



**SIGMA**

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## **Responsibilities and Organization of the Legal Services of the State Chancellery of the Republic of Latvia**

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“Organisation of the legal services of the ministry of finance:  
the experience of EU Member States”

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## **Introduction**

The legal services of the State Chancellery of the Republic of Latvia (further referred to as the State Chancellery) are to be viewed in a rather broad perspective of the State Chancellery's mission that is ensuring legitimate, motivated, efficient, transparent and continuous decision-making process of the Cabinet of Ministers of the Republic of Latvia (further referred to as the Cabinet of Ministers or the Government) and work of the Prime Minister.

In order to outline the responsibilities and organization of the legal services of the State Chancellery this paper gives a description of:

- Mandate, mission, responsibilities and structure of the State Chancellery
- Organization, responsibilities, criteria for distribution of responsibilities of the Legal Department
- Problems and solution in the operation of the Legal Department

## **1. State Chancellery**

### **1.1. Mandate, mission and values of the State Chancellery**

According to the Law on Structure of the Public Administration, Law on Structure of the Cabinet of Ministers, Regulation Nr.263 of the Cabinet of Ministers (adopted on May 20, 2003) "Rules of the State Chancellery" and Regulation Nr.300 of the Cabinet of Ministers (adopted on April 7, 2009) "Rules of Procedure of the Cabinet of Ministers" The State Chancellery is a public administration institution (central government institution) administered by the Director of the State Chancellery, who as the highest civil servant among other responsibilities also coordinates an inter-ministerial cooperation of the state secretaries of line ministries.

The primary task of the State Chancellery is to ensure preconditions for legitimate, motivated, efficient, transparent and continuous work of the Cabinet of Ministers and the Prime Minister.

Operation of the State Chancellery is based on the common values as follows:

- fairness and purposefulness
- a professional and creative team
- growth and development
- openness and cooperation

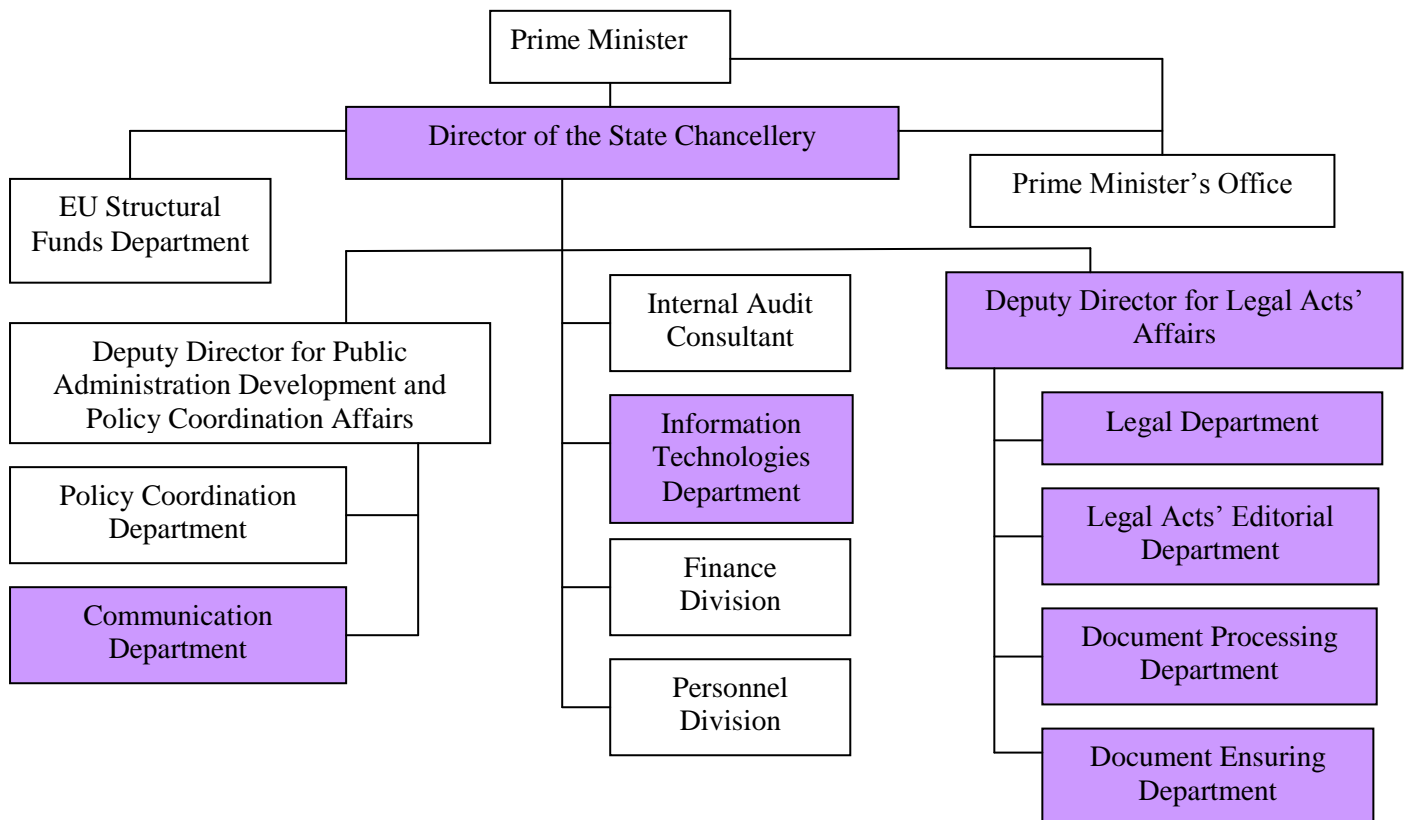
### **1.2. State Chancellery**

- ensures the work of the Cabinet of Ministers (organization of Government meetings, circulation of documentation, technical support etc.)
- ensures legitimate and motivated decision-making process, legal advisory
- participates in planning the Government policy within the scope of political guidelines and tasks
- coordinates policy planning and implementation at national level
- on behalf of the Prime Minister oversees performance of decisions of the Cabinet of Ministers and the Prime Minister
- develops the Government communication policy and eventually coordinates its implementation
- informs the society on the work of the Cabinet of Ministers

- ensures preparation of development policy of public administration (also public civil service), eventually coordinates and oversees its introduction
- ensures representation of the State interests in international and local court proceedings

### 1.3. Structure of the State Chancellery

The current organizational structure of the State Chancellery is optimal for the performance of the State Chancellery's functions; it corresponds to the distribution of competencies and responsibilities according to units and ensures efficient overall operation of the State Chancellery.



*Deputy Director for Legal Acts' Affairs* – coordinates work of the units directly responsible for organization of operation of the Prime Minister and the Cabinet of Ministers.

*Legal Department (in summary)* provides for professional legal advisory (civil servants) to the Prime Minister and the Cabinet of Ministers in the areas of all line Ministries.

The Legal Department analyzes draft legal acts, draft policy papers and informative statements, and provides for opinions from the legal perspective, formalizes (finalizes) draft legal acts, controls performance of tasks assigned to the Cabinet of Ministers in laws and decisions of the Saeima (Parliament), controls performance of tasks given by the Cabinet of Ministers and the Prime Minister, and performance of tasks given at the Meeting of State Secretaries, coordinates cooperation of public administration institutions in uniform application of legal norms.

The Legal Department represents the State interests in legal proceedings where the state of Latvia is involved (since 2004). It also represents the Cabinet of Ministers in local courts, as required.

The Legal Department coordinates representation of the Cabinet of Ministers at the Constitutional Court and supervises and provides legal consultations in the procedures of the public procurements of the State Chancellery (since recently).

Legal Acts' Editorial Department formalizes (linguistic expertise) and prepares for the signing of the legal acts of the Cabinet of Ministers and the Prime Minister, develops and coordinates literary wording of legal acts, prepares legal acts for publishing in the official newspaper "*Latvijas Vēstnesis*" (Official Gazette) and for entering them into the Informative System of Regulatory Enactments (NAIS), prepares proposals for the Latvian language equivalents of terms used in EU legal acts, coordinates cooperation of public administration institutions in observing state language standards and uniform usage of terminology in legal acts.

Document Processing Department ensures paper and paperless (Informative system of document circulation and control (DAUKS)) document management, including archive, organizes incoming and outgoing correspondence and circulation of drafts submitted for consideration to the Cabinet of Ministers and meetings State Secretaries.

Document Ensuring Department organizes and ensures meetings of the Cabinet of Ministers, meetings of the Committee of the Cabinet of Ministers and State Secretaries' meetings, including organization of the agenda (in e-portfolio) and taking of minutes of these meetings, ensures publication of the legal acts adopted by the Cabinet of Ministers and the Prime Minister, in cooperation with the Legal Department prepares draft resolutions of the Prime Minister on further progress of draft legal acts and other documents submitted to the Cabinet of Ministers.

Information Technologies Department ensures uninterrupted operation of automated information systems of the Cabinet of Ministers and the State Chancellery.

Plans and organizes public procurement in the State Chancellery ensuring material and technical provision of the Prime Minister and the State Chancellery, supply of goods, performance of services and works (since recently).

Communication Department ensures the link of the Cabinet of Ministers and the State Chancellery with the public, by providing information on adopted decisions and coordinating cooperation between communication divisions of ministries and secretariats of ministers for special assignments.

The Communication Department reviews applications, proposals and complaints submitted to the Cabinet of Ministers and the State Chancellery by natural and legal persons, prepares proposals on their further progress, receives visitors and provides for consultations to visitors of the Cabinet of Ministers and the Prime Minister (since recently).

The Communication Department also ensures the work of the National Tripartite Cooperation Council (since recently).

Policy Coordination Department develops a single state policy planning system and supervises its implementation (by giving opinions on draft policy planning documents prepared by line ministries), coordinates cooperation of public institutions in developing and implementing sectoral and inter-sectoral policies, provides methodological assistance in ensuring this process, develops and supervises the public administration reform, develops the civil service development policy and supervises its implementation, updates the Action Plan for performing the activities of the Declaration of Intended Activities of the Cabinet of Ministers.

Finance Division is responsible for planning and distribution of the budget funds of the Cabinet of Ministers and the State Chancellery.

*Personnel Division* prepares documents necessary for employment relations of members of the Cabinet of Ministers and civil servants and employees of the State Chancellery, ensures staff selection, plans training of employees and civil servants, and ensures the work of the Award Council.

#### **1.4. Regulatory enactments and policy papers**

- Constitution of the Republic of Latvia (1922, 1991)
- Law on Structure of Public Administration (2003)
- Law on Structure of the Cabinet of Ministers (2008)
- Law "On Budget and Financial Management"
- Law on Administrative Procedures (2004)
- Law on Applications of Private Persons (2008)
- Regulation No.263 of the Cabinet of Ministers (20.05.2003) "Rules of the State Chancellery"
- Regulation No.300 of the Cabinet of Ministers (07.04.2009) "Rules of Procedure of the Cabinet of Ministers"
- Instruction No.4 of the Cabinet of Ministers (18.09.2001) "Preparation of Explanatory Notes for Draft Regulatory Enactments"
- Declaration of Intended Activities of the Cabinet of Ministers
- Guidelines of Policy Planning (adopted by protocol decision (prot. No.48 § 17) of the sitting of the Cabinet of Ministers of October 9, 2001)
- Guidelines of Medium-term Budget Planning Methodology (adopted by protocol decision (prot. No.15 § 1) of the sitting of the Cabinet of Ministers of April 5, 2001)
- Guidelines on the System of Results and Performance Indicators (approved by order No.162 of the Cabinet of Ministers "On the Guidelines on the System of Results and Performance Indicators" of March 13, 2003)
- Guidelines of Government Communication Policy (adopted by protocol decision (prot. No.59 § 17) of the sitting of the Cabinet of Ministers of December 4, 2001)
- Public Administration Reform Strategy, 2001-2006 (adopted by protocol decision (prot. No.32 § 34) of the sitting of the Cabinet of Ministers of July 10, 2001)
- Operational Strategy of the State Chancellery for 2007–2009 (The Strategy outlines medium-term priorities of the State Chancellery that are detailed by specific measures in an annual Work Plan of the State Chancellery. Performance appraisal on the implementation of the measures included in the Work Plan is carried out twice a year internally and annually by way of a Public Report of the State Chancellery (website <http://www.mk.gov.lv/en/vk/publikacijas/>))

## **2. Legal Department of the State Chancellery**

### **2.1. Responsibilities of the Legal Department (in detail)**

2.1.1. Legal analysis of all draft legislation, policy planning papers, reports, statements considered by the Cabinet of Ministers as regards the following aspects:

- compliance of the draft legal acts with the rules of legal drafting techniques
- compliance with the set procedures for submission of the drafts to the Cabinet of Ministers, including consultation requirements
- compliance of the draft legal and or policy paper with laws and other legislation, including necessity to amend other legal acts, and compliance with the policy planning papers adopted by the Cabinet of Ministers

Once incompliance is detected a written opinion of the Legal Department is produced and submitted to the Prime Minister or Director of the State Chancellery (according to the Rules of Procedure of the Cabinet of Ministers) accompanied with the suggestion on further action, for example, returning of the draft to the line Ministry for correction, requesting additional opinions from other state institutions, non-governmental organizations, placing the issue on the agenda of the State Secretaries' meeting or Committee of the Cabinet of Ministers for broader discussions. Opinions are signed by the Legal Advisors.

2.1.2. Finalization (in cooperation with linguistics specialists) and endorsement of all draft legal acts of the Cabinet of Ministers before including into the agenda, and finalization and/or endorsement of all draft legal acts signed by the Prime Minister. The final text of a draft legal act is endorsed with the official at the line Ministry responsible for drafting of the draft legal act.

The Appendix contains illustration of this function in a schematic format.

2.1.3. Coordination of cooperation of legal services of public administration institutions in order to ensure uniform application of legal provisions and legal drafting techniques. The Legal Department organizes regular inter-ministerial meetings of heads of legal services to discuss problematic issues raised by ministry's lawyers or on the Department's own initiative, or to present actual topics (seminars).

Legislative initiatives that concern all line ministries, like regulation of competence and work of the Cabinet of Ministers, Rules of Procedure of the Cabinet of Ministers, rules on legal drafting techniques, are discussed at the inter-ministerial meeting of legal services prior to the official procedures.

2.1.4. Drafting of policy planning papers and regulatory enactments within areas of the Department's competence, and participation as key experts or drafters in the working groups for drafting of legislation, as required.

2.1.5. Representation of the State interests in the processes of international arbitration and representation of the Cabinet of Ministers in local courts, in cooperation with line Ministry, if necessary. The Legal Department, in performing this function, examines case materials, develops and implements a strategy, attends court sittings.

According to Order No.146 of the Cabinet of Ministers (05.03.2004) "On the Concept Paper "On Creation of a Mechanism for Representation of State Interests in Connection with court proceedings"", the State Chancellery was appointed as the institution in charge of implementation of the Concept Paper. The aim of this Concept was to create an effective system to ensure lawful prevention of potential disputes, timely reaction, and, if necessary, also competent representation of state interests, if court proceedings are possible and the Republic of Latvia is the plaintiff or the defendant in these proceedings.

This Concept Paper provides for the creation of a mechanism for representation of state interests to ensure uniform, competent and professional representation of State interests in disputes when there is the probability of court proceedings and when the state is among the parties involved in such proceedings. The tasks set in the Concept Paper are aimed at the creation of an effective, competent and cost-efficient institution (in this case the tasks are assigned to the Legal Department), which would be responsible for coordination of all information concerning international court proceedings and, if necessary, also physical representation.

It was decided to assign such a specific function to a public administration institution after assessing previous experience in connection with individual international court proceedings and eventual results. The previous experience showed insufficient control over such

proceedings from the side of public institutions and the rather negligible ability of public administration to influence the chosen strategy in the proceedings.

In 2005 the Legal Department began to implement the tasks stipulated in the Concept Paper. The representation by the State Chancellery of state interests in international court proceedings has expressed itself in the following ways:

- by managing negotiations between two or more subjects of law, at least one of which is exercising a respective public administration function. Thus it is possible that in case of potential (or already ongoing) court proceedings the Republic of Latvia as the initial legal person of public law will be the defendant;
- by developing strategies for court proceedings and after being approved by the Cabinet of Ministers implementing them in disputes where the Republic of Latvia is the plaintiff or the defendant;
- by providing the Cabinet of Ministers and particular public administration institutions with consultations on potential disputes and disputes over which court proceedings are already taking place;
- by preparing opinions concerning issues of international commercial law.

The most important instrument for implementation of the function is the creation of a reporting system to ensure effective exchange of information and speedy informing of members of the Cabinet of Ministers about the situation in each individual case, thus enabling to operatively react on changes in the situation. Taking into account the specifics of issues connected with implementation of this function (issues to be considered are almost always classified as restricted access information or even state secret), a corresponding information security regime must be ensured also for reporting. Thus the reporting system has two important preconditions:

- regularity of reporting
- observation of a corresponding security regime.

2.1.6. Representation (in cooperation with the Ministry of Justice) of participation of Latvia in the work of the International Institute for the Unification of Private Law (UNIDROIT). This includes the attendance of expert working sessions and annual General Assembly meetings, also participation in the preparation of Latvia's official opinion on draft conventions.

2.1.7. Coordination of preparation of the official opinion, explanation or other documents in the proceedings brought before the Constitutional Court and representation of the Cabinet of Ministers in the cases at the Constitutional Court, if necessary together with specialists of the line Ministry.

2.1.8. Coordination and control of implementation of tasks given to the Cabinet of Ministers by the Saeima in laws(delegated legislation), and tasks given to line Ministries in legal acts of the Cabinet of Ministers or protocol decisions of the State Secretaries' meeting. This function is carried through information system for document management and control (DAUKS).

2.1.9. Organization of procurement procedures of the State Chancellery and drafting of contracts, as well as control over implementation of these contracts (legal aspects).

2.1.10. Ensuring functions of the secretariat for the National Council for Crime Prevention chaired by the Prime Minister. This entails preparation of agenda, circulation of documentation, taking minutes of meetings of the Council and control of implementation of tasks given by the Council.

## 2.2. Organization of the Legal Department

Although the Legal Department covers a wide range of responsibilities and fields of legislation of all line Ministries, there is no structural division of this unit. Responsibilities, as described in detail further, are distributed according to fields of legislation or particular function.

### Deputy Director for Legal Acts' Affairs

- **coordinates** the work of Legal Department and other units responsible for ensuring work of the Cabinet of Ministers
- **participates** in all meetings of Cabinet of Ministers and meeting of the State Secretaries with **advisory rights** (also delivers the comments prepared by the Legal Adviser)
- **briefs** the Prime Minister and the Director of the State Chancellery on the Agenda prior each meeting
- **supervises** the representation of the State interests in the processes of international arbitration
- **supervises** public procurement procedures of the State Chancellery

### Head of Legal Department

- **substitutes** Deputy Director for Legal Acts' Affairs in her absence
- **coordinates** the work of the Legal Department, including distribution of documents to be reviewed and/or legal acts drafted by Legal Advisors
- **endorses** all documents prepared by Legal Advisors
- **participates** in elaboration of the Annual Work Plan of the State Chancellery on tasks carried out by the Legal Department
- **coordinates** the representation of the Cabinet of Ministers at the Constitutional Court

### Senior Desk Officers (2)

- **assisting** the Legal Department in its daily work, including management of correspondence, documentation (paper and paperless)

### Senior Desk Officer Legal Consultant

- **controlling** implementation of tasks given in the laws to the Cabinet of Ministers, tasks given to line ministries in legal acts of the Cabinet of Ministers or by protocol decisions of the State Secretary's Meeting

### Deputy Head of Legal Department

- **substitutes** Head of Legal Department in her absence
- **assists** the Head of Legal Department in coordination of the work of the Legal Department, including participation in elaboration of the Annual Work Plan
- **drafting and/or updating** Rules of Procedure of the Cabinet of Ministers, regulation on establishment and work of the Cabinet of Ministers and the State Chancellery, legal drafting methodology
- **legal advisory** in the fields of justice, prevention of conflict of interests, international treaty law, representation at UNIDROIT
- **coordination** of cooperation of legal services of line ministries and other public administration institutions in order to ensure uniform application of legal provisions and legal drafting techniques
- **organization** of public procurement procedures of the State Chancellery and drafting and controlling of contracts
- **secretariat** of the National Council for Prevention of Crime

### Legal Advisors (11)

Within their competence – fields of legislation, legal advisors are responsible for:

- **legal analysis** of draft legislation and policy papers submitted by line ministries to the Cabinet of Ministers
- **formalizing** of draft legal acts and endorsing these drafts in cooperation with the responsible official at the line ministry
- **attending** meetings of the Cabinet of Ministers and State Secretaries
- **drafting** legal acts and policy papers
- **representation** of the State interests in international arbitration processes and the Cabinet of Ministers in local courts
- **consultation** of line ministries, local governments, other units of the State Chancellery of legal matters
- other tasks assigned to the Legal Department by the Prime Minister or the Cabinet of Ministers

### **3. Problems and solutions**

The Legal Department serves the Cabinet of Ministers and the Prime Minister, therefore the foremost preoccupation is the quality of the decisions of the Cabinet of Ministers as far as it can be influenced by civil servants. The team of the Legal Department is required to be highly professional, impartial (esp. politically) and flexible as the tasks entrusted to the team vary from legal analysis of draft legislation and policy papers to representation of the State interests in the processes of international arbitration in any field of regulation.

#### **3.1. Quality of legal acts (technically)**

The principal concern of the Legal Department is the quality and legitimacy of the regulatory enactments adopted by the Cabinet of Ministers and draft laws initiated by the Cabinet of Ministers to the Saeima (Parliament).

In order to ensure uniformity in drafting regulatory enactments rules on uniform legal drafting techniques were elaborated in cooperation with the Ministry of Justice. Regulation No.108 "Rules on Elaboration of Draft Normative Acts" were adopted by the Cabinet of Ministers on February 3, 2009. These Rules provide for legal drafting techniques applicable as obligatory to draft laws, draft legal acts of the Cabinet of Ministers, other independent state institutions (in a limit scope), regulations of local governments, and internal draft legal acts of public administration institutions. Legal drafting techniques that may be applied as alternative or with modification according to situation and examples are included in a Handbook on Drafting of Normative Acts (2002). This handbook is currently being updated. The Legal Department on its own initiative or in cooperation with the Ministry of Justice organizes seminars (within the framework of regular meetings of heads of legal services of line ministries) on problems of legal drafting issues.

Legitimacy of draft regulatory enactments is being examined by the Ministry of Justice and, if necessary, by the Legal Department. At the same time the Legal Department discusses uniform application of legal provisions in the aforementioned meetings of heads of legal services of line ministries. These meetings are being documented and solutions or agreements on application of legal provisions are available on the website of the State Chancellery and are to be observed by line Ministries in their practice and legal drafting process.

The Legal Department (Legal Advisors) regularly organizes internal briefings on court judgements, especially judgements of the Constitutional Court, innovations in legislation, problems in application of legal provisions, etc. according to the field of legislation of Legal Advisors.

#### **3.2. Quality of decisions of the Cabinet of Ministers (substance)**

3.2.1. Sufficient information on the substance and impact of a draft regulatory enactment is of vital importance to the Legal Advisor who examines a draft regulatory enactment submitted for consideration to the Cabinet of Ministers. Another problem that should be mentioned – proposing for adoption of draft regulatory enactments by line ministries without being sure about sufficient financial resources for introduction of the new regulation.

Regulatory impact assessment is included in an explanatory note that according to the Rules of Procedure of the Cabinet of Ministers is attached to all draft laws and legal acts of the Cabinet of Ministers. This document provides for an important information for the Legal Advisor: description of the situation and/or problem why the legal provisions in force should be replaced and/or supplemented, what are the other legal acts that need amendments, what is the substance of the proposed new regulation, international law instruments, EU regulation and case law related to the subject, consultations with other institutions and NGOs.

The Regulatory impact assessment instrument also contains a chapter on fiscal impact – planned incomes and expenditures, fiscal impact, compensatory measures, detailed analysis of expenditures for three years ahead.

Requirements for the regulatory impact assessment of draft legislation are outlined in the Instruction No.20 of the Cabinet of Ministers (adopted 18.12.2007) "Rules for Completion of Explanatory Note of a Draft Normative Act".

3.2.2. Nowadays decision-making means the involvement of many parties – line ministries, other public administration institutions, politicians, non-governmental organizations, and individual members of society, to ensure the principle of openness and the transparency of the decision-making process. The Legal Advisor, when examining a draft regulatory enactment or policy paper, has to make sure that the draft concerned has been discussed with all involved parties.

Another problem that the Legal Department encounters and that requires most creative solutions is the use of urgency procedures by line Ministries for submission of draft regulatory enactments for consideration by the Cabinet of Ministers. Reasons for such action may be various, but most frequent – avoiding of complete consultation procedures, especially when problematic issues are to be regulated, unsuccessful planning of legal drafting work, limited timing for transposition of EU directives.

Solutions for the aforementioned problems and more are integrated in the Regulation No.300 of the Cabinet of Ministers (07.04.2009) "Rules of Procedure of the Cabinet of Ministers". The Legal Department is responsible for constant updating of this decision-making instrument.

Revolutionary reforms in the Rules of Procedure took place in 2002 when the road to paperless Government commenced. A rapid circulation of draft legislation and policy papers from the drafter in the line Ministry to the meeting of the Cabinet of Ministers is ensured by use of information systems and reduction of paper documents. The agenda of a meeting of the Cabinet of Ministers is prepared electronically – in e-portfolio. E-portfolio is an internet-based authorized information system with several levels of access. Also the agenda for the wider public is available on the internet website of the Government on the day of the meeting.

The first Rules of Procedure were adopted in 1996; by the Rules of Procedure in 2002 the current decision-making framework was established and the first attempts to introduce a paperless circulation. The aim of such innovations was to make the work of the Government more efficient. The need for reducing the use of resources was among other reasons for improving the Government decision-making process and the Rules of Procedure in 2009 provided for only electronic circulation of documents at the stages prior to the adoption of documents at the meeting of the Cabinet of Ministers and documents to be submitted to this last decision-making stage was reduced to minimum.

The Rules of Procedure (available also on the Government website in English (web address: <http://www.mk.gov.lv/en/mk/darbibu-reglamentejosie-dokumenti/kartibas-rullis/>) is the core instrument besides Rules of Legal Drafting Techniques. The Rules of Procedure regulate:

- documents (and their enclosures) that are considered by the Cabinet of Ministers
- requirements for consultations and procedures, including mandatory opinions, consultations with NGOs
- preparation and organization of meetings of State Secretaries, Committee of the Cabinet of Ministers, and Cabinet of Ministers

- when and how the Legal Department examines drafts submitted to the Cabinet of Ministers
- procedure for attending Government meetings including by non-public administration
- monitoring implementation of tasks given in laws (delegated legislation) and in the legal acts of the Cabinet of Ministers

According to the Rules of Procedure, line ministries are obliged to consult with the Ministry of Finance (fiscal impact) and Ministry of Justice (legitimacy) **on all** draft regulatory enactments, policy papers and informative notices.

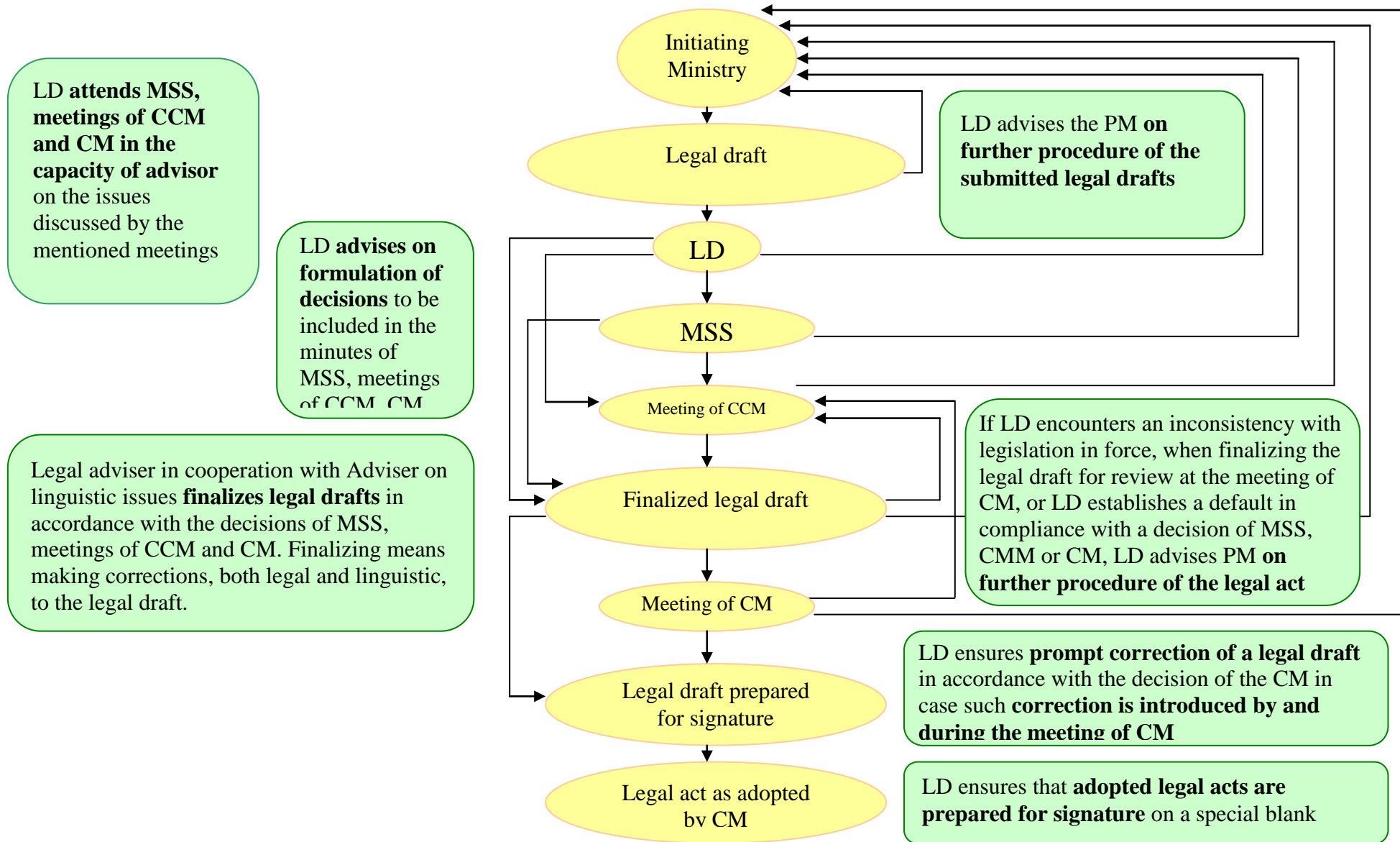
3.2.3. Creative solutions and in-depth case studies are required in functions related to representation of the State interests or the Cabinet of Ministers in arbitration processes or court proceedings as the Legal Department is mostly entrusted to work with cases entailing problems or failures made in previous stages.

For example, in the representation of the Cabinet of Ministers in the Administrative Court, the following problem should be mentioned. During the appeal proceedings the Legal Department establishes failures or negligence of the institution that has investigated the matter in the initial stage, like failures in examining disciplinary cases. As a result the State may be responsible for compensating damages to an individual who would not receive this compensation if his/her offence had been investigated carefully and if the legal provisions had been applied correctly.

In such cases the Legal Department having made such conclusions may only plead to the Court to consider also these facts when making the judgement. The Latvian Administrative Procedures abide the court proceedings to keep strictly to the administrative act subject to the proceedings.

3.2.4. Another problem the Legal Department is facing recently is the frequent changes in legislation, especially laws, that is a result of the economical situation in Latvia that required broad and rapid reforms and a severe reduction of resources in public administration.

**FUNCTIONS OF LEGAL DEPARTMENT WITHIN THE PROCESSING OF DOCUMENTS FOR THE CABINET OF MINISTERS  
AS PROVIDED BY RULES AND REGULATIONS**



PM - Prime Minister  
LD - Legal Department  
MSS - Meeting of State Secretaries