a number of important tasks are placed on the implementation agenda and dealt with in a considered fashion. These include the following:

- Development of a system for monitoring implementation of the APL in ministries, national administrative bodies, and municipal bodies. This would include a baseline inventory of efforts to conform special norms to the APL and practical steps taken to prepare for implementation.

- Preparation of manuals on the APL for legal professionals, administrative decisionmakers, and rank-and-file civil servants (each group would require manuals with different contents and emphases).

- Development with the Ministry of Finance of a workable compensation scheme.

- Development of a training curriculum for legal professionals in ministries and administrative bodies, the training-of-trainers aspect of which could be housed at the School of Public Administration.

- Development of a training curriculum for civil servants. Again, the training-of-trainers aspect could be housed at the School of Public Administration, even if rank-and-file training were conducted within individual ministries and administrative bodies.

- Development of a training curriculum for judges, the training-of-trainers aspect of which might also be best housed at the School of Public Administration (even as general training of judges occurred at the Latvian Judicial Training Center).

- Development of a comprehensive public education strategy, including targeted educational materials and press packets.

These and other tasks and described in more detail in Section IV below.

IV. A SUGGESTED IMPLEMENTATION PROGRAM AND ACTION PLAN FOR THE LAWS ON ADMINISTRATIVE PROCEDURE AND ACCESS TO INFORMATION

The Latvian Government seeks to take an active approach to implementing two laws – the administrative procedure law (APL) and the law on information access (LIA) – that are vital to government accountability in a democratic society. Few laws are so modest in their apparent import, yet have the potential to play such an important role in the lives of ordinary Latvian citizens and in the development of a favorable business environment. Every citizen and business is affected by the degree to which public servants provide basic information about government activities and issue decisions according to clear legal procedures affording internal and court appeal rights.

A. The Need for a Government-Wide Implementation Program

Despite their cross-sectoral importance and their potential impact on business development, anti-corruption objectives, and overall government accountability, neither of the two laws has received sufficient government or public attention. In the case of the administrative procedure law, the reasons are simple: the law is still in draft form and will not go into effect until January 1, 2003 at the earliest. At the same time, most of its provisions constitute a generic (and rather abstract) framework, unlike the more visible and subject-specific norms and procedures of individual administrative bodies (which must ultimately comply with the APL). Finally the APL is somewhat deceptive in that it does not materially change the outward features of administrative appeals under Regulation No. 154 and court appeals under the Code of Civil Procedure (although it effects potentially major changes in terms of fidelity to legal principles). In the case of the law on information access, the law has

been in effect for several years, yet its utilization is extremely low. Moreover, there is little understanding of its provisions on the part of government officials and citizens.

Given the importance of both laws, but especially the breadth of coverage of the APL and its impact on the everyday affairs of the public, a thoughtful plan of implementation and public education is vital if their promise is to be realized and cynicism about the value of reforms of this kind is to be avoided. Indeed, due to the low public and government consciousness about the two laws, a special government-wide commitment to implementation is required, something that can only come from the Cabinet of Ministers. *Accordingly, we recommend that the program be designated by the Cabinet as a formal program of the Government. This would entail the allocation of discrete responsibilities to various ministries and other state bodies, and establishment of a certain schedule of activities, reporting requirements, and monitoring benchmarks.* A useful model in this regard is the program on *Improvement of the Business Environment in Latvia,* whose action plan received approval from, and has been amended as necessary by, the Cabinet of Ministers.

Under this implementation framework, we envision overall program coordination residing with the Ministry of Justice (MoJ). The Ministry would also assume substantive leadership on matters involving (1) amendments to the law, (2) transitional requirements, (3) creation of an access to information competence within the State Data Protection Inspectorate (including the hiring and training of information inspectors), (4) drafting of commentaries on the laws, (5) provision of official guidance and training to the legal departments of ministries and other state bodies, (6) the carrying out of research and evaluation activities relating to utilization of the two laws, (7) hiring and training of administrative law judges, (8) design of a functional compensation scheme to reimburse individuals and organizations for wrongful or

mistaken government decisions, and (9) development of a comprehensive public education program on the two laws.

Significant other responsibilities would be carried out by the Secretariat of the Special Ministry for Public Sector Reforms (guidance and training for civil servants by the Secretariat, the State Civil Service Administration, and the School of Public Administration), the Special Ministry for Local Government Affairs and the Union of Municipalities (guidance and training for local government officials), the Legal Department of the State Chancellery (oversight over clarification/harmonization of other relevant laws, regulations, and other normative acts with the APL and LIA), the Ministry of Finance (creation of a feasible compensation fund), and the Supreme Court and Latvian Judicial Training Center (guidance and training for judges). *Representatives of these institutions should sit on a program-wide central task force structure (or 'Steering Committee' to be created at the outset of the initiative.* The Committee would function as a kind of board of directors of the program, providing high-level guidance to an executive group at the Ministry of Justice comprising the Program Implementation Unit (PIU). Both of these groups are discussed below.

Meanwhile, all deputy state secretaries of ministries or their equivalents, as well as ministry legal departments, would be charged with certain responsibilities for bringing their own institutions and those of subordinate bodies into compliance with the two laws. In coordination with the Government program, certain non-governmental organizations (NGOs) and the business community could also play useful public education and monitoring roles.

Although part of the same program, implementation of the two laws would proceed on separate, somewhat independent tracks based on different institutional requirements that will have a central bearing on the timing and sequencing of implementation activities. Activities

relating to the APL can proceed immediately upon the law's expected enactment this fall. Effective implementation of the existing LIA on the other hand, will depend on the speed with which the State Data Protection Inspectorate is given expanded powers over freedom of information issues through appropriate legal and/or regulatory changes. It is therefore entirely conceivable that substantial implementation work on the APL could proceed during late 2001 and early 2002, while implementation of the LIA might be delayed for several months pending establishment of the State Data Protection Inspectorate's information access competency (and hiring of appropriate staff).

Based on discussions with the Ministry of Justice and the World Bank, we assume that the program would run (at least initially) for a period of 18 months – from October 1, 2001 through March 31, 2003. This period, which covers an initial implementation period that may give rise to other initiatives and funding streams, will coincide with the currently-contemplated funding of relevant capacity building activities through an IDF grant from the World Bank.

B. Program Organization and Planning

In order to execute the program in a timely and effective manner, an implementation capability should be established within the Ministry of Justice, and a central task force structure, or "Steering Committee" created for effective inter-ministerial coordination.

The Ministry of Justice should accordingly create a Program Implementation Unit (PIU) led by the Deputy State Secretary for Legislative Matters. The PIU should include a representative from the Ministry's Division on Legislation and Regulations, the Director of the

State Data Inspectorate, a person responsible for public affairs at the Ministry, and at least two junior staff reporting to the Deputy State Secretary who can assist with day-to-day implementation matters. *The PIU should also engage the services of a consultant (preferably a lawyer) with significant government experience to lead the PIU on a day-to-day basis at the direction of the Deputy State Secretary.*[102] The unit should be supported by two advisory councils, or groups, that have particular expertise in the respective laws, and that can provide intermittent guidance (e.g., through monthly meetings or on an as-needed basis) to the Ministry on legal and implementation matters. The advisory group on the APL could include members of the working group involved in the drafting of the law, as well as key individuals representing the perspectives of, for example, a ministry legal department, the business community, an interested NGO, the judiciary, the state civil service administration, and a local government legal department. The advisory group on the LIA could involve individuals representing the views of a ministry or local government legal department, a ministry public affairs office, the business community, an interested NGO, and a journalists' group.[103]

A Steering Committee representing the key implementation institutions described above in Section IV.A should be established for general agenda-setting and monitoring during the duration of the program. This Committee could meet frequently as a whole toward the beginning of the program or for one or two key reporting milestones (possibly in a workshop format), and thereafter on a monthly basis. It could also communicate by e-mail on an ongoing

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102 We understand the MoJ is supportive of this idea and is taking steps to secure funding for such a position.

103 We are mindful of the fact that membership in either of these groups could cause individuals and their organizations to have the appearance of conflict of interest problems. These issues will need to be dealt with on a case-by-case basis according to the individual considerations of each of these individuals and their affiliated organizations.

informal basis. The Committee could also break into smaller informal working groups as needed for specific objectives (e.g., training of civil servants, development of public information program) during the bulk of the program's 18-month duration. These working groups could meet on a regular basis depending on particular tasks. A graphic depiction of this overall management structure is shown in Figure 1.

The Ministry of Justice's PIU, together with appropriate input from the two advisory groups and external consultants, should discuss and ratify in September an action plan setting forth all key tasks, benchmarks, and reporting requirements, based on a thorough review of this report and any necessary departures therefrom. An abbreviated version of the plan could be appended to a program proposal, or concept paper, submitted to the Cabinet of Ministers for approval later in late September. The plan as finally constituted should be informed by discussion and consideration of key dimensions of the policy implementation cycle, including:

- proper organization of program leadership and communication;
- clarification of overall objectives and current strategy
- identification of major strengths and weaknesses of affected agencies
- mapping of the external policy setting, including the political and operational environment (especially anticipated changes in government)
- identification of key stakeholders and their expectations
- identification of key strategic problems and opportunities
- refinement of implementation strategy
- development of week-to-week implementation plan
- design and implementation of a monitoring process to inform necessary adjustments[104]

The plan should also incorporate appropriate institutional development considerations (especially for the State Data Protection Inspectorate) essential for effective implementation of new legislation. These include the following:

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104 Most of these issues have been explored at length in the research literature emanating from the USAID Implementing Policy Change Project. For an overview of many of the relevant topics, *see* Derick Brinkerhoff, 1996. *Enhancing Capacity for Strategic Management of Policy Implementation in Developing Countries,* IPC Monograph No. 1 (Washington: USAID). *See also* the IPC website at http://ipc.msi-inc.com/ipc.html.

- recruitment and training of appropriate personnel
- establishment of an appropriate organizational structure
- procurement of adequate resources
- design of internal procedures and creation of appropriate checklists and manuals
- creation of commentaries, guidelines and protocols for government agencies implementing the laws
- establishment of relationships with foreign counterpart authorities where necessary, for educational and information-sharing purposes
- establishment of a public education program
- formulation of a research agenda
- strengthening of ties with collateral institutions (e.g., courts)

Careful planning of this nature will anticipate many problems and build necessary flexibility into the program.

The PIU should pay particular attention to commissioning, co-funding, or coordinating surveys and other research that could help better identify potential implementation problems and resource needs toward the beginning of the program. Such research could include an administrative caseload assessment in the courts, a study of utilization of appeals processes among a cross-section of certain ministries, and surveys of public awareness of citizens' rights to appeal administrative decisions. One helpful model is the research attending the *Improvement of the Business Environment* program, which has resulted in a number of surveys of Latvian businesses to help gauge the impact of that initiative.

C. Key Conceptual/Strategic Considerations

A number of key strategic considerations must be weighed in the course of discussing and approving the program and action plan. These include (1) the differing background contexts and practical interrelationship of the two implementation initiatives, (2) the treatment of municipalities in the implementation program; (3) the basic pedagogical approach to

training activities, and (4) the overall scope of training and education activities. Each of these is briefly discussed in turn below.105

1. The Different Implementation Contexts of the Two Laws

While the LIA is already in effect, there is no central institution responsible for its interpretation and enforcement. As a result, implementation of the law has been ineffectual. The Ministry of Justice has therefore proposed that the State Data Protection Inspectorate assume responsibility for ensuring governmental compliance with the law. Assumption of these duties will, however, require certain legislative and regulatory changes, particularly those defining the investigative and enforcement powers of that body.

As a result, development of legislative and regulatory amendments and their approval by the Cabinet of Ministers and *Saiema* could easily consume as much as half or more of the 18-month period envisioned for this initial implementation initiative. This means that implementation activities for the LIA will likely end up on a slower timetable than those for the APL. There is nothing inherently problematic about this, and indeed, given the limited management capacity and resources of the MoJ and the Government as a whole, the later phase-in of implementation activities for the LIA could prove helpful in allowing the Government adequate preparation and planning time.

A potentially more important question is the relationship between institutional development of the Data Protection Inspectorate and revisions needed to improve the existing LIA and its implementing regulation (Cabinet Regulation No. 275). While ideally, the law and regulation might be revised first in order to rectify their overall ineffectiveness and make the Inspectorate's enforcement job more rational, it makes sense to empower the Inspectorate to

105 Another major strategic consideration identified earlier in the year was whether to delay implementation of the provisions on court procedure or the provisions on financial compensation. It was recently decided that the law should contain no such transitional deferral provisions, and that the entire law should come into effect on January 1, 2003.

implement the law as soon as possible in its present form, and to encourage that organization to develop the necessary reform proposals based on actual experience. Building such a track record based on empirical evidence and raising the enforcement profile of the Inspectorate should contribute to the law reform process and could ultimately lead to higher quality amendments being accepted by the Cabinet of Ministers and *Saiema.* The MoJ seemed to favor such an approach during our mission in June, and we support it as the best way to grant the Inspectorate its new authority with a minimum of controversy. Later – perhaps toward the end of 2002 – a more substantive menu of changes to the LIA and Regulation No. 275 can be developed and presented to the Cabinet for consideration based on actual experience.

2. Treatment of Municipalities Under the Implementation Program

A major concern in this program is the degree of coordination and responsiveness that can be expected from municipalities, which are known to be among the administrative bodies least attuned to procedural regularity in their decisionmaking toward the public. While the challenges attending municipal implementation are steep, there are ways to ensure that municipalities are brought as fully into the program as possible as major stakeholders, and are held accountable for their degree of conformity with the APL and LIA.

Some of the more useful coordination, implementation, and monitoring mechanisms that the Ministry of Justice should consider in addressing the participation of municipalities in the program are the following:

- Membership on the Steering Committee of representatives of the Special Ministry of Local Government Affairs and the Union of Municipalities
- Reliance on the Union of Municipalities as a practical and politically palatable liaison to the municipalities
- Participation of Union representatives in higher-level implementation kickoff meetings
- Participation of key municipal officials in other ongoing workshops and the like
- Participation of Union-designated trainers in training-of-training sessions at the School of Public Administration (along with trainers from ministries and the judiciary) to raise the level of expectations among municipal trainers.

- Commissioning of research specifically focused on municipal compliance with the two laws
- Reporting requirements for each municipality to create a sense of accountability (channeled through the Union to the MoJ).
- Secondment or other appointment of consulting help to the Union to serve as a resource on APL and LIA implementation matters).

We recommend that the Ministry of Justice take the last point very seriously in considering how best to help the municipalities meet their legal obligations. Whether wholly or partly paid for by donor funds, a legal or other consultant serving at the disposal of the Union of Municipalities could help both the municipalities and the MoJ manage the implementation process.

3. Basic Approach to Training Activities

Our suggested approach to training assumes that a training-of-trainers mechanism will be employed initially for virtually all of the different training audiences. This is based on the idea that government training capabilities generally need to be strengthened in the interest of sustainability, cost-effectiveness, and customization: once a capable cadre of internal trainers has been instructed, many kinds of training, including informal on-the-job teaching, can take place within individual ministries and other government units based on specific applications of the APL.

This means that while most training-of-trainers instruction will take place at the School of Public Administration (including some training of judicial trainers and municipal training experts), the School need not assume responsibility for training most rank-and-file ministry and other personnel, whose numbers are in the thousands (although over time, a certain schedule of training for ministry civil servants may be established). Those individuals may be best instructed on a decentralized, flexible basis in their own institutions.

Within the context of training-of-trainers instruction, we believe there is value in having certain kinds of prospective trainers trained together, despite their potentially different backgrounds and ultimate objectives. For example, although ministry lawyers and line managers (with administrative decisional authority) have different responsibilities and different training needs, there is significant utility in having them trained together on certain basic principles and issues, so that they may deal fluently with each other in implementing new procedures that must be both practical and legally compliant. It also makes sense from a resource standpoint to bring these individuals together at the same time given the present scarcity of instructors with expertise in administrative law. Consequently, we have recommended in the action plan that some training modules include basic sessions with mixed attendance followed by specialized breakout training sessions for, say, lawyers and managers.

4. Coverage of Proposed Training Activities

While the focus of training is on ministry/subordinate agency officials and judges, there are other potentially important groups that should receive some kind of training or advance information about the APL, and also the LIA. As noted above, perhaps the most important of these groups are municipal officials. Municipal officials reportedly are the group that has the poorest record of compliance with the requirements of the LIA and Regulation 154, and that tends to cause the most harm to businesses and citizens. While the municipalities are self-governing and cannot be directly ordered to participate in the program, there is every indication that the Union of Municipalities would voluntarily participate and assume responsibility for training its members based on prior training-of-trainers instruction funded under the IDF grant.106 Coordination of this aspect of the program could be facilitated by the Special Minister for Municipal Affairs. Given the potential impact that gradual diffusion of

training and information among municipalities could have on the public, we have incorporated municipalities into the preliminary draft of the action plan.

We similarly believe that practicing lawyers and the Procuracy need to be educated about the LIA, and especially the APL. The need for lawyers' education may be rather obvious; as legal sophistication in the country increases, larger numbers of lawyers will be asked to handle administrative challenges, even at the ministerial or agency level where the stakes are high or business interests are involved. The need for some educational programs for procurators is less obvious; however, large numbers of citizens, particularly the elderly, turn to procurators' offices for advice and referral of information about administrative problems. As it now stands, many procurators' offices that offer consulting hours or sessions tend implicitly to defend government agencies against challenge or discourage or ignore citizens' complaints. Requiring the Procuracy to participate in the program and disseminate useful, accurate information to citizens about their appeal rights in administrative disputes could greatly assist the program's public education objectives.

Finally, the public education activities themselves should be developed in as creative a way as possible, even if direct funding for such activities is limited. From an early date, program leaders should arrange for meetings with NGO's, journalists, and the business community to explore ways of sharing responsibility and providing for public information initiatives related to implementation of the LIA and APL. Projects could range from focused training and education forums organized by particular NGOs or business groups for specialized audiences, to regular synchronized press releases and feature articles issued by various ministries. The important point to remember is that capacity-building for transparency and participation must occur within civil society as well as the government.

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106 This was conveyed to us by the head of the Union, Mr. Jaunsleinis, and his training directors, in June.

D. Suggested Implementation Program Agenda

The following represents a summary description of a suggested implementation program that would run from October 1, 2001 through March 31, 2003 (in the interest of proper planning, some preparatory activities prior to October 1, 2001 are included in the program description). *The multi-dimensional program described here is purposely ambitious and somewhat over-inclusive; even though the government might not want or be able to implement all of the listed tasks, the various program components have been broken down in a deliberate effort to provide a logical sequence of implementation steps and to provoke discussion and debate.* It does not represent a detailed blueprint or program description; that can only emerge through planning and discussion by the Ministry of Justice PIU with the APL and LIA Advisory Groups during the coming months. These discussions should purposefully focus on issues of leadership and capacity.

The program can be broken down into three main parts: (1) preparatory and management tasks common to implementation of both laws; (2) tasks associated with implementation of the APL; and (3) tasks associated with implementation of the LIA. Each of these three sets of tasks, together with various sub-tasks, are discussed in turn.

1. Implementation Program Management and Planning

The purpose of these tasks is to create a working management structure that can operate efficiently across the government and minimize disruption to regular government operations.

a. Task 1: Formation of PIU and Advisory Groups (Aug.-Oct. 2001). In August and September of this year, the Ministry of Justice should form a working PIU structure that can lead the project throughout the 18-month program period. As described above, the PIU will be led by the Deputy State Secretary for Legislative Matters, who will

delegate day-to-day management of the PIU and the Program itself to a Ministry consultant. The consultant, who should have project management experience, as well as significant experience in or around the Latvian government, should be hired as soon as possible, but in no event later than early September. PIU membership should also include a representative from the Ministry's Division on Legislation and Regulations, the Director of the State Data Protection Inspectorate, a person responsible for public affairs at the Ministry, and at least two junior staff who can assist the Deputy State Secretary and the consultant on a day-to-day basis. The PIU should meet weekly. Advisory groups on the APL and LIA, whose membership is described in the previous section, should provide ongoing guidance to the PIU, but would meet on their own at least monthly. *These meetings should begin in September.*

b. Task 2: Discussion and Modification of the Program and Action Plan (Aug.-Sept. 2001). During August and September, the PIU (whether or not fully constituted) should carefully review the program as herein described and suggest all necessary modifications to render it as practically feasible and politically palatable as possible. This is a time when the PIU could learn a lot through consultations with individuals responsible for the program on *Improvement of the Business Environment in Latvia,* in order to learn from that program's experience and make necessary changes to this program.

c. Task 3: Submission of the Program and Action Plan to the Cabinet (Sept.-Oct. 2001). All preparatory steps should be planned and executed to bring the program to the Cabinet for consideration, including a preparatory memorandum to place the program on the Cabinet's agenda, answers to commonly-asked questions, information about the financial impact of the program, and planning for the Steering Committee's operations.

d. Task 4: Clarification/Revision/Approval of the Program (Oct.-Nov. 2001). Questions about, and revisions to, the program should be expected and built into the schedule. The program should receive approval no later than November of this year.

e. Task 5: Initial Meetings of the Steering Committee, Working Groups (Nov.-Dec. 2001). Following program approval, several initial meetings of the Steering Committee will be necessary to ensure proper understanding of the program and coordination mechanisms (including an email network). The Ministry of Justice will place key agenda items before the Committee for approval. Starting in 2002, the Committee should move to a schedule of monthly meetings.

f. Task 6: Workshop on the Program for Deputy State Secretaries and Union of Municipalities (Nov. 2001). As a consciousness-raising event, the PIU will organize a workshop for deputy state secretaries from each of the ministries to acquaint them with the program, seek their views on possible program adaptations, and troubleshoot potential problems. Representatives from the Union of Municipalities will also be invited. A key objective will be to charge the attendees with responsibility to begin in earnest a process of informing their relevant ministry and administrative body personnel about the impending tasks expected of them under the program.

g. Task 7: Designation of Responsible Managers and Legal Staff in Each Ministry; Responsible Officials in Each Municipality (Dec. 2001). Based on the meeting of deputy state secretaries, each ministry will be expected to designate responsible managers and lawyers who will serve as key resources and points of contact for (1) general education programs within the ministries and subordinate administrative bodies; (2) selection and training of key personnel; (3) revision of special legal procedural norms as necessary; and (4)

development of new practices and internal guidance in furtherance of the new laws. Similar responsibilities will be assigned to a designated official in each municipality. *Given the capacity problems in the municipalities, consideration should be given to hiring a legal specialist on a part-time basis to serve as a consultant to the Union of Municipalities on APL implementation issues*. This individual could assist the Union and individual local governments on matters of legal revision and implementation of revised special procedural norms.

h. Task 8: Commissioning of Baseline Research on APL, LIA (Dec. 2001-Jan. 2002). In consultation with outside experts and Latvian social scientists and NGO representatives, the PIU should launch several baseline studies relevant to APL and LIA implementation. These could range from surveys of public awareness of, and satisfaction with, current administrative procedures and information accessibility, to research on existing administrative caseloads in the courts. Research priorities should obviously be discussed in the PIU throughout the fall of 2001.

i. Task 9: Development of a Monitoring Plan (Dec. 2001-Jan. 2002). With the help of external consultants as necessary, the PIU should approve a monitoring and evaluation mechanism for the program that relies on regular reporting from the various institutions represented on the Steering Committee, as well as each ministry. Under the guidance of the MoJ consultant, a junior staff person in the MoJ should assume responsibility for creating a user-friendly database that will be regularly updated and able to generate monthly reports for the benefit of all program participants, but especially the PIU and Steering Committee.

j. Task 10: Introductory Workshops/Program Launch for Responsible Ministry Legal and Managerial Staffs, and Municipal Officials, respectively (Jan. 2002).

The key staff designated above from each ministry and municipality, respectively, should attend 1 ½-2 day workshops aimed at educating them in some depth about the program in general as well as specific issues under the APL and LIA for which they will be held responsible in their various institutions and subordinate bodies. The PIU and Special Ministry for Public Sector Reforms should assume responsibility for the ministries' workshop, while the PIU and the Union of Municipalities should assume responsibility for a separate municipalities' workshop. There should be common sessions and then breakout sessions relevant to each group at the ministries' workshop (e.g., a seminar on the need for lawyers to inventory their various administrative procedures and information classification practices for fidelity to the APL's and LIA's respective requirements, if they have not already done so), while a more uniform overview format would prevail at the municipalities' workshop.

k. Tasks 11-12: Commencement of Monthly Steering Committee Meetings and Monthly Reports to the Steering Committee (Feb. 2002). A regular monthly meeting and reporting cycle should start at the beginning of February and continue thereafter until the close of the project). Reports should be prepared by the PIU at least one week prior to each meeting.

l. Task 13: Commencement of Quarterly Reporting to the Cabinet (April 2002). Beginning in April 2002, the Steering Committee will forward a summary quarterly report (prepared by the PIU) to the Cabinet to keep the latter apprised of progress and problems under the program. The reports will be sent during the month following the end of each calendar quarter.

m. Task 14: Submission of Final Report to Cabinet of Ministers (March/April 2003). The PIU and Steering Committee will be responsible for sending a final report on the

18-month program to the Cabinet at the close of the project (the report shall have been begun prior to the end of the program, but submitted in the month or so following the program, so as to include the last quarter's data and other information).

2. Implementation of the APL

Implementation of the APL represents a very significant undertaking for the Latvian government given the draft law's potentially pervasive influence and the number of individual administrative bodies, government officials, and citizens and businesses affected. Coordinating and monitoring the implementation process – keeping a number of tasks moving simultaneously throughout the 18-month program – constitutes a major management challenge that will tax the various planning and organizational systems described immediately above. At the same time, the Steering Committee and PIU will face another kind of challenge, but one that is no less significant: getting lawyers and agency managers to take seriously the individual rights principles that are obscured by the gray legal prose of this voluminous law and to ignore the casual impression fostered by some observers that the new law leaves fundamentally unchanged most existing administrative processes. The under-resourced judiciary will certainly not have any illusions about the law: it portends significant difficulties for courts unschooled in administrative matters and desperately short of personnel. To reassure their government audiences, it will be tempting for those leading the implementation process to downplay the magnitude of the changes involved. Yet if this occurs, a vital opportunity to change attitudes and practices will have been lost.

Education and training therefore lie at the heart of the implementation program: education of key ministry managers and lawyers, education of lawyers and procurators, education of the public and the business community, training-of-trainers among the ranks of

managers, lawyers, judges, and municipal officials, and finally, training of rank-and-file personnel by the trained instructors. The process is one of delegating responsibility for education and training, and then ensuring that the results are monitored and later reinforced.

Despite the focus on trainers 'teaching their own,' in fact there will be considerable cross-disciplinary interaction at the training-of-trainers level. Indeed, at this preliminary stage of instruction, it is envisioned that lawyers, managers, and judges will all be part of the same instructional program for a significant portion of the time. This will encourage higher-quality learning based on the more realistic scenarios and challenges that each of the three groups will bring to the sessions to discuss and work through in role-playing exercises. Later, as new processes and routines are implemented, interdisciplinary interaction will also be encouraged through problem-solving workshops that will be held from time to time. In compartmentalized post-Soviet societies, these opportunities for exchanges of views across professions and institutions are all too rare and are critical to the development of social capital in a new democratic culture.

The following tasks are clustered under eight major objectives or categories of activities. Each represents a critical dimension of the implementation landscape.

a. Objective 1: Creating and/or Harmonizing Legal Frameworks.

Six discrete types of activities must take place under this objective in order for consistent administrative procedure frameworks to exist across the national and municipal governments. First, the APL itself must be passed by Parliament. Second, a conceptual approach must be adopted toward special procedural norms in ministries and administrative bodies that may not conform with the new law. Third, a Cabinet of Ministers regulation may be needed to address issues such as fees in administrative matters and court fees. Fourth,

official legal commentaries on the law need to be begun. Fifth, special procedural norms need to be amended or created wherever they are needed in order to bring a ministry or administrative body into compliance with the law. And sixth, special Ministry of Justice guidance on implementation of new special procedural norms needs to be drafted and disseminated to all ministries and municipalities.

Task 1.1: Development of Approach to Special Procedural Norms and Main Transitional Requirements (Aug.-Sept. 2001). Based on the work of Prof. Briede in the APL Working Group, the Ministry of Justice must decide on a general approach to the question of special procedural norms in national administrative bodies and municipalities. This will include a decision about which specific transitional requirements to include in the APL, and which general transitional statements will be incorporated to ensure compliance with the APL across the country. The latter determination may need to incorporate a reworking of the text of Article 3 of the draft law. *This approach will serve as a starting point for inventorying the changes in special procedural norms that will need to be made prior to Jan. 1, 2003. The detailed and comprehensive inventory of the changes necessary at each and every national and local administrative body will occur in the spring of 2002 as described below.*

Task 1.2: Work with Saiema on Final Modifications to the Law (Aug.-Sept. 2001). The MoJ and the APL Working Group must work with the Legal Committee of the *Saiema* to bring the draft law to final passage. This will involve careful attention to transitional provisions as well as possible consideration of the concerns suggested in this report.

Tasks 1.3, 1.4: Development and Delivery of Plan/Guidance for Ministries and Local Governments re: Inventory of Appeals Procedures (Oct.- Dec. 2001). The PIU, assisted by the APL Advisory Group, should draft a plan and memorandum for ministries and municipalities to conduct and report back on an inventory of the special procedural norms under their jurisdiction. This will serve both to lay the groundwork for actual revisions to such procedures to bring them into conformity with the law, and to create accountability on the part of these institutions (although extra time and assistance will be needed to help bring municipalities into conformity). The memoranda requesting the inventories can be sent in December to the ministries and municipalities, which will then forward them on to the responsible personnel identified in Task 1.g under the Program Management Tasks described above.

Task 1.5: Begin Drafting General Commentaries on the APL (Nov. 2001--). Under the direction of the APL Advisory Group, the Ministry should commission the drafting of general commentaries on the new law that can serve as a general reference point for legal professionals seeking to better understand and apply the law. Professor Dravnieks and Professor Briede should take the lead on this task, which could take up to a year or more to complete depending on the Advisory Group's objectives.

Tasks 1.6, 1.7, 1.8: Submission and Review of Inventory Reports on Changes to Special Procedural Norms (including proposals for repeal or modification); Submission of Ministry Regulatory Changes to Cabinet (March-June 2002). Each administrative body and each municipality will be expected to submit a report inventorying all special procedural norms that need to be repealed or modified in order to bring them into conformity with the APL's provisions. The reports will contain legislative proposals necessary to effect the required changes. Reports by ministerial and administrative bodies will be sent directly to the MoJ for review; the municipal reports will be sent to the Union of Municipalities, where they will be reviewed and general conclusions about common issues and concerns forwarded to the MoJ. Proposals for regulatory changes at the ministerial level will be packaged and presented for review and approval by the Cabinet of Ministers no later than June 2002.

Task 1.9: Official MoJ Guidance to Ministries, Union of Municipalities re: Implementation of Revised Procedures (June 2002). Based on a review of the inventory reports and an overall impression of the types of changes and potential practical issues attending revision of procedural norms, MoJ should issue a general guidance letter to all ministries and the Union of Municipalities (for further distribution to individual municipalities) informing them of the desire to see all such revisions put into place by fall 2002. The letter, which will also refer to the importance of having appropriate training activities underway (see below), will serve as a further spur to action in an effort to harmonize all legal frameworks prior to the APL going into effect on January 1, 2003.

Task 1.10: Approval of Bulk of Revised Ministerial Appeals Procedures by Cabinet (July 2002). Based on regulatory proposals received in May and June, the Cabinet should approve by July 2002 all necessary ministerial regulations needing to be revised to bring them into conformity with the APL. Based on these changes, revisions to special procedural norms at the level of subordinate administrative bodies can occur in the fall of 2002.

Task 1.11: Approval and Publication of Revised Special Procedural Norms by Administrative Bodies and Municipalities (July-Nov. 2002). Depending on the magnitude and complexity of changes to be made, as well as technical and administrative capacity issues, all revisions to special procedural norms should be approved and published by November 2002 in national administrative bodies and municipalities.

b. Objective 2: Development of a Compensation Mechanism

Development of some kind of workable compensation scheme is essential to the proper functioning of the APL as currently drafted—so that not only can citizens' rights be vindicated in cases where they prevail against the government, but commensurate financial judgments rendered. While a fund for large judgments is reportedly under consideration

pursuant to an independent law, 107 the government has not taken any decisions on the matter. There is a presumption that a fund for administrative cases, even if made part of a larger government fund, would be administered by the Ministry of Justice. Key decisions need to therefore be made about administration of the fund, whether it would be paid for directly by the Ministry of Finance or out of individual ministry accounts,108 and how the funding levels would be established.

A starting point would be to have a consultant or working group develop an options paper for government consideration, taking into account matters of bureaucratic practicality, the views of key ministerial experts, comparative international experience, and research on expected numbers of cases. This paper, which would address options for both the national government and municipalities, could then be discussed at a workshop, where consensus approaches could be hammered out and submitted to the Steering Committee for consideration, and then approved by the Cabinet and Union of Municipalities, respectively. Ultimately, a concrete legislative or regulatory proposal for the national government would be submitted to the Cabinet. Guidance from a special working group and/or consultants could guide the implementation of inter-agency procedures necessary to operationalize the compensation mechanism. A solution for municipalities, meanwhile, would require a separate legislative solution.

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107 Interview with Maija Sauluna, Deputy Minister of Justice, March 15, 2001. Currently, funds to pay court judgments are set aside by each agency in its own budget, while especially large awards must be approved by the Ministry of Finance.

108 The Ministry of Justice expressed interest in a centralized approach, although there is reportedly some sentiment that having each agency equitably or proportionally contribute to a fund (e.g., based on recent judgment experience) would create a greater sense of accountability. The problem is of course that such contributions are bureaucratically more complicated, and court judgments may bear little relationship to an agency's actual conduct.

Task 2.1: Working Group on Compensation Issues Established (Oct. 2001). The Steering Committee should establish an informal Compensation Working Group to consider the matter of an appropriate compensation scheme. Key ministerial representatives (e.g., from Ministries of Finance, Justice, etc.) should be included.

Task 2.2: Development of Options Paper on Alternative Compensation Schemes (Oct.-Dec. 2001). Local and/or foreign consultants should be retained to draft an options paper for consideration by the Compensation Working Group and ultimately, the Steering Committee. The paper will address options for *both the national government and municipalities.*

Task 2.3: Workshop on Options Paper, Approval of Concepts by Steering Committee (Jan.-Feb. 2002). The options paper will be discussed at a workshop with interested parties facilitated by the consultants. The workshop will discuss options for both the national government and municipalities. The consultants will then take consensus options and turn them into two Concept Papers that can be adopted by the Steering Committee and presented to the Cabinet (and in the case of the municipalities, to the Union of Municipalities) for approval.

Task 2.4: Approval of Concept by Cabinet (April 2002). The Cabinet will consider and approve (with necessary changes) the Concept Paper for the national government. The paper will be turned over the MoJ for development into a formal legislative or regulatory proposal. The Concept Paper on the municipalities will be turned over to the Special Ministry for Local Government Affairs and the Union of Municipalities for further study and recommendations.

Task 2.5: Drafting of Legal/Regulatory Proposals Relating to Compensation Scheme, as well as Amendments to APL, if necessary (May-July 2002). Proposals necessary to translate the Concept Paper for the national government into actual legislation and/or regulations will be drafted, including any necessary changes to the compensation provisions of the APL.

Task 2.6: Drafting of Operational Implementation Paper by MoJ (May-July 2002). The MoJ, assisted by the special Working Group and the Ministry of Finance, will put together an operational implementation paper spelling out the procedural and practical steps necessary to realize the draft compensation scheme for the national government. Where requested, expertise could also be directed to the Union of Municipalities and the Special Ministry for Local Government Affairs to guide their consideration of ways to operationalize individual municipal compensation schemes.

Task 2.7: Legislative, Regulatory, and Budget approvals for Compensation Scheme (Summer-Fall 2002). The MoJ will coordinate closely with the *Saiema,* Cabinet, and Ministry of Finance to ensure that the legal and financial basis for the national compensation fund is established.

Task 2.8: Preliminary and Follow-up Guidance to Ministries and Judges on Compensation Mechanism (Fall 2002-Winter 2003). The MoJ will coordinate issuance of

general guidance to ministries and judges on how judgments at the national level will actually be entered and paid. This will include preliminary guidance in the fall of 2002 and follow-up guidance (backed by preliminary experience) issued in the winter of 2003.

c. Objective 3: Training of Managers and Lawyers

Perhaps the most crucial objective of the entire implementation plan, the training of managers and lawyers in ministries and other administrative bodies is intended to educate the two groups of individuals most responsible for ensuring that each institution's administrative procedures and their execution are consistent with the provisions of the APL. At the same time, many of the training methodologies and materials, as well as training experts dedicated to training this audience, will be used as a foundation on which other types of training – e.g, for judges and for municipal officials – will be built.

The core of the training curriculum will feature an intensive interactive presentation of the main principles of the APL (i.e., the EU-derived principles appearing in Chapter 1 of the law and the procedure in administrative bodies (Part B)) and the implications of the new judicial review procedures, as illustrated by problems and situations drawn from actual experience. Given the large numbers of individuals to be trained, as well as the short time-frame between passage of the law and its effective date, the success of the training program will depend to a great degree on the selection of a nucleus of perhaps a dozen highly-skilled and respected group of APL training specialists. These specialists, armed with existing training experience and additional specialized training in Germany, will lead a training-of-trainers program in which they will train a cadre of some 25-35 individuals to deliver training on a decentralized, longer-term basis to rank-and-file personnel in executive branch institutions, as well as in the judiciary and the municipalities. *Development of the training program will thus focus first on training-of-trainers (using a foreign study tour to Germany to see how the*

influential German Administrative Procedure Law is taught, and refining the training methodologies at the School of Public Administration), and then on diffusion of training on a compulsory basis at each of the relevant administrative institutions.

The development of a practical and compelling set of training materials will consume considerable time in the early part of the program. The materials will need to accentuate the differences between the new and old procedure (again, emphasizing the practical application of the new principles) and provide a number of problem-solving opportunities. *The objective should be to inculcate a new appreciation for interpretational methods and the hierarchy of legal norms.* Key elements of the core curriculum should include:

- The purpose and benefits of orderly, fair, and open administrative procedures
- The legal effect of the APL (hierarchy of norms)
- The key principles of the APL
- The progress of a typical administrative case (jurisdiction, parties, opportunity for hearing, decision, internal appeal), with particular attention to the form and content of the decision
- Issues regarding invalidity, suspension, overrule, or repeal of a decision, as well as the 'factual conduct' of a administrative body
- Issues regarding compensation and enforcement
- Judicial appeal and court procedure

We envision that this common curriculum would be supplemented by specialized units focusing on the needs of agency lawyers (drafting and structural issues) and managers (focusing on interpretation and the form of agency decisions), respectively.

We would recommend that wherever possible, the training experts incorporate clear, real-life examples of well-constructed and maintained procedures into the curriculum. Based on our interviews, we understand that the Road Traffic Safety Inspectorate, the Naturalization Administration, and the Welfare Ministry all have high quality procedures and personnel who could be consulted in the development of the curriculum.

The following tasks trace the development of the training program from initial design to deployment of two waves of training of rank-and-file personnel in the ministries and other administrative bodies. It also results in the qualification of expert trainers able to provide training-of-trainers instructions (and some rank-and-file training as needed) to judges and municipal officials.

Task 3.1: Identification of Core Training Specialist Group (Training-of- Trainers Instructors)(Oct.-Dec. 2001). The APL Working Group will assist the PIU in identifying up to a dozen (probably 10-12) of the best-regarded trainers in administrative procedure and designate them as an instructor group ("the Training Specialist Group") that will take responsibility for training-of-trainers instruction and the development of the core training curriculum. The group will draw from among the dozen or so existing trainers who have offered administrative law instruction at the School of Public Administration,109 but will also locate up to three additional specialists, as necessary, if they are promising.

Task 3.2: Inventory of Existing Training Materials/Approaches in Administrative Procedure Instruction (Jan.-Feb. 2002). The Training Specialist Group, assisted by the APL Working Group, will meet and collectively review and compile the best training materials and curricular approaches relating to the teaching of administrative procedure in the country. Initial work in refining and improving these materials will begin during this period, subject to further revision based on input from different quarters as described below. A major task will be creating common curricular materials as well as specialized materials for instructing lawyers (focusing on structure of procedures, drafting issues) and managers (practical decisionmaking issues).

Task 3.3: Preparations for Training/Study Tour for Training Specialist Group (Jan.-Feb. 2002). Supported in part through arrangements with the German Ministry of Justice and the Soros Foundation, as well as the IDF grant from the World Bank, the PIU will make arrangements for the Training Specialist Group to travel to the German Judicial Training Academy for (1) instruction in the teaching of administrative law and procedure; and (2) exposure to the practical application of the German Administrative Procedure Law in various ministries. Prior to travel, the Training Specialist Group will hold several meetings to identify areas requiring the greatest supplementation of their knowledge and pedagogical skills.

Task 3.4: Training/Study Tour for Training Specialist Group (March 2002). Accompanied by at least one training specialist from the School of Public Administration and one member of the APL Working Group, members of the Training Specialist Group will travel to the German Judicial Training Academy for several weeks of instruction in and observation of, legal training methodology generally and a curriculum focused on administrative procedure

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109 These individuals are: R. Eize, L. Mengele, M. Mudelis, I. Zudane, J. Neimanis, J. Volksons, A. Lublina, J. Briede, M. Groduma, D. Olte, L. Priedite, and U. Petersons. Because most of these individuals are full-time government employees, it is not clear that they would be available to serve in the core group of trainers.

in particular. There will also be opportunities to visit some German ministries and talk to agency lawyers and managers about application of the German APL.

Task 3.5: Workshop on Training Curriculum Design (April 2002). Based on the study tour experience in Germany, the Training Specialist Group will conduct a small workshop a month later to take stock of what they have learned and to begin to refine and shape both a training-of-trainers curriculum and core materials for instruction of rank-and-file agency managers and lawyers. Also invited to the workshop will be a select group of interested agency managers and lawyers who will help serve as a 'reality check' on the training design. Several of these individuals will have returned from their own tour of Germany and/or another EU country to observe administrative procedures in practice.

Task 3.6: Identification/Nomination of Train-the-Trainers Candidates (April-June 2002). Based on their knowledge of qualified potential candidates, the Training Specialist Group will nominate at least two dozen individuals to receive specialized training in administrative procedure. *Some individuals will be drawn from the ranks of the judiciary and the municipalities to become qualified to instruct in those institutions* (all of these individuals will, as a result of the training sessions, ultimately become qualified to serve in the Training Specialist Group as qualified trainers on the subject).

Task 3.7: Refinement of Training Materials (April-June 2002). Based on the workshop and additional discussions within the Training Specialist Group, the Group will undertake refinement and modification of the training materials to be used for both training-of-trainers instruction and training of rank-and-file ministry/agency personnel.

Task 3.8: Train-the-Trainers Program at the School of Public Administration (July 2002). Members of the Training Specialist Group will instruct up to two dozen qualified individuals to become capable trainers of administrative procedure in their own right. *Modules will cover the basic common topics described above, as well as specialized material focused on the needs of agency lawyers and managers, respectively. Other materials will be shaped for use by specialized training audiences such as the judiciary or the municipalities.* All training will be carefully evaluated by the participants and others.

Task 3.9: Further Adaptation of Training Materials for Instruction of Rank-and-File Ministry/Administrative Body Personnel; Preparations for First Wave of Compulsory Lawyer/Agency Manager Training (Aug.-Oct. 2002). Based on the instruction received, the enlarged Training Specialist Group (now possibly numbering as many as 35 members) will refine course materials further based on the unique needs of ministries and other administrative bodies seeking to train rank-and-file lawyers and civil servants. Preparations (including designation of attendees) will continue in the early fall for this first wave of training in these institutions on a decentralized basis. Preparations will also proceed for specialized training sessions for members of the judiciary and municipal officials (see below).

Task 3.10: First Wave of Decentralized Compulsory Training of Lawyers and Managers in Various Ministries and other Administrative Bodies (Nov. 2002). Training for a certain number of designated lawyers and managers (possibly 80-100 individuals) will occur on a decentralized, compulsory basis in various ministries and other administrative bodies.

Task 3.11: Second Wave of Decentralized Compulsory Training of Lawyers and Managers (Dec. 2002). A second wave of training (another 80-100 individuals) will occur in order to reach another group of key participants in administrative procedure in selected institutions.

Task 3.12 (Third and Fourth Waves of Decentralized Compulsory Training of Lawyers and Managers (Feb., March 2003). Further training will occur in order to reach the remainder of those agency lawyers and managers directly involved in the structuring of agency procedures or the issuance of administrative decisions.

d. Objective 4: Implementation of New/Modified Administrative Appeals Procedures

In tandem with the drafting of new or amended administrative appeals procedures and training of lawyers and managers in administrative bodies, proper implementation of the APL will require prompt and coordinated implementation of the new procedures. This will require that proper organizational and resource issues are planned for, and proper internal instructions and manuals are made available to translate legal requirements into practical checklists for a variety of agency personnel. It will also require that certain reporting functions are updated and improved, so that agency managers have a clear picture of what is happening from a statistical, financial, and public relations standpoint. The implementation work should be developing on an independent track even as formal legislative and regulatory proposals capturing the new and modified procedures are being considered by the *Saiema* or Cabinet, respectively. The same will be true on an analogous basis in the municipalities.

To prompt agency personnel to think as creatively as possible about how to make their new and modified procedures more user-friendly and effective (for bureaucrats and the public alike), three important information-gathering exercises will be encouraged by the Ministry of Justice:

(1) A select group of ministry and administrative body personnel with a reputation for open-mindedness and innovation will be selected to participate in a two-week study tour of one or two countries to observe how agency managers in

those countries organize themselves to manage their administrative procedures in the most effective way possible and how they communicate with the public about their procedures;

(2) Based in part on information and insights gained from the study tour participants, they and other organizers will mount a substantial two-day series of workshops and seminars for senior ministry managers and subordinate administrative body managers on innovative best practices for managing administrative procedures. A similar convocation can be suggested for the municipalities.

(3) Based on the seminar and the training received by several managers and lawyers as described in the previous section, each ministry and administrative body will be asked to hold problem-solving sessions at the rank-and-file level where new and modified procedures can be discussed with an eye toward improving their efficiency and transparency. Each administrative body will be asked to report back on these problem-solving sessions, and the results will be compiled into ministry reports sent to the Ministry of Justice and the Special Ministry for Public Sector Reforms for eventual transmittal to the Cabinet. Again, individual municipalities will be encouraged to go through the same process with their own departments.

Based on the ministry reports, a number of approved managerial and training tasks will be carried out to fulfill the recommended improvements.

Task 4.1: Development of Implementation Plans/Resource Needs Based on Legislative and Regulatory Changes (May-Sept. 2002). As the final contours of the legislative and regulatory changes within ministries and administrative bodies become clear (in the spring of 2002), agency managers can begin to plan for the operational changes and resources needed to effect those changes. These plans will be developed and forwarded to the ministries, where they will be synthesized into the regular budget and planning process.

Task 4.2: Identification of Innovative Managers for Study Tour of Comparative Administrative Procedure Management (Dec.2001-Jan. 2002). Approximately 15 innovative, open-minded agency managers will be identified and selected to participate in a study tour of one or two EU countries designed to acquaint the managers with ways in which foreign mangers plan for, and operate, various procedural systems. *It is expected that at least 2 representatives of municipal governments will be selected to participate.*

Task 4.3: Study Tour of Comparative Administrative Procedure Management (March 2002). The 15 study tour participants will spend 2-3 weeks in one or two countries (e.g,, Germany and the Netherlands) talking with foreign agency managers and consultants about the practical management of a system of administrative procedure. A major emphasis will be on educating civil service personnel and the public about the operation of the procedures.

Task 4.4: National Workshop on Innovative Best Practices in Administrative Procedure Management (June 2002). Based in part on information gleaned from the study tour, tour participants and the MoJ will put together a two-day workshop on innovative best practices in administrative procedure management. Approximately 100 individuals (principally lawyers and managers with decisional authority) will be invited. The workshop will feature plenary meetings as well as many breakout sessions discussing various managerial topics of relevance to APL implementation, including issues of budgeting, public communications (use of Internet, brochures, etc.), and recordkeeping.

Task 4.5: Municipal Workshops on Innovative Best Practices in Administrative Procedure Management (July 2002). Based on the national government workshop described above, the Union of Municipalities will organize a similar workshop for 100-150 municipal officials.

Task 4.6: Ministry-Ordered Problem-Solving Meetings on Implementation of Improved Procedures (Sept.-Oct. 2002). All administrative bodies under a ministry's authority will be ordered to conduct problem-solving sessions on how they are working to improve administrative procedures in terms of transparency and efficiency. *The PIU will encourage the Union of Municipalities to ask all municipalities to go through the same exercise and report back their conclusions.*

Task 4.7: Drafting of Manuals, Internal Instructions, and Public Information Materials (Sept.-Dec. 2002). Based on earlier plans and input from the above problem-solving sessions, responsible agency personnel will draft manuals and internal instructions, as well as public information materials necessary to make new and improved procedures more intelligible. *The Union of Municipalities will monitor this process in the municipalities.*

Task 4.8: Compilation of Ministry Reports on Implementation of New/Improved Procedures (Nov.- Dec. 2002). Summaries of all actions taken or to be taken with respect to modifying and improving administrative procedures in each administrative body will be transmitted up to each ministry for compilation into a report that will in turn be delivered to the Ministry of Justice and the Special Ministry for Public Sector Reforms. *A similar report will be asked of the Union of Municipalities, to be delivered to the MoJ and the Special Ministry for Local Government Affairs, with consultant help being provided as necessary.*

Task 4.9: Publication of Report on Implementation of New Procedures; Transmittal to Cabinet (March 2003). A synthesized report on measures taken to implement the APL at the national and municipal level will be published and sent to the Cabinet for review. This will help in monitoring the overall implementation process, identifying how and where certain additional research and monitoring can be undertaken to evaluate the impact of the APL on actual use of administrative procedures, and providing a snapshot of where further implementation work needs to occur in various ministries and municipalities.

e. Objective 5: Training of Judges

Due to the low level of material resources currently afforded the judiciary in Latvia, as well as the relative lack of experience with administrative cases among active judges, the judicial implementation of the APL represents one of the most serious challenges to the overall implementation plan. Although the current number of administrative appeals is currently estimated to be only around 300 per year,110 that number could rise dramatically after the APL becomes effective in January 2003. The Ministry of Justice conservatively estimates that it will need between 40 and 45 new judges in order to have administrative procedure expertise housed at each court around the country.111 While a request to hire such judges is pending with the Ministry of Finance, there is no certainty that money for the entire complement of judges will be forthcoming.

Because of the large influx of new judges and the dearth of administrative law expertise among existing judges, significant judicial training talent must, in the short run, come from outside the judiciary.112 At the same time, pedagogically, judicial training is in its infancy in Latvia; notwithstanding the currently well-appointed training facilities of the Latvian Judicial Training Center in a wing of the Riga Graduate School of Law, few judges have the inclination to utilize modern interactive adult learning techniques. For this reason, *a cadre of*

110 Interview with Maija Sauluna, Deputy Minister of Justice, March 15, 2001.

111 It is expected that each court will have one administrative judge at the first-instance level, although the Riga City Court may have 2 or 3 such judges. Administrative cases at the second instance level will be handled on a collegial basis based on assignments by the Chief Judge.

112 There is a danger in assuming, as some current judges apparently have, that the changes wrought by the APL are minor in nature and can easily be handled by veterans on the court. The fact is that while the court procedures do not differ greatly from current practice, the entire basis for review is dramatically different due to the requirement that certain principles guide administrative and judicial decisionmaking and due to the many more significant procedural requirements (e.g., form of the administrative decisions) imposed on agency managers. Due to Soviet-era legal education and judicial training, these concepts are likely to be harder to inculcate in many older members of the court.

judicial trainers knowledgeable about administrative procedure must be developed from the judicial ranks over time, relying on skilled trainers from other quarters to provide the initial instruction in the subject. For the time being, most such instructors will be culled from the Training Specialist Group described in Objective 3 above. These instructors will seek, over time, to nurture a group of perhaps a dozen skilled judges and lawyers to serve as dedicated judicial trainers who can build a solid curriculum in administrative procedure over time at the Judicial Training Center.

As for the training audiences and curriculum, there are two distinct groups that must be addressed: first, the existing judges, who may have well-developed courtroom management ability and skills in evaluating evidence but less appreciation of the APL or the practical application of its democratic principles; and new judges, who may be quite naïve about practical case management but more attuned, through their legal studies, to the APL's procedural subtleties. The latter group, moreover, will generally have fewer opportunities to discuss problems with colleagues given the absence of collegial structures at the first instance level where more most of the new judges will be assigned. This suggests the need for a differential training program that focuses on the requirements of these two groups separately in the early stages (where APL training would be woven into the general curriculum for new judges), and then brings them together for more common work at a relatively later date in the instructional process.

Building on the foundation of the Training Specialist Group's existing expertise, and supplemented by training and observations collected from the study tour and training program at the German Judicial Training Academy, a training-of-trainers program will cultivate an expanded group of judicial trainers who will be trained alongside those responsible for lawyer

and manager training (in some cases, these will be the same people). This will promote significant sharing of information and skills, as well as exposure to the most innovative training techniques, which are in short supply at the Judicial Training Center. These judicial trainers will be in a position to provide differential training to the two groups of judges charged with applying the APL at the judicial stage. Thereafter, these training curricula will become more fully integrated into the overall training cycles offered by the Judicial Training Center.

Task 5.1: Inventory of Training Resources for Judicial Training (Oct.-Nov. 2001). The APL Advisory Group will work with the Ministry of Justice to identify existing curricular materials and potential judicial trainers within and outside the judiciary.

Task 5.2: Designation of Certain Trainers to Participate in Training/Study Tour for Training Specialist Group (Jan.-Feb. 2002). Along with members of the Training Specialist Group who will be able to provide certain aspects of training for judges, a small number of individuals (e.g., at most two or three) will be chosen to participate in the study tour/training program at the German Judicial Training Academy based on their judicial backgrounds or experience in the courts.

Task 5.3: Training/Study Tour for Training Specialist Group (March 2002). April 2002). Judicial training will represent a major focus of the training/study tour program, which, as described in Task 3.4 above, will be carried out at the German Judicial Training Academy. The training specialists who know they will be concentrating on training judges will spend additional time on that subject.

Task 5.4: Workshop on Training Curriculum Design (April 2002). Judicial training will constitute the focus of several distinct sessions and discussion groups at the general training workshop and brainstorming session following the study tour (as described in Task 3.5 above).

Task 5.5: Identification/Nomination of Train-the-Trainers Candidates (April-June 2002). Among the two dozen individuals nominated to receive specialized training in administrative procedure under Task 3.6 above, at least 3 or 4 individuals will be specifically recruited to serve as judicial training specialist candidates, and some of them may be active judges. All of these individuals will as a result of the training sessions become qualified to serve in the Training Specialist Group as qualified trainers on the subject.

Task 5.6: Refinement of Training Materials (April-June 2002). Based on the workshop and additional discussions within the Training Specialist Group, the Group will undertake refinement and modification of the training materials to be used for both training-of-trainers instruction and training of new and veteran judges.

Task 5.7: Train-the-Trainers Program at the School of Public Administration (July 2002). Members of the Training Specialist Group will instruct as many as 3 or 4 training specialists who will focus specifically on court procedures under the APL (although the other two dozen individuals trained in this program will be able to train judges as necessary on the subject of administrative procedures in administrative bodies).

Task 5.8: Further Adaptation of Training Materials for Instruction of New and Veteran Judges, Respectively; Preparations for Judge Training (Aug.-Oct. 2002). Based on general and specialized instruction received at the School of Public Administration's training-of-trainers sessions, a subset of the enlarged Training Specialist Group knowledgeable about judicial training will spend further time on adapting general training materials into materials that can be used for new and veteran training groups, respectively. Veteran judge training will focus not only on administrative procedure in administrative bodies, but on the major principles of the APL and on the new burdens of proof and the role of the judge in helping elicit all relevant evidence in pursuit of the truth. New judge training will concentrate on the APL as a vehicle for teaching the art of effective judging in its own right, emphasizing the importance of the judge in vindicating individual rights and carefully weighing facts.

Task 5.9: Training for New and Existing Judges designated for Administrative Cases (Nov. 2002). Based on designation of the new and existing judges for administrative cases (which should happen in the early fall of 2002), the first training sessions for such judges (with different modules for new and existing judges) will be held at the Latvian Judicial Training Center, taught by a range of trainers but with key judicial training specialists from the Training Specialist Group at the core.

Task 5.10: Reinforcement Training for New and Existing Judges Designated for Administrative Cases; Integration of Training into the Regular Training Cycle (March 2003). Based on the need for additional training (esp. for new judges), a second round of differentiated training will be conducted for all new and existing judges designated for administrative cases. This training will reinforce the earlier training while allowing for discussion and problem-solving of issues that have already arisen during the first three months of working with the new APL. As a result of the two training sessions, the special curricula will be packaged into discrete modules that can be integrated into the regular continuing education and new judge training cycles at the Judicial Training Center.

f. Objective 6: Training of Municipal Officials

The training of municipal officials in application of the APL represents a special challenge in terms of the widely disparate characteristics of municipalities in the country and the general low regard in which procedural regularity is held in most municipalities. Inescapably, training of municipal officials will have to occur on a decentralized basis through

the offices of the Union of Municipalities. Yet given the uneven quality of municipal training specialists and the broad lack of familiarity with the subject of administrative procedure, it makes sense to integrate municipalities initially as much as possible into the general training-of-trainers program to be delivered at the School of Public Administration as described above. By incorporating a limited number of talented and forward-thinking municipal trainers into this program, they will be exposed to the highest training standards and methodologies and given an opportunity to share experiences and problems with a dedicated group of peers. These peers can provide an important support network later on when additional resources are needed or questions are posed; it is possible that several other training specialists from the Training Specialist Group can also be deployed to assist with municipal training activities from time to time.

The two most important objectives for municipal training are to engage the political support and interest of mayors and other high municipal officials at the start of the program, and to provide municipal managers with highly practical and simplified training modules that will make implementation of the APL an opportunity rather than a burden. To this end, the program will build on the political momentum generated by the overall program launch workshop for municipalities in January 2002 (*see* Task 10 under the Program and Management tasks above) and the training-of-trainers sessions, lawyer and manager workshops, and reporting processes (*see generally* Objective 4 above) to generate interest among key municipal leaders, and will ensure that the Specialist Training Group includes several influential trainers from the municipal training ranks who understand the political environment in which most municipal officials operate and can adapt training modules accordingly.

Task 6.1: General Guidance to Municipalities on APL implementation and need for training of municipal officials (Feb. 2002). In the wake of the municipalities' APL launch workshop in January 2002, the Special Ministry for Local Government Affairs should issue general guidance to the municipalities regarding the need for close coordination on APL implementation and training of key municipal lawyers and managers in the new procedures.

Task 6.2: Identification/Nomination of Train-the-Trainers Candidates (April-June 2002). As discussed in Task 3.6 above, the Training Specialist Group will nominate several municipal trainers or skilled training generalists interested in working with municipalities to receive specialized training in administrative procedure. These individuals will, as a result of the training sessions, become qualified to serve in the Training Specialist Group as certified trainers on the subject.

Task 6.3: Train-the-Trainers Program at the School of Public Administration (July 2002). Members of the Training Specialist Group will instruct up to two dozen qualified individuals to become capable trainers of administrative procedure in their own right, several of whom will be municipal training specialists as described immediately above. Several of the modules will be focused on issues of particular importance to municipal lawyers and managers.

Task 6.4: Adaptation of Training Materials for Instruction of Rank-and-File Municipal Managers and Lawyers (Aug.-Oct. 2002). Based on the training received, the municipal training specialists from the Training Specialist Group will adapt the training-of-trainers course materials to meet the needs of rank-and-file lawyers and managers from the municipalities. There will also be discussions and training as needed with other municipal training specialists to prepare for decentralized municipal training sessions that will be held in two or three waves in the Union of Municipalities' training centers in Riga and in other regions of the country.

Task 6.5: Development of Specific Guidance/Publicity on APL for Municipal Governments and the Public (Sept.-Nov. 2002). Based on discussions within the Union of Municipalities, the Union will develop specific guidance on APL implementation and training for municipal officials, as well as brochures on the APL that municipalities can use to inform the public about their rights. The guidance and brochures will be delivered to the municipalities for distribution in December 2002.

Task 6.6: Training of Rank-and-File Municipal Lawyers and Managers (Nov. 2002, Jan. 2003, March 2003). Under the auspices of the Union of Municipalities, and using the services of the municipal training specialists and other training specialists, three waves of training for municipal managers and lawyers will be conducted during the last quarter of the program. The aim is to reach approximately 200-300 municipal officials and to create a significant degree of legal literacy about the law among a relatively large cadre of municipal officials.

g. Objective 7: Education and Training for Lawyers and Procurators

Given the focus on training for government officials and to a lesser extent, on public education, it is easy to forget the importance of educating practicing lawyers about the law and ensuring that legal higher education curricula incorporate courses and materials on the APL. It is even easier to forget the importance of having the Procuracy play a responsible, supporting role toward the law, rather than contradicting its purpose through mistaken or misguided advice offered to the public through various consultation channels.

For practicing lawyers, the Ministry of Justice should encourage lawyers' associations to hold at least one or two workshops or training sessions on the APL, at which leading experts on the law or individuals from the Training Specialist Group could serve as the featured speakers. The Institute of Human Rights or one of the legal rights clinics at the University of Latvia Faculty of Law could also develop practical manuals for lawyers on the APL and how to present the most effective appeals within an agency and in the courts.

For law students, teaching materials for public officials can be adapted for a student audience, as has already been done by Professor Briede at the University of Latvia Faculty of Law. Professor Briede is also engaged in creating a textbook on administrative procedure for law school instruction, supported by a Soros Foundation grant. At the Riga Graduate School of Law, moreover, faculty could help put together instructional materials that not only emphasize the basic curriculum but also business cases in which administrative procedure plays a prominent part, e.g., company registration examples or tax appeals.

For procurators, the program needs to ensure that they understand the overall impact of the new law and the degree to which they can help the public to understand their right to challenge mistaken or wrongful government action. Although the procurator's general supervisory role is much diminished today, many people – especially the older generation –

still seeks out procurators to lodge complaints or obtain advice vis-à-vis the bureaucracy. Getting procurators to understand the importance of empowering individual citizens to invoke their rights under the APL constitutes an important shift in cultural patterning that needs to occur in Latvian society. At the direction of the Steering Committee, the Ministry of Justice should send the Procurator General some suggested information about the law that could be circulated within the Procuracy and made the subject of centralized guidance and informal training within that organization.

Task 7.1: Development of Legal Education Agenda by APL Advisory Group (Nov. 2001-Jan. 2002). The APL Advisory Group should develop for the PIU an agenda for legal education that could identify specific educational tasks that the program would support.

Task 7.2: Support for Legal Curricular and Extracurricular Reforms (Nov. 2001-Ongoing). The APL Advisory Group should support and monitor the development of curricular changes in the main degree programs at the Latvian University Faculty of Law and the Riga Graduate School of Law. Extracurricular innovations could include legal clinic cases focused on use of the APL as a training device, and moot courts utilizing cases with administrative procedure as a prominent feature.

Task 7.3: Support for Lawyers' Association Workshops and other Publicity About the APL (Jan. 2002-Ongoing). The APL Advisory Group should communicate with various lawyers' associations and individual lawyers about holding workshops and generating publicity about the APL and its implementation. *One important activity is encouraging leaflets and other materials to be produced by lawyers' associations (possibly with Soros or other foundation funding) for use in legal consultations with ordinary citizens. Another possibility, again with grant assistance, is the establishment of an information hotline on appeals rights.* Certain training modules or specific training materials could be adapted for use in such workshops by members of the Training Specialist Group, who could also serve as educational resources.

Task 7.4: Development of Handbooks/Pamphlets on APL for Practicing Lawyers (spring-fall 2002). With the support of the APL Advisory Group and individual members of the Training Specialist Group, certain lawyers identified with the implementation program will help put together a highly practical handbook or pamphlet on the APL for use by practicing lawyers. The handbook will have sections helping the reader generally understand the law as well as put together a solid appeal from a legal and factual point of view.

Task 7.5: Delivery to the Procuracy of General Information on the APL and Suggested Ways of Handling Citizen Complaints Related or Susceptible to Administrative Appeals (spring 2002). This general information, approved by the APL Advisory Group, will

contain practical suggestions about how to handle citizen complaints and how to refer citizens to particularly helpful resources.

Task 7.6: Support for Informal Meetings or Workshops on the APL Held by the Procuracy (May 2002-ongoing). The APL Advisory Group will coordinate with the Procuracy to offer monetary and in-kind support for various educational programs and publications offered by the Procuracy to guide its members in understanding their new roles under the law.

h. Objective 8: Public Education

In a society where individuals have only recently begun to assert their rights and challenge—even informally—the actions of government bureaucrats, one cannot expect the enactment of the APL by itself to spur a groundswell of citizen appeals. Citizens still suffer from feelings of embarrassment, shame, and fear in confronting public officials with their grievances. Public education about the law and its purpose can begin to change this dynamic, but it will not occur merely through inspirational exhortations to citizens to take action or even through publication of brochures. Rather, a strategic series of test cases or 'positive examples' must be fostered to provide practical models of behavior and action to which the public can refer in taking up their own challenges. The program can encourage these examples through diverse kinds of press coverage of a limited number of administrative cases in progress or completed. The program can also encourage the publication of research addressing this subject, some of which will have been commissioned pursuant to Task 8 of the Programming and Management Tasks noted above.[113] The key is to generate demand for the law through *both* supply-driven educational programs *and* business/NGO activism.

Insofar as the most potent examples of administrative cases can be generated by organizations with a determined interest in the subject, the public education component must

113 For example, the Latvian Development Agency has commissioned research on perceived changes in the quality of the business environment in Latvia, and is reportedly set to issue a report on administrative appeals in several government agencies.

engage a handful of well-organized non-governmental organizations and individual businesses or business associations. Each can be mobilized initially through seminars and workshops (in the case of the business community, courses on the subject can also be offered through the Riga Graduate School of Law to businessmen). Each group should be encouraged to monitor the current situation with appeals under Regulation No. 154 and locate several cases involving businesses or individuals asserting their rights that would tell a compelling story, positive or negative, about the use of appeals. The press should be encouraged to pursue stories about these cases after receiving well-constructed press packets that discuss the APL's impending effective date and the pervasive influence of administrative procedure in everyday life.

Mindful of the need to keep their activities separate, the government and its business or NGO partners will independently work on the development of press strategies that serve their own purposes. Each group can pique the interest of journalists by issuing regular press releases and holding one or two seminars outside Riga where participants can discuss not only the subject of administrative procedure and its inherent interest to ordinary citizens, but the use of administrative challenges by journalists themselves to vindicate a number of their own rights, e.g., access to government information (this will be discussed in greater detail below). This aspect of the public education program should prove remarkably inexpensive; so long as compelling needs and stories can be identified, the press will find that providing extensive coverage is in its own interest.

In addition to stimulation of press coverage in its own right, the program should develop several general types of public information materials for dissemination through the media, through volunteer and grassroots organizations, and through certain government agencies. These would be relatively short texts that could appear in informational brochures

or leaflets or in wall posters. The text of the former could be transmitted through television, radio, newspapers, and various websites, as well as through physical means. The latter could, through arrangements with the national and municipal governments, be posted in government agencies. Emblazoned with a title like "Your Right to Challenge Government Decisions," such materials could have a profound impact on the experience of each citizen entering a public agency.

The public education component of the program in some ways represents a delicate balancing act for the Government. It must maintain arm's length relationships with NGOs and business organizations as it implements the program, and will not want to be seen as by civil servants as actively encouraging an adversarial attitude toward public agencies. In the short run, promotion of the public education program may indeed provoke considerable discontent on the part of many state officials. In the long run, however, such efforts will indeed provide the strongest possible lever for government accountability, as each citizen becomes the guardian of his or her individual rights.

Task 8.1: APL Advisory Group Meetings on Public Education Strategy (Feb.-May 2002). The APL Advisory Group should hold several meetings in the spring of 2002 to map out a comprehensive public education strategy embracing the components described above. A major task will consist of allocating various responsibilities to NGOs and the business community (and tallying the in-kind contributions to the education effort that they can make), and beginning to estimate the cost of preparing official government brochures and posters (Soros Foundation has already made a commitment to fund the production of non-official brochures and other materials). Research not already undertaken will also be commissioned or at least encouraged and monitored.

Task 8.2: Tracking of Compelling Stories About Use of Administrative Procedure and Administrative Appeals for Potential Press Coverage (Nov. 2001-Ongoing). NGOs and the business community will actively search for compelling stories about experiences with administrative challenges.

Task 8.3: Seminars on Administrative Procedure for NGOs and the Business Community (spring 2002). Through the efforts of NGOs like *Delna* and the NGO Center, and business associations like the Latvian Merchants Association, seminars can be held at

which public education efforts can be discussed and refined (and associational contributions ascertained).

Task 8.4: Development of Courses for Businesspeople on Government Regulation and Administrative Procedure (spring 2002). Based on existing examples, individuals responsible for business courses at the Riga Graduate School of Law can consider the development of a course focused on administrative procedure within the larger context of government regulation of business. This kind of course could be offered during the fall semester of 2002.

Task 8.5: Development of Government Public Relations Strategy on APL (March-May 2002). Government public affairs officers from many different agencies should come together at a workshop to hammer out a common public relations strategy on the APL and set in motion the development of press materials as well as brochures and posters for broad dissemination to government offices and public organizations. *The workshop and development process should be communicated to municipal representatives to encourage their establishment of a similar process.*

Task 8.6: Drafting and Approval of Generic Government Brochures and Posters (May-Sept. 2002). Posters and brochures for public distribution should be developed, budgetary needs calculated, and text and designs approved by the Cabinet.

Task 8.7: Development of Brochures and other Informational Materials by NGOs and Business Groups (May-Oct. 2002). On an independent track, NGOs and businesses should develop their own informational materials and press packets regarding the APL.

Task 8.8: NGO Seminars on APL for Journalists (Oct.-Nov. 2002). The NGO Center and other groups can organize seminars for journalists on the APL and how it can serve the interests of the journalistic profession.

Task 8.9: Printing and Dissemination of Government Brochures and Posters; Government Guidance (Oct.2002-Feb. 2003). Generic government brochures and posters (which can later be supplemented by agency-specific publications on the law and individual rights) will be printed and distributed to national and municipal government agencies across the country. Guidance will also be sent about how/where to post/distribute the materials.

3. Implementation of the Law on Information Access

Implementation of the LIA presents a number of problems distinct from those faced in the case of the APL. First, unlike the APL, which has a working regulation as a predecessor norm (Regulation No. 154) whose general requirements are known to government managers, the LIA

represents a poorly-implemented and seldom-understood law. Second, for those who have take the time to read it, the law provides enormous unwarranted discretion to government officials to avoid implementation of its central purpose. Third, the government has placed little priority until now on making the law work, and the business community has tended not to create pressure on the government to do so (although the business community has played an active role in helping to adopt a progressive public procurement law). Finally and most important, the LIA lacks a knowledgeable and determined institutional champion. Without a government body charged with monitoring implementation on an ongoing basis, neither administrative bodies nor the public has taken seriously the LIA and its promise of more open government.

Notwithstanding the government's new interest in moving aggressively to implement the law, it will take the government some time to enforce meaningful compliance from ministries and other administrative bodies. While the Ministry of Justice could attempt to assume compliance responsibilities merely on the strength of its interest in the subject, in fact some legislative basis is necessary to locate an enforcement competency within the ministry. As a result, vigorous government compliance must await the creation of such a competency, which is now slated to be lodged – quite logically – with the State Data Protection Inspectorate within the ministry. Even with the creation of a dual competency in data protection and access to information, however – an institutional arrangement mirrored elsewhere, most notably in various Canadian provinces and in Hungary – an active compliance and public education agenda may be delayed pending development of a sensible strategic plan and enactment of certain legislative and regulatory changes clarifying government agency obligations. For the time being, the government seems to have taken the position that those changes will have a greater chance of adoption if they come with an endorsement and empirical evidence from the newly-enlarged Inspectorate.

The implementation challenge thus breaks down into four discrete objectives: (1) creating the new access to information competency within the Inspectorate; (2) pursuing a research agenda and documenting the need for revisions to the LIA and its implementing regulation; (3) creating a clear but attainable compliance mandate through technical assistance and training to administrative bodies; and (4) establishing a helpful public education program. Each of these objectives is discussed below. Note that while Objectives 1-3 will depend in large measure on the assumption of government leadership on the issue by the State Data Protection Inspectorate, work on Objective 4 can proceed almost immediately based on the leadership of civil society organizations.

a. Objective 1: Creating an Access to Information Competency Within the State Data Protection Inspectorate

Operational since January of this year, the State Data Protection Inspectorate has occupied itself with getting its internal systems (including information technology (IT) systems) in order and educating large data collection establishments (public and private) about their legal responsibilities under the Data Protection Law. Were it to expand its capabilities to undertake compliance functions on the access to information side of the ledger, a legislative mandate would be required – probably an amendment to the LIA setting forth the powers and general structure of the organization, e.g., through creation of an access to information division. Such a development would also necessitate acquisition of additional human and material resources, including specialized inspectors and extra legal staff. Currently, there are plans to hire at least three new inspectors and at least one additional lawyer.114 In addition to the acquisition of

114 Interview with Signe Plumina Director, State Data Protection Inspectorate and Guntis Lauskis, Head, Legal Department, State Data Protection Inspectorate, June 27, 2001.

additional resources, the assumption of new compliance functions would require the development of an institutional development plan, including a compliance strategy for the next several years and a training agenda for key staff. These tasks are detailed below.

Task 1.1: Drafting of Concept Paper on Assumption of Expanded Access to Information Compliance Powers by Inspectorate (Oct.-Dec. 2001). The PIU should commission the LIA Advisory Group to draft (with the help of a consultant, if necessary), a short concept paper describing the rationale for granting the Inspectorate powers over access to information compliance. The paper would also describe the precise nature of the powers to be granted (e.g., paralleling those granted to the Inspectorate on the data protection side) and the basic resource needs of the body over the next several years. This paper will form the basis for a legislative amendment to the LIA documenting such expanded competency.

Task 1.2: Development and Approval of Legislative Amendment Granting Expanded Powers to the Inspectorate (Jan.-March 2002). Approval of the Concept by the MoJ and the Cabinet in winter 2002 should enable a legislative amendment to the LIA to be passed by spring.

Task 1.3: Development of Strategic Development Plan and Compliance Approach for Access to Information Division of the Inspectorate (May-August 2002). Pending and immediately following enactment of the legislative change, senior staff at the Inspectorate, working with consultants as necessary, will work on a strategic development plan for the new Access to Information Division of the Inspectorate, looking at human and material resource needs, training requirements, IT needs, and basic compliance objectives. The development plan will be aided by a study tour that staff will take to Hungary and one other country (perhaps the United Kingdom, which is presently implementing its own new access to information law) in order to gain comparative perspective on different compliance approaches (see Task 1.5 below).

Task 1.4: Hiring of Staff, Procurement of Additional Resources (May-Sept. 2002). Starting with a division chief, the Inspectorate will hire additional staff (inspectors and legal staff) to execute their new responsibilities. The Inspectorate should also retain the services of a local research consultant who will be available to analyze data and propose research on the LIA and its implementation. Additional IT and other resources will also be obtained.

Task 1.5: Study Tour for Inspectorate Staff to Hungary, other Country (July 2002). Using IDF funds, a study tour will be arranged for existing division staff, the Inspectorate Director and IT supervisor, and the Chief of the Legal Department. Certain MoJ staff may also accompany the group. The tour will focus on one or two countries, one being Hungary, which as a similar dual competency institution in a transition country (the Ombudsman for Data

Protection and Freedom of Information) has much to offer in terms of comparative experience; and the other possibly being the United Kingdom, which is in the midst of implementing its new Freedom of Information Act.

Task 1.6: Workshop on Ideas for Better Compliance and Access (Sept. 2002). After taking stock of its own plans and resources, the Inspectorate's Access to Information Division will work with members of the LIA Advisory Group to put together a workshop to which key government, NGO, and business representatives will be invited. The workshop will consider ways to improve government agency compliance and public outreach concerning access to information. *A major focus of the discussion will be on the importance of expanded affirmative disclosure of information and use of technology to increase information dissemination.* Potential legislative and regulatory changes to effect these and other changes will also be discussed. *Furthermore, the importance of information access to the business community and the government's anti-corruption program will be explored, as will relationships with partner organizations in civil society to monitor and evaluate each ministry/administrative body's responsiveness to public information requests. Public education efforts, including creation of a richly populated web site (see Objective 4 on public education below) will also be discussed.*

Task l.7: Development of Internal Policies and Procedures Manual (Oct.-Dec. 2002). The Access to Information Division will create an internal policies and procedures manual governing inspections, investigative procedures, collection and maintenance of data on government information registries, and provision of technical assistance.

Task 1.8: Identification of Information Officers at all Government Administrative Bodies and Development of Government Access to Information Intranet as well as Public Web Site (Sept. 2002.-Jan. 2003). Seeking to unite government agencies into a virtual community of individuals concerned with information access and data protection, the Inspectorate will identify and compile contact information about each person responsible for information access and data protection in each administrative body (for a variety of reasons, lawyers should be preferred to fill such slots) and will create an Intranet linking these individuals to one another for sharing of information and receipt of technical guidance from the Inspectorate's Access to Information Division. The Inspectorate will also create pages on its main web site for the Division, which pages will gradually be populated with substantial amounts of information for public consumption during the latter stages of the program (see Objective 4 below).

Task 1.9: Development/Adaptation of IT Systems to Maintain Databases on Government Information Access Activity and Reporting (Nov. 2002-Feb. 2003). Inspectorate IT specialists will adapt systems already being utilized for collection and maintenance of registries on personal data for use as information access data systems. These separate systems will be able to maintain and analyze the activities and performance of government administrative bodies

relative to affirmative and responsive information disclosure. Analytical software should permit dynamic comparisons of different agencies relative to particular access request experience and performance.

b. Objective 2: Research on Compliance/Development of Legislative/Regulatory Reform Proposals

The purpose of this objective is to develop empirical evidence of public and government awareness of the LIA and its requirements, and to determine its level of utilization. This evidence will help the Inspectorate mount a case for various kinds of legislative and regulatory changes necessary to circumscribe existing bureaucratic discretion and create greater efficiencies in the maintenance and provision of information. Such evidence will also help pinpoint implementation problems that may require delivery of technical assistance or training to government agencies. Finally, such information will provide a baseline against which basic agency compliance with the law and satisfaction with various performance objectives can be measured.

Prior to the Inspectorate's assumption of broader powers over access to information matters, the MoJ should allow an NGO (such as *Delna*) and/or independent consultants to undertake certain studies of agency responsiveness to information requests and public awareness of the law. *Delna* already has very interesting information about government officials' poor understanding of the LIA's requirements, and this survey and interview work could be expanded to identify specific weaknesses potentially requiring legal/regulatory revision, e.g., the definition of commercial secrets, the maintenance of restricted access registries, and the lack of a clear LIA supremacy provision. Later, when the Inspectorate's new access to information division is established, more systematic inventorying of government agency access policies can be undertaken that will help pinpoint where the Inspectorate's technical assistance and training

emphasis should be directed. Eventually, certain research questions can be transformed into regular reporting requirements for administrative bodies, which will be expected to forward quarterly and annual reports to the Inspectorate on items like numbers of requests received, numbers of requests processed and in what format, refusals of access and the grounds therefor, appeals taken by requesters, etc.

Task 2.1: Commissioning of Baseline Research on LIA Compliance and Public Awareness (Dec. 2001-April 2002). Prior to the grant of additional powers and responsibilities to the Inspectorate, the MoJ will commission or at least encourage an NGO *(e.g. Delna*) and independent consultants to conduct baseline research on the extent of LIA compliance and public awareness.

Task 2.2: Report on Deficiencies in the LIA (Sept. 2002). With the help of the LIA Advisory Group and consultants as necessary, the Inspectorate will publish and release a report summarizing the results of the above research. The report will provide a basis for later development of a proposal for legislative and regulatory reform, supplemented by the experience of the Inspectorate in working with other government agencies over a several-month period.

Task 2.3: Inspectorate's Own Documentation of Deficiencies in the LIA (Sept.-Dec. 2002). Based on its own experience in overseeing implementation of the LIA within the government and responding to complaints from the public, the Inspectorate will document problems with the law noted on its own. This will add to the evidence placed in support of the legislative and regulatory proposals described below.

Task 2.4: Development and Submission of Legislative and Regulatory Reform Proposals (Dec. 2002-March 2003). Based on the most serious identified weaknesses in the law and the implementing regulation, the Inspectorate will develop a comprehensive proposal to revise the law and make changes to the implementing regulation.

Task 2.5: Implementation of More Systematic Research Activities (Jan.-Feb. 2003). Based on a thorough review of research conducted thus far and its analytical needs over the next 18 months, the Inspectorate will create a more regular set of research activities to inform the agency about its work. The Inspectorate will rely on a mix of consultants and independent scholars to carry out these tasks.

Task 2.6: Inauguration of Information Access Reporting Requirements for Government Ministries and other Administrative Bodies (March 2003). The Inspectorate will require the first quarterly reports on information access activity in each government agency to be reported using the Intranet set up under Task 1.8). These will be delivered within 45 days following the end of the quarter (in this case, in mid-April 2003).

c. Objective 3: Provision of Technical Assistance and Training to Ministries and Subordinate Administrative Bodies

Based on the information obtained from the September workshop on improving government compliance with the LIA (Task 1.6 above), the Inspectorate will begin in the fall of 2002 to implement a program of technical assistance and training for government administrative agencies that will create performance standards and accountability among responsible public officials. The program will also inaugurate a quarterly and annual reporting requirement (also identified under Objective 2) that will capture information about numbers of requests, bases for refusal of requests, duration of processing requests, fees charged, and so on. These data, which will be disseminated among government agencies via the Intranet set up by the Inspectorate's Access to Information Division, will be compared across administrative bodies to identify problems and opportunities, as well as allocation of resources.

The technical assistance and training program will consist of several diverse components, including (1) workshops and training sessions at the School of Public Administration for the public information officers designated under Task 1.8 above (including guidelines for classifying information and creating information registers, help with interpreting the LIA's provisions on generally accessible information and restricted information, and suggestions and protocols for handling information requests); (2) development of written guidance (officer's handbooks) to be

disseminated to such officers in hard copy and electronic form (via the government Access to Information Intranet); and (3) intensive technical assistance to four ministries and/or administrative bodies to assist them in becoming models of effective, professional, and courteous providers of access to information. Such assistance will result in the creation of informative guidance to the public through hard copy materials and electronic information on each agency's web site.

In addition to engineering this transfer of knowledge –something that will require the Inspectorate to make liberal use of IT and information policy specialists as consultants – the Inspectorate should try to condense a good deal of its training materials into a curriculum that can be offered on a more limited basis to municipalities through the training services of the Union of Municipalities. Certain municipal officials and consultants will be invited to attend several of the workshops facilitated by the Inspectorate so that they are able to bring such learning back to the community of municipalities.

Two important sub-texts will inform all technical assistance and training provision. First, the Inspectorate will emphasize the importance of active information provision in the interest of efficiency and openness. All agencies will be encouraged to create their own physical and electronic 'reading rooms' that affirmatively present as much core information as possible about agency personnel, jurisdiction, organization, and basic work mandates. Second, trainers and consultants will emphasize the advantageous use of technology in making the provision of information more efficient and comprehensible. This represents and important culture change as the country necessarily considers greater involvement in 'e-government.'

Task 3.1: Meeting for Access to Information Officers Across the Government (Oct. 2002). At the invitation of the Inspectorate, identified information officers will be invited to a meeting designed to identify training and technical assistance needs and to prioritize them. Based

on information collected at the meeting, the Inspectorate will draft a technical assistance and training plan for government agencies.

Task 3.2: Development of Technical Assistance and Training Plan for Government Ministries/Other Administrative Bodies (Oct.-Nov. 2002). The technical assistance and training plan will cover various forms of knowledge transfer, but will emphasize development of guidance in electronic form. The plan will also contain a special concentrated assistance program for four model ministries/administrative bodies.

Task 3.3: Designation of Four Ministries/Other Administrative Bodies As Model Agencies Targeted for Intensive Short-Term Assistance (Nov. 2002). Based on the need to achieve tangible results in a relatively short amount of time (given the uncertainties concerning funding beyond the 18-month program period), the Inspectorate will designate four ministries and/or administrative bodies to serve as model agencies for receipt of intensive technical assistance and training.

Task 3.4: Development of Basic Training Curriculum for Information Officers (Nov.-Dec. 2002). The Inspectorate will work with consultants and training specialists at the School of Public Administration to create a basic training curriculum for government information officers, including modules on interpreting the LIA, classifying and registering information, processing data requests, and satisfying the Inspectorate's reporting requirements.

Task 3.5: Delivery of Intensive Technical Assistance and Training to Four Model Agencies (Dec. 2002-March 2003). Delivery of the intensive assistance to the four agencies will proceed during the winter of 2002-2003. Efforts will be made to bring the basic service level of the four agencies' information offices up to an exemplary standard, and to encourage press attention to these efforts. Inspectorate staff and outside consultants will spend a good deal of their time examining the public communications dimension, including information dissemination through the agencies' web site, hard copy information, and personal communications by agency front-line staff.

Task 3.6: First Wave of Training for Information Officers at the School of Public Administration (Feb. 2003). The first wave of training using the curricula described above will be held at the SPA for approximately 20 –30 information officers. Certain of the best students will be approached to determine if they would like to become instructors themselves through additional training-of-trainers instruction.

Task 3.7: Adaptation of Training Materials and Curriculum for Use by Municipalities (Feb.-March 2003). The most important training modules will be adapted for use by municipalities based on work by municipal consultants. The materials will be discussed with training specialists from the Union of Municipalities, who will make further refinements before conducting their own training later in 2003.

d. Objective 4: Public Education

As with the APL public education strategy, the strategy for educating the public about its rights under the LIA must consist in roughly equal parts of practical information designed to be used by individuals, businesses, and journalists, and compelling and inspirational news stories and other publicity designed to motivate and inspire the public to exercise those rights and press for better government compliance.

Practical guidance to the public can take the form of official and unofficial materials. The heart of the government program will be the establishment of a central website for the Inspectorate's Access to Information Division, to be located on the Inspectorate's home page (see Task 1.8 above). The Division's web site will offer basic factual information about itself and the LIA; practical guidance on how to use the law; and links to every agency's website, where pages on that agency's approach to complying with the law will be described (including identification of the cognizant information officer for that body). Depending on budgetary constraints, the Inspectorate should also produce a significant number of official brochures, but at a minimum informational posters that can appear in government office locations throughout the country.

Using Soros Foundation and other foundation funding, NGOs and journalists' groups can be encouraged to produce their own informational materials. *Delna* has already begun work on

general LIA brochures, and could undertake to author a companion guide for citizens that provides a 'how to' approach to obtaining government information.

Press and broadcast campaigns can similarly come from the government and civil society groups, working independently. The latter's work can be more ambitious and can be crafted around a broader follow-up study to the *Delna* inquiry on LIA compliance two years ago. This work can also involve a highly organized sequence of stories about the LIA and its usage authored by noted experts and by individuals with first-hand experience (good and bad) of seeking access to government information. This work too will build on the methods used by *Delna* in its earlier study.

Public education can also include efforts to provide information to businesses, particular activist and special interest groups, and lawyers who can mount test cases to challenge government refusals of access. These efforts can begin to create a greater sense of accountability on the part of certain agencies and the government as a whole. The government could seek to engage the business community on the subject of information access by holding a problem-solving workshop on the treatment of commercial secrets under the law; this could generate support for more liberal access to information generally and provide helpful suggestions for the Inspectorate's eventual legislative reform proposals. The program could also reach diverse audiences through the organizing efforts of a group like *Delna*, which could hold a series of meetings or seminars providing practical information to groups and encouraging them to document their own access activities.

Finally, an appropriate NGO (e.g., *Delna*) could play an overall coordinating and resource role on public education by not only providing education and training, but by serving as

a central information collection and resource point. Newspapers and the media can also be approached to serve in that capacity. As suggested by *Delna,* in tandem with a press campaign, individuals seeking access to information can be encouraged to report their experiences in dealing with government officials under campaign slogans like "Let Us Know If You Have Been Pushed Out the Door!" Information could be compiled on officials' attitudes, how long requests took to be processed, how much was charged for the information, and other factual details.115 This function can be aided by maintaining a web site and publishing a regular newsletter on access to information, keeping a scorecard on both public access efforts and government agency compliance experience, and setting up an information hotline that provides a wide range of clearinghouse information for different audiences.

Task 4.1: Development of Organized LIA Public Information Strategy (Sept.-Nov. 2001). Interested NGOs such as *Delna* and others can meet with other interested groups and individuals to refine an access to information public relations strategy for the coming year and a half. One major goal should be to create a well-defined network of activist groups and resources able to work loosely but collectively on the LIA implementation issue.

Task 4.2: Development of Public Brochures on LIA (Sept.-Nov. 2001). *Delna* can complete work on general public brochures on the LIA that are being funded by the Soros Foundation. These brochures can be supplemented by other information as the campaign for LIA implementation intensifies.

Task 4.3: Development of Citizen's Manual on Obtaining Access to Information (Nov.2001-March 2002). Based on its own experience, and using foreign models (e.g., the Bulgarian citizen's handbook created by the group "Access to Information Program" in that country), *Delna* should seek additional foundation funding to create a practical 10-20 pp. Citizen's Manual on Access to Information in Latvia that could be distributed in hard copy or disseminated for downloading on the Internet.

Task 4.4: Development of Press Packets and Press Campaign on LIA Implementation (Nov.-Ongoing). Interested NGOs can help create a basic press kit on the LIA that can be supplemented over time as more information and interesting stories about the LIA are generated.

115 Inese Voika of *Delna* has even suggested that people experiencing good or bad service from public officials could wear badges saying something brief and memorable one way or another about their personal experience with access efforts. E-mail from Ms. Voika, July 27, 2001.

Task 4.5: Follow-up Study on Government Compliance by* Delna (*Feb.-July 2002). *Delna* can launch a second study on government compliance with the LIA, using larger numbers of researchers and asking more probing questions about the reasons for refusals of access.

Task 4.6: Meetings/Seminars on LIA Implementation for Special Interest Groups, Business Community, Lawyers (March 2002-ongoing). *Delna* and other groups can help set up meetings on the practical uses of the LIA and practical methods for seeking information from government agencies. Groups and lawyers can be encouraged to bring test cases in court on LIA compliance, and lawyers with an interest in the subject can be encouraged to create an informal network of legal expertise. *One very useful and compelling workshop for the business community could focus on the subject of commercial secrets.*

Task 4.7: Establishment of LIA Compliance Newsletter, Information Hotline, and LIA Website by NGOs (April 2002-ongoing). *Delna* and others can establish an LIA compliance newsletter in hard copy and electronic form that will compile information on public efforts to obtain access to information. A central web site can also be created that not only provides a wide range of information on the LIA, but has certain interactive software able to receive, house, and organize reported data on LIA compliance matters.

Task 4.8: Establishment of Public Access/Media Campaigns (May-July 2002). Interested NGOs like *Delna* and others can launch a public access campaign encouraging the public to report on their experiences to the press, to the information hotline, and directly to the central web site.

Task 4.9: Expansion of Access to Information Division's Web Pages (Sept. 2002-ongoing). Consistent with budgetary realities and outside IDF and/or PSAL funding, the Inspectorate will gradually include on its website (the Division's home pages) helpful information on the law, recent administrative and/or court decisions, official guidance, and links to information officers at other administrative bodies.

Task 4.10: Development and Printing of Government Brochures and Posters on LIA (Nov. 2002-Feb. 2003). The government will develop, publish, and deliver to government offices across the country as well as to the Union of Municipalities (if funds permit) copies of official brochures and posters on the LIA and citizens' rights. *Publication of these may be delayed if legislative/regulatory revisions are extensive; in this case, new posters and brochures would be prepared later in 2003 or beyond.*

Task 4.11: Promotion of Four Model Agencies to be Responsive to Public Access Requests (Dec. 2002-March 2003). Based on technical assistance and training provided under Objective 3 above, the Inspectorate will work intensively with four government ministries and/or administrative bodies to strengthen their access to information capabilities -- from data classification and maintenance, to dissemination of useful guidance via brochures and agency web sites. Extensive press coverage will be cultivated around these four institutions to create a sense of both achievement and competitiveness among government agencies.

Task 4.12: Publication of Follow-up Study on Government Compliance by* Delna *(Dec. 2002). *Delna* will publish its follow-up study, accompanied by a significant media campaign.

Appendix A

Persons Interviewed for the Report

Solvita Harbacevica, Deputy State Secretary for Legislative Affairs, Ministry of Justice
Kristine Jarinovska, EU Division, Ministry of Justice
Maija Sauluna, Deputy Minister of Justice, Ministry of Justice
Andrejs Vilks, Director, Criminological Research Center, Ministry of Justice
Ruta Lapse, Head, Division of Legislation and Resolutions, Ministry of Justice
Prof. Arvids Dravnieks, Advisor to the Ministry of Justice
J. Neimanis, Legal Department, State Enterprise Registry
Maija Celmina, Director of Public Affairs, State Enterprise Registry
Signe Plumina, Head, State Data Protection Inspectorate
Guntis Lauskis, Head, Legal Department, State Data Protection Inspectorate
Normunds Belskis, Director, Press and Public Relations Department, Ministry of Interior
Inese Sviksa, Head, Secretariat, Corruption Prevention Council
Edvins Parups, Director, Department of State and Municipal Procurement Supervision, Ministry of Finance
Roberts Rusis, Executive Director, Latvian Judicial Training Center
Barba Butule, Assistant to the Executive Director, Latvian Judicial Training Center
Svetlana Proskurovska, Deputy Head of the Secretariat, Special Ministry for State Reforms
Armands Kulins, Director, State Civil Service Administration
Ugis Rusmanis, Director, Latvian School of Public Administration
Biruta Olmane, School of Public Administration
Dace Markusa, Head of Analysis and Research Unit, School of Public Administration
Gunars Kusins, Chairman of Legal Bureau, Saiema
Andris Jaunsleinis, Chairman, Union of Municipalities
Ruta Kreituse, Training Specialist, Union of Municipalities Consultation Center
Gunta Liepe, Director, Municipal Training Center, Union of Municipalities
Normunds Rudzitis, Head of Internal Audit Division, Customs Board, State Revenue Service
Ainars Latkovskis, Head, Customs Modernization Division, Customs Board, State Revenue Service
Sergejs Piscikovs, Information Division, State Revenue Service
Andris Malenders, Head, Litigation Division, Legal Department, State Revenue Service
Dagmara Strele, Deputy Head of Appeals Bureau, State Revenue Service
Valdis Vanags, Chief Lawyer, Appeals Bureau, State Revenue Service
Gunta Berke, Head, Public Relations Division, Ministry of Welfare
Ruta Zilvere, Deputy State Secretary, Ministry of Welfare
Juris Bundulis, Director, Pharmacological Department, Ministry of Welfare
Gunta Veismane, Director, State Chancellery
Sandra Klavina, Consultant, Policy Planning and Coordination Department, State Chancellery
Baiba Petersone, Consultant, Policy Planning and Coordination Department, State Chancellery
Ugis Sics, Consultant, Policy Planning and Coordination Department, State Chancellery
Veronika Krumina, Judge, Riga City Court
Normunds Salnieks, Judge, Riga District Court

Imants Krumins, Deputy Chief, Environmental State Inspectorate and Head, Air Control Division
Anita Drondina, Deputy Executive, European Integration Division, Ministry of Environmental Protection and Regional Development
Eriks Leitis, State Secretary's Office, Ministry of Environmental Protection and Regional Development
Edgars Purins, Head, Legal Department, Ministry of Environmental Protection and Regional Development
Heidrun Flammer, Project Manager, Baltic Environmental Forum
Juris Teteris, Head of Driver's Training and Testing Department, Road Traffic Safety Directorate
Janis Aizpors, Public Relations Department, Road Traffic Safety Directorate
Juris Puntaks, Inspectorate of Control and Certification of Vehicles, Road Traffic Safety Directorate
Peters Vilks, Head, Competition Council
Maris Stenders, Chief, Information Department, Competition Council
Laris Grava, Latvian Development Agency
Sanda Putnina, Latvian Development Agency
Igors Klapenkovs, Director, Soros Foundation - Latvia
Vita Terauda, Soros Foundation – Latvia
Sarmite Catluka, Secretary, Tripartite Coordination Council
Inese Voika, Director, *Delna*
Diana Kurpniece, *Delna*
Dzintra Miezaini, NGO Center
Pauls Puke, Head, National Economic Council Secretariat
Henriks Danusevicz, Head, Latvian Merchants Association
Juris Rodzevics, Chairman, Free Trade Unions
Ieva Jaunzeme, Director, Latvian Employers Federation
Ivars Baladis, Head, *Apeirons*
Indulis Emsis, Member, Riga City Council, Former Minister of the Environment