PROGRESS REVIEW METHODOLOGY OF THE JUSTICE SECTOR REFORM IN UKRAINE

GUIDE & MATRICES

December 2016

Consolidation of Justice Sector Policy Development in Ukraine

Funded by the European Union and the Council of Europe

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Contents

ADR	Alternative Dispute Resolution
AP	Justice Sector Reform Strategy Action Plan
CCJE	Consultative Council of European Judges
CEPEJ	European Commission for the Efficiency of Justice
CM	Committee of Ministers of the Council of Europe
CoE	Council of Europe
CPE	Court Performance Evaluation Framework
CPT	European Committee for the Prevention of Torture
CSO	Civil Society Organisation
ECHR	European Convention of Human Rights
ECtHR	European Court for Human Rights
ER	Expert report
EU	European Union
GRETA	Group of Experts on Action against Trafficking in Human Beings
HCJ	High Council of Justice of Ukraine
IDP	International Development Partners
JRC	Judicial Reform Council
JSRS	Justice Sector Reform Strategy
MoJ	Ministry of Justice of Ukraine
NGO	Non-Governmental Organisation
PRM	Progress Review Methodology
SJA	State Judicial Administration of Ukraine
WB	World Bank
WEF	World Economic Forum
UN	United Nations

Guide on the metholodology

Introduction

1. The Justice Sector Reform Strategy (JSRS) is the key policy document outlining the fundamental principles, objectives, main directions, priorities and other substantial parameters, as well as suggesting an overall roadmap and framework for bringing in changes in order to address the shortcomings in the justice sector, improving the functioning of the related group of institutions for ensuring 'effective, efficient and well-coordinated operation of the justice sector based on the rule of law, accountability to the citizens of Ukraine, independence from political influence, and compliance with EU standards and best practices.'[1] It was adopted by the President of Ukraine on 20 May 2015 and covers the period 2015-2020.

2. The reform is divided into twelve pillars, eleven of which concern specific sub-sectors (areas) and one that defines the mechanics of its institutional and organisational implementation. Together, chapters 4 and 5 of the JSRS set out the following twelve sub-chapters:

1. Increasing the independence of the judiciary, streamlining judicial governance and the system of appointment of judges
2. Increasing the competence of the judiciary
3. Increasing the accountability of the judiciary
4. Increasing the efficiency of justice and streamlining the competences of different jurisdictions
5. Increasing the transparency and publicity of justice
6. Strengthening the Bar and legal aid
7. Improving the enforcement system
8. Strengthening the Public Prosecutor's Office
9. Enhancing fairness and defence rights in criminal proceedings
10. Increasing the effectiveness of the justice sector in the fight against organised crime and corruption
11. Increasing the effectiveness in the prevention of crime and promoting rehabilitation in the execution of sanctions
12. Improving the coordination of reforms and interoperability of the justice sector information systems

3. The JSRS is further itemised in a corresponding overall Action Plan (AP) aligned according to the twelve pillars (chapters) that are further split into areas of intervention, more specific actions, together with a general chronology/timetable, intervention area-related measures/outputs, and outcome and pillar-related impact indicators, and means to implement the Strategy. The AP in its turn is to be furthered in pillar-specific annual implementation action plans. There have been developed and adopted 2016 plans for the eleven substantial pillars.

4. The CoE, in particular within the framework of the joint EU/CoE Project "Consolidation of Justice Sector Policy Development in Ukraine" is assisting Ukraine in the process of the JSRS implementation and monitoring of its implementation by way of providing recommendations

[1] JSRS, Chapter 1.

with regard to and assistance in developing a methodology for reviewing, measuring the progress and achievements of the justice sector reform in Ukraine ("Progress Review Methodology" or PRM) on the basis of the JSRS.

5. The CoE has, therefore, engaged a team of four international consultants, who designed, presented and discussed the PRM with the Reference Group established by the Project.[2] The Reference Group comprised representatives from relevant justice sector stakeholders, NGOs, international organisations and donor initiatives in order to discuss the challenges in implementing the justice sector reforms, validating the objectives of the PRM and ensuring consistency in relation to the further development of the tool.

6. The present PRM comprises a relevant narrative guide, pillar-specific tools and incorporates monitoring matrices. It has been compiled on the basis of contributions of the consultants' team having presented conceptual considerations and an initial draft used as a discussion paper for the purpose of identifying an overall approach, model, structure and other elements of the PRM to the Reference Group at a meeting on 24 June 2016. It was followed by a round of bilateral meetings and consultations held by the consultants' team with the key stakeholders in the course of July 2016 and related desk research, during which the international consultants' team was assisted by national consultants that helped with obtaining additional information, data and designing the tool and matrices.

General Considerations

7. Initially the consultants' team had a broadly formulated task as neither the stakeholders in their relevant request to the CoE nor the JSRS or AP provided definitive indications as to the exact nature, scope and specific format of the methodology and instrument to be developed.

8. When designing the PRM, the consultants' team took into account the fact that the JSRS merely operates with general terms of strategic planning (in Chapter 6) and evaluation and monitoring, expected results[3] and certain impact indicators (Chapter 9). The AP in its Area of Intervention 12.1.1 specifies only one measure/output that implies development of certain assessment/review tools. In particular, it provides for: "6. Practice guides and training modules on strategic planning and regulatory development, as well as on substance in relation to all major justice-sector related reform initiatives, developed, disseminated and updated regularly". This measure/output is set out with corresponding outcomes referring to "complex quantitative and qualitative M&E methodologies applied in designing and reviewing the implementation of all policies relating to the justice sector" and "results-orientation (rather than focussing on procedure) of all reform policies by using output, outcome (result) and impact indicators in all policy documents, with feedback linkages and regular improvements with reference to findings in review (M&E) process".

9. It was therefore incumbent on the consultants' team to deduce and in consultation with the stakeholders suggest the most appropriate approach to and, therefore, format for reviewing the progress and achievements of the justice sector reform in Ukraine.

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[2] The Team comprised international consultants of the EU/COE Joint Project "Consolidation of Justice Sector Policy Development in Ukraine": Mr Erik Svanidze, team coordinator and member responsible for Pillars 8 and 10, Team Leader of the EU funded Justice Monitoring Project in Armenia, member of the European Committee for the Prevention of Torture (2001-2005); Dr Pim Albers, team member responsible for pillars 1-5, Independent justice sector reform consultant; Dr Romana Schweiger, team member responsible for pillars 6,7 and 9 independent justice sector reform consultant; Mr Martin Seddon, team member responsible for pillar 11, Independent justice sector reform consultant, member of the CoE group of consultants supporting penal reform projects in Ukraine.

[3] It is to be noted that the English text of the JSRS elaborates on the notion of expected results by placing their categories in brackets as output, outcome or impact. There are difficulties with nuanced translation into other languages of the terms "output" and "outcome". While the former is sometimes translated by using the word combination "immediate result/product", the latter is treated as an equivalent to "result" or "substantial/qualitative result". See also the definitions quoted in footnote 6 below.

10. The PRM has been designed on the basis that, in spite of structural and considerable substantial synergy between the JSRS and AP, they have certain differences in prioritising and expanding certain objectives, actions and results. .[4] The AP and annual sub-sectoral (pillar) action plans were treated as definitive documents and sources for comprehending the logical framework, gauging the benchmarks and other details of the justice sector reform in Ukraine.

11. Bearing in mind the differences between different public sector policy development and implementation models, including institution or sector-specific **assessment, monitoring and evaluation frameworks,**[5] **the PRM has been predominantly developed in accordance with the EU approach**. It is evident that apart from the relevant aspirations of the Ukrainian authorities once more declared in the JSRS, it and the related set of policy instruments have been drafted in accordance with the EU policy development and implementation regulatory framework and relevant "Input-Output-Outcome-Impact" typology of the classical result chain.[6]

12. The consultants' team assumes that **the PRM will form a part of or be applied as a tool of a broader Performance Assessment Framework (PAF)**, which is a set of regular performance measurements and aims to 'enable managers and stakeholders to reliably assess progress in achieving a set of outcomes reflecting all key dimensions of the system that is being monitored.[7]

13. Thus, the PRM is expected to provide the key stakeholders with **the policy-specific (SJSR and AP based) framework for assessing the substantive results of the justice sector reform in Ukraine in their dynamics.**

14. The actors or the bodies/institutions intended to carry out (organise) an assessment of the specific indicators, are proposed in line with the specifics of the actions/results and taking into account a combination of factors, including:

(a) functional relevance;

(b) legitimate interest;

(c) sensitiveness of the matter;

(d) feasibility of/need for external evaluation;

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[4] For example, the AP does not explicitly address the task of 'ensuring greater balance between the investigative functions of PPO and other law enforcements agencies' provided for by sub-chapter 5.8 of the JSRS. On the other hand, the AP has incorporated a separate Intervention Area 8.5 on *transparency of PPO* without having a corresponding element in the JSRS. For further details see comments suggested in the relevant tools below.

[5] See : Glossary of Key Terms in Evaluation and Results Based Management, OECD, 2002 http://www.oecd.org/development/peer-reviews/2754804.pdf; The United Nations Rule of Law Indicators, Implementation Guide and Project Tools, UN, 2011, http://www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf; Why, What and How to Measure? A User's Guide to Measuring Rule of Law, Justice and Security Programmes, UNDP/Vera Institute, 2014, http://www.undp.org/content/dam/undp/library/crisis%20prevention/UNDP_CPR_ROLMEGuide_August2014.pdf

[6] Guidelines for EC support to sector programmes, https://ec.europa.eu/europeaid/sites/devco/files/ec-guidelines-support-to-sector-prog-2007-final-en.pdf p. 89. The Guidelines provide the following definitions and hierarchy of indicators concerned: Box. 5.7 IMPACT - Measures the consequences of the outcomes in terms of wider objectives (for example, literacy rates, health improvement). The definition covers the wider effects of the outcomes, but there might also be higher level impacts, related to broader objectives – growth and income poverty, for example. OUTCOME - Measures the results at the level of beneficiaries (for example, gross enrolment rates in primary schools, vaccination). The definition covers the outcomes (or results) from the use and satisfaction of the goods and services produced by the public sector - it is where supply comes face-to-face with demand. OUTPUT Measures the immediate and concrete consequences of the resources used and measures taken (for example, schools built, teachers employed, nurses trained). The definition of output covers those goods and services "supplied", "produced" or "provided" by the public sector with the inputs. INPUT Measures the financial resources provided and the administrative and regulatory measures taken (for example, resources allocated, resources used, measures taken, laws passed).The definition of inputs can be treated as very broad, covering in some cases what is often called "process indicators".

[7] Ibid, p. 88.

(e) availability of expertise, in particular in case of international development partners (IDP)

The actors are expected to carry out the evaluations and apply PRM, handle the results, including their publication and reporting, independently. The actors indicated in the PRM are to carry out and organise an assessment, including engaging experts (where appropriate), organising events and producing reports.

15. At the same time, although the JRC is under the aegis of the President of Ukraine and is affiliated with the Executive, it should be considered that this body is of a composite nature and represents different branches of state powers, sector stakeholders, and civil society. Moreover, when opting for coordinating arrangements for PRM implementation, it has been kept in mind that the executive authorities have to have a say in policy formulation and implementation in all sectors, including justice and the rule of law. This should not be seen as a violation of the basic principles of distribution of powers, relevant constitutional provisions and inappropriate interference in administration of justice. Thus, in view of the complexity and comprehensiveness of the sector, policy documents in question, existing coordination arrangements, **the Judicial Reform Council could be regarded as the only networking platform for coordinating the application of the PRM.**

16. In addition to serving as a coordinator of the PRM implementation, the JRC could, on the basis of the assessment deliverables of the assigned actors, compile and **publish a report on the monitoring of the implementation of the Strategy, AP and reform in general**. Preferably it should be done biannually in accordance with the proposed monitoring calendar.[8]

17. Although the JRC has designed and launched its web-site, that offers considerable information, including certain online visualised tool on the advancement of the judicial reform, it can and should be supplemented by a dynamic, regularly updatable, information monitoring tool. The PRM and its matrices could serve as a basis for designing and maintaining a dynamic, key-performance indicator (weighting)-based **regularly updatable information monitoring tool (IMT)** that would provide overall sector and disintegrated numerical data and visualise the dynamics and particular achievements, including by indicating the overall, segment, area and indicator-specific levels (in %) of reaching the results envisaged by the Strategy and AP per relevant period of their implementation.[9]

18. However, it should be highlighted that for performing this and other functions with regard to the implementation of the reform and related policy instruments, it would be necessary to **support and provide the JRC and its secretariat with dedicated staff** (not engaged in other work). Moreover, it could be advisable to follow the best practices from other jurisdiction in terms of **institutional support and funding of coordination and implementation of justice sector reforms**. [10]

Progress, Achievements, Results

19. Besides suggesting a uniform understanding of the set of interrelated terms and indicators comprising the "Input-Output-Outcome-Impact" typology, the EU/EC framework quite rigidly links them to the type of performance measurement methods and processes. It suggests that 'the terms "results" and "outcomes" should be treated as synonymous.' There are different definitions of what is meant by a result. For example, the OECD-DAC refers to a result as being the "output, outcome, or impact…of a development intervention".[11]

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[8] See below the comments as to the proposed timing and matrices accordingly.

[9] IMT is not a part of the current assignment and is to be developed separately.

[10] E.g. Multi Donor Trust Fund for Justice Sector Support (MDTF-JSS), http://www.mdtfjss.org.rs/en/about-us#.V7_scCh9601

[11] Glossary of Key Terms in Evaluation and Results Based Management", OECD, 2002.

20. The most important recommendation suggested by the EU/EC framework in this regard concern sectors, like the one in issue, where there is limited experience with and availability of outcome indicators or outcome indicators respond with a long time lag. In these cases it is advisable to use output indicators in addition to outcome indicators. It is important to clearly state the reasons for using them.[12] Thus, the PRM has been based on and predominantly follows the understanding that while **the results, achievements, progress of the justice sector reform are primarily measured through outcomes and impact indicators,** for **the initial stages of the reform and/or specific areas and actions it could, as a result, concern outputs.**.

21. The JSRS is an integrated strategy addressing various needs and issues affecting the justice sector in Ukraine and applying many measures for intervening in that sector. This characteristic necessarily entails a multiplication of indicators, which would lead to confusion if the PRM is not highly structured. However, the JSRS outlines a very limited number of impact indicators. The AP suggests a set of measures/output and outcome, as well as blocks of sub-sector impact indicators, which, as discussed are to be taken into account.[13] Nevertheless, taking into consideration that they do not fully cover the JSRS (and other way around) and could be further improved in terms of consistency with the envisaged interventions, expected results and for better assessment of the changes occurred, the **PRM will devise an amended/adjusted set of indicators**.

22. These considerations suggest that **while keeping in mind the inputs, relevant indicators and performance in this regard, the PRM will focus on measuring output and impact indicators.**[14] Monitoring an attainment of input and output indicators is an important aspect of any policy implementation. However, conceptually it is a more straightforward process-oriented exercise, which requires measuring different types of actions and collecting different data in comparison to the result-oriented indicators. Thus, inputs are to be addressed and dealt with through other components of the PAF. At the same time, the most important immediate outputs are recapitulated in the PRM, and its use will involve their initial verification prior to identifying, achievement of corresponding outcomes and impacts. Moreover, the PRM attempts, where possible, to identify **baselines**, i.e. state of affairs relevant in the context of the assessment area at a given time (generally at the beginning of the intervention), and against which changes will be measured.

Review, Monitoring and/or Evaluation

23. When specifying the essence and expected or most appropriate scope of a 'progress review' under this exercise, it has been noted once more that both the JSRS and AP operate with concepts of monitoring and evaluation / M&E.[15]

24. Under the EU policy, implementation performance and regulatory impact assessment/ evaluation frameworks monitoring is defined as a continuous and systematic process of data collection about an intervention. It generates factual information for future evaluation and impact assessments and helps identify actual problems in relation to implementation. Monitoring is considered necessary to allow policy makers and stakeholders to verify whether policy implementation is 'on track' and to generate information that can be used to evaluate whether it has achieved its objectives**.** While monitoring looks at "what" changes have occurred since the entry into force of a policy intervention, evaluation examines **"**whether**"** the intervention has been effective in reaching its objectives.[16]

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[12] Guidelines for EC support to sector programmes, p. 56.
[13] See para.9 above.
[14] See also footnote 3 above.
[15] See para.8 above.
[16] Better Regulation Guidelines Toolbox. Tool N35. Monitoring Arrangements and Indicators. http://ec.europa.eu/smart-regulation/guidelines/tool_35_en.htm#sdfootnote374anc

25. Evaluation is understood primarily as an evidence-based judgment of the extent to which an intervention has been effective and efficient, relevant with respect to the needs and its objectives.[17] In other words, evaluation aims to evaluate an intervention with reference to criteria and explicit standards (e.g. its relevance, efficiency, sustainability). The judgment usually concerns the needs which have to be met by the intervention, and the effects produced by it. Normally, an evaluation is based on information which is specially collected and interpreted to support the judgment.

26. Thus **according to the PRM**, an **assessment, review involves both monitoring and evaluation measures and processes** that are expected to be carried out under a uniform framework that is to logically hold together and reflect the entire system.

Methods

27. There are no formal requirements as to the minimum or maximum number of indicators as well as limitations in terms of monitoring and evaluation, assessment methods and tools to be applied.

28. In general, the quality and usefulness of indicators and methods are restricted by the available data and the existing mechanisms and resources for performance measurement. Due to the complexity, time consuming and other resource-demanding character of such assessments, **the scope of measures, indicators and processes to be used in the PRM should be kept to a manageable number and framework.**

29. At the same time, the PRM attempts to balance the manageability considerations against the requirement of adequacy of assessment of substantial performance in the reform and JSRS implementation. Their selection and composition is **pillar/area/action-specific so that the methods address all the important components and results. The PRM envisages indicators and methods primarily aimed at measuring the *efficiency* of the JSRS and its implementation in terms of achieving the objectives and expected results and *utility* in relation to addressing broader societal and economic needs.**

30. Consequently, development of the PRM also involved an examination of the availability of relevant data at the national and international levels, their accessibility and structure, proposing compilation of new data and establishing sources and/or new use of the existing data. Thus, **the PRM comprises the most appropriate assessment methods** consisting of families of assessment techniques and tools that fulfil different purposes.[18]

31. The basics of evaluation, social impact assessment, and research in general suggest using **quantitative and qualitative measures.** The PRM suggests operating with respectively numerical summaries, percentages, rates, or absolute numbers e.g. number of people receiving state legal aid and data that lends itself to comparison over time or between settings, as well as different methods for analysing complex phenomena based on researches, documents or other sources and methods for collecting or generating narrative and substantial information. The combination of these measures should enable a detailed and multifaceted assessment.

32. The **PRM proposes using combined methods of collecting, processing and recording of data, and methods for their analysis.**

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[17] *Ibid,* Tool N 36, http://ec.europa.eu/smart-regulation/guidelines/tool_36_en.htm.

[18] They usually consist of procedures and protocols that ensure systemisation and consistency in the way assessments/ evaluations are undertaken. Methods may focus on the collection or analysis of information and data; may be quantitative or qualitative; and may attempt to describe, explain, predict or inform action. The choice of methods follows from the indicators /evaluation questions being asked and the mode of enquiry – formative, causal, exploratory, normative etc. See K. Schreckenberg, Social Assessment of Conservation Initiatives: A Review of Rapid Methodologies, London, UK: International Institute of Environment and Development, 2010.

Quantitative and qualitative methods for collecting, processing and recording of data include: desk research and review of primary and secondary information (documents, administrative and statistical information); on line and/or telephone surveys, individual structured and semi-structured (in-depth) interviews, focus groups, case studies, collecting and processing data from the electronic monitoring systems and other administrative data, field study, collecting information from alternative sources of information, third party reports, analyses (TRP).

Quantitative and qualitative methods of data analysis that can be applied in the assessment process include: logical models, content analysis, causal analysis, experimental and quasi-experimental approaches (including counterfactual analysis), SWOT analysis, functional analysis, benchmarking, comparative analysis, peer review, impact assessment, cost-effectiveness analysis, concept mapping of impacts and expert evaluation panels.

33. The specifics of the JSRS and AP interventions and results to be achieved suggest that measuring progress in respect of the majority of indicators predominantly requires an expert and professional assessment in terms of the level of achieving qualitative indicators comprising complex facets and factors. This includes assessing compatibility with the normative requirements and international standards, as well as confirming the state of affairs, actual introduction and functioning of the institutional, legal safeguards and guarantees. This calls for expert assessment based on:

- research and reporting (ER),
- panel conclusions,
- analysis of third party reports including of domestic and international monitoring mechanisms,
- a set of in-depth (structured or semi-structured) interviews, surveys and other data collection and evaluation methods engaging prosecutors and legal professionals/key-stakeholders and civil society organisations and, possibly, users of the services of/interacting with prosecution or court users engaged in criminal procedures (SU).

For some specific assessments it would be necessary to combine certain methods, e.g. expert researches /reports, functional analysis discussed at thematic or multi-disciplinary, as well as multi-actor or separate focus group meetings of representatives of the same legal profession.

34. At the same time, some of the indicators can be measured by collecting administrative data and/or statistics and other comparatively simple methods of data collection and analysis.

Timing and organisational arrangements[19]

35. The Ukrainian stakeholders are advised and the PRM is designed, in accordance with the **best practices,** to facilitate **carrying out composite review/assessments,** when the assessment exercise is split/distributed between internal and external monitoring/evaluation mechanisms or arrangements, among sector institutions, components of the implementing (coordinating) body, as well as international development partners and/or NGOs.

36. The PRM suggests **actors and the distribution of labour in terms of**

(a) data collection and analysis:

(b) the most appropriate **segment-specific and general reporting formats:**

(c) institutional and procedural arrangements for handling results of the performance assessment, and

[19] See also relevant comments (paras 14-18) suggested in the General Considerations section above.

(d) identifying relevant coordinating institutions/bodies.

The actors identified on the basis of abovementioned factors[20] are expected to carry out and organise an assessment, including engaging experts (where appropriate), organising events, producing reports and handling them accordingly (including in terms of publication and interaction with the JRC). Thus, the actors that will be responsible for organising, carrying out an assessment of the indicators suggested in the relevant row and not all the actors, institutions involved in implementation of corresponding reforms, interventions envisaged by the policy papers. The PRM (the relevant column of its matrices) is to be considered as an indication of the most appropriate groups of actors. However, they do not imply that they have already agreed to or undertaken any commitment to carry out relevant assessments, provide funding or other resources. The column is indicative and reflects the experts' opinion as to most suitable actors. In the course of the PRM implementation, it will be for the coordinating institution (JRC) to approach them well in advance with a proposal to provide relevant contribution/assistance. However, it cannot be ruled out that the indicated group of actors, including international development partners, will take the matrices into account and apply to the JRC on their initiative (in the event of securing financial and other necessary resources, or when there are good perspectives for obtaining these). Moreover, it could be advisable that upon endorsement of the PRM, the interested parties, stakeholders, other potential actors will be invited to express their interest in contributing to the monitoring.

37. When proposing an **overall period, as well as a tentative time-table for carrying out particular components of the assessment**, the PRM takes into account the character of the sub-sectors, issues tackled, implementation calendar (indicated in the AP) and expected delivery of relevant outputs, time that is needed for generating outcomes and producing impacts.

Structuring and format

38. In view of the complexity and diversity of the sector and issues concerned, the integrated character of the policy instruments, interventions and actions, and, consequently, the range and number of indicators, other parameters to be tackled and envisaged by the PRM, it has been **structured in accordance with the reform/JSRS pillars. Moreover, pillar-specific objectives, actions and results are grouped in relevant assessment areas that are accompanied with sets of uniform matrices that are filled, adjusted and itemised accordingly.**

39. Thus, the PRM provides for sets of relevant (most significant and appropriate) selected and picked from the AP or newly formulated outputs/measures and related outcome indicators. They are incorporated in matrices, listed in the relevant columns.

40. The PRM matrices are structured so to suggest a specific assessment format with regard to each outcome indicator incorporated in it. They are aligned with the proposed method, actors and timing of assessment indicated in relevant separate columns (blocks of the table).

41. However, in some instances, where the indicators are closely interrelated, refer to the same issue (result) and require simultaneous assessment within the same evaluation exercises, for the sake of simplicity they are merged and incorporated in one block accordingly.[21]

42. Furthermore, in view of the considerations of effectiveness, the matrix also suggests a further potential grouping of the indicators and measures for their joint assessment purposes. Where in view of the nuanced character of the actions and/or outcome indicators they are rightly split in order to ensure completeness and structuring of the PRM, but they could be addressed within one composite evaluation exercise, the matrix suggests the same method/tool, actor and

[20] See para. 14 above.

[21] E.g. this approach has been applied with respect to some of PPO budget-related indicators corresponding to measure 3 under Action 8.1.1.

timing of assessment respectively.[22] However, depending on the availability of experts and other factors it is up to the actor to decide which mode (merged or separate) to choose.

43. In general, some of the indicators suggested in the PRM matrices are broadly formulated by incorporating a reference to relevant international standards, recommendations of international standard-setting instruments and mechanisms, e.g. the European Commission for Democracy through Law (Venice Commission), without specifying them further. It is done in order to keep their formulation concise. When applying the matrix, carrying out specific evaluation activities, if need be, the actors are invited to consult the list of relevant documents and sources of standards, best practices suggested with regard to the assessment area in question.

44. Besides this introductory narrative guide explaining the rationale and principles the PRM is based on, it offers further assessment area-related narrative explanations and general (impact) indicators in sub-sector (pillar) packages, as well as attached or incorporated comments, directories of relevant international standards and other guiding documents.[23] This format is to facilitate arranging and carrying out a composite assessment.

[22] For example, it specifies that the most appropriate method for evaluating attainment of outcome indicators related to outputs 1 and 2 of action/result 8.1.1 would be an expert /report opinion (ER). By suggesting the same actor and timing (2017 – I half) it implies that all these interrelated indicators could be assessed within one exercise (covered by one expert opinion in this case).

[23] Thus, in order to keep the PRM as concise as possible, as a rule, the narrative explanations refrain from outlining or dwelling upon the international standards, requirements or best practices the reform interventions are to or could follow. If required, the actors are to consult the texts indicated in the directories or footnotes.

PRM Guide and Matrices for Judiciary-related Pillars/Chapters 1-5

OVERALL STRUCTURE

According to the JSRS the judiciary is currently not sufficiently independent from the other state powers (the executive and legislative power), the performance of the courts and the management of the courts low, there is no linkage between the available capacity in the courts (judges and staff) and the workload of the courts, there is an underdeveloped system of financial management for the judiciary, a lack of transparency of the judiciary and access to justice. As the result of these problems there are several actions described in the justice sector strategy to enhance the independence, accountability and transparency, the capacity, performance and quality of the judiciary. The JSRS has suggested six pillars of the reform concerning judiciary:

- Increasing independence of the judiciary;
- Streamlining judicial governance and the system for appointment of judges;
- Improving competence of the judiciary;
- Increasing transparency and accountability of the judiciary;
- Increasing efficiency of justice and streamlining the competences of different jurisdictions;
- Increasing transparency and publicity of justice.

For the purposes of structuring the implementation of the reform in this sphere the JSRS has formulated relevant objectives, actions and results. It grouped them in five Sub-chapters 5.1 to 5.5 of Chapter 8 by merging the first two pillars on independence of judiciary and governance/ appointment of judges and maintaining the remaining as separate ones, The AP has been designed accordingly. It comprises five corresponding chapters.

The PRM suggests the following judiciary chapter-specific tools and matrices accordingly. In addition, it is furnished with an extended paper suggesting more detailed explanations on the issues concerned.

1. INCREASING THE INDEPENDENCE OF THE JUDICIARY, STREAMLINING JUDICIAL GOVERNANCE AND APPOINTMENT OF JUDGES

1. Increasing the independence of the judiciary, streamlining judicial governance and appointment of judges

Chapter-related Structure

In the JSRS seven actions and results are identified in order to strengthen the independence of the judiciary and to streamline its governance.

5.1.1 Setting up a transparent internal review system of professional suitability within the judiciary, using objective criteria and fair procedures;

5.1.2 Reviewing the appointment systems, ensuring that all appointments or transfers to a particular judicial post are based upon merit and open competition, and that lifetime appointment to a judicial post is guaranteed with no probationary period;

5.1.3 Allowing for the secondment of judges to other courts to deal with excessive workloads;

5.1.4 Developing impartial and transparent procedures for the dismissal or termination of judicial appointments;

5.1.5 Reducing the likelihood of outside interference in the administration of justice by effective and practical mechanisms that establish liability for intervening in the administration of justice and safeguards against any possibility of political influence in the procedures for appointing and dismissing judges, or holding judges liable for the legitimate exercise of their functions;

5.1.6 Optimising the methodology of financial management, organisational structure and role of the governance bodies of the judiciary, in order to contribute to the independence of the judiciary and guarantee the clear separation of powers; entrusting these bodies with clearly-defined duties to guarantee the independence of a judge, manage the courts and judiciary, represent the interests of judges and the judiciary as a whole;

5.1.7 Enhancing standards, including ethical obligations, for members of the governance bodies of the judiciary.

When reviewing these actions and the individual measures described in the Action Plan (AP), they are logically clustered in three areas of measurement:

1. Actions and results related to strengthening the independence of the judiciary through the introduction of legislative and organisational changes related to the governance of the judiciary at a centralised level and at the level of the individual courts, as well as through the development of clear criteria for the appointment, promotion, transfer and dismissal of judges and safeguards against political influence on the process of nominating (and dismissing) judges.

2. Actions and results connected with the improvement of the system of financial management of the courts and the judiciary, and strategic planning of the judiciary.

3. Actions and results in order to improve the internal and external communication of the judiciary through professionalising the public relations policies towards courts, the media and society.

The PRM proposes relevant matrices for each of the delineated areas of assessment. At the same time, it provides for a common baseline and separate reviews of the specifics of the interventions under the assessment areas in issue.[1]

Chapter-related International Standards and Country-Specific Reference Documents

- CCJE Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges;
- CCJE Opinion No. 2 (2001) on the funding and management of courts;
- CCJE Opinion No. 7 (2005) on justice and society;
- CCJE Opinion No. 10 (2007) on "Council for the Judiciary in the service of society";
- Council of Europe's recommendations on the efficiency of justice (See: http://www.coe.int/cepej);
- UN Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 (hereinafter UN Basic Principles).

Baseline

In Chapter 3 of the JSRS, the main problem in this specific area of measurement concerns the lack of independence of the judiciary from the executive and legislative branches. Moreover, there is no proper system in place for appointment, promotion, transfer and dismissal of judges based on clear criteria (e.g. appointment based on merits) and transparent procedures.

The areas covered are subject to regulation by Chapter VIII of the Constitution of Ukraine which was amended on 2 June, 2016. The amendments were given a positive evaluation by both the CoE, including by the Venice Commission as laying the groundwork for comprehensive judicial reform. On the same date, the new edition of the Law "On the Judiciary and the Status of Judges" was adopted. Both laws came into force on the 30 September 2016.

The changes provided for by the legislation referred to in the preceding paragraph include:

(a) a simplification of the administrative structure of the court system and the establishment of the new Supreme Court which will be formed by open competition for all judicial positions;

(b) increasing the remuneration of the judges;

(c) new grounds for dismissal of the judges, including those unable to pass a competency and ethics test or unable to prove the legitimate origin of their assets;

(d) declarations of family members of individuals holding high-ranking civil service positions and/or employed by the courts, public defenders or prosecutors' offices to minimise conflicts of interest;

(e) limiting the immunity of judges;

(f) reducing the political influence on the judges by limiting the competence of both the Parliament and the President regarding judicial careers.

At the same time, there is not yet a legal framework in place to fully implement the ideas envisaged by the abovementioned constitutional amendments is.

[1] The judiciary-related tool and matrices differ from the general approach under other JSRS pillars, in which they are more itemised.

First of all, the new edition of the Constitution provides for the creation of the new constitutional body – the High Council of Justice (HCJ, *Vyshcha Rada Pravosuddya*) which will replace the existing HCJ (*Vyshcha Rada Yustytsii*). Following the recommendations of the CoE, more than half of the HCJ will consist of judges elected by judges. However, in order to make the HCJ operational, it is necessary to adopt respective legislation.

The JSRS also envisages the creation of the Single Judicial Governance Body that will combine the authorities of the HCJ and the High Qualifications Commission of Judges (HQCJ), and possibly other bodies of judicial self-governance. The Single Judicial Governance Body is expected to be responsible, among other things, for the career of judges, disciplinary proceedings regarding them and their protection from unlawful influence. The newly adopted laws do not provide for the merger of any of these authorities and explicitly mention the HCJ and the HQCJ as separate institutions. However, the legal framework to provide for such a merger may be developed at further stages in the judicial reform.

In addition, the budgetary and financial (planning) capacities of the courts are under-developed. Consequently, there is, for example, no clear connection between the performance achieved by the individual courts and their respective budgetary needs, nor do the courts have sufficient staff to assist in the preparation and the execution of the court budgets.

The independence of judges, to a large extent, depends on the existence of effective measures to protect the judges from being placed under pressure and subject to unlawful influence. According to the previous legislation (the Law "On the Judiciary and the Status of Judges") the Council of Judges of Ukraine was responsible for protecting judges from the unlawful influence. However, the law did not provide any effective mechanism of such protection. The new edition of Chapter VIII of the Constitution transfers this competence to the HCJ. However, the HCJ will not be effective in carrying out this task unless the concrete and effective measures that the HCJ can take to protect judges from undue influence are specified in the law.

Besides the challenges in the area of the institutional independence of the judiciary, the procedures for appointment, promotion, transfer and dismissal of judges, the lack of capacity in the area of budgetary planning, preparation and execution, there is also a lack of trust and confidence in the judiciary within the Ukrainian society.

With regard to the baselines, the AP has listed a number of key objectives that can serve as a point of reference to measure the progress towards increasing the level of institutional and judicial independence, public trust and confidence:

- Five percent annual decrease in the number of cases the ECtHR establishing divergences in practice of Ukrainian courts in applying national legislation, or establishing breaches of the independence or impartiality of a tribunal, or fairness of proceedings or defence rights, or the 'reasonable time' requirement (baseline: relevant ECHR judgments pronounced in 2015).
- User satisfaction surveys (conducted as part of the judiciary performance management system, or by external observers) attest an increase in the confidence of society in the judiciary generally, and its independence and competence in particular (baseline: 2015; suggested 2016 target – increase by 5%; 2018 target – increase by 15%; 2020 target - increase by 25%).
- Progress noted by the COE CM in the implementation of general measures deriving from the judgment of the ECtHR in the case of Oleksandr Volkov v. Ukraine (baseline: 2015).
- Ukraine's standing in various relevant international indices relating to the performance of the judiciary improves, including the Governance Indicators and the Rule of Law Index (World Bank Institute), World Economic Forum (WEF) Global Competitiveness Report, rankings by

Freedom House, World Justice Project (Rule of Law Index), Transparency International (CPI etc.), Bertelsmann Stiftung Transformation Index (BTI), WB Doing Business Index (baseline: 2015).

1.1. Increasing the independence of the judiciary, streamlining judicial governance and appointment of judges

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

It is expected that the independence of the judiciary will be strengthened following the adoption of the constitutional changes[2] related to the judiciary. One of the results of the constitutional changes is related to the HCJ. The new draft Law "On the High Council of Justice (*Pravosuddya*)" was introduced to the Parliament recently and is expected to be adopted soon. As the result of the adoption of the law on the HCJ, the governance structure and the place of the other judicial institutions (e.g. the HQCJ, State Judicial Administration[3] and the Council of Judges) in it will change. The impact of these changes on the functioning of the courts and the way in which they are managed could be assessed in a separate evaluation study, where the new mandate of the HCJ is compared with the international trends concerning councils for the judiciary and European standards as has been described in one of the opinions of the Consultative Council of European Judges (CCJE).[4]

Besides the introduction of a new governance structure for the judiciary, the first pillar of the JSRS must also lead to an improved regulatory framework for the appointment, promotion, transfer and dismissal of judges with a lesser influence of the other state powers (the executive and legislative power) on this process[5]. It is difficult to measure whether these changes will result in more judicial independence. One of the indirect sources of information that can be used concerns the application of general public opinion surveys (such as those conducted by the World Economic Forum) to measure the level of perceived independence of the judiciary.

Due to the interrelated nature of the measures/outputs corresponding to the action, the matrix groups them so that they can be addressed by all the outcome indicators and assessment methods accordingly.

[2] http://zakon5.rada.gov.ua/laws/show/1401-19

[3] http://www.fair.org.ua/content/library_doc/SJA_Structural_Assessment_JW_eng.pdf. http://www.fair.org.ua/content/library_doc/SJA_Structural_Assessment_MZ_eng.pdf

[4] http://www.coe.int/ccje

[5] See: the Draft Law on the High Council of Justice (2016) and the Law on the Judicial System and Status of Judges.

PRM Matrix on Assessment Area

1.1. Strengthening the independence of the judicial governance structure and appointment of judges

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Ensuring greater Institutional and judicial independence (1.1.1)	1. A clear regulatory framework for judicial self-governance and representation of the judiciary in judicial governance bodies 2. Clear criteria and procedures for the appointment, promotion, transfer and dismissal of judges	– The level of compliance of the new law on the HCJ with international standards (after its adoption). – The majority of the members of judicial governance bodies are composed of judges. – The criteria for selection of the members of HQC and HCJ are clear and objective.	Desk research, Expert Report	HCJ, HQCJ, SJA, NGOs, international development partners and experts	2017-II
		– The quantity and quality of the decisions taken by judicial governance bodies and judicial self-governance bodies related to the illegal influence on judges – The quality of decisions taken by self-governance bodies (e.g. the Council of Judges) on policies related to the protection of (the independence of) judges	Desk research, interviews of judges, administrative data, expert reports	NGOs, HCJ, Council of Judges, professional associations of judges, international experts,	2018-II
		– The perceived level of institutional independence according to the viewpoint of judges	Survey of judges[6]	NGOs (Internat. Statistics), professional associations of judges, international experts, courts	2019-II
		– The perceived level of institutional and judicial independence according to key stakeholders in society and society in general	Public opinion poll survey[7]	Courts, NGOs	2018-II
		– The perceived level of satisfaction among judges concerning the criteria and procedures for appointment, transfer, promotion and dismissal of judges and their compliance with the applicable legislation	Survey of judges, analysis of complaints of judges related to criteria and procedures for appointment, transfer and dismissal	Courts, NGOs	2019-II

[6] An example of a survey of the opinion of judges is the following: http://www.fair.org.ua/content/library_doc/FAIR_2016_Judges_Opinion_Survey_Presention_ENG_070616_print1.pdf

[7] See for example the results of public opinion polls carried out by the Ilko Kucheriv Democratic Initiatives Foundation (DIF): http://dif.org.ua/en/publications/press-relizy/judiciary-reform-public-opinion-poll_-judges-and-experts-surveys.htm and http://www.fair.org.ua/content/library_doc/2015_FAIR_July_Public_Survey_Lustration__ENG.pdf

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
		– The number and possibilities for appeal against decisions of the HCJ not to appoint a judge (which were previously appointed for a five-year term)	Desk research, admin. data	HCJ, professional associations of judges	2017-II 2020-I
		– The number of complaints/cases submitted to the HCJ, related to the interference of the executive power (or fellow judges and prosecutors) in the decision making process of a judge	Administrative data, desk research	HCJ, professional associations of judges	2017-II 2020-I
		– The level of transparency and the use of objective selection criteria in the process of appointing judges at the Supreme Court	Desk research	HCJ, High Qualification Commission, NGOs, professional associations of judges	2017-II 2020-I

1.2. Improving the capacity of (strategic) planning and financial management in the judiciary

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

In addition to the implementation of measures in the governance structure of the judiciary, there is also a need to rationalise the strategic planning process in the judiciary, as well as the development of budget and financial management capacities in the HCJ and the individual courts. One of the measures related to this activity concerns the strengthening of the capacity in the courts regarding financial management and the introduction of performance based budgeting systems.

Due to the interrelated nature of the measures/outputs corresponding to the action, the matrix groups them so that they can be addressed by all the outcome indicators and assessment methods accordingly.

PRM Matrix on Assessment Area

1.2. Improving (strategic) planning and financial management capacity in the judiciary

Action/Result	Major Outputs/ Measures	Outcome Indicators	Methods	Actors	Timing
Improved system of strategic planning and financial management of the judiciary (1.2.1, 1.2.2)	1. The establishment of a financial management system for the judiciary where objectives are related to budgetary requirements 2. Dedicated financial units in all courts and in the State Judicial Administration and Judicial Governance Bodies 3. The publication of annual reports for the judiciary 4. Dedicated staff in the State Judicial Administration and Judicial Governance bodies responsible for strategic planning 5. Installation of pay-terminals in all court houses	– Publication of strategic plans and annual court plans (containing performance objectives and budgetary needs)	Desk research	SJA, Council of judges, courts	2019-I 2020-I
		– The number of courts which have dedicated staff working on strategic planning and financial management	Administrative data	SJA, courts	2019-I 2020-I
		– The annual budget for the judiciary	Administrative data	SJA, Supreme Court, HCJ	Annually
		– The annual expenses of the courts related to court utilities, postal services, expert costs	Administrative data	SJA, Supreme Court	Annually
		– The percentage of the total court budget which is attributable to court fees	Administrative data	SJA	Annually

1.3. Professionalised relationship between judiciary, media and society

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

Since the perception of the level of independence of the judiciary and public trust and confidence in the judiciary is dependent on how the judiciary is seen from the viewpoint of the media and society, this reform chapter is focused on the introduction of new PR-strategies in the judicial authorities and the individual courts, as well as investing in the relationship with the society (e.g. through the organisation of court open-days, the organisation of study visits for students, etc.). Due to the establishment of a new structure (and competences) of the Supreme Court, the HCJ and other judicial governance bodies, there will be a need to launch information campaigns about the changes in the judiciary in order to restore public trust and confidence in the judiciary.

Due to the interrelated nature of the measures/outputs corresponding to the action, the matrix is groups them so that they can be addressed by all the outcome indicators and assessment methods accordingly.

PRM Matrix on the Assessment Area

1.3. Professionalised relationship between judiciary, media and society

Action/Result	Major Outputs/ Measures	Outcome Indicators	Methods	Actors	Timing
Professionalised relationship between the judiciary, media and society (1. 3. 1)	1. Operational press centres at the Judicial Governance Bodies 2. Press officers appointed in all appellate regions 3. Regular study visits for school children and students organised in all courts 4. Regular conduct of court user surveys in the courts 5. Active publication of press releases in all courts	– The level of satisfaction among the judiciary and the courts regarding the internal and external communication policies	Survey of judges	SJA, HJC, courts	2019-II
		– The total number of press officers appointed per appellate region	Administrative data	SJA, courts, NGOs, media	2019-I
		– The perceived level of satisfaction (and trust) by the media concerning the introduction of press officers and speaker judges	User surveys	SJA, courts, NGOs	2019-II
		– The number of study visits for school children and students organised by the courts	Administrative data	SJA, courts	Annually
		– The level of satisfaction of school children and students who have visited the courts	User surveys	SJA, courts	At each visit
		– The total number of press releases published by the judiciary per year	Administrative data	SJA, courts	Annually
		– The total number of courts that has conducted a court user survey per year	Administrative data	SJA, courts	2019-I 2020-I

2. INCREASING THE COMPETENCE OF THE JUDICIARY

2. Increasing the competence of the judiciary

Chapter-related Structure

In the JSRS five actions and results are identified in order to increase the competence of the judiciary.

5.2.1 Further efforts in performance management to ensure that competitions are held in all appointments to a particular judicial post, and that judges are always evaluated and promoted on the basis of the same transparent criteria; establishing the system of qualifying certification of judges and their regular assessment; introduction of the statutory requirement for increasing competence as one of the main criteria for the promotion of judges;

5.2.2 Improving the system of initial training, including by strengthening the formal link between the initial training and the appointment of judges, introducing an effective mechanism for scrutinising particular information about a judicial candidate from the point of view of integrity and other qualities, revision of the age requirements, and standards for professional experience etc.;

5.2.3 Improving the capacities and distribution of the court staff;

5.2.4 Comprehensive strengthening of the National School of Judges of Ukraine and the continuous training system;

5.2.5 Developing mechanisms to better harmonise practice through strengthened research and analysis capacities of the higher courts, streamlining the roles of the Supreme Court and other higher instance courts, ensuring their close cooperation with scientific and educational institutions (such as the National Academy of Legal Sciences of Ukraine).

When reviewing these actions and the individual measures described in the AP, they are logically clustered in four areas of measurement:

4. Higher level of court performance and user satisfaction of the courts

5. Strengthened system of human resources policies for judges and staff

6. More competent judiciary through a better system of initial and continuous training

7. Higher level of harmonisation of court practice

The PRM proposes relevant matrices for each of the delineated areas of assessment. At the same time, it provides a baseline and recommendations on how the outcomes and impact of the interventions for this reform chapter can be measured.[1] Since it is expected that many of the reforms described in this chapter, will have an impact on the performance, quality of the judiciary and public trust and confidence in the judiciary, this chapter includes an impact assessment grid, in which it is proposed that the indicators measure the organisational and societal impact of the reforms related to this chapter.

Chapter-related International Standards and Country-Specific Reference Documents

- CCJE opinion No. 4 (2003) on the training of judges

[1] The judiciary-related tool and matrices differ from the general approach under other JSRS pillars, where they are more itemised.

- CCJE opinion No. 9 (2006) on "the role of national judges in ensuring an effective application of international and European law"
- CCJE opinion No.11 (2008) on the quality of judicial decisions
- CCJE opinion No. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence
- CEPEJ (2014) 16, Revised SATURN Guidelines for Judicial Time Management (2nd revision)
- CEPEJ (2010) 1E, Handbook for conducting satisfaction surveys aimed at Court users in Council of Europe's member States
- CEPEJ (2008), Checklist for promoting the quality of justice and the courts
- CEPEJ (2005) 12 rev, Time Management Checklist
- USAID FAIR Justice (2010), Guide to court performance studies for civil society organisations.
- USAID FAIR Justice (2010), Court Performance Evaluation under the Citizen Report Cards Methodology. Manual
- USAID FAIR Justice (2014), Court Performance Evaluation Framework manual
- USAID FAIR Justice (2016), Court Performance Evaluation implementation guide

Baseline

In 2012, a draft court performance evaluation framework (CPE) was developed by a working group in cooperation with the subgroup on developing court performance standards under the working group on innovations of the State Judicial Administration (SJA) assisted by the USAID FAIR Justice project. The framework contains four areas of measurement: efficiency of court administration, case disposition timeliness, quality of court decisions and user satisfaction. Twenty-four court performance evaluation criteria and more than 100 (performance) indicators have been defined for these four areas of measurement.[2] The evaluation mechanism for the courts includes several methods of data collection, such as: a court user satisfaction survey based on the Citizens Report Card Methodology, a survey for judges and court staff, an expert analysis of court decisions and the use of judicial and court performance statistics. As a part of the strategic plan 2013-2015 of the Council of judges, it was agreed that a national court performance evaluation framework should be developed and implemented in all Ukrainian courts in order to enhance professionalism and court excellence.[3]

With regard to judicial performance, evaluation changes have been introduced in the Law on the Judiciary and the Status of Judges. According to this law, a new procedure will be introduced for the *initial qualification assessment of judges* (required to measure if the current sitting judges will meet the minimum professional standards of a judge; Articles 83-86)[4] and for the *regular evaluation of judges* (Articles 88-89).

Concerning the regular evaluation of the work of judges, there are different types of measures for proposed evaluation. As part of these proposals an important role is given to trainers/lecturers at the National School of Judges, fellow judges, NGOs, as well as to the individual judges (Article 88). The basic source of information will be the use of surveys and the observation of the work of a judge during court hearings. For example, upon completion of every training course, a lecturer must complete a judge-evaluation questionnaire containing information about: the knowledge of the judge, skills and abilities gained in the training course, the accuracy and timeliness of the

[2] http://www.fair.org.ua/content/library_doc/COURT_PERFORMANCE_ENG2015.pdf
[3] http://www.fair.org.ua/content/library_doc/Strategic_Plan_NEW_eng.pdf
[4] Excerpts from the new law on the judiciary and status of judges (2016).

performance of tasks, analytical skills, team playing, communication skills, strong points of the judge and areas of improvement required. The completed evaluation questionnaire may be added to the personal file of the judge.

According to Article 91 of the Law, the evaluation may be used later, when the relevant judge seeks to obtain a court position on a competitive basis. The procedure and the methodology of the evaluation and self-evaluation are defined by the High Qualification Commission of Judges.

The role of the NGOs in the new law will focus on the evaluation of the work of a judge during court hearings. The results of the independent evaluation will be recorded in a questionnaire that will include, for example, an assessment of the duration of the trial, the legal rules applied, the right to a fair trial, the communication of the judge with the parties, level of impartiality and satisfaction of the judge regarding the interaction with the parties (Article 90).

With regard to the training and education of judges it must be noted that Ukraine does not have a well-developed standard of legal education and access to the legal profession. Therefore, even if there is considerable progress in the development of the specialised judicial training system regulated by the Law "On Judiciary and Status of Judges", the adoption of improved legislation governing the legal education and access to the legal profession is required to provide for a comprehensive legal framework on the education and training of judges.

2.1. Court performance and user satisfaction of the courts

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

A distinction needs to be made between the introduction of a court performance measurement system and a judicial performance evaluation and measurement system. For the avoidance of doubt, the PRM separates both types of measurement systems through different categories of evaluation studies.

The evaluation of the introduction of the Court Performance Evaluation Framework can be assessed in two different ways. Firstly, it can focus on whether the framework is being introduced in all courts, if concrete performance targets have been defined and the working experiences regarding the new court performance evaluation framework. This part of the evaluation is focused on *outcomes* and *outcome indicators*.

The second part of the evaluation concerns the *impact* of the use of the court performance evaluation framework on the competence, court performance and quality. For the purpose of this part, a set of indicators is defined with regard to the efficiency (of judicial procedures and court management) and quality (quality of court decisions and user satisfaction). In contrast to the evaluation of the outcomes (i.e. if all courts have implemented the court performance evaluation framework), the impact assessment is focused on the measurement of the improvement of the court performance and quality of judicial service delivery based on several actions undertaken by the courts to raise their level of quality and performance.

Due to the interrelated nature of the measures/outputs corresponding to the action, the matrix is groups them so that they can be addressed by all the outcome indicators and assessment methods accordingly.

PRM Matrix on Assessment Area

2.1. Court performance and user satisfaction of the courts

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
A higher level of court performance and user satisfaction of the courts (2.1.1)	1.The establishment and introduction of a Court Performance Evaluation Framework in all courts[5] 2.The conduct of user satisfaction surveys on a regular basis (see also chapter 1 and the performance indicator on user satisfaction surveys)	– Court performance standards and objectives defined for and applied in all courts	Desk research	SJA, courts, HCJ, Council of Judges, HQC	2019-I
		– Performance standards and objectives defined for and applied in all judicial governance bodies	Desk research	SJA, HCJ, High Qualification commission of judges, courts	2019-I

[5] USAID Fair Justice project and its predecessor USAID UROL project have been doing a lot of research in the field of judicial professionalism, specific information can be found at the following site: http://www.fair.org.ua/index.php/index/work_single/3

2.2. Judicial and staff performance measurement system

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The main importance of introducing a new system of regular judicial performance evaluation is not only related to the methods used to collect information about the quantitative and qualitative performance of the work of judges, but also on which specific criteria should be used to evaluate judicial performance, the rating of the criteria and the consolidation of the scores into a general evaluation result of the judge. Similar to the judicial performance evaluation for judges it is important that in the evaluation of this area of measurement the practice and level of satisfaction will be measured by using a new system for appraising court staff, appointment and dispute resolution.

Due to the interrelated nature of the measures/outputs corresponding to the action, the matrix groups them so that they can be addressed by all the outcome indicators and assessment methods accordingly.

PRM Matrix on Assessment Area

2.2. Judicial and staff performance measurement system

Action/Result	Major Outputs/ Measures	Outcome Indicators	Methods	Actors	Timing
Strengthened system of human resources policies for judges and staff (2.2.1)	1.The establishment and use of a new system to evaluate judicial performance 2.The introduction of a system to appraise court staff and appoint new court staff based on objective criteria	– Objective criteria has been applied when evaluating judges or the transfer of judges to other courts[6]	Desk research	HCJ, HQC, NSJ, NGOs	2020-II
		– Objective criteria has been applied when appraising (court) staff and their appointments	Desk research	NSJ, SJA, NGOs, National Agency on State Service, Cabinet of Ministers	2020-II
		– The perceived level of satisfaction among judges and court staff with the judicial performance evaluation methods and methods for staff appraisals[7]	Judges surveys	HCJ, HQC, SJA, NSJ, NGOs	2017-II 2020-II[8]
		– The number of judges that have been evaluated as a part of the initial qualification assessment	Administrative data	HCJ, HQC, NGOs	2018-II 2020-II
		– The number of judges that have been evaluated per year as a part of the regular judicial performance evaluation	Administrative data	HCJ, HQC, NGOs	Annually
		– The number of judges with a temporary (5 years) appointment that have been evaluated	Administrative data	High Qualification Commission of Judges	Annually
		– The number of judges that have been rated at the level of good or whose performance has been rated as poor as a part of the regular judicial performance evaluation	Administrative data	HCJ, HQC, NGOs	Annually
		– The observed level of independence, impartiality and fairness of judges in court trials (courtroom observations)	Administrative data, court observation studies	HCJ, HQC, NGOs	2017-II 2019-II

[6] An expert opinion on judicial testing can be found at: http://www.fair.org.ua/content/library_doc/FAIR_Review_of_Judicial_Testing__Regulations_ENG.pdf

[7] A survey has been held about judicial testing: http://www.fair.org.ua/content/library_doc/FAIR_Review_of_Judicial_Testing__Regulations_ENG.pdf. In addition to this, it must be noted that since court staff are part of the civil service, an important role on human resource policies is played by the national agency of civil service. In practice, though, the court staff falls under the direct responsibility of the State Judicial Administration (SJA).

[8] Starting with the data collection process in 2017.

2.3. System of initial training (special training of candidates for judgeship) and continuous training of judges

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

An enhancement of the competence of judges is related to initial and continuous training provided by the National School of Judges. Thus, it necessary to review not only the statutory role of the National School of Judges, but also the system of initial and continuous training and education for judges.

Due to the interrelated nature of the measures/outputs corresponding to the action, the matrix groups them so that they can be addressed by all the outcome indicators and assessment methods accordingly.

PRM Matrix on Assessment Area

2.3. System of initial training (special training of candidates for judgeship) and continuous training of judges

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
A more competent judiciary through a better system of initial and specialised training (2.3.1)	1. A new legal regulation for the National School of Judges 2. An improved system for initial and specialised/ advanced training and education courses for judges (and court staff)	– The number of (candidate) judges using distance learning programmes and specialised training courses at the National School of Judges	Desk research and administrative data	National School of judges	Annually
		– The number of (candidate) judges admitted to special training for judges at the National School of Judges	Administrative data	National School of judges, High Qualification Commission of Judges	Annually
		– The average number of hours spent by judges, on specialised and advanced training courses, education, conferences and other relevant training events[9]	Administrative data	National School of Judges	Annually
		– The quality of the training curricula measured on the basis of evaluation criteria developed by the National School of Judges[10]	Desk research, administrative data	National School of Judges	2017-II 2019-II
		– The level of satisfaction of judges with the content and quality of the training and education provided by the National School of Judges	Survey of judges	National School of Judges	2017-II 2020-II
		– The annual budget allocated to the National School of Judges and the actual disbursement of the budget	Administrative data	National School of Judges, Ministry of Finance and budgetary committee of the parliament	Annually

[9] Information about the training programs can be found at: http://nsj.gov.ua/training/judges/stat-2/http://nsj.gov.ua/files/1453190772%D0%A3%D0%B7%D0%B0%D0%B3%D0%B0%D0%BB%D1%8C%D0%BD%D0%B5%D0%BD%D1%96%20%D0%B4%D0%B0%D0%BD%D1%96%20%D0%BF%D1%80%D0%BE%20%D0%BF%D1%96-%D0%B4%D0%B3%D0%BE%D1%82%D0%BE%D0%B2%D0%BA%D1%83%20%D1%81%D1%83%D0%B4%D0%B4%D1%96%D0%B2%20%D1%83%202015%20%D1%80%D0%BE%D1%86%D1%96.pdf

[10] Since recently (June 2016) it is expected that the training programme of the National School of Judges is based on European standards and have a practical component (http://nsj.gov.ua/ua/about/symbols/). As a part of the evaluation, it is important to develop a measurement instrument to verify if these requirements have been fulfilled and if the training programs are up to date.

2.4. Harmonisation of court practice

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The topic of the harmonisation of court practice or case-law is a difficult subject for evaluation studies. The most common method for assessing if there is a higher level of harmonisation of court practice is to conduct a multi-disciplinary study carried out by legal researchers and social scientists. The range of recommended methods is suggested in the Matrix accordingly.

Since certain aspects of the harmonisation of court practice are included in the Court Performance Evaluation Framework described above, data may be already available as a part of the regular data collection process that is required for collecting data about the performance of the courts in terms of quality and efficiency. However, if courts may decide not to implement the CPE module on the quality of court decisions, a separate study must be conducted as a part of this specific area of intervention.

Due to the interrelated nature of the measures/outputs corresponding to the action, the matrix groups them so that they can be addressed by all the outcome indicators and assessment methods accordingly.

PRM Matrix on Assessment Area

2.4. Harmonisation of court practice

Action/Result	Major Outputs/ Measures	Outcome Indicators	Methods	Actors	Timing
A higher level of harmonisation of court practice (2.4.1)	1. Availability of joint intranet, electronic court case law databases 2. Establishment of units for harmonisation of judicial practice, statistics, etc. at the Supreme Court, appellate courts 3. Agreements for cooperative relationships between courts and law faculties	– The level of user satisfaction of the judges and legal researchers with the intranet websites and electronic case law databases	Judges survey	Courts, SJA	2017-II 2020-II
		– The level of harmonisation of court practice measured through the number/ percentage of justified overruled court decisions/judgments (compared with the total number of appeal cases) on appeal	Administrative data	courts, HQC, SJA	Annually
		– The technical-legal reasons for overruling a decision/judgment on appeal	Desk research (legal analysis)	Supreme Court, NGOs, law faculties	2017-I 2019-I
		– The level of the harmonisation of court practice measured through legal analysis	Desk research (legal analysis)	Supreme Court, other courts, HQC, SJA, law faculties	2017-I 2019-I

2.5. Impact assessment

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

Since it is expected that many of the reforms described in this chapter, will have an impact on the performance, quality of the judiciary and public trust and confidence in the judiciary, this chapter includes an impact assessment grid, in which indicators have been proposed to measure the organisational and societal impact of the reforms related to this chapter.

It is important to note that they are clustered, based on two areas of measurement *efficiency* (of court management and judicial proceedings) and *quality* (quality of court decisions and user satisfaction). Both areas are based on the four key areas of measurement of CPE (efficiency of court administration, time to disposition, user satisfaction and quality of court decisions).

Due to the interrelated nature of the impact indicators and suggested methods of their measurement, the matrix groups them so that they can be applied accordingly.

PRM Matrix on

Impact assessment

Action/Result	Impact Indicators	Methods	Actors	Timing
Increased efficiency of judicial proceedings[11] (2.5.1)	– The average number of incoming and resolved cases per judge – The average number of court staff per judge – Clearance rates at court level (civil, criminal, commercial law, administrative offences and administrative law cases) – Average disposition time at court level (civil, criminal, administrative law, administrative offences and commercial law) – Average cost per case – Average duration of the proceedings at court level (civil, criminal, administrative offences, administrative and commercial law) – Number of cases pending for more than one year	Court performance statistics (Administrative data)[12]	Courts, SJA	Annually
	– The level of satisfaction with the management and leadership of the courts and human resources policies	Judge/staff surveys	NGOs	2017-II 2020-II

[11] This information should be collected and analysed at the national level, based on the data provided by the individual courts. In the CPE, a distinction is made between a basic evaluation and complete evaluation. In the complete evaluation, more performance indicators are defined to measure 'time to disposition'.

[12] www.court.gov.ua tracks all kinds of relevant statistic information. One of the most valuable sources of information that can be found on this website concerns the yearly analytical reviews of the court performance, sorted by region, instance and type of courts. An example of a statistical form can be found by following this link (in Ukrainian): http://court.gov.ua/userfiles/ogliad_2015.pdf. Moreover, separate tables in the "court statistics section" reflect more detailed information on court performance: http://court.gov.ua/sudova_statystyka/#.In addition to this it is important to note that the Supreme Court of Ukraine also issues its own "State of the judiciary" yearly review based on court statistics provided by the SJA and High courts: http://www.scourt.gov.ua/clients/vsu/vsu.nsf/7864c99c46598282c2257b4c0037c014/d17027fca3b933f6c2257f930027876a/$FILE/100.pdf and analytical information related to the state of the judiciary: http://www.scourt.gov.ua/clients/vsu/vsu.nsf/(documents)/D7F9F72E78DA88ECC2257F730036F282

3. INCREASING ACCOUNTABILITY OF THE JUDICIARY

3. Increasing accountability of the judiciary

Chapter-related Structure

The JSRS identifies seven actions and results in order to increase accountability (integrity) of the judiciary.

5.3.1 Development of mechanisms to perform oversight and check integrity, notably extended declarations of assets, income and expenditure by judges and their family members, introduction of proportional penalties for failing to declare or making incomplete or false declarations; practical and effective investigatory mechanism to uncover corruption and other serious offences committed by judges, including an effective system for authorising the application of intrusive measures against allegedly corrupt judges and a reviewed regulatory framework concerning immunities, whilst retaining only the functional immunities of judges;

5.3.2 Ensuring an effective investigation of corruption and other serious offenses committed by a judge;

5.3.3 Granting the judiciary governance bodies the powers to authorise the detention of a judge;

5.3.4 Improving ethical rules, strengthening their clarity and foreseeability;

5.3.5 Improving the disciplinary framework, including a proportionate system of disciplinary penalties, revision of the statute of limitations for bringing disciplinary proceedings against judges, improved disciplinary proceedings by preventing court challenges during disciplinary investigations and an effective right to appeal against disciplinary decisions;

5.3.6 Establishing an exhaustive list of clear-cut grounds and circumstances for dismissal of a judge;

5.3.7 Developing internal oversight tools, including an improved regulatory framework based on the status and duties of judicial inspection and the introduction of the judge's dossier.

When reviewing these actions and the individual measures described in the AP, they are logically clustered in three areas of measurement:

8. Development of an ethical framework for judges and court staff (codes of conduct).

9. Creation of a disciplinary framework, including a review of the disciplinary procedures, rules and authorities responsible for the conduct of disciplinary actions.

10. Introduction of an internal and external oversight mechanism to combat and prevent corruption in the judiciary and achieve a higher level of integrity in the judiciary.

The PRM proposes relevant matrices for each of the delineated areas of assessment. At the same time, it suggests highlighting certain details of the interventions under the assessment areas in issue.[1]

Since this part of the justice sector reform strategy is focused on the integrity of the judiciary, it is recommended to include in the PRM methodology impact indicators which measure the perceived level of public trust and confidence in the judiciary and the perceived level of corruption in the judiciary.

[1] The judiciary-related tool and matrices differ from the general approach under other JSRS pillars, where they are more itemised.

Chapter-related International Standards and Country-Specific Reference Documents

- UN (2002), Bangalore principles of judicial conduct
- CCJE Opinion No. 3 (2003) on ethics and liability of judges
- CCJE Opinion No. 7 (2005) on justice and society
- CCJE (2010) Magna Carta of judges
- European Network of Councils for the Judiciary (2009 – 2010), judicial ethics report.

Baseline

The new Law "On the Judiciary and Status of Judges" establishes several new tools and institutions to assess judicial accountability and integrity, including the Public Council for Integrity (PCI), the independent body that will comprise lawyers, scholars, investigative journalists and NGO representatives. The PCI will have the authority to collect data about judges and judicial candidates and based on that data, issue assessments on the integrity of such candidates or judges that are supposed to be taken into account by the High Qualification Commission of Judges when considering judicial dossier and making a decision on a judicial career. However, the law does not provide for any state financing for the PCI (neither for its infrastructural needs nor the remuneration of its 20 members that are supposed to work full-time for at least two years). The online tool available to the public in order to provide relevant information is also needed. In order to launch the PCI and guarantee the effectiveness of its work other sources of financing should be considered.

The other new tools provided for by the law are the declaration of integrity and the declaration of family relations of the judge that need to be completed by more than 7600 judges. As required by the law, both these declarations as well as the judicial dossier that contains other pieces of information must be available online.

Due to the limited and correct application of ethical and disciplinary rules for judges and a lack of a proper oversight mechanism to fight against corruption several measures or actions are included in the JSRS under the chapter of 'increasing accountability of the judiciary'. At present there are no rules of conduct for court staff available, nor is sufficient training provided to judges and court staff on the topic of ethics and integrity.

Moreover, the tool suggests a number of references to reports and other documents that illustrate certain facts of the state of affairs and ongoing developments with regard to the issues falling under this Chapter.

3.1. Ethical framework for judges and court staff

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The PRM takes into account that besides the development of an ethical framework for judges and court staff, judges and staff need to be trained on the topic of integrity.

Due to the interrelated nature of the measures/outputs corresponding to the action, the matrix groups them so that they can be addressed by all the outcome indicators and assessment methods accordingly.

PRM Matrix on Assessment Area

3.1. Court performance and user satisfaction of the courts

Action/Result	Major Outputs/ Measures	Outcome Indicators	Methods	Actors	Timing
A high level of integrity within the courts (3.1.1, 3.1.2)	1. Developed and published code of judicial ethics and rules of conduct for court staff[2] 2. Publication of a practice guide on ethical behaviour of judges and court staff	– The level of awareness among judges and court staff of the existence and application of the code of judicial ethics.	Desk research, judges and staff surveys	HCJ, SJA, National School of Judges, judicial self-governance bodies	2019-I 2020-II
		– The number of judges and court staff that have participated in a training on ethics and integrity	Administrative data	HCJ, SJA, National School of Judges	Annually

[2] See the recently adopted commentary on the code on judicial ethics (2016).

3.2. System of disciplinary proceedings for the judiciary

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The PRM takes into account that to measure the outcomes of the interventions, it is necessary to examine if a unified disciplinary system for the judiciary has been developed and applied during the reform period (including a list of disciplinary sanctions) and if a judicial authority has been established that is responsible for processing disciplinary cases.

The matrix suggests a composite measure output with aligned indicators so that they are addressed by the proposed set of assessment methods.

PRM Matrix on Assessment Area

3.2. System of disciplinary proceedings for the judiciary

Action/Result	Major Outputs/ Measures	Outcome Indicators	Methods	Actors	Timing
Improved system of disciplinary proceedings for the judiciary (3.2.1)	Development and publication of a framework on disciplinary rules and procedures, and the establishment of a competent authority to examine disciplinary cases	– The quality and level of transparency of the process of appointment of the members of a disciplinary body[3]; – The level of independence of the members of the disciplinary body and the composition of the body; – The number of disciplinary proceedings; – The average length of the disciplinary proceedings; – The level of transparency and accountability of the disciplinary proceedings against judges – The level of effectiveness of the disciplinary proceedings; – The existence of procedural guarantees for a proper mechanism for disciplinary proceedings.	Expert report	HCJ, HQC, SJA, NGOs[4]	2017-II
		– The publication of judicial dossiers and the judicial candidates' dossiers on the websites of the HQC.	Desk research	HQC, NGOs	Annually
		– The publication of disciplinary procedures and sanctions against judges and court staff on the websites of the judiciary and the State Judicial Administration (percentage of judicial sanctions published on the web)	Desk research	HCJ, HQC, SJA	Annually

[3] This must be seen in the context of the establishment of a HCJ (Vyshcha Rada Pravosuddya). For the protection of the independence of the judiciary it is extremely important that the nomination of the members of the HCJ is fully transparent and complies with European and international standards regarding councils for the judiciary.

[4] Besides the actors mentioned in the table that should play a central role in the provision of data, it is important that for the evaluation of the disciplinary proceedings and the establishment of a new regulatory framework independent organisations (e.g. NGOs or universities) will be responsible for the developing and conducting research and evaluating projects concerning disciplinary proceedings against Ukrainian judges.

3.3. Fight against corruption

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The PRM tool for the area in issue takes into account that it concerns the working methods and procedures of the judicial inspectors, as well as the content of the inspections (in terms of reviewing the income and assets of judges, judicial immunities and the introduction of a judicial dossier which includes a full overview of the professional activities of a judge). In addition, it is expected that under the influence of the introduction of a system of random assignment of cases the level of corruption in the judiciary will be reduced. Moreover, it is expected that civil society and NGOs will play an active role in a civilian oversight board of the judiciary.

Due to the interrelated nature of the measures/outputs corresponding to the action/result, the matrix groups them so that they can be addressed by all the outcome indicators and assessment methods accordingly.

PRM Matrix on Assessment Area

3.3. Fight against corruption

Action/Result	Major Outputs/ Measures	Outcome Indicators	Methods	Actors	Timing
A lower level of (perceived) corruption within the judiciary (3.1.3)	1. Development and application of rules of procedures for judicial inspectors to assess the level of integrity of judges	– The level of progress made towards the development of new rules of procedures and working methods for judicial inspectors for assessing the level of integrity of judges	Desk research	HCJ, HQC	2017-I
	2.The introduction of a system for random assignment of cases[5] 3.The establishment of a civilian oversight board for the judiciary[6]	– The number of courts that have introduced a system for the random assignment of cases – The level of usability of the IT system for the random assignment of cases from the viewpoint of the judges and the court staff	Desk research, judge and staff surveys	SJA, HCJ	Annually
		– The extent to which the PCI is fully functional	Expert report	HQC, PCI, NGOs	2017-II 2019-II
		– The resources (budget and human resources) of the PCI	Administrative data	PCI, NGOs	Annually
		– A fully functional data portal for gathering information regarding professional ethics and the integrity of the judges and judicial candidates	Administrative data	PCI	Annually
		– A developed uniform methodology to assess integrity of judges and judicial candidates	Desk research	HQC (with the assistance of PCI)	2017-I
		– The number of cases processed by the PCI	Administrative data	PCI	Annually
		– The number of decisions of the PCI included (referenced) in the decisions of the HQC	Administrative data	HQC, PCI	Annually

[5] NGOs can be invited to monitor the implementation of the case assignment system.
[6] Set up by the PCI and composed of representatives of various NGOs.

3.4. Impact assessment under Chapter 3

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

Similar to the previous chapters the PRM proposes an impact assessment grid which can be used to measure on a regular basis if the instruments proposed in the JSRS will lead to a higher level of accountability i.e. integrity of the judiciary.

However, taking into account the multifaceted impacts of the integrity-related interventions and their assessment from different perspectives, the Matrix suggests a set of actions/results for measuring them. Each of specific actions/results is accompanied by a separate block of indicators, which, in their turn, due to the interrelated nature are expected to be simultaneously measured by collecting and analysing the composite data.

PRM Matrix on

Impact assessment under Chapter 3

Action/Result	Impact indicators	Methods	Actors	Timing
A judiciary with a high level of integrity	– The number of judges that have violated the code of judicial ethics – The number of court staff that have violated the rules of professional conduct – The total number of complaints against judges and court staff related to conduct and ethics	The collection of statistics from the authority responsible for disciplinary procedures (Administrative data)	HCJ	Annually
	– The number of appeals against decisions taken by a disciplinary body against judges – The number of appeals against decisions taken by a disciplinary body against court staff	Collection of statistics from the authority that is responsible for appeals against decision of a disciplinary body (administrative data)	HCJ	Annually
A lower number of disciplinary proceedings and sanctions against judges (and staff)	– The total number of disciplinary proceedings against judges – The total number of disciplinary proceedings against court staff – The total number of findings of disciplinary liability – The total number of judges and staff that have been disciplined (according to the type of disciplinary measure taken against the judge or staff)	Collection of statistics about the number of disciplinary cases against judges and staff, the number and type of disciplinary sanctions (administrative data)	HCJ	Annually
A lower number of corruption cases against judges	– Total number of judges and staff per year that did not properly declare their income, assets, integrity or family relations properly – Total number of dismissals on the basis of Article 126(6)(6) of the Constitution of Ukraine ("violation of the obligation to justify the legality of the origin of property"). – Total number of declarations of the income and assets of judges of the previous periods in the public domain. The total number of judges that have been dismissed, due to their inability to declare their income and assets – The total number of criminal cases and cases of administrative offence against judges and court staff related to corruption – The total number of convictions of judges in corruption cases – The total number of judges convicted of committing an administrative offence – The total number of sentences imposed on a judge in corruption cases that are being enforced/executed	Collection of statistics about corruption in the judiciary and criminal proceedings against judges and court staff related to corruption (administrative data)	Judicial inspection department of the HCJ, HQC, the National Agency for the Prevention of Corruption (NAPU), courts, National Anticorruption Bureau (NABU) and Specialised Anticorruption Prosecutor's Office (SAPO), MoJ	Annually

Action/Result	Impact indicators	Methods	Actors	Timing
A high level of public trust and confidence in the judiciary (including a lower perceived level of corruption)	– Perceived level of trust/mistrust in the judiciary by the Ukrainian population – Perceived level of corruption in the judiciary (based on international benchmark studies) – Perceived level of trust/mistrust in the judiciary viewed by the PCI, – Perceived level of trust/mistrust of the Ukrainian population in the PCI	Collection of statistics (based on opinion polls and international studies) on trust in the judiciary and perceived level of corruption	International Statistics and national data (e.g. World Bank, World Justice Project) and NGOs (e.g. Transparency International), PCI	Based on availability of data (annual or in another frequency)

4. INCREASING THE EFFICIENCY OF JUSTICE AND STREAMLINING THE COMPETENCES OF THE VARIOUS JURISDICTIONS

4. Increasing the efficiency of justice and streamlining the competences of the various jurisdictions

Chapter-related Structure

In the JSRS 14 actions and results are identified in order to increase accountability (integrity) of the judiciary.

5.4.1 Revision of the courts system by

(a) developing precise criteria and mechanisms to delineate competences of administrative, commercial and general (civil and criminal) jurisdictions;

(b) optimising the court network based upon careful gap analysis and impact assessment, duly taking into account the interests of efficiency and fairness;

(c) consolidating the court system at various levels (in particular, the creation of inter-district courts, and consolidating appellate regions);

5.4.2 Gradual application of and support for trial by jury;

5.4.3 Increasing efficiency in the management of court resources, by optimising administrative staffing of the courts, depending on the workload of judges;

5.4.4 Increasing the use of court fees and other paid services to cover expenses of the justice sector; higher court fee rates in property and other types of civil litigation, while protecting access to justice; streamlining the amount of court fees based on the value of the claim or appeal;

5.4.5 Increasing the attractiveness and prestige of work in the judiciary, including by improving socio-economic guarantees;

5.4.6 Improving the use of information systems (IS) for greater delivery of e-justice services, introduction of electronic management information systems in courts, including full electronic case management and tracking (before higher review instances), e-notification, e-summons, e-trial (in some cases), e-payment, random case assignment, audio or video recording of all hearings, internal jurisprudence data-base information system, legislative data-base information system; decreasing court workloads through an equal and impartial case distribution system for individual judges and panels of judges at all stages of proceedings;

5.4.7 Gradually introducing e-justice tools that will allow users to attend a court, pay court fees, participate in proceedings, and obtain an electronic copy of all necessary information and documents;

5.4.8 Ensuring timely resolution of disputes and counteracting the abuse of procedural rights through effective procedural restrictions on parties that (without good reason) fail to use their best efforts to undertake required action e.g. provide evidence;

5.4.9 Increasing recourse to alternative dispute resolution, including through the practical implementation of mediation, arbitration, and conciliation; widening of the categories of cases to be resolved by arbitration or summary proceedings; establishing effective procedures to prevent cases from being heard in which there is no concrete factual case or dispute;

5.4.10 Reducing the burden on higher courts by defining the categories of cases which they are competent to hear with reduced rights of appeal and levels of appeal;

5.4.11 Developing a system of review of judicial decisions and re-opening of cases to improve the accessibility and efficiency of justice, reducing the courts' workload, and promoting harmonisation of court practice and better reasoning in court decisions;

5.4.12 Enhancing the procedural powers at the cassation instance;

5.4.13 Developing socio-economic conditions for the judiciary;

5.4.14 Developing instruments and methodologies for evaluating the extent to which the judiciary comply with the CoE standards.

When reviewing these actions and the individual measures described in the AP, they are logically clustered in the following three areas of measurement:

11. Optimisation of the court network: a better distribution of the workload between the courts and a more logical arrangement of the competences between the jurisdictions (administrative, commercial and ordinary courts);

12. Improved socio-economic conditions for the judiciary;

13. Better accessibility of court facilities and more judicial services through PPP and improved IT-services in the courts.

The PRM proposes relevant matrices for each of the delineated areas of assessment. At the same time, it suggests separate emphasis on the specifics of the interventions under the assessment areas in issue.[1]

The interventions envisaged under the chapter and areas in issue are expected to produce specific impact in terms of optimisation of the court system. The PRM accordingly suggests specific impact indicators and a framework for their assessment that are outlined in the last matrix.

Chapter-related International Standards and Country-Specific Reference Documents

- COE Recommendation (2003)15 on archiving of electronic documents in the legal sector
- COE Recommendation (2003)14 on the interoperability of information systems in the justice sector
- COE Recommendation (2001)3 on the delivery of court and other legal services to the citizen through the use of new technologies
- COE Recommendation (95)5 concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases
- COE Recommendation (98)1 on family mediation
- COE Recommendation (2001)9 on alternatives to litigation between administrative authorities and private parties
- Recommendation (2002)10 on mediation in civil matters
- CEPEJ(2013)7RevE 06 December 2013, Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System
- CEPEJ-GT-QUAL(2013)1E 15 March 2013, Questionnaire for collecting information on the organisation and accessibility of court premises
- CEPEJ(2014)15 12 December 2014, Guidelines on the organisation and accessibility of court premises

[1] The judiciary-related tool and matrices differ from the general approach under other JSRS pillars, where they are more itemised.

Baseline

Ukraine's judiciary is characterised by an uneven and excessive workload, as well by unreasonable length of the proceedings[2].

The failure to make any new appointments in the last 2,5 years has contributed to the problem. Based on the data available on the High Qualification Commission of Judges' website[3] , there are already several courts of the first instance with no active judges, and more than 60 in which there is only one judge.

The current legal framework does not provide tools to effectively remedy the situation.

The tool also suggests a number of references to reports and other documents that illustrate certain facets of the state of affairs and ongoing developments with regard to the issues falling under this Chapter.

[2] See http://www.scourt.gov.ua/clients/vsu/vsu.nsf/(documents)/BFCE7D537DF5925EC2257F5E002E417A?OpenDocument&year=2016&month=02&; http://court.gov.ua/sudova_statystyka/

[3] http://vkksu.gov.ua/ua/oblik-posad-suddiw/

4.1. Optimisation of the courts network

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

In order to measure the process of change in the court network and a revision of the judicial map of Ukraine, as well as a rearrangement of the competences between the jurisdictions, it is necessary to conduct (qualitative) research (Desk Research), which includes a comparison between the current judicial map and the proposed courts network and the expected effects on the workload of the courts. This research may include a study about the secondment of judges, competences of the various jurisdictions of the Ukrainian courts, and the need to change these competences in order to achieve more efficient justice.

Due to the interrelated nature of the measures/outputs corresponding to the action, the matrix is grouping them for being crisscrossed by the outcome indicators and assessment exercises.

PRM Matrix on Assessment Area

4.1. Optimisation of the courts network

Action/Result	Major Outputs/ Measures	Outcome Indicators	Methods	Actors	Timing
Better distribution of the workload between the courts and a more logical arrangement of the competences between the jurisdictions (administrative, commercial and ordinary courts) (4.1.1)	1. Revised regulatory framework for the organisation of courts (courts network) 2. Revised regulatory framework for jurisdictional competences 3. New HR policy established for seconding judges to other court locations[4]	- Optimised court network that fully operates and enables a more equal distribution of the workload between the courts (including information about the number of court locations)	Desk research	HCJ, SJA, Council of judges, President of Ukraine, Verkhovna Rada of Ukraine	2019-I
		- A reallocation of cases following a revision of the competences between the different jurisdictions of the courts (including an overview of the number of courts according to the new jurisdictions)	Desk research	HCJ, SJA, Council of Judges	2019-I

[4] It is important to note that one of the most overloaded jurisdictions is currently that of the appellate administrative courts to which no secondment is possible from any other courts. Therefore, (at least for the time being) in order to equalise the workload the adjustments to the number of courts and the number of judges in these courts should also be carried out.

4.2. Improved socio-economic conditions for the judiciary

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The indicators listed in the table are clustered around an improvement in the socio-economic conditions of the judiciary, which is one of the main results/actions to be expected to enhance efficiency and improve the competences of the courts. They have a strong correlation with the actions and results under chapter 2 on improving the human resources policies of the judiciary.

The PRM offers the following separate matrix with the two measures/outputs corresponding to the action that are provided with interrelated outcome indicators and methods.

PRM Matrix on Assessment Area

4.2. Improved socio-economic conditions for the judiciary

Action/Result	Major Outputs/ Measures	Outcome Indicators	Methods	Actors	Timing
Improved socio-economic conditions for the judiciary (4.2.1)	1. Remuneration (and benefits) system in place that reflects the status of judges (and court staff). 2.Secure working environment in the court for judges and court staff	- The level of satisfaction of judges and court staff with their remuneration and system of benefits	Survey of judges and court staff	SJA, courts, Council of judges	2017-II 2020-II
		- The perceived level of security of the working environment for the judges and court staff	Survey of judges and court staff	SJA, courts, Council of judges	2017-II 2020-II

4.3. Better accessibility of courts and judicial services

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The PRM tool for this area is expected to assess the results of investing in the courts, improving the accessibility, raising the level of comfort of courthouses and offices for judges and court staff, envisaged refurbishment or constructing new courthouse. Moreover, the tool will measure their advancement in terms of information technology (e.g. the introduction of a new case management information system, e-filing, improvement of court websites, videoconferencing).

The Matrix is based on an action/result that merges these two aspects, which are aligned with the three key outputs and expected outcomes to be measured through relevant indicators and by means of qualitative evaluation studies (Desk Research) in some instances to be combined with collection and analysis of further (more nuanced) administrative, including budgetary data.

It is to be kept in mind, that standard court user surveys and relevant questions about the level of comfort of the courthouses as perceived by the judges and the court staff will be a part of the Court Performance Evaluation framework. As a result, certain basic data will be already available. However, there is a paucity of studies about the current quality of the judicial infrastructure and, therefore, it will be necessary to conduct a dedicated (qualitative) study on this topic. This study might include the development and changes related to the information technology in the courts. Alternatively, since information technology in the judiciary is a complex subject on its own, there is sufficient ground available to justify a separate study on the impact of measures in the field of information technology on the internal work processes and management of the courts, as well as the level of accessibility to information for the users of the courts.

PRM Matrix on Assessment Area

4.3. Better accessibility of courts and judicial services

Action/Result	Major Outputs/ Measures	Outcome Indicators	Methods	Actors	Timing
Better accessibility of court facilities and more judicial services through public-private partnership (PPP) and improved IT-services in the courts (4.2.2, 4.3.1)	1. Implementation of pilot projects for a new functional model for court premises 2. Extended services of the courts through PPPs in the courthouses 3. Easily accessible court websites for court users and an improved case management information system[5]	- Number of pilot courts that have implemented a new functional model for courthouses aiming at a high level of accessibility	Desk research	SJA, courts	2019-I 2020-II
		- New regulatory framework for the PPP-projects - Overview of courts that have new court services as the result of PPP-projects	Desk research	SJA, courts	2020-I
		- Number of courts that have introduced a new court website - Percentage of courts that have deployed a new case management information system - The total number of e-courts Use of e-services in courts (e-summons, filing of electronic documents, e-court decisions etc.).	Desk research, administrative data	SJA, courts, Council of judges	Annually
		- The level of satisfaction regarding the accessibility and quality of the court websites	Survey of judges and court staff	SJA, courts, Council of judges	2017-II 2020-II

[5] A number of courts are already running pilot projects with the use of it-services such as electronic filing of documents. In particular, the Vinnytsia Administrative Court of Appeal http://www.vaas.gov.ua/service/elektronna-dostupnist/ and the High Economic Court of Ukraine in cooperation with iGov: http://www.arbitr.gov.ua/news/2519/. Moreover, SMS-summons are applied: http://court.gov.ua/smsec. According to the official Judiciary web-portal of Ukraine (http://court.gov.ua) these two are the only two e-services that some courts provide http://court.gov.ua/ecourt/

4.4. Impact assessment under Chapter 4

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

Similar to the previous chapters the PRM proposes an impact assessment grid which can be used to measure on a regular basis to what extent the proposed interventions will increase the efficiency of justice.

At the same time, taking into account the multifaceted impacts of the integrity-related interventions and their assessment from different perspectives, the Matrix suggests a set of actions/results for measuring them. Each of the specific actions/results is accompanied by a separate block of indicators, which, in their turn, due to the interrelated nature are expected to be simultaneously measured by collecting composite data.

When analysing the results of chapter 5.4 it is clear that there is a relationship with chapter 5.2. While impact indicators on efficiency of the judicial proceedings in 5.2 are connected with the general court performance indicators, the performance indicators of 5.4 are concentrated on specific case types related to fast track proceedings and alternative dispute resolution. Also, the actions/results in chapter 5.2 on improving the human resources policies of the judiciary have a strong correlation with the actions and results on strengthening the socio-economic conditions of judges and staff described in chapter 5.4. Therefore, both for the efficiency indicators and the indicators related to human resources policies it is possible to merge the outcome and impact indicators of the two topics and develop evaluation projects to measure the efficiency of justice and the human resources policies of the judiciary.

Similar to other judiciary-related chapters, due to the complexity of impacts expected to be produced by the proposed interventions and their assessment from different perspectives, the Matrix suggests a set of actions/results for measuring them. Each of the specific actions/results is accompanied by a separate block of indicators, which, in turn, are expected to be measured by the suggested complex data collection and analysis methods.

PRM Matrix on

Impact assessment under Chapter 4

Action/Result	Impact Indicators	Methods	Actors	Timing
Optimised court network (4.4.1)	- The number of first instance, appeal and (High) specialised courts - The number of geographic court locations - The average size (in terms of number of judges) of the courts of first instance - The average workload (incoming cases) per court of first instance - The average number of court staff per court of first instance - The average number of judges seconded to courts other than their duty station	The collection of statistics from the authority responsible for at a national (and regional) level (Administrative data)	SJA, courts	Annually
Efficient fast track proceedings, optimised use of ADR, efficient appeal courts and application of European standards (4.4.2)	- The number of incoming, resolved and pending cases (at the beginning and end of the registration period) for: small claims,[6] uncontested civil cases, administrative offences and misdemeanour cases) - The percentage of incoming cases resulting in an agreement (settlement/plea bargaining) - The total number of acquittals that entered into force - The average duration of fast track proceedings - The clearance rates of fast track proceedings - The number and percentage of appeal cases - The number and percentage of cases referred from the appeal courts to the lower courts (for reopening) - The average court fees in appeal cases - The total number of received mediation cases (out of court mediations) - The total number of court referrals to a mediator - The number and percentage of cases submitted to mediation and conciliation that were not successfully resolved (which will be referred to the ordinary courts) - The number of annual cases in which the court has found a violation of the right to a fair trial within a reasonable time under Article 6 of the ECHR	-The collection of statistics from the authority responsible for court performance statistics and ADR (administrative data)	SJA, national councils for mediation, arbitration and conciliation	Annually

[6] One of the ideas that circulate regarding small claims and similar cases is to establish e-court based on the experience of Lublin court in Poland https://www.e-sad.gov.pl/Subpage.aspx?page_id=35, as well as the Establishment of an electronic Order of Payments and Garnishments which is a part of IMF-Ukraine Memorandum of July 2015. The respective law was adopted in May 2016: https://www.imf.org/external/np/loi/2015/ukr/072115.pdf

Action/Result	Impact Indicators	Methods	Actors	Timing
Improved social economic conditions for the judiciary (4.4.3)	- The annual budget spent on salaries and benefits of the judiciary (judges and members of judicial governance bodies) - The average gross annual salary of (court) staff - The average gross annual salary of a judge of a first instance court - The average gross annual salary of a judge of the Supreme Court	Collection of statistics from the authority responsible for human resources policies in the judiciary (administrative data)	SJA, courts, HQC, HCJ	Annually
Improved accessibility of courthouses through better courthouse infrastructure and IT solutions (4.4.4)	- The annual budget requested for capital investments/court infrastructure (construction of new courthouses, refurbishment, operations and maintenance costs) - The budget received for capital investments/court infrastructure - The annual budget allocated to IT in the courts (investments, operations and maintenance, staffing costs) - The level of user satisfaction with the new court websites (and databases with court decisions) and e-services by the users of the courts, the judges and court staff - The level of user satisfaction regarding the comfort and accessibility of courthouses (see also impact indicators reform Chapter 2)	The collection of statistics from the authority responsible for court infrastructure and IT in the judiciary (administrative data)	SJA, courts	Annually

5. INCREASING TRANSPARENCY AND PUBLICITY OF JUSTICE

5. Increasing transparency and publicity of justice

Chapter-related Structure

The JSRS specifies three actions and results which aim to increase the transparency and publicity of justice:

5.5.1 Balancing the statutory framework for confidentiality with the right to a fair trial and the interests of transparent justice, including by establishing clear criteria for holding proceedings in camera;

5.5.2 Extension of individual rights regarding transparency and publicity in the governance of the judiciary; ensuring greater openness of information about the judiciary governance bodies, stages of proceedings and types of decisions;

5.5.3 Better public access to and openness of court hearings and judicial decisions.

When reviewing these actions and the individual measures described in the AP, they are logically clustered in two areas of measurement:

14. Introduction of a Law "On the Access to Public Information" (the Law on the API) in combination with the streamlining of regulations related to state secrets

15. Strengthening of the level of transparency of the justice institutions and the judiciary

The PRM proposes relevant matrices for the delineated areas of assessment. At the same time, it provides for separate outlines of the specifics of interventions under the assessment areas in issue.[1]

Since the interventions described in this chapter will have an impact on public trust and confidence in the judiciary, it suggests an assessment grid for measuring this category of results.

Chapter-related International Standards and Country-Specific Reference Documents

- Interim narrative report (2015), EU – COE project strengthening the information society in Ukraine
- Recommendation No. R(87) 15 regulating the use of personal data in the police sector (17 September 1987)
- Recommendation No. R(91) 10 on the communication to third parties of personal data held by public bodies (9 September 1991)

Baseline

Ukraine has recently adopted a new Law "On Access to Public Information" (the Law on the API) including a number of provisions that make public information more accessible, including that relating to the courts and judicial governance bodies. The 1994 Law "On State Secrets" (with a series of amendments, the most recent of which was made in 2015) also applies.

At the same time, there are separate articles in the legislation on courts (Law "On the Judiciary and the Status of Judges") and judicial governance bodies (Law "On the High Council of Judges")

[1] The judiciary-related tool and matrices differ from the general approach under other JSRS pillars, where they are more itemised.

regarding access to information in courts and judicial bodies. One of the most recent examples is the introduction of the new rule provided for by Article 11 of the Law "On the Judiciary and the Status of Judges" on videotaping court proceedings, for which the permission of the court is not required.

The tool suggests a number of references to reports and other documents that illustrate certain facets of the state of affairs and ongoing developments with regard to the issues falling under this Chapter.

5.1. Introduction of the Law "On Access to Public Information" in combination with streamlining of regulations related to state secret

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The PRM mirrors the two-fold character of the set of interventions combined under the assessment area that are respectively related to new Law "On Access to Public Information" (the Law on the API) and other legislation regarding access to information in courts and judicial governance bodies[2] and a change in the approach of justice institutions in providing information to the general public or interest groups, including concerning information with limited access[3]. In addition, measures are also proposed in order to create more openness and transparency in court proceedings.

In order to measure the outcomes of the introduction of the Law on the API and the revision of regulations on information with limited access, it is recommended to collect empirical information from user surveys and opinion polls carried out with members of legal professions, citizens and NGOs. It could be combined with a legal analysis (desk research) of the content of the Law on the API and other regulations that govern access to information in courts and judicial governance bodies and the extent to which these regulations comply with European and other International standards.

The matrix aligns each of the outputs/measures attached to the action/result with separate single outcome indicators and relevant assessment methods accordingly.

[2] Note: the issues regarding judicial proceedings and other procedures (such as HCJ sessions, access to HCJ files) are not exclusively covered by this law. Some topics (regarding access to information in court proceedings, audio and videotaping of the court proceedings) are partly regulated by the Law "On Judiciary and Status of Judges" and by procedural codes. HQCJ issues also fall under this law. The HCJ issues are covered by the special HCJ law

[3] The Law "On Access to Public information" distinguishes between confidential information, secret information and service information under the general term «information with limited access».

PRM Matrix on Assessment Area

5.1. Introduction of the Law "On Access to Public Information" in combination with streamlining of regulations related to state secret

Action/Result	Major Outputs/ Measures	Outcome Indicators	Methods	Actors	Timing
Higher transparency of the justice sector through the introduction of the Law on the API and a revision of the regulations related to information with limited access (5.1.1)	1. Application of the Law "On Access to Public Information" and other legislation regarding access to information in courts and judicial governance bodies (the Law on the API)	- The level of compliance of the courts with the new Law "On Access to Public Information" and other legislation regarding access to information in courts and judicial governance bodies	Court user surveys	Ombudsperson's Office, HCJ, SJA, NGOs, Council of Judges	2020-I
	2. Revised regulatory framework for the information with limited access	- The level of compliance with EU standards of the Law "On Access to Public Information" and other legislation regarding access to information in courts and judicial governance bodies as well as of the regulations regarding state secret	Expert report	IDP (an EU project)	2019-I

5.2. Strengthening of the level of transparency of the justice institutions and the judiciary

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The second assessment area under this chapter is related to the general publication and media policies for justice institutions to be reinforced by the engagement of specialised and professional staff.

The PRM mirrors the difference between the evaluations related to the courts and studies focused on the justice sector governance bodies. A multi-disciplinary approach will be used when measuring the accessibility of the courts and the justice institutions, including a legal analysis of the regulations and collection of assessment by individuals, as well as statistics related to the court websites and other quantitative indicators.

Due to the interrelated nature of the first two measures/outputs corresponding to the action, the matrix groups them together in order that they can be addressed by one outcome indicator and assessment method.

Two remaining outputs/measures are accompanied by a separate single outcome indicator and the same assessment method, therefore, suggesting that all of them could be measured within one relevant assessment exercise.

PRM Matrix on Assessment Area

5.2. Strengthening of the level of transparency of the justice institutions and the judiciary

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
A higher level of transparency of the courts and judicial governance bodies (5.2.1)	1. New regulatory framework for the publication of court hearing schedules, judicial governance bodies sessions and court decisions, and for in-camera hearings in courts and judicial governance bodies[4] 2. Introduction of court and judicial governance bodies' hearings schedule information systems in all courts' and judicial governance bodies' websites	- The extent to which legal professions and citizens have access to information regarding court hearings and the sessions of judicial governance bodies	Court user surveys	SJA, NGOs, Judicial governance bodies, courts	2019-II
	3. Development of an electronic courts case-law database accessible by legal professions and courts	- The level of accessibility of electronic court case-law databases by legal professions and citizens	Court user surveys	SJA, NGOs	2019-II
	4. New PR policy and more PR capacity available for judicial governance bodies	- The perceived level of transparency of judicial governance bodies by legal professions, citizens, media and CSOs	Court user surveys	SJA, NGOs	2019-II

[4] The current regulatory framework already envisages the publication of all court decisions (the online register: http://reyestr.court.gov.ua/). An assessment of the law and the registry has already been carried out. The expert assessment of the law can be found at: http://www.fair.org.ua/content/library_doc/Analysis_of_Law_and_Resolution_MZ_eng.pdf and the registry itself http://www.fair.org.ua/content/library_doc/Assessment_Report_Registry_of_Court_Decisions_RS_eng.pdf

5.3. Impact assessment

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

Since it is expected that many of the interventions under this chapter will have an impact on the performance, quality of and public trust and confidence in the judiciary, it includes an impact assessment grid. The PRM Matrix mirrors the two assessment areas addressed by the preceding ones.

To measure how often citizens, members of the legal professions and NGOs request government information based on the Law on the API and the regulations on state secret and to compare the number of the requests with those of refusals to provide the information, it is necessary to conduct an impact assessment where statistics about the use of the Law on the API and the laws on state secret is being collected and analysed.

The real use of online information about court hearings and court decisions can be retrieved via statistics related to the court websites, whilst the number of visitors/citizens attending meetings of judicial governance bodies should be collected by the justice institutions through statistics related to the registration of these visitors for a meeting.

Similar to other judiciary-related chapters, due to the complexity of impacts expected to be produced by the proposed interventions and the angle from which they are looked at, the Matrix suggests a set of actions/results for measuring them, each of which is accompanied by a separate block of indicators, which, in turn, are expected to be measured by the suggested complex data collection and analysis methods.

PRM Matrix on

Impact assessment under Chapter 5

Action/Result	Impact Indicators	Methods	Actors	Timing
Improved transparency through the Law on the API (5.3.1)	– The annual number of requests for public information in relation to the courts and judicial governance bodies based on the Law on the API – The number of rejections of requests for information based on the Law on the API – The number of refusals to grant access to public information challenged in courts- The number of refusals to grant access to public information found unlawful by courts – The level of court fees related to challenging refusals to grant access to public information	Administrative data, desk research	Ombudsperson's Office, Ministry of Information Policy, courts, HQC, HCJ	2018-I 2020-I
Improved transparency of the courts and justice sector governance bodies (5.3.2)	– The number of courts that voluntarily disclosed all the public information related to their work on their websites – The number of declarations of judges' assets and income in respect of the previous years published on courts' websites – The number of visitors to the courts' websites' and judicial governance bodies websites' pages related to access to public information – The number of visitors to the state registry of court decisions – The number of visitors to the judicial websites related to the case-law databases – The number of members of the public attending sessions of justice sector governance bodies – The number of closed sessions of judicial governance bodies – The number of judicial dossiers available online – The number of judicial candidates' dossiers available online – The total number of PR-officers of judicial governance bodies	The collection of statistics from the authority responsible for the management of court websites (SJA) and the various judicial governance bodies	SJA, justice sector governance bodies, courts, NGOs	2018-I 2020-I

6. STRENGTHENING THE BAR AND LEGAL AID

6. Strengthening the bar and legal aid

INTRODUCTION

Overall Structure

The aim of Pillar 6 is to facilitate access to justice by strengthening the bar association and the free legal aid system and improving the legislative framework on the working conditions of advocates. The JSRS sets out the reform of the legal representation system in Ukraine in eleven actions and results.[1] These results have been numbered below, in accordance with the order in which they appear in the JSRS. The JSRS numbering referred to throughout this chapter do not match the numbering of the Action Plan (AP), which is why references to the AP are separately indicated. The matrix adopts the verbatim text of the action/results from the JSRS, matches it to the AP numbering and refers to the strategy numbers in the footnote.

The actions are:

6.1. As an *immediate priority*, determining the types of legal assistance that may only be provided by licensed lawyers, thereby improving the quality of legal representation and enhancing access to justice;

6.2. Strengthening the Ukrainian National Bar Association as an institution, to ensure that the Bar operates effectively, manages the legal profession, and represents the collective interests of advocates;

6.3. Refining the balance of power between the Bar governance bodies, including the qualification and disciplinary commissions of advocates; improving the system of accountability of the Bar governance bodies and their members;

6.4.Strengthening the professional and ethical requirements for advocates and persons intending to become an advocate, and the disciplinary oversight of the profession; clarifying the grounds for imposing disciplinary sanctions, improving disciplinary proceedings, and differentiating the types of penalties that may be imposed on an advocate;

6.5. Development of the initial training system, including procedures for taking the Bar exam, serving an internship, developing the institution of the advocate's assistant;

6.6. Improving the continuous training system of advocates;

6.7. Improving the system for respecting the status of advocates, developing an effective mechanism for making officials liable for violations of the principles of independence; strengthening guarantees for the protection of confidentiality;

6.8. Improving socio-economic, financial, and operational conditions for exercise of the legal profession, by introducing the system of advocates' professional civil liability insurance, granting advocates the right to use a simplified system of taxation, accounting, and reporting;

6.9. Strengthening the information systems management, to establish better provision of e-justice services by advocates;

6.10. Facilitating access to legal aid through improvement of and respect for quality and delivery standards; extension of legal aid to areas of representation beyond criminal cases, improving coverage in the regions, enhancing the quality of legal aid services;

[1] The Justice Sector Reform Strategy (JSRS), 2015-2020, as signed by the President on 20 May 2015; at 5. The blocks of actions and results have been numbered for the purposes of the PRM.

6.11. Ensuring proper financing of the legal aid system from both State and private funding sources.

These eleven envisaged actions and results may be logically grouped into three main areas:

- strengthening the Ukrainian National Bar Association (UNBA) and its organs (JSRS actions/ results regarding the strengthening of the UNBA as an institution (6.2), regarding the UNBA's governance bodies (6.3), regarding the UNBA's disciplinary and ethics system (6.4), regarding the UNBS's initial (6.5) and continuous training system (6.6) and AP area of intervention 6.1 and 6.2),
- revising the legislative framework to improve conditions for the exercise of the profession of advocates (JSRS actions/ results regarding the preconditions for appearing as legal representative (6.1), regarding the system establishing the liability of advocates (6.7), regarding advocates' insurance and taxation system (6.8), and regarding IT-services available to advocates 6.9 and the AP area of intervention 6.3), and
- strengthening the legal aid system (JSRS actions/ results regarding the quality of free legal aid (FLA) services 6.10, and regarding the proper financing of the FLA system 6.11 and AP area of intervention 6.4 and 6.5).

Indicators

The review methodology is outlined in the Matrix 6 below. Indicators are set at the outcome level. Whereas numerous suggestions for output indicators were received during the review process, the PRM is a general tool applicable to all stakeholders of the JSRS, that may be further refined in its application for individual sectors with their output indicators. The indicators consist of a majority of quantitative indicators. The UNBA and the Free Legal Aid Coordination Centre (FLACC) routinely collect most of the data to measure the indicators and their statistics provide a good basis for the PRM of Pillar 6.

Set of Methods

When selecting the indicators and determining the methodology to measure them, the PRM considered particular problems in the existing system, identified during the desk research, in consultations with project interlocutors at meetings on 11 and 12 July and 17 October 2016 and in the focus group meeting on 6 October 2016. The PRM is user-friendly, because data to be collected throughout the implementation of the JSRS is easily available but also particularly indicative of improvements in weak areas. Not all details can be measured in the PRM. The identified areas where indicators are set are either partially indicative of progress or particularly sensitive. Consideration was given to the fact that both the UNBA and the FLACC collect a wealth of data and have the capacity to analyse and measure them to valuably contribute to the review. Due to the polarisation of Ukraine's advocacy over basic issues methodologies like expert reviews (ER) were suggested to a limited degree and reliance on objective data is deemed more beneficial in this field.

Administrative data collection and review

One method relied on heavily is the collection and monitoring of administrative data. Data is collected annually throughout the implementation of the strategy between 2017 and 2020. Due to their capacities and interest in the objective evaluation of progress in their area, it is proposed that the collection and analysis of data is carried out by the UNBA and the FLACC and annually compared. For the overall consistency of the data collection, the annual results should

be forwarded to the co-ordination body of the strategy.[2] As the overall goal of the pillar is to raise the standard of legal support routinely provided to clients in Ukraine throughout the country, and considering that countrywide discrepancies exist it is of key importance that regional discrepancies are reflected in the data monitoring.[3] Hence, where noted in the review, matrix data also needs to be collected at the regional level and segregated by region in the evaluation.

Expert review and assessment

Many of the qualitative indicators are measured through expert assessments and expert reviews (ERs). These are proposed for evaluating progress in reforming the accountability system of the UNBA, its training and admission structure and the functioning of the FLA CC. Depending on the sensibility and scope of the ER, it is proposed that they are conducted by international experts (disciplinary system) or led by the UNBA or the FLACC itself with international financial support and the expert support of Ukraine's expert NGOs. The performance of the FLA system's criminal limb was already evaluated in this way in 2013[4] and 2016[5] with donor support. It is proposed that the evaluation would be repeated in 2019. For the UNBA, a similar model of regular evaluations is proposed. Another option is that the UNBA partners with a bar association of another country, as identified through the international bar association, in measuring indicators to rely on peer expertise.

Surveys and monitoring

In addition, surveys of the UNBA or FLA user are proposed as review methodology. The surveys should be led by the institution concerned and should be supported by an international donor or the expertise of a national NGO. To assess the image of advocates and the UNBA as portrayed in the national media, it is proposed that a national NGO conducts throughout one year a media monitoring project, which consists of monitoring a selection of national media.

Applicable international standards and recommended reference documents

Certain rights of Article 6 of the European Convention on Human Rights (ECHR) apply in civil and criminal cases. The civil limb of Article 6 (1) also covers the right to legal assistance, whereas in Article 6 (3), the criminal limb, sets out more detailed rights to legal assistance in criminal matters. Article 14 of the International Covenant for Civil and Political Rights (ICCPR) also provides for the right to legal assistance in criminal cases and sets fairness standards in civil and criminal cases.

Other CoE reference documents include:

- Resolution (78) 8 On Legal Aid and Advice (Adopted by the Committee of Ministers on 2 March 1978 at the 284th meeting of the Ministers' Deputies);
- Resolution (76) 5 On Legal Aid in Civil, Commercial and Administrative Matters (Adopted by the Committee of Ministers on 18 February 1976 at the 254th meeting of the Ministers' Deputies);

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[2] See supra conceptual remarks.

[3] Regarding the PRM's approach to difficulties in collecting data in localities not controlled by Ukrainian authorities. See the Introduction.

[4] Free legal aid system in Ukraine: the first year of operation assessment. International Renaissance Foundation, 2014 https://issuu.com/irf_ua/docs/hr-2014-4_fin_engl, accessed 10 October 2016.

[5] Assessment of the free secondary legal aid system of Ukraine in the light of Council of Europe standards and best practices. Council of Europe, September 2016 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a4c6a, accessed 10 October 2016.

– Recommendation No. R (93) 1 of the Committee of Ministers on Effective Access to the Law and to Justice for the Very Poor (Adopted by the Committee of Ministers on 8 January 1993 at the 484ter meeting of the Ministers' Deputies).

Relevant UN tools include:

– Basic Principles on the Role of Lawyers (Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August – 7 September 1990);

– United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (General Assembly resolution 67/187, annex, of 20 December 2012).

Practice Standards examples include:

– American Bar Association, ABA Standards for Criminal Justice: Providing Defence Services, 1992[6];

– Standard tools developed by the International Bar Association.[7]

Defence rights are an integral part of the right to fair trial. Chapter 9 outlines further reference documents on fair trial standards.

[6] Available at: http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/ providing_defense_services.authcheckdam.pdf, accessed 10 October 2016.

[7] Available at: http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx, accessed 10 October 2016.

6.1 Strengthening the bar and legal aid

Baseline

In chapter 3 of the Strategy, shortcomings in the system (at the time of the drafting of the Strategy) are outlined as follows:

"The access to justice is currently also insufficient, owing to:

- a discrepancy between the formal status of advocates and the actual conditions of their work, creating impediments to the effective exercise of their duties;
- an underdeveloped system of Bar governance bodies and their interaction, lack of independence and performance standards;
- the need for improved disciplinary oversight and clarified ethical standards for advocates;
- an insufficient funding and support for the legal aid system;
- the need for improved budgetary planning and financial management, and communication capacities of the Bar governance system."[8]

No comprehensive assessment of the functioning of Ukraine's advocates' work and organisational structure has been undertaken. However, the following background documents help to establish the relevant baseline for Pillar 6:

- International Renaissance Foundation, Free legal aid system in Ukraine: the first year of operation assessment, 2014[9];
- Quality and Accessible Legal Aid in Ukraine (QALA) Project, Legal aid system in Ukraine: an overview, 2014[10];
- UNBA, Legal Aid System in Ukraine: Current Issues and Recommendations for Reform, 2015;[11]
- UNBA, Annual Report, 2015[12];
- UNBA, Violation of Attorneys' Professional Rights and Guarantees in Ukraine in the Period 2013-2015, 2016;[13]
- Support to Justice Sector Reform in Ukraine, Protecting the Professional Rights of Advocates, Findings and Recommendations, 9 June 2016;[14]
- CoE, Report on an Evaluation of the Implementation of the Criminal Procedure Code of Ukraine, 2015;[15]

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[8] Justice Sector Reform Strategy, 2015-2020, as signed by the President on 20 May 2015; at 3.

[9] Free legal aid system in Ukraine: the first year of operation assessment. International Renaissance Foundation. 2014, available at: // https://issuu.com/irf_ua/docs/hr-2014-4_fin_engl; accessed on 1 November 2016

[10] Available at: http://legalaid.gov.ua/images/control/Legal%20Aid%20System%20in%20Ukraine%20an%20Overview_Eng.pdf, accessed on 1 November 2016.

[11] Available at: http://unba.org.ua/assets/uploads/news/advocatura/2015.11.30-unba-report-legal-aid-eng.pdf, accessed on 1 August 2016.

[12] Available at: http://en.unba.org.ua/assets/uploads/news/zvity/20.04.2016-annual-report.pdf, accessed on 1 November 2016.

[13] Available at: http://en.unba.org.ua/assets/uploads/news/zvity/2016_03_16-Report-violation.pdf, accessed 29 October 2016.

[14] Available at: http://www.justicereformukraine.eu/wp-content/uploads/2016/06/ProtectingAdvocates-Memo_FINAL-_eng.pdf, accessed 29 October 2016.

[15] Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168044f56a, accessed 29 October 2016.

– OSCE Special Monitoring Mission to Ukraine, Access to Justice and the Conflict in Ukraine, 2015[16];

– CoE, Assessment of the free secondary legal aid system of Ukraine in the light of Council of Europe standards and best practices, 2016.[17]

The Bar Association

The Ukrainian National Bar Association (UNBA) was founded in 2012 to guarantee an independent, professional and strong profession of advocates in Ukraine, most recently based on the 2012 Law on the Bar and Practice of Law.[18] It undertakes functions of professional self-government, in particular admission to the profession, training, disciplinary oversight and regulatory powers for the profession.[19]

The most recent constitutional amendments repeat the guarantee of the independence of the bar association.[20] The amendment follows recommendations of the Venice Commission on a previous draft[21] and strengthens the powers of the UNBA, as all advocates representing clients in court have to be members. Combined with provisions in the Law on the Bar and Practice of Law, this results in only members of the UNBA being able to represent clients before the courts in Ukraine.[22] According to the transitional provisions in the constitutional amendments, only advocates will be able to represent clients before the Supreme Court and highest courts (starting in 2017), in courts of appeal (starting in 2018), in local courts (starting in 2019).[23]

From an administrative point of view, the UNBA structures are organised in the 27 regions of Ukraine and consist of a Regional Bar Council (RBC), a Regional Qualification and Disciplinary Commission (RQDC) and a Regional Audit Commission (RAC).[24] At the national level, the Bar Council of Ukraine (BCU), the Higher Qualification and Disciplinary Commission (HQDC) and the Higher Audit Commission (HAC) have been established. The Congress of Advocates, the UNBA's highest decision making body, to which the Conference of Advocates in the Region sends delegates meets at least every three years and decides on the guiding policy issues of the UNBA, including the adoption of the Statute and the rules of conduct, and the appointments to UNBA bodies at the national level.[25] The regular decision making body at the national level is the BCU with lesser regulatory competences given to the RBC. The HQDC functions as an appeals instance for admission and disciplinary decisions of the respective regional bodies.[26]

Whereas the UNBA established its organs to discharge its duties regarding admission, training and disciplinary oversight, there still remain challenges in ensuring that the system of self-governance functions smoothly. Challenges continue to arise regarding:

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[16] Available at: http://www.osce.org/ukraine-smm/212311, accessed on 23 October 2016.

[17] Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a4c6a, accessed on 30 October 2016.

[18] Law on the Bar and Practice of Law, BVR, 2013, No. 27, p 281, Article 45 (2).

[19] Ibid.

[20] See: Law No. 1401-VIII on Amending the Constitution of Ukraine as to Justice, adopted on 2 June 2016, Article 131-2.

[21] Venice Commission Secretariat Memorandum on the Compatibility of the Draft Law of Ukraine on Amending the Constitution of Ukraine as to Justice, as submitted by the President to Verkhovna Rada on 25 November 2015, CDL-AD(2015)043, 21 December 2015.

[22] Law on the Bar and Practice of Law, BVR, 2013, No. 27, p 281, Article 2 (2).

[23] See: Law No. 1401-VIII on Amending the Constitution of Ukraine as to Justice, adopted on 2 June 2016, transitional provisions.

[24] Law on the Bar and Practice of Law, BVR, 2013, No. 27, p 281, Articles 43 seq; Statute of UNBA, as amended on 27 April 2014, Articles 6 seq.

[25] Ibid, Article 54.

[26] Ibid, Article 52.

(a) the UNBA's protracted struggle to secure its own independence and the independence of advocates;

(b) the need to upgrade the capacity of the continued training system to deliver quality training to all advocates country-wide;

(c) the consolidation of the fair and objective administration of the admission and disciplinary system;

(d) the adaptation of the UNBA's structure to represent all advocates in Ukraine taking into account diverse viewpoints.

The legislative and institutional framework on the profession of advocates

In addition to the Constitution and general procedural laws, organisational matters of the profession of advocates and conditions for practicing the profession are regulated in the Law on the Bar and Practice of Law of 2012. The law is under revision at the time of writing.

Violations of the status of advocates and threats to their independence have been identified as a serious concern in the current justice system in Ukraine.[27]

Taxation and the insurance system of advocates have been identified as issues that need to be revised. Under the current legislation, professional liability insurance covers any activity within the legal profession, including the problems of financial damages incurred by the client or the lawyer of another party due to an error or negligence in the performance by the advocate of his professional duties. Professional liability insurance does not cover criminal acts involving fraud, theft and misappropriation of funds. However, currently, professional liability insurance for lawyers is voluntary. Professional liability insurance for lawyers in the legal system in Ukraine is not common and the fact that very few advocates insure their liability results in considerable risks for the client.

Finally, it is considered that the introduction of an e-governance system will facilitate the attorney's work.

The Free Legal Aid System

FLA is provided on the basis of the Law of Ukraine on Legal Aid (2011, LULA). The FLACC under the auspices of the Ministry of Justice (MoJ) coordinates the countrywide service of providing FLA and administers the roster of lawyers providing legal aid services ("Register").[28] Between 2012 and 2015, seven competitions for inclusion in the Register were held and on this basis 5 000 lawyers were admitted to the Register. Out of these, 2 555 lawyers were contracted for 2016 by regional centres to provide FLA services.

Since 1 January 2013, 25 regional centres for FLA services have operated in Ukraine (in territories controlled by the Ukrainian government) under the auspices of the FLACC and mainly provide secondary legal aid in criminal proceedings and administrative and criminal detention cases. In addition, they coordinate FLA services within the relevant region. Whereas a solid coverage of secondary legal aid in criminal cases has been achieved, the FLACC continues to extend its

[27] See: UNBA, Violation of Attorneys' Professional Rights and Guarantees in Ukraine in the Period 2013-2015, 2016; Support to Justice Sector Reform in Ukraine, Protecting Rights of Advocates, Findings and Recommendations, 9 June 2016.

[28] See: http://legalaid.gov.ua/images/pdfs/figures,facts,philosophy.pdf; accessed 10 October 2016.

primary legal aid services.[29] Since 1 July 2015, 100 local FLA centres have provided legal aid in civil and administrative proceedings.

According to Article 7 of the LULA, the centres' services in non-criminal matters are:

(1) providing basic legal information;

(2) consulting and explaining legal issues;

(3) drafting claims, complaints and other legal documents; and

(4) engaging lawyers for legal representation in civil or administrative proceedings.

The first three types of legal services (information) are provided for everyone without exception. The latter type of service – engaging a lawyer – can only be provided to:

1) persons with a low-income, whose family earns an average monthly income below the minimum subsistence level;

2) orphans, children deprived of parental care, children in challenging living conditions or affected by military action and armed conflict;

3) persons covered by the Law of Ukraine "On refugees and persons in need for complementary or temporary protection in Ukraine";

4) veterans of war and persons covered by the Law of Ukraine "On the status of war veterans and their social protection", persons who have special labour merits before the Motherland, victims of persecution;

5) persons subject to civil incapacity proceedings, acknowledged as incapable;

6) persons subject to civil proceedings in which compulsory psychiatric care is assigned;

7) persons rehabilitated in criminal proceedings (Article 14 of the LULA).

The current circumstances in Ukraine have caused the number of persons eligible for FLA services to increase. According to the Ministry of Justice, eight out of 45 million people of Ukraine are potential recipients of FLA.[30] Since 1 September 2016, more than 400 legal aid offices have opened to improve access to FLA, especially in smaller towns in rural areas. Based on a needs assessment conducted by FLACC, functions of local FLA bureaus have also been extended. FLA bureaus are now also providing legal information and give consultations. They also organise events to increase the legal knowledge and awareness of the general public. The latter is part of the FLACC's project of local empowerment.[31]

To ensure a unified quality standard of all FLA services, the FLACC has introduced a general quality standard for the provision of free secondary legal aid (FSLA) in criminal proceedings.[32] Legal aid quality managers were assigned to monitor court hearings and conduct interviews with users of FLA system. Twenty-five quality managers have been appointed in regional centres and conduct their activities currently in criminal cases with the potential to extend their services also to civil and administrative cases.

The further development of the FLA system is outlined in the following strategic documents complementing the JSRS, AP and Annual Plans:

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[29] Free legal aid system in Ukraine: the first year of operation assessment. International Renaissance Foundation, 2014.

[30] Free legal aid: figures, facts, philosophy // http://legalaid.gov.ua/images/pdfs/figures,facts,philosophy.pdf; accessed 10 October 2016.

[31] Role of Legal Aid Bureaus // http://legalaid.gov.ua/en/home-eng/1810-role-of-legal-aid-bureaus, accessed 10 October 2016.

[32] Quality standard for the provision of FSLA in a criminal process, approved by the Ministry of Justice on 25 February 2014.

– National Human Rights Strategy, adopted on 25 August 2015 (Chapter 4, sub-chapter "Ensuring the right to a fair trial");

– Government Action Plan for implementing the National Human Rights Strategy by 2020, adopted on 23 November 2015 (para. 16, 24-26);

– Plan of priorities of Government's Activities for 2016, adopted on 27 May 2016 (Chapter V.4);

– National Strategy for supporting the development of civil society in Ukraine in 2016-2020, adopted on 26 February 2016 (subchapter 4.4);

– Government Action Plan 2016 for implementing the National Strategy for supporting the development of civil society in Ukraine in 2016-2020, adopted on 2 November 2016 (para. 4, 11, 12).

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

Measures related to strengthening the UNBA (JSRS Action Results 6.2 to 6.6 and AP area of intervention 6.1 and 6.2) aim to achieve the following key outcomes (outcomes are further detailed in the AP):

– establishing effective self-governance of the bar association in accordance with democratic principles;

– ensuring the UNBA's bodies represent the geographic, political and gender diversity of Ukraine's advocates;

– ensuring the accountability of Members of the UNBA's organs for performing their functions;

– ensuring fairness and transparency of the UNBA's admission and disciplinary system;

– guaranteeing a minimum quality standard for the quality of legal representation;

– upgrading the UNBA's training system to provides quality training to all attorneys in Ukraine.

The institution mainly responsible for the implementation of these actions/results is the UNBA. The review methodology relies heavily on data collected by the UNBA and already published in its annual report or on its website.[33] The UNBA representative confirmed at the focus group meeting on 6 October 2016, that the UNBA collects the date required in the review methodology and is willing to collect and analyse this data throughout the implementation of the JSRS.

Three results and actions of the JSRS relate to changes in the legislative framework to improve the working conditions of advocates (6.1, 6.7, 6.8, 6.9). In the AP this is area of intervention 6.3.

The main outcomes are (see also the AP):

– an improved normative framework regarding working conditions of advocates;

– effective protection against violations of advocates' rights.

The first action/result 6.1. consists of legislative changes, which do not require to be measured. The second action/result is more complex and relates to identified violations of advocate's rights by Ukraine's institutions.

Main outcomes (see also AP) of JSRS action/results 6.10 and 6.11 and AP area of intervention 6.4 and 6.5 regarding the FLA system are:

[33] See: http://en.unba.org.ua/assets/uploads/news/zvity/20.04.2016-annual-report.pdf, accessed on 1 November 2016.

- increased access to FLA;
- increased quality of FLA services;
- financial sustainability of the FLA system;
- increased public awareness of FLA services and legal matters;
- increased independence and accountability of FLA services.

PRM Matrix on Assessment Area

Strengthening the Bar and Legal Aid

6.1.1. Measures relating to the Bar Association

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Strengthening the UNBA as an institution, to ensure that the Bar operates effectively, manages the legal profession, and represents the collective interests of advocates.[33] (AP 6.1)	1. Law on the Bar and Practice of Law (LBPL) and (Ukrainian National Bar Association) The UNBA's Statute is revised to allow for effective and strategic management and diversity in the UNBA. 2. The working bodies of the UNBA are established at the national and regional level and function in accordance with their mandate. 3. The UNBA represents advocates externally.	Inclusiveness, transparency and effectiveness of the UNBA regulatory bodies:[34] (1) The total number of decisions passed by the Bar Council of Ukraine (BCU) and (2) the Regional Bar Councils in 27 regions (RBC); (3) Number of initiatives rejected by the BCU and (4) the RBC; (5) Percentage of BCU decisions passed on the basis of initiatives of representatives from regional representative in the BCU; (6) Number of decision passed upon initiative of female representatives in the BCU and (7) in the RBC; (8) Percentage of decisions of the UNBA's regulatory bodies published at the (9) national and (10) regional level.	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
		The UNBA's participation in the justice sector reform process: (1) Percentage of Working Groups drafting Justice Reform related legislation including one or more representatives of the UNBA; (2) number of meetings per year between the UNBA representatives and government officials in accordance with Art 45 (2) (1) at the national level and (3) in the regions; (4) Number of written proposals and initiatives submitted by the UNBA representatives in relation to legislative amendments.	Administrative data collection and analysis	UNBA/ Presidential administration	Annually in 2017-2020 (II)
		Perception of UNBA members of the work of the UNBA's regulatory bodies at the national and the regional level.[35]	Survey among UNBA members	UNBA supported by international donor/NGO[36]	2017-IV and 2019-IV

[33] In the JSRS, this is action /result 6.2.

[34] The UNBA collects and monitors the following data between 2017 and 2020 at the end of every calendar year.

[35] Survey amongst UNBA members to assess all aspects of the UNBA's bodies at the national and regional level, including effectiveness, strategic planning capacity and inclusiveness.

[36] The survey among UNBA members should be conducted by the UNBA with the financial support of an international donor and the expert support of an NGO.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Refining the balance of power between the Bar governance bodies, including the qualification and disciplinary commissions of advocates; Improving the system of accountability of the UNBA governance bodies and their members.[37] (AP 6.1)	1. Clear and transparent rules adopted for checks and balances to UNBA's bodies. 2. Employees of the UNBA trained to enable them to conduct their functions. 3. Establishment of accountability mechanisms for the employees of UNBA.	Use of UNBA bodies control mechanisms: (1) Number of Article 47(5)(7) LBPL reports rejected by the Conference of Advocates of the Region per meeting; (2) Percentage of Art 54(7) LBPL (5) reports rejected by the Congress of Advocates of Ukraine per meeting; (3) Percentage of employees dismissed prior to the expiry of their mandate.	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
		Use of accountability mechanisms for the UNBA employees: (1) Percentage of the UNBA employees/functionaries found liable of violating the rules in exercising their functions; (2) Percentage of employees/functionaries in the UNBA re-elected for a second mandate on the national and regional level (between 2016 and 2020).	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
		Training of UNBA functionaries:[38] Number of employees/functionaries at the (1) national and (2) regional level having participated in capacity building events on the conduct of functions in the UNBA bodies.	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
		Findings in UNBA audits on use of funds at regional and national level.[39]	Administrative data collection and analysis	UNBA	2017-2020 according to audit schedule

[37] In the JSRS, this is action /result 6.3.
[38] Whereas these trainings are currently not available due to lack of funding, the UNBA should address this gap throughout the implementation of the JSRS.
[39] Audits are carried out in accordance with Articles 51 and 53 of the Law on the Bar and Practice of Law.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Strengthening professional and ethical requirements for advocates and persons intending to become an advocate, and the disciplinary oversight of the profession; Clarifying the grounds for disciplinary liability, improving disciplinary proceedings, and differentiating the types of penalties that may be imposed on an advocate.[40] (AP 6.1)	1. Amendments to the law on the bar association to clarify admission to the bar, grounds for disciplinary liability and respective sanctions. 2. Disciplinary organs of UNBA established and functional. 3. Transparency of the disciplinary system increased.	Success of remedies in disciplinary cases: (1) Percentage of complaints in disciplinary cases (partially or fully) rejected by the HQDCB; (2) Percentage of complaints (practically) rejected by Courts (final decision); (3) percentage of complaints in disciplinary cases upheld by the HQDCB but rejected by Courts (final decision)	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
		Sanctions in disciplinary cases: (1) Percentage of disciplinary cases in which the most serious sanction was imposed by the QDCB in their initial decision; out of this percentage of cases in which most serious sanction was upheld in appeals to: (2) the HQDCB, and (3) Courts (final decision); (4) average word number to argue the sanction in first instance decisions of the HQDCB.	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
		Compliance of the UNBA's disciplinary system with international standards and norms with a focus on the system's fairness, transparency and effectiveness.[41]	Expert report	International expert with expert support of national NGO in cooperation with UNBA	2019-II (6 months)

[40] In the JSRS this is action /result 6.4.

[41] Considering the sensitivity of the matter as well as the independence of the UNBA, an international expert with the expert assistance of a national NGO in cooperation with the UNBA should conduct the assessment. The assessment should analyse the legal framework and jurisprudence of the disciplinary system and take into account regional differences. Assessments should be on all aspects of AP 6.1.3 Development of ethics and disciplinary system. The assessment should be completed within a period of six months in 2019.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Development of the initial training system, including procedures for taking the Bar exam, serving an internship, developing the institution of the advocate's assistant.[42] (AP 6.1)	1. Standardised of the training system for candidates for the bar exam introduced. 2. Regulations on the status of trainee lawyers passed. 3. Requirements for bar exam standardised throughout the country.	Success quota in the bar exam country-wide: (1) Percentage of unsuccessful bar exam candidates in each region in the first attempt to pass the bar exam; (2) Percentage of unsuccessful candidates in the second or third attempt to pass the bar exam; (3) Number of bar exam candidates in each region; (4) percentage of unsuccessful candidates in the first attempt who are registered to take the bar exam in another town in the second attempt.	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
		Outcome of appeals against unsuccessful bar exam: Number of rejections of appeals against unsuccessful bar exam per region (HQDCB).	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
		Successes quota in traineeship: Percentage of trainees receiving a negative assessment report.	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
Improving the continuous training system of advocates.[43] (AP 6.2)	1. Standardised curriculum developed. 2. UNBA roster of trainers established. 3. System of delivering training to all advocates in Ukraine in appropriately-sized groups.	Perception of UNBA members of the training system with a focus on quality, relevance, timeliness and accessibility.	Opinion survey among UNBA members	UNBA supported by international donor[44]	2017-IV and 2019-IV
		Number of training events by the UNBA meeting training needs:[45] (1) number of training events offered by UNBA annually in each region; (2) Average number of training participants per training in each region; (3) Average travel time spent per participant to reach the training (per region).	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)

[42] In the JSRS this is action /result 6.5.e

[43] In the JSRS this is action/result 6.6.

[44] Survey "Support to Justice Sector Reform in Ukraine, Protecting the Professional Rights of Advocates, Findings and Recommendations" in 2016; and repeated in 2019 by another international actor.

[45] An identified shortcoming of the current training system is the lack of training events offered by the UNBA which results in turn in a high number of training events.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
		UNBA availability and use of trainers and specialisation: 1) Trainers specialised in ethics, civil, criminal, administrative/ constitutional law available on UNBA roster by number of advocates in Ukraine and (2) in each region; (3) Average number of training events per trainer per year; (4) Number of trainers having delivered the same training in at least five regions in Ukraine; (5) Percentage of trainers having not participated in a training of trainers in the past 3 years	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
		Quality of individual training: 1) Percentage of training events having received the highest overall evaluation in the questionnaire assessing the training by more than half of the participants; (2) Percentage of training events with more than 100 participants in each region; (3) Percentage of "advanced training events"; (4) Percentage of skills training events; (5) Percentage of IT supported training events.	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
		Quality and efficiency of the training system as evaluated in an expert assessment[46].	Expert report	UNBA with expert support of national NGO and/or partnering bar association with international donor support	2017-IV 2018-I

[46] Assessment conducted by the UNBA in 2017/2018 with support of an international donor, the expertise of a national NGO and/or a partnering bar association of another country.

PRM Matrix on Assessment Area

Strengthening the Bar and Legal Aid

6.1.2. Measures regarding free legal aid (FLA)

Action/Result	Major Outputs/ measures	Outcome Indicators	Methods	Actors	Timing
Facilitating access to legal aid through improvement of and respect of the quality and delivery standards; extension of legal aid to areas of representation beyond criminal cases, improving coverage in the regions, enhancing the quality of legal aid services.[47] (AP 6.4/6.5)	1. Investment in capacity building of the free legal aid (FLA) services' human resources i.e. advocates, lawyers and other staff and partner institutions. 2. Extension of network of local FLA bureaus and mobile teams and extension of FLA services. 3. Increased quality of providing FLA services and extension of quality control tools of FLACC. 4. Ensuring the operation of the required number of points of access to FLA and capability to provide legal services according to user needs and to perform state obligations with regard to equal access to justice. 5. Introduction of information technologies in the FLA service	*Access to FLA services*[35] To primary legal aid (FLPA): (1) Number of clients per region having used services of primary legal aid; (2) Number of clients to whom mobile teams provided assistance; (3) Percentage of districts / cities of oblast (region) significance with FLA access points. To secondary legal aid (FLSA): (4) Average time between notification of the FLSA entity and the first meeting between the defendant and defence lawyer; (5.1.) Percentage of cases when upon request the FSLA was provided in criminal proceedings (Article 48, 49 Criminal Procedure Code); (5.2.) in detention cases (Article 48, 190, 208 Criminal Procedure Code); (5.3.) in civil/administrative cases (article 13(2)(2) LULA; (6) Percentage of regions in which the public defender's offices have been piloted, (7) established; (8) Percentage of police stations displaying a notice setting out the rights of arrested person to a lawyer.	Administrative data collection and analysis	FLACC	Annually in 2017-2020 (II)

[47] In the JSRS this is action /result 6.10.

Action/Result	Major Outputs/ measures	Outcome Indicators	Methods	Actors	Timing
		Effectiveness of FSLA <u>in criminal cases:</u> (1) Percentage of completed cases where FSLA was provided that resulted in: (1.1.) a full acquittal; (1.2) the minimum or lower sentences imposed; (1.3) the defendant being discharged on probation; (2) Percentage of cases with FSLA where a less intrusive preventive measure than detention was imposed on motion filed by the prosecution. <u>in civil and administrative cases:</u> (1) percentage of administrative cases where the plaintiff's claims were upheld in part or (2) in full; (3) percentage of civil cases where the plaintiff's claims were upheld in part or (4) in full.	Administrative data collection and analysis	FLACC	Annually in 2017-2020 (II)
		Application of quality control mechanisms and standards in the FLACC: (1) Percentage of criminal, (2) civil and (3) administrative cases covered by FLA quality control. (4) Percentage of cases covered by quality control of FSLA with no breach of quality standards. (5) Number of cases in which the tool of professional evaluation (peer review) of case materials of the client by an independent advocate (on client's consent) is used. (6) Quality standards for providing FSLA in civil/ administrative cases are approved and applied.	Administrative data collection and analysis	FLACC	Annually in 2017-2020 (II)

Action/Result	Major Outputs/ measures	Outcome Indicators	Methods	Actors	Timing
		Quality/frequency of training provided to free legal aid advocates and lawyers in FLA centres: (1) Average number of training events attended by free legal aid advocates; (2) Number of training events provided by the FLACC; (3) Assessment by attendees regarding the quality of training events provided by the FLACC; (4) Assessment of whether the training provided meets the needs of the attendees. *Quality/frequency of training for staff (other than lawyers and advocates) working for FLA providers and staff of partner institutions of FLA providers:* (1) Average number of training events attended by free legal aid advocates; (2) Number of training events provided by the FLACC; (3) Assessment by attendees regarding the quality of training events provided by the FLACC; (4) Assessment of whether the training provided meets the needs of the attendees.	Administrative data and survey among trained free legal aid advocates Surveys of training participants	FLACC FLACC	Annually in 2017-2020 (II) Annually in 2017-2020 (II)
		Findings of expert panel *on quality control mechanisms* applied in the FLA system.	Expert panel	FLACC supported by international donor/NGO	2019-II
		Quality of FLA services and the underlying legislative framework for FLA services and accessibility of free legal aid services as assessed by international experts and extended to civil and administrative cases[48]	Expert report	FLACC supported by international donor/NGO[49]	2019-II
		Complex information analytical system for providing FLA (CIAS): The extent to which CIAS functionality is ensured for the business processes of main parties of the FLA system (personnel of FLACC, FSLA centers, and lawyers).	Expert panel	FLACC supported by international donor	2018-I

[48] Expert Assessment of the Free Legal Aid System should take into account all services provided by the FLACC.

[49] International Renaissance Foundation, Free legal aid system in Ukraine: the first year of operation assessment, 2014; CoE, Assessment of the free secondary legal aid system of Ukraine in the light of Council of Europe standards and best practices, 2016.

Action/Result	Major Outputs/ measures	Outcome Indicators	Methods	Actors	Timing
		Assessment of quality of IT-supported (web- resources) FLA services for those users who access the FLA web-interface.	Expert report	FLACC supported by international donor/NGO[50]	2018-II
		E-database of typical legal consultations established	Administrative data	FLACC	2017-2018
Ensuring the proper financing of the legal aid system from both State and private funding sources.[51] (AP 6.5)	1. Sustainable finance system for legal aid is introduced. 2. Transparency and accountability of the FLA system is ensured.	Percent of funding of the FLA system assigned from the state budget (as a share of GDP) as compared to the European average (as established by the CEPEJ)	Administrative data collection and analysis	FLACC	Annually in 2017-2020 (II)
		Budget of FLA is balanced/sustainable:[52] (1) FLACC compares the budget balance annually at national and (2) regional level; (3) Percentage of administrative costs/FLA service in the FLA budget. (4) Percentage of actual funding of the FLA system provided from the state budget as compared to the funding requested. (5) Percentage of districts/ cities of oblast (region) significance, where local programmes for providing FLA and their funding were approved. (6) Percentage of increase in remuneration of lawyer services for providing FSLA compared to the previous period.	Administrative data collection and analysis	FLACC	Annually in 2017-2020 (II)
		Findings on financial needs (State and non-State sources) of the FLACC in expert panel with national/ international experts and IDPs.	Expert panel	FLACC supported by IDP	2018-I 2020-I

[50] International Renaissance Foundation, Free legal aid system in Ukraine: the first year of operation assessment, 2014; CoE, Assessment of the free secondary legal aid system of Ukraine in the light of Council of Europe standards and best practices, 2016.

[51] In the JSRS this is action /result 6.11.

[52] FLACC compares the budget balance annually.

Action/Result	Major Outputs/ measures	Outcome Indicators	Methods	Actors	Timing
Legal capacity and awareness of the local communities enhanced[53]	FLACC implements measures to strengthen legal knowledge and awareness in the regions	*Better legal awareness of general public and local communities:*[54] (1) Percentage of regions engaged in measures of interregional resource and communication platforms; (2) Number of awareness raising events held in regions for the community and the public on opportunities for solving legal issues; (3) Number of independent providers of FLA that have established cooperation with FPLA, as well as (4) created by local self-governance bodies to meet the legal needs of communities.	Administrative data collection and analysis	FLACC supported by IDP	Annually in 2017-2020 (II)
		Community awareness of FLA	Opinion Survey	FLACC supported by IDP	2019-II
Independence, transparency and accountability of the FLA system is ensured.[55]	Regulations adopted.	A supervisory/ advisory board of the FLA system is established, members hereto are appointed by means of a transparent public appointments procedure.	Administrative data collection and analysis	FLACC/MoJ	2019-II, 2020-II
		Level of independence of the FLA system	Expert panel	FLACC supported by international donor/NGO	2019-II

[53] This action/result is outlined in Governmental Action Plan for the implementation of the National Human Rights Strategy until 2020 (para. 25), Plan of priorities of Government's Activities for 2016 (Chapter V.4); Plan of Paramount Government's Activities adopted by the Resolution of the Cabinet of Ministers on 27.05.2016 № 418-p. See: http://www.kmu.gov.ua/document/249113344/R0418-00.doc (accessed on 8 December 2016). The events aimed at the legal empowerment/legal education/ building legal awareness are in the documents adopted earlier as well, in particular, in the middle-term Implementation Plan for the National Human Rights Strategy for 2016-2020. It is also available on the web-site of the Cabinet of Ministers (in Ukrainian): http://www.kmu.gov.ua/document/248740672/R1393.doc. It was added to PRM of JSRS upon explicit request of the FLACC to increase the practical use of the tool as a comprehensive document.

[54] The indicators were added upon proposal of the FLACC and are tailored to the specific needs of the FLACC.

[55] Annual implementation plan of JSRS for 2016 (Chapter 7) http://jrc.org.ua/strategies/plan/6/2016/en.

PRM Matrix

6. Strengthening the Bar and Legal Aid

Legislative/institutional changes regarding the profession of advocates

Action/Result	Major Outputs/ measure	Outcome Indicators	Methods	Actors	Timing
Improving the system for respecting the status of advocates, developing an effective mechanism of making officials liable for violations of the principles of independence. Strengthening guarantees for the protection of confidentiality.[56] (AP 6.3)	1. Legislative amendments introduced. 2. Judges, prosecutors and law enforcement officials trained on lawyer-client confidentiality and independence.	UNBA action against violation of the advocates' status: 1) Number of criminal/administrative complaints filed by the UNBA for violation of advocates' status; (2) where no representative of the RBC was present despite timely notification.	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
		Assessment of the legislative framework and measures to protect advocates against violations of their rights.	Expert report	National NGO	2018-I
		Response in law enforcement and judiciary against reports of violations of advocates' privileges: (1) Number of training events for law enforcement officers, and (2) members of the judiciary incorporating information on the attorney-client privilege per year; (3) Number of disciplinary cases against judges, prosecutors, law enforcement personnel filed in relation to a violation of the advocate's rights and (4) ending with a finding of guilt concerning a violation of the attorney-client privilege.	Administrative data collection and analysis	Judiciary, MoI, supported by International Development Partner	Annually in 2017-2020 (II)
		Media reports on advocates and the UNBA[57]	Media monitoring	NGO	2018-2019 with final report issued in 2019-II

[56] In the JSRS this is action /result 6.7.

[57] Monitoring and analysis of the media throughout Ukraine during the period of two years. It is proposed that the monitoring be conducted by a local NGO familiar with the work of the UNBA and experienced in media monitoring. The monitoring should entail a survey of a representative sample of print, online and broadcasting media.

Action/Result	Major Outputs/ measure	Outcome Indicators	Methods	Actors	Timing
Improving socio-economic, financial, and operational conditions for exercise of the legal profession, by introducing the system of advocates' professional civil liability insurance; granting advocates the right to use a simplified system of taxation, accounting, and reporting.[58] (AP 6.3)	1. Legislative amendments introduced on the taxation of advocates. 2. Insurance system introduced.	Simplified taxation for advocates: (1) Average time spent by an advocate on taxation per month; (2) Percentage of revenue of advocates paid in tax.	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
		Use of civil liability insurance: Number of recorded civil liability incidents filed by advocates per year.	Administrative data collection and analysis	UNBA	Annually in 2017-2020 (II)
		Quality and practicability of the taxation and liability system.[59]	Survey among UNBA members and expert report	UNBA	2019-II (duration of 6 months)
Strengthening the information systems management, to establish better provision of e-justice services by advocates.[60] (AP 6.3)	E-justice system introduced within the UNBA.	Access to e-justice: (1) Percentage of advocates having access to e-justice per region; (2) Percentage of advocates regularly using e-justice.	Survey among advocates	UNBA	2017-IV 2019-IV

[58] In the JSRS this is action /result 6.8.

[59] The qualitative assessment of the taxation and insurance system is undertaken by the UNBA, if feasible supported by a partnering bar association from another country; the assessment should be undertaken on the basis of a survey.

[60] In the JSRS this is action /result 6.10.

6.2 Impact assessment under Chapter 6

The overall impact of the measures of Pillar 5.6 is that the quality of legal representation and/or advice in various types of cases (civil, administrative, and criminal) has improved. This impact can be measured primarily though a survey of court users conducted by the MoJ assisted by international donor support.

PRM Matrix on
Impact assessment under Chapter 6

Impact	Impact Indicators	Methods	Actor	Timing
Improved legal support for parties	Increased satisfaction of court users with legal representation	Comprehensive court user survey Covering also issues like: – satisfaction and legal awareness of the public – human rights violations	MoJ with donor support	2019-II

7. IMPROVING THE ENFORCEMENT SYSTEM

7. Improving the enforcement system

INTRODUCTION

Overall Structure

The aim of Pillar 7 is to create a more efficient enforcement system and to accelerate the procedure for the enforcement of private judgements. Central to the envisaged reform are:

- the revision of norms governing enforcement proceedings and institutional set-up of the system in the Law "On the Enforcement Proceedings"[1] (the Law on EP) and the Law "On the Bodies and Persons Authorised to Enforce Court Decisions and Decisions of Other Bodies"[2] adopted on 2 June 2016, and
- the establishment of private enforcement officers and their self-administration body.

The flaws in the current Ukrainian enforcement system, and in particular its inefficiency and average length,[3] are addressed in the JSRS in eight activities and results.[4] These results have been numbered below in accordance with the order in which they appear in the JSRS. Whilst referred to throughout this chapter, this JSRS numbering does not match the numbering of the Action Plan (AP), which is why references to the AP are separately indicated. The matrix adopts the verbatim text of the action/results from the JSRS matches, it to the AP numbering and refers to the strategy numbering in the footnote.

7.1. Streamlining the enforcement governance system;

7.2. Developing the institution of private enforcement officers, including by creating an independent governance system, mechanisms for admission to the profession, a system of oversight and revocation of licences, and professional civil liability insurance;

7.3. Creating equal competition between private and State-run branches of the enforcement system; striking a balance between the powers of private and State enforcement officers;

7.4. Revising the mechanism of remuneration for enforcement officers to improve productivity;

7.5. Developing the initial and continuous training systems in accordance with harmonised objectives, tasks, and professional requirements; harmonised ethical and disciplinary rules for private and State enforcement officers;

7.6. Less formalised and more streamlined stages and terms of enforcement proceedings;

7.7. Striking a balance between the rights of the creditor and debtor by enabling enforcement officers to seize the assets of debtors, whilst putting in place safeguards against abuse, effective incentives for voluntary enforcement of court decisions and sanctions against debtors who oppose enforcement;

7.8. Strengthening the information systems management for better provision by enforcement officers of e-justice services.

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[1] Law on the Enforcement Proceedings on 2 June 2016, № 1404-VIII, BVR, 2016, № 30 // http://zakon2.rada.gov.ua/laws/show/1404-19.

[2] Law on the Bodies and Persons Authorised to Enforce Court Decisions and Decisions of Other Bodies on 2 June 2016, № 1403-VIII, BVR, 2016, № 29 // http://zakon2.rada.gov.ua/laws/show/1403-19.

[3] See below: baseline sections of the relevant components of the PRM.

[4] Justice Sector Reform Strategy (JSRS), 2015-2020, as signed by the President on 20 May 2015; at 5.

These action/results of the JSRS can logically be grouped into three assessment areas (clusters):

- legal and institutional changes to the enforcement system – actions/results regarding:
  (a) the governance system (7.1);
  (b) the revision of remuneration (7.4);
  (c) the streamlining the enforcement proceedings (7.6); and
  (d) the e-justice system (7.8).
- measures targeting specifically the introduction of private enforcement officers – action/result regarding:
  (a) the institution of private enforcement officers (7.2);
  (b) the creation of competition between private and public enforcement officers (7.3);
  (c) the enforcement officers' training system (7.5).
- measures regarding creditors and debtors' rights – action/result 7.7.

The AP groups the private enforcement reform process into three areas of intervention:

7.1 Improved Enforcement officers Governance System;

7.2 Improved Professional Training System for Enforcement officers;

7.3 Improved Conditions for Practical and Effective Exercise of the Profession of Enforcement officer.

The above three areas of intervention are referred to in the PRM matrix together with the Action/Results of the JSRS.

Indicators

Indicators are set out at the outcome level. The number of indicators per cluster varies depending on the different scope of the clusters.

Set of Methods

The review methodology is outlined in the Matrix 7.

When defining how to measure the indicators, the PRM takes into account particular problems in the existing system, identified by project interlocutors or during the desk research and suggests comparing data throughout the implementation of the strategy that is easily available, but particularly indicative of improvements in weak areas.

The main methods proposed to measure the progress on this pillar are the collection of statistical/administrative data, expert evaluations or expert reviews (ER) and surveys.

Expert Reviews

The ERs aim to assess the

(1) quality of the normative framework on enforcement and its application;

(2) the quality of the governance, recruitment, training, and accountability system for private and public enforcement officers.

These are relevant for the actions/results relation to the governance of the enforcement system, regarding

(a) the development of private enforcement officers;

(b) the training system; and

(c) the amendments to the enforcement procedure.

For the sake of consistency and economising resources, it is proposed that these ERs are conducted by one expert team and compiled in one single report. During the focus group meeting on 6 October 2016, an additional expert review was proposed at an earlier stage of the JSRS's implementation to assess the legislative framework regarding the enforcement system. This separate assessment of the legislative framework was added and should be conducted by a national non-government organisation (NGO).

The action/result on streamlining the governance system is closely linked to the action/result on streamlining enforcement proceedings. Both actions aim to improve the efficiency of enforcement proceedings and accelerate enforcement.

The action/result on streamlining the governance system includes normative changes to improve the institutional set-up of the enforcement system. The actions/results on streamlining enforcement proceedings encompasses normative changes regarding the enforcement proceedings itself.

Indicators for both actions should be interpreted together. In particular, the indicator *average duration of enforcement proceedings* is also relevant for measuring the effect of action 7.1. The expert assessment for both actions is intertwined, because it entails an assessment of the same normative framework, but focuses on either the institutional or the procedural aspect.

A second prong of the ER comprises an analysis of various aspects of the newly established governance system for private enforcement officers. One element is to measure the effectiveness and transparency of the enforcement officers' governance system,[5] the fairness and transparency of the admissibility system to the profession of enforcement officers and the liability of private enforcement officers. According to the Law "On the Bodies and Persons Authorised to Enforce Court Decisions and Decisions of Other Bodies", governance functions of the profession of enforcement agents are shared between the MoJ and the self-governance body of private enforcement agents.

The ER should also analyse the division of responsibilities of the self-governance structure and the MoJ. This prong of the analysis requires the co-operation of the self-governance structure for private enforcement officers in addition to the MoJ. The other elements of the second prong of the ER comprise an analysis of both, the (initial and continuous) training and accountability system for enforcement officers. The assessment should focus on the geographical coverage of the training system and its quality and comprehensiveness. The assessment should be supported by the MoJ, which is also responsible for training private enforcement officers[6] and retains relevant data[7] such as the number of training events conducted, number of participants, evaluation of trainings in participants' questionnaires and results of periodical tests undertaken by private enforcement officers.[8] In relation to the accountability and oversight system for enforcement officers, the analysis should mainly focus on its fairness.

[5] *Law On the Bodies and Persons Authorised to Enforce Court Decisions and Decisions of Other Bodies,* Article 47.
[6] Ibid, Article 17.
[7] Ibid, Article 34 seq.
[8] Ibid, Article 33 (1).

Administrative Data

Collections and analysis of statistics are proposed for the remaining pillars of the JSRS administrative data. These are conducted annually and the results are compared throughout the period in which the JSRS is implemented.

The productivity of enforcement officers constitutes the indicator for assessing whether the new remuneration scheme for public enforcement officers is effective. As the productivity of public enforcement officers is supposed to increase on the basis of the new remuneration scheme, the measure proposed is the average number of cases completed per public enforcement officer per year. This number should rise during the strategy's implementation period with the application of the new remuneration scheme.

One should, however, take into account the changing competence of public enforcement officers because they no longer have exclusive competence in cases that can also be enforced by private enforcement officers. The number of cases completed per public enforcement officer, where competence is shared, is expected to fall with the introduction of private enforcement officers and cannot serve as a reliable measure for the proposed indicator. On the other hand, the introduction of private enforcement officers does not have an influence on the caseload of public officers regarding cases in which they retain exclusive competence. Therefore, in order to measure the effectiveness of the new remuneration scheme, the average number of completed enforcement case, in which, according to Article 5 para 2 of the *Law on the Enforcement Proceedings* only public enforcement officers are competent, should be compared throughout the period in which the JSRS is implemented. If the new remuneration scheme is effective, then this number should rise. Where resources allow, geographical discrepancies in the indicator should be monitored to assess whether additional measures targeting specific regions are required.

Another important quantitative indicator is the duration of enforcement proceedings (for action/result aimed at streamlining the procedure). The second indicator is of a quantitative nature and measures the average duration of enforcement proceedings resulting from property disputes. This excludes enforcement proceedings listed under section VIII of the *Law on the Enforcement Proceedings*. The reason for focusing exclusively on enforcement of pecuniary awards is that these proceedings are more homogeneous. Therefore, this type of proceedings was chosen as more representative. Moreover, the MoJ will both retain and monitor the data on the length of relevant. The average length of these proceedings should be compared per year throughout the period in which the strategy is implemented until 2020. Where resources allow, geographical discrepancies in the indicator can be monitored as well to assess whether additional measures are required in certain regions.

The effectiveness of actions/results relating to IT tools for enforcement officers are best measured through ADs and surveys. The data needed to measure the indicators is accessible in electronic form in the relevant databases. The data should be collected by the MoJ's administrator of the database and should be compared throughout the years of the implementation of the JSRS until 2020. Possible regional differences in IT-access regional differences should be taken into account.

User surveys conducted by the MoJ complement the ADs in this area (see infra).

The implementation of actions/results aimed at creating a balanced competition between private and public enforcement officers is measured by monitoring the increase in the number of private enforcement officers throughout the implementation of the Strategy, until the necessary number of private enforcement officers has been reached throughout Ukraine. The second indicator for these actions/results is the total average number of enforcement proceedings completed by enforcement officer per year and the number of enforcement proceedings completed by private enforcement officers in relation to public enforcement officers in cases of shared competence.

Another indicator requiring administrative data collection relates to balancing creditors and debtors rights (7.7) and measures the number of appeals lodged by debtors against the violation of their rights in enforcement proceedings throughout Ukraine, the data concerning these statistics are collected by the courts and the MoJ. The higher the number of appeals, the more problematic is the safeguarding of debtors' rights during enforcement proceedings.

Surveys

Surveys aim to corroborate ADs regarding the usage of IT-tools for enforcement officers and to assess the private enforcement officers' oversight and training system.

Timing

The late completion of interventions under pillar 7, as set out in the AP, poses a challenge to reviewing the results of the JSRS during its implementation,[9] because the effects of some action/results will only show effects after 2020. Given the timeframe for the implementation of the JSRS and delays in the full establishment of the system of private enforcement officers,[10] it is recommended that the more comprehensive combined ERs for this pillar be conducted only in 2019-II with a timeframe of about six months. At the request of interlocutors during the focus group meeting, a review of the legal framework was added to the PRM in 2018-I (*see supra*).

International Standards

The right to have a court decision enforced without undue delay is covered by the fair trial guarantees of Article 6 (1) of the ECHR. The provision covers all stages of the proceedings on the determination of civil rights and obligations, including those after the final decision. The ECtHR has held that the execution of a judgment rendered by any court must be regarded as an integral part of the "trial" for the purposes of Article 6:

"Article 6 para. 1 (art. 6-1) secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", (...) However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 para. 1 (art. 6-1) should describe in detail procedural guarantees afforded to litigants - proceedings that are fair, public and expeditious - without protecting the implementation of judicial decisions; to construe Article 6 (art. 6) as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (see, mutatis mutandis, the Golder v. the United Kingdom judgment of 21 February 1975, Series A no. 18, pp. 16-18, paras. 34-36). Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (art. 6); moreover, the Court has already accepted this principle in cases concerning the length of proceedings".[11]

The ECtHR has also held that Article 6 (1) of the ECHR applies to enforcement of civil obligations regardless of whether the initial proceedings were covered by Article 6.[12] In case of enforcement

[9] See the timeframes in AP at: http://jrc.org.ua/strategies/7/en, accessed on 1 August 2016.
[10] Ibid.
[11] *Hornsby v. Greece*, ECtHR, No. 18357/91, 19 March 1997, para. 40. See also: *Romańczyk v. France*, ECtHR, No. 7618/05, 18 November 2014, para.53.
[12] *Buj v. Croatia*, ECtHR, No. 24661/02, 1 June 2006, para. 19.

proceedings resulting from a violation of a right under the Convention, Article 13 of the ECHR also applies.[13]

In addition, to the ECtHR, various other CoE *fora* have advanced applicable standards regarding enforcement proceedings:

- CoE, Committee of Ministers (2003), Recommendation Rec(2003)17 to member states on enforcement;
- CoE, CEPEJ (2009), Guidelines for a better implementation of the existing Council of Europe Recommendation on enforcement;

CoE, CCJE (2010), Opinion No. 13 (2010) on the role of Judges in the enforcement of judicial decisions, Strasbourg.

[13] FRA, Handbook on European law relating to access to justice, 2016, p. 128 seq. Accessible at: http://www.echr.coe.int/Documents/Handbook_access_justice_ENG.pdf, accessed on 19 August 2016.

(Private) Enforcement system

Baseline

Ukraine has experienced persistent problems in ensuring the (efficient) enforcement of sanctions. In chapter 3 of the Strategy, the following shortcomings in the enforcement system (at the time of the drafting of the Strategy) are outlined:

"Considerable shortcomings exist in the enforcement system, including:

- Low level of actual enforcement of court decisions;
- Lack of effective incentives for enforcement;
- Insufficient coordination and interaction between enforcement officers and other public and private institutions."[14]

In addition to the JSRS, Ukraine's National Human Rights Strategy has noted the ineffective implementation of domestic Court decisions and provides for measures designed to remedy the shortcoming, in particular, the establishment of a system of private enforcement officers.[15]

In 2009, the ECtHR rendered a pilot-judgment (*Yuriy Nikolayevich Ivanov v. Ukraine, ECtHR, No.40450/04, 15 October 2009*) in relation to the lengthy enforcement or non-enforcement of final domestic court decisions in Ukraine, noting „the recurrent and persistent nature of the underlying problems, the large number of people affected by them in Ukraine and the urgent need to grant them speedy and appropriate redress at domestic level."[16] Until the pilot judgement, the ECtHR had been seized in more than 300 cases against Ukraine and found repetitive violations of the ECHR on account of both the non-enforcement or the lengthy enforcement of final domestic awards in Ukraine and the absence of effective domestic remedies in respect of such shortcomings.[17]

The CoE Committee of Ministers (CM), in reference to its related previous interim Resolution, advised Ukraine to take urgent measures, including revising the enforcement system of national decisions.[18] In 2012, the ECtHR, upon review of the implementation of the pilot judgement decided to resume Ukrainian applications in relation to violations of the ECHR in cases of enforcement of national court decisions.

The lack of efficiency in Ukraine's enforcement proceedings is also evident in the country's rating in international justice or business indices.[19]

Enforcement proceedings in Ukraine are regulated by:

(a) the *Law on the Enforcement Proceedings* and the *Law On the Bodies and Persons Authorised to Enforce Court Decisions and Decisions of Other Bodies* adopted on 2 June 2016;

(b) the *Commercial Procedure Code* of 6 November 1991;

(c) the *Civil Procedure Code* of 18 March 2004; and

(d) the *Code of Administrative Justice* of 6 July 2005.

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[14] Justice Sector Reform Strategy, 2015-2020, as signed by the President on 20 May 2015; at 3.

[15] Decree of the President of Ukraine 501/2015 of 25 August 2015 on the Approval of the National Human Rights Strategy of Ukraine, at (4) Ensuring the Right to a Fair Trial.

[16] *Yuriy Nikolayevich Ivanov v. Ukraine*, ECtHR, No.40450/04, 15 October 2009, para 81.

[17] Ibid, para. 83; see also Committee of Ministers' Resolution of 8 June 2009 (CM/Del/Dec(2009)1059).

[18] See also: CM Interim Resolution CM/ResDH(2009)159 with the list of EctHR cases at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805acdc1; Interim Resolution *CM/ResDH(2008)1*.

[19] See for example: Word Justice Project, Country Profile Ukraine: http://data.worldjusticeproject.org/#/groups/UKR, accessed on 19 August 2016; World Bank Doing Business Index: http://www.doingbusiness.org/data/exploreeconomies/ukraine, accessed on 19 August 2016.

The Ukrainian authorities have noted that legal loopholes, allowing the parties to unduly delay the enforcement proceedings, and institutional shortcomings, in particular, the sole reliance on an ineffective public enforcement system have resulted in weak enforcement proceedings.[20]

The reform results in the establishment of private enforcement officers. This new profession will initially be recruited and organised by the MoJ, and should gradually set up a self-governing system.[21]

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

Measures related to legal and institutional changes of the enforcement system (JSRS actions/results regarding the governance system (7.1), regarding the revision of remuneration (7.4), regarding streamlining the enforcement proceedings (7.6), regarding the e-justice system (7.8), and AP area of intervention 7.1 and 7.3) aim to achieve the following key outcomes (for other outcomes see also AP):

- improved normative framework for enforcement proceedings;
- acceleration of enforcement proceedings;
- increase in the quality of work of enforcement officers.

Measures regarding the introduction of private enforcement officer (JSRS actions/results regarding the institution of private enforcement officers (7.2), regarding the creation of competition between private and public enforcement officers (7.3), and regarding the enforcement officers' training system (7.5)) and AP area of intervention 7.1 and 7.2) aim to achieve the following key outcomes (for other outcomes see also AP):

- reduction of expenses incurred by the State on enforcement through the outsourcing of services;
- accelerated enforcement proceedings.

Measures related to debtors' rights (action/result regarding balancing creditors and debtors' rights JSRS 7.7 and AP action 7.3.2) aim to achieve the following key outcome: the enforcement procedure remains fair despite efficiency measures.

[20] Meeting of the CoE Consultant with MoJ Officers on 12 July 2016.

[21] *Law On the Bodies and Persons Authorised to Enforce Court Decisions and Decisions of Other Bodies* adopted on 2 June 2016, Section V, Transitional provisions. For the envisaged timeframe, see: http://jrc.org.ua/strategies/7/en, accessed on 19 August 2016.

PRM Matrix on Assessment Area

7. Improving the Enforcement System

7.1. Legal and Institutional Changes to the Enforcement System

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Streamlining the enforcement governance system[22] (AP 7.1)	Legal and Institutional changes in the enforcement system (including regulations).	Institutional risks for delays in enforcement proceedings reduced/ eliminated.	Expert Report [23]	MoJ in co-operation with International Development Partner (IDP) (e.g. CoE[25])	2019-II (estimated duration 6 month)
		Reformed legal framework for enforcement is assessed positively	Expert Report [25]	MoJ in cooperation with national NGO with financial support of IDP	2018-I
Revision of the mechanism of remuneration for enforcement officers to improve productivity[26] (AP 7.3)	Amendments to rules on remuneration of (public) enforcement officers and application of the new remuneration system.	Productivity of (public) enforcement Officers increased: average number of actual cases completed per enforcement officer.	Administrative Data Collection and Analysis[27]	MoJ	Annually in 2017-2020 (II)

[22] In the JSRS this is action /result 7.1.

[23] Comparative expert assessment of the legislative solutions adopted in the 2016 Law on Enforcement Proceedings, Law On the Bodies and Persons Authorised to Enforce Court Decisions and Decisions of Other Bodies and other relevant legislation and regulations carried out by an international expert on civil procedure supported by local experts. For ease of implementation and cost efficiency it is proposed that the assessment of actions/results action/results regarding the enforcement governance system, regarding the development of private enforcement officers regarding the training system, and regarding the revisions of the enforcement procedure are conducted in one expert assessment focusing on the respective components of the results.

[24] The CoE is suggested as the international actor conducting the relevant assessment due to its unique expertise in the field.

[25] During the focus group meet on 6 October 2016, interlocutors suggested conducting an assessment of the legal framework earlier than in 2019 to be able to react to identified shortcomings during the implementation of the JSRS. Whereas the AP provides that interventions regarding result 7.1 are finalised by 2018, the work plan for 2016 (see: http://jrc.org.ua/strategies/plan/7/2016/en, accessed on 15 October 2016) provides for numerous legislative measures. Upon the proposal of the MoJ, it is suggested that a separate legislative assessment be conducted by 2018.

[26] In the JSRS this is action/result 7.4.

[27] Measured are: the average number of actually completed enforcement cases (according to Article 5 para 2 of the Law on EP in the competence of public officers alone) per enforcement officer per year compared throughout the period in which the JSRS is implemented. The MoJ collects data on the completion of enforcement cases under Article 5 para 2 of the Law on EP and calculates the average number completed per employee. Where resources allow, geographical differences should also be analysed and the average number per enforcement officer completed in each region should be analysed.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Less formalised and more streamlined stages and terms of enforcement proceedings[28](AP 7.1)	(1) Revised legal framework for accelerating enforcement proceedings; (2) Practical measures to accelerate enforcement implemented.	Procedural risks for delays in enforcement proceedings reduced/ eliminated.	Expert Report (see supra)	MoJ in co-operation with IDP (e.g. CoE[29])	2019-II (estimated duration 6 month)
		Average duration of selected enforcement proceedings.	Administrative Data Collection and Analysis [30]	MoJ	Annually in 2017-2020 (II)
Strengthening the information systems management for better provision by enforcement officers of e-justice services[31] (AP 7.3)	(1) Unified register of debtors in accordance with Article 9 of the Law on EP is fully functional. (2) Database for enforcement officers is in operation.	Number of debtors registered in the database in accordance with Article 9 of the Law on EP	Administrative Data Collection and Analysis	MoJ	Annually in 2017-2020 (II)
		Access to general e-justice services for enforcement officers Percentage of enforcement officers having access to e-justice per region.	Administrative Data Collection and Analysis	MoJ	Annually in 2017-2020 (II)
		Access/usage to/of general e-justice services for enforcement officers: - percentage of enforcement officers having access and regularly using e-justice per region.	Survey[32]	MoJ	2019-I

[28] In the JSRS this is action/result 7.6.

[29] The CoE is suggested as the international actor conducting the relevant assessment due to its unique expertise in the field and its interest in the reform considering the caseload of related applications before the ECtHR.

[30] Statistics are collected by the MoJ and compared annually. The time measured as the duration will be the time from the start of enforcement proceedings in accordance with Article 26 of the Law on EP to the end of the enforcement proceedings (satisfaction of creditor) in property disputes (not disputes covered under Section VIII of the Law on EP). The actual duration of the enfocement proceedings, which includes all possible legal remedies, will be measured. Where resources allow, geographical discrepancies in the indicator should be monitored as well, and dates should be collected by region to assess whether additional measures are required in certain regions.

[31] In the JSRS this is action/result 7.8

[32] In order to verify the data collected through the administrative data; the MoJ will also conduct a survey amongst the private and public enforcement officers regarding the use of the database among private and public enforcement officers. The results should be assessed per region to assess geographical differences.

PRM Matrix on Assessment Area

7. Improving the Enforcement System

7.2. Measures relating to the introduction of private enforcement officers

Action/Result	Major Output/Measures	Outcome Indicators	Methods	Actors	Timing
Development of the institution of private enforcement officers, including by creating an independent governance system, mechanisms for admission to the profession, a system of oversight and revocation of licences, and professional civil liability. insurance[33] (AP 7.3)	Creation of governance, recruitment, oversight, liability system for private enforcement officers.	Fairness, and transparency of the admission system to the profession of private enforcement officers; Efficiency of the liability system of private enforcement officers; Functioning oversight system for private enforcement officers; Effectiveness and transparency of the private enforcement officer's governance system.	Expert Report [34]	MoJ in co-operation with IDP (e.g. CoE) / Courts	2019-II (estimated duration 6 month)
		Assessment of enforcement officers of their professional civil liability insurance system.	Survey among enforcement officers	MoJ in cooperation with the association/ chamber of private enforcement officers	2020-I
Creation of equal competition between private and State-run branches of the enforcement system; striking a balance between the powers of private and State enforcement officers[35] (AP 7.1)	(1) Adoption of legislative framework for the competencies of private and public enforcement officers. (2) Establishment of the private enforcement system.	Number of private enforcement officers: (1) registered in total (calculated at the end of each calendar year) in the country; (2) in each region of Ukraine (calculated at the end of each calendar year).	Administrative Data Collection and Analysis	MoJ in cooperation with the association/ chamber of private enforcement officers	Annually in 2017-2020 (II)
		Number of enforcement proceedings/ complaints: (1) fully enforced in accordance with Article 39 (1) (9) of the Law on EP by private enforcement officers in total per year officer. (2) number of complaints filed in relation to the inactions of state enforcement officers and (3) private enforcement officers in total per year.	Administrative Data Collection and Analysis	MoJ in cooperation with the association/ chamber of private enforcement officers	Annually in 2017-2020 (II)

[33] In the JSRS this is action/result 7.2;

[34] Comparative assessment of the newly established private enforcement system with a special focus on certification of enforcement officers by an international expert on civil procedures assisted by a local expert. The estimated duration of assessment will be up to six months. For the ease of implementation and cost efficiency, it is proposed that the assessment of JSRS 7.1, 7.5, 7.6 and 7.2 are conducted in one expert assessment focusing on the respective components of the results.

[35] In the JSRS this is action/result 7.3.

Action/Result	Major Output/Measures	Outcome Indicators	Methods	Actors	Timing
Developing the initial and continuous training systems in accordance with to the harmonised objectives, tasks, and professional requirements; harmonised ethical and disciplinary rules for private and State enforcement officers[36] (AP 7.2)	(1) Training system for private enforcement officers established. (2) Accountability system and ethical rules for private and public enforcement officers established.	Geographical coverage of training programme for enforcement officers Quality and comprehensiveness of the training programme for private and public enforcement officers	Expert Report [37]	MoJ in co-operation with IDP (e.g. CoE) in cooperation with the association/ chamber of private enforcement officers	2019-II (estimated duration 6 month)
		Assessment of enforcement officers of the (1) quality, the accessibility, and the relevance of the training programmes and (2) of the quality and fairness of the disciplinary system.	Survey among enforcement officers	MoJ in cooperation with the association/ chamber of private enforcement officers.	2019-I
		Fairness of the accountability system for enforcement officers.	Expert Report [38]	MoJ in co-operation with IDP (e.g. CoE) in cooperation with the association/ chamber of private enforcement officers	2019-II (estimated duration 6 month)

[36] In the JSRS this is action/result 7.5.

[37] Comparative assessment of the newly developed oversight, accountability and training system for enforcement officers. For the ease of implementation and cost efficiency, it is proposed that the assessment of actions/results action/results regarding the enforcement governance system, regarding the development of private enforcement officers regarding the training system, and regarding the revisions of the enforcement procedure are conducted in one expert assessment focusing on the respective components of the results.

[38] The comparative assessment of the newly developed oversight, accountability and training system for enforcement officers. For the ease of implementation and cost efficiency it is proposed that the assessment of actions/results action/results regarding the enforcement governance system, regarding the development of private enforcement officers regarding the training system, and regarding the revisions of the enforcement procedure are conducted in one expert assessment focusing on the respective components of the results.

PRM Matrix on Assessment Area

7. Improving the Enforcement System

7.3. Measures regarding debtors' rights

Action/Result	Major Output/ Measures	Outcome Indicators	Methods	Actors	Timing
Promoting balance between the rights of creditors and debtors by enabling enforcement officers to seize the debtor's assets, while putting in place safeguards against abuse, effective incentives for voluntary enforcement of court decisions and sanctions against unwilling debtors[39] (AP 7.3)	Fair enforcement proceedings introduced through amending legislation	Violation of debtors' rights as established in the final judgements: Number of appeals brought by debtors granted throughout Ukraine and in the regions.	Administrative Data Collection and Analysis	MoJ/ Courts	Annually in 2017-2020 (II)

[39] In the JSRS this is action/result 7.7

7.4. Impact assessment under Chapter 7

The current challenges in the enforcement system in Ukraine have resulted in backlogs of enforcement cases pending. The impact of the reforms of the enforcement can be can be measured by monitoring the backlog of enforcement cases pending.

PRM Matrix on
Impact assessment under Chapter 7

Impact	Impact Indicators	Methods	Actors	Timing
Reduction in the backlog of enforcement cases	Number of enforcement cases pending in Ukraine and in the regions:[40] - between 6 and 12 months; - between 1 and 3 years; - for more than 3 year.	Administrative Data Collection and Analysis	MoJ/ Courts	Annually in 2017-2020 (II)

[40] It is suggested that the data is collected and compared in Ukraine and in the individual regions which will show where geographic discrepancies exist and where measures targeting individual regions are warranted.

8. STRENGTHENING THE PUBLIC PROSECUTOR'S OFFICE

8. Strengthening the Public Prosecutor's Office

INTRODUCTION

Overall Structure

The Strategy and Action Plan rightly single out the Public Prosecutor's Office (PPO) and devote particular attention to it both due to the importance of this service for the criminal and overall justice sectors in any jurisdiction and its considerable institutional, functional and other deficiencies in Ukraine. In addition to outlining its shortcomings in a special sub-paragraph, Chapter 3 of the Strategy assigned to it an individual pillar "Strengthening PPO in accordance with European standards".[1] In chapter 5 it was attributed a separate sub-chapter 8 comprising the following 7 blocks of activities and results:[2]

1. Ensuring greater institutional independence of the PPO; striking a balance between independence, competence, accountability and efficiency of the PPO, including by introducing changes in the prosecutorial governance system, performance management, and professional and continuous training systems;

2. Streamlining the duties of the PPO and performance thereof in accordance with the recommendations of the CoE;

3. The creation and effective operation of the PPO self-governance bodies as additional safeguards for independence of the PPO;

4. Ensuring the greater functional independence of prosecutors from improper internal influence;

5. Ensuring a greater balance between the investigative functions of the PPO and other law enforcements agencies;

6. Improving the ethical and disciplinary frameworks for prosecutors and internal oversight mechanisms, including by introducing extended declaration of assets, revenues and expenditure by prosecutors and their family members;

7. Ensuring a practical and effective investigation into allegations of corruption and other serious offences committed by prosecutors.

The formulation of the actions and results in issue call for the striking of a balance between independence, competence, accountability and efficiency of the PPO and the intertwined repetitive clauses. For the purposes of streamlining and facilitating performance assessment and designing the related elements of the PRM,[3] they are re-grouped into the following thematic clusters (assessment areas):

8.1. Prosecutorial independence (Institutional Independence, Functional Independence of Prosecutors from Improper Internal Influence; Prosecutorial Governance and Self-Governance System);

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[1] For more details see the baseline sections of the relevant components of the PRM.

[2] The blocks of activities and results have been numbered for the purposes of the RPM.

[3] They have clearly been re-grouped also for the purposes of implementation when designing the relevant segments of the AP.

8.2 Duties of the PPO and performance thereof in accordance with the recommendations of the Council of Europe; striking a balance between the investigative functions of the PPO and other law enforcements agencies.

8.3 Performance management;

8.4 Professional and continuous training systems

8.5 Ethical and disciplinary frameworks for prosecutors, the fight against corruption and internal oversight mechanisms;

8.6 Transparency.

PPO-related International Standards and Country-Specific Reference Documents

- Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system;
- Recommendation CM/Rec(2012)11 of the Committee of Ministers to member states on the role of public prosecutors outside the criminal justice system;
- Recommendation 1604 (2003) on the Role of the Public Prosecutor's Office in a Democratic Society Governed by the Rule of Law of the Parliamentary Assembly of the Council of Europe;
- The Venice Commission's Report on European Standards as regards the Independence of the Judicial System: Part II The Prosecution Service;
- The European Guidelines on Ethics and Conduct for Public Prosecutors ('the Budapest Guidelines') adopted by the Conference of Prosecutors General of Europe;
- Opinion No. 3(2008) of the Consultative Council of European Prosecutors on 'The Role of Prosecution Services Outside the Criminal Law Field';
- Opinion No.12 (2009) of the Consultative Council of European Judges (CCJE);
- Opinion No.4 (2009) of the Consultative Council of European Prosecutors (CCPE) on "Judges and prosecutors in a democratic society" ('the Bordeaux Declaration');
- Joint Venice Commission and Directorate General of Human Rights 2013 Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine and preceding assessments of the (draft) legal framework on the PPO of Ukraine issued by the Venice Commission;
- Venice Commission Interim Opinion on the Draft Law on Integrity Checking of Ukraine, CDL-AD(2015)031;
- Thematic Directory of the Principles for a Draft Law on the Public Prosecution Office of Ukraine prepared as part of the Project "Support to Criminal Justice Reform in Ukraine".[4]

[4] The Directory in its turn suggests specific references to the ECHR and the applicable case law of the ECtHR accordingly.

8.1. Prosecutorial independence

Baseline

The Strategy has suggested that PPO lacks sufficient structural independence, that is combined with the impunity and insufficient accountability, and that the PPO functions do not comply with European standards.

The introductory comments on Chapter 8 of the AP have stressed that its independence should be strengthened at the structural level (with regard to other institutions); there is no independent governance body alongside the Prosecutor General, leaving the latter with wide and, at times, unfettered powers both at the policy-making and operational levels; creation of a self-governance body under the new legislation may help overcome these gaps in institutional governance.

In some specific details, the state of affairs preceding the adoption of the new law on the PPO and recent constitutional changes (within the package related to the judiciary) was summarised in the Joint Venice Commission and Directorate General of Human Rights 2013 Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine. According to this opinion, the combination of excessive centralisation under the Prosecutor General with the dependence of the Prosecutor General on political organs created problems for the independence or autonomy of the prosecution service. Moreover, it identified the threats to the independence resulting from: the relative shortness of the term of office, when coupled with the power of reappointment, of the Prosecutor General and subordinate public prosecutors; the absence of adequate guarantees against the dismissal of the Prosecutor General, as well as any input by a technical, non-political body in the appointment process for the Prosecutor General.[5] As to the self-governance of prosecutors, it stressed the importance of developing a fully-fledged set of relevant bodies, including the All-Ukrainian Conference and Qualifications and Disciplinary Commission, as well as striking a balance between their powers and the PPO itself.[6]

In mid-2016, after certain controversial developments within the PPO and with regard to its reform, the Ukrainian authorities opted to introduce amendments to the Law on the PPO concerning the Prosecutor General's profile, the temporary suspension of the prosecutorial self-governance, and changed the leadership of the PPO accordingly.

The opinion polls suggest a quite negative perception and public confidence about the reform of the PPO, including with regard to the most recent cycle of appointment of local prosecutors. Although it was carried out within the context of the reform, more than 50 percent of those questioned in the opinion polls expressed a negative perception.[7]

There are no separate international indices addressing the performance of prosecution systems. However, some of the relevant exercises concerning the judiciary and rule of law in general comprise an evaluation of relevant specific factors. Thus, the Rule of Law Index suggests a breakdown in terms of different problems facing the criminal investigation systems, including prosecutorial independence. According to the data collected on the relevant variable in the

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[5] CDL (2013)039, paras. 15, 30.

[6] Ibid, paras. 154-178.

[7] ДУМКИ ТА ПОГЛЯДИ НАСЕЛЕННЯ УКРАЇНИ щодо Конституції, конституційної, судової реформ і реформи прокуратури, Грудень 2015. Дослідження проведено Фондом «Демократичні ініціативи» імені Ілька Кучеріва на замовлення Центру політико-правових реформ в рамках проекту «Спідометр конституційної та судової реформ», фінансованого Європейським Союзом, http://pravo.org.ua/ua/news/20871276-scho-ukrayintsi-dumayut-pro-konstitutsiyu,-reformu-sudu-i-prokuraturi

course of preparing the 2015 Rule of Law Index by the World Justice Project, the prosecutorial independence in Ukraine was identified as a significant problem.[8]

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The matrix on the PPO independence-related interventions is based on actions 8.1.1, 8.1.2, 8.1.3, 8.1.4, as well as 8.2.1 itemised in the AP. In substance they provide for greater independence of the PPO from political power, its institutional independence, greater functional autonomy / internal independence of individual prosecutors and greater personal autonomy of prosecutors respectively, as well as clear and transparent selection and appointment procedures of prosecutors.

At the same time, it should be noted that there are certain particularities of the AP that are addressed in the matrix. Thus, measure 2 under activity 8.1.1 that concerns the powers of the Prosecutor General includes a provision on his/her appointment framework that is already addressed in measure 1. Moreover, the same measure (2) inexplicably contains a part on performance-based and programme budgeting tackled by measure 3. Accordingly, the matrix has eliminated these overlaps.

The set of outcome indicators concerning *institutional independence* listed in the relevant column of the AP does not include any with regard to a clear measure/output on the security of tenure and term of office of the GP. There are no specific outcome indicators of *enhancement of the PG's powers* in the AP either.[9] The matrix remedies this omission as well.

As to awareness raising, outcome indicators corresponding to Action 8.1.2, the AP provides that officials and public require full information about the responsibilities of the prosecutorial SGS bodies, and their decisions. The matrix takes into account that although it is broader than the formulation of measure 2, which concerns only prosecutors and not public at large, there is a separate intervention area dedicated to the transparency of PPO. Accordingly, the Matrix tackles only the profession-related (internal) communication aspects of the activity.

The matrix remedies the lack of immediate consistency in listing the outcome indicators in the relevant block of the AP for the *career development-related* measures/outputs under Action 8.1.3. Therefore, it notes that the indicator concerning public access to the PG's official website to the reasoning part of the recommendation of the Council of Public Prosecutors of Ukraine (CP)[10] to office and the reasoning part of the PG's refusal to appoint to office the candidate recommended by the CP is inserted among those related to *internal (individual) independence of prosecutors* and allocates it accordingly.

[8] See Global Insights, Problems Facing Criminal Investigation Systems, http://worldjusticeproject.org/problems-facing-criminal-investigation-systems

[9] It refers to fine-tuning the scope of functions of PPO and prosecutors according to Venice Commission recommendations and other European standards and best practices.

[10] This acronym is also used by the JSRS Action Plan.

PRM Matrix on Assessment Area

8.1. Prosecutorial independence

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Greater independence of the PPO from political power (8.1.1)	1. Review of the Constitution and statutes concerning the procedure of appointment, dismissal and terms of the PG	- Principle of checks and balances when appointing the PG as suggested by the CoE standards/Venice Commission recommendations[11]	Expert report	IDP (CoE)[12]	2017-I
		- Advanced impartiality and depolitisation of the framework for the PG nomination, vetting, selection and appointment	Expert report	IDP (CoE)	2017-I
		- Application of a merit-based criteria and rating of candidates to the office of PG	Expert report	IDP (CoE)	2017-I
		- Sufficient legal and actual guarantees (grounds for dismissal and procedure, term of office) for ensuring the security of tenure of the PG	Expert report	IDP (CoE)	2017-I
	2. Review of the framework on enhancing the PG's powers	- The scope of the PG's powers defined in line with the institutional, internal independence, self-governance and other CoE standards and recommendations of the Venice Commission[13]	Expert report	IDP (CoE)	2017-II
	3. Financing of the PPO, formalising the principles of performance-based budgeting and programme budgeting by PPO	- The PPO budgeting framework is built on an annual budget cycle and the draft budget is developed in accordance with the programme (MTBF) and performance-based and aligned with Strategic Planning methodologies	Expert report or Expert panel[14]	Council of Public Prosecutors of Ukraine	2018-I

[11] See below the list of applicable international standards and documents.
[12] The Council of Europe is suggested as the actor to be invited for providing relevant assessment due to its extensive expertise in this area.
[13] See above the list of applicable international standards and documents.
[14] The assessment could be alternatively carried out by means of an expert report (opinion) or holding a panel.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
		- Expenses determined in the State budget upon requests approved by the PG - Increased quality of public financial management (PFM) - Budgetary adjustments and further policy developments in all matters of the PPO organisation, institutional modifications, number of prosecutors determined by performance assessment data and evidence-based approach	Expert panel	Council of Public Prosecutors of Ukraine	2018-I 2020-I[15]
		- Improved cost-efficiency of the PPO	Administrative data	Council of Public Prosecutors of Ukraine	2018-I 2020-I
Greater institutional independence of the PPO system (8.1.2)	1. Reviewed regulatory framework for prosecutorial self-governance system	- All bodies within the SGS function in an effective and sustainable manner in line with the CoE standards/Venice Commission recommendations.	Survey among prosecutors	Council of Public Prosecutors of Ukraine	2017-II 2020-II[16]
		- The CP's effectively contributes to the reinforcement of the independence of prosecutors, their legal and social status, addressing their relevant grievances.	Survey among prosecutors	Council of Public Prosecutors of Ukraine	2017-II 2020-II[17]
		- The QDC effectively handles career development matters, including handling complaints of other prosecutors on these issues	Survey among prosecutors	Council of Public Prosecutors of Ukraine	2017-II 2020-II[18]
	2. Awareness campaigns for prosecutors at all levels on role, functions and range of responsibilities of SGS	- Officials have full information about the responsibilities of the prosecutorial SGS bodies, and their decisions	Survey among prosecutors	Council of Public Prosecutors of Ukraine	2017-II

[15] It is suggested that one repeats the survey (among prosecutors) in order to assess dynamics and sustainability of outcomes and impacts. See also the relevant rows of the Impact Indicators Matrix for Chapters 8 and 10.

[16] It is suggested that one repeats the survey (among prosecutors) in order to assess dynamics and sustainability of outcomes and impacts. See also the relevant rows Impact Indicators Matrix for Chapters 8 and 10.

[17] Supra note.

[18] Supra note.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Ensuring greater functional autonomy of prosecutors from improper internal influence (8.1.3)	1. Reviewed regulatory framework for implementation of specific criteria by CP for candidate selection, and appointment to positions based on results of performance evaluation	- All new appointments of prosecutors in the system (100%) are done through the new appointment system - The independence of prosecutors is ensured through increased impartiality when such appointments are made	Administrative data	Qualifications and Disciplinary Commission	2017-II
			Survey among prosecutors	Council of Public Prosecutors of Ukraine	2017-II 2020-II[19]
		- Clear and foreseeable internal regulations, establishing criteria for choosing candidates, selecting prosecutors and their dismissal - Career decisions taken on a merits-based system	Expert panel	Council of Public Prosecutors of Ukraine	2017-II
			Public survey	Council of Public Prosecutors of Ukraine	2020-II[20]
		- Live-streaming of recruitment interviews - Software in place for evaluating the prosecutor candidates' compliance with the established criteria - Public access on the PPO official website to the reasoning part of the CP's recommendation to office and the reasoning part of the PG's refusal to appoint the candidate recommended by the CP	Administrative data	GPO	2017-II

[19] Supra note.
[20] Supra note.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
	2. Internal regulations, establishing an exhaustive list of grounds for inspections of lower prosecutorial bodies by higher ones 3. Internal guidelines and policies on the scope of prosecutorial discretion and enlarging the freedom of prosecutors to issue procedural written documents without the prior agreement of the relevant supervisor 4. Regulatory framework on the procedure of making written orders and giving oral or written instructions by higher-level prosecutors to lower-level prosecutors	- Enhanced scope of prosecutorial discretion within the limits established by the law; - Introduction of the obligation of higher-level prosecutors to give orders in writing - Introduction of a ban on disciplinary responsibility of prosecutor for non-compliance with an oral order or instruction of higher prosecutor - Introduction of a ban on improper inspections of lower-level prosecutors by higher-level prosecutors; - Clear and foreseeable internal guidelines establishing any inspection's clear and transparent grounds determined	Expert panel Survey among prosecutors	Council of Public Prosecutors of Ukraine Council of Public Prosecutors of Ukraine	2017-I 2019-II[21]
	5. Analysis of complaints on violation of prosecutorial independence included as part of Annual Activity Report of PPO	- Impartial, timely and independent examination by CP of complaints on violation of prosecutorial independence	Administrative data	Qualifications and Disciplinary Commission	Annually-(I)
	6. System of case management fully operational, distributing work-load among prosecutorial bodies and prosecutors	- System of prosecutors' specialisation according to crime types and other appropriate criteria in place - System of distribution of cases paying due attention to objective factors, such as specialisation and avoiding corrupt practices is compliant with the international standards,[22] best practices and operational	Expert report	IDP	2018–I

[21] It is suggested supplementing the initial assessment of the legal framework by means of an expert panel with the subsequent measurement of the efficiency (actual level) of attainment of these indicators through surveys among prosecutors.

[22] See below the list of applicable international standards and documents.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Ensuring greater personal autonomy of prosecutors (8.1.4)	1. Reviewed regulatory framework on remuneration, other professional guarantees and social security of prosecutors	- Reasonable remuneration and protection through salary and social guarantees depending on the role, experience and other clear and objective criteria established by law	Expert panel	Council of Public Prosecutors of Ukraine	2017-II
		- Actual increase of the salaries and other payments to prosecutors	Administrative data	GPO	2017-II 2019-II[23]
		- Social and logistics maintenance of prosecutors and PPO staff is established by law	Expert panel	Council of Public Prosecutors of Ukraine	2017-II
	2. Reviewed regulatory framework on individual freedoms of prosecutors, determining the scope and extent of the exercise by prosecutors and the PPO staff of the right to privacy, freedom of conscience, expression, and association, and other individual rights and freedoms.	- Guaranteed procedure of compulsory examination of complaints of prosecutors and PPO staff on violation of their rights due to the failure of the State to carry out its positive obligations to protect them - Regular examination by CP of complaints concerning the legal protection of prosecutors - Scope and extent of the exercise by prosecutors and PPO staff of the right to privacy, freedom of conscience, expression, association and other individual rights and freedoms, defined clearly by law - Enabling prosecutors and PPO staff to join or form local, regional, national or international professional associations in order to represent their interests and protect their status	Survey among prosecutors	Qualifications and Disciplinary Commission	2017-II 2020-II[24]

[23] It is suggested to repeat the assessment in order to assess dynamics and sustainability of outcomes.

[24] Could be addressed within the same surveys of prosecutors suggested for the indicators under Action 8.1.2. See also the Impact Indicators Matrix for Chapters 8 and 10.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Development of independent, transparent and objective procedures of selection of prosecutors (8.2.1)	1. Itemised procedures of prosecutor selection by QDC	- Provisions on QDC contain detailed regulations on rights and obligations of QDC when performing its duties for selection of prosecutors	Expert panel	IDP	2018-I
		- Information on QDC activity and decisions on prosecutors selected available to public on QDC web-site	Administrative data	Qualifications and Disciplinary Commission	Annually (I)
	2. Qualification Examination scope, form, contents and procedure developed jointly with key stakeholders. Qualification Examination formalised by internal regulations, reviewed and updated annually[25]	- Questions and assignments of Qualification Examination updated annually in order to prevent candidates from preparing answers in advance and ensure that they keep up-to-date with in criminal law and State policy	Expert report	Qualifications and Disciplinary Commission	2018-I 2020-I[26]
	3. Procedures for competitions for filling vacant prosecutor posts developed and approved depending on the rating of candidates, reviewed and updated	- Competitions for filling vacant positions held by QDC, based on results (score) at qualification Examination, and results of testing	Survey among prosecutors	Council of Public Prosecutors of Ukraine	2017-II 2020-II[27]

[25] Measure 3 concerning pre-appointment anti-corruption check of the candidates has been re-allocated and dealt with under Assessment Area 8.5 and relevant Matrix below.
[26] To be repeated for assessing the update and modification of the examination tools.
[27] Could be addressed within the same surveys of prosecutors suggested for the indicators under Action 8.1.2.

8.2. PPO responsibilities

Baseline

The Strategy has correctly suggested that the PPO functions are incompatible with European standards.

The introductory comments on Chapter 8 of the AP, have, in their turn, highlighted that the PPO is currently facing several strategic challenges, with regard to institutional reform and the implementation of the new law on the prosecution, as it tries to move closer to European standards and best international comparative practices. There is a need to strengthen the role of prosecutors as 'procedural leaders' of criminal investigations in particular.

The Joint Venice Commission and Directorate General of Human Rights 2013 Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine provides specific details with regard to the state of affairs preceding the adoption of the new law on the PPO and recent constitutional changes (within the package related to the judiciary) that followed the basic recommendations suggested in this opinion. According to this opinion, the powers conferred on public prosecutors in Ukraine considerably exceeded the scope of the functions performed by prosecutors in democratic states that complied with the rule of law, with the result that the Public Prosecutor's Office was an unduly powerful institution that amounted, in effect, to a Soviet style 'prokuratura'. It objected to the retention of functions that go beyond the criminal justice sphere relating to the representation of the interests of the individual and the state.[28]

The AP rightly suggests that momentum for reforming the criminal justice system has gained pace since the entry into force of the new Code of Criminal Procedure. However, according to international assessments, notwithstanding the five-year transitional period set out in the Code, no steps had been taken during that period with regard to the

(a) transfer of investigative functions from the Public Prosecutors Office;

(b) appropriate initial institutional changes within the Ministry of Internal Affairs and other stakeholders.

The mere upgrade of the status of investigative structures within the Ministry and a limited increase in the numbers of their staff, not supported by any redistribution of tasks and format of interaction between investigators and operative officers, has not been sufficient for the proper implementation of the Code. Even though not inappropriate, the transfer of investigative powers and structures from the first (district) level prosecutors' offices to regional ones was an insufficient measure.[29]

In the course of 2014 and 2015, the Ukrainian authorities furthered the process in issue by adopting the laws on the National Anti-Corruption Bureau and State Bureau of Investigations of Ukraine, as well as relevant institutional developments. The ongoing reform of the criminal justice system, designing new pre-trial arrangements have increased the topicality of appropriate delineation of jurisdictions and distribution or relevant responsibilities and powers among the PPO and the investigating agencies.

Moreover, the process has been facilitated by the 2016 amendments to the Constitution of Ukraine with regard to the judiciary that included the introduction of Article 131[1] that has outlined the PPO functions, including with regard to the criminal justice system (prosecution, investigative and law-enforcement activities).

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[28] CDL (2013)039, paras. 16, 30

[29] Report on an evaluation of the implementation of the Criminal Procedure Code of Ukraine, February 2015, prepared as part of the Project «Support to Criminal Justice Reform in Ukraine», para. 19.

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The matrix on the PPO functions-related interventions is based on the result/action 2 of Sub-chapter 5.8 of the Strategy providing for the streamlining of the responsibilities of the PPO and their exercise in accordance with the recommendations of the CoE.

There are neither specific actions, measures nor outputs focused on or immediately related to the adjustment of the powers of the PPO and the functions in the AP. At the same time, it contains action 8.4.1 concerning the promotion of efficient performance by prosecutors, which is itemised through measures/outputs providing only for the analysis and consistency of prosecutorial practices, developing internal guidelines on use of special investigation techniques, sentencing and other aspects of criminal procedural functions that somewhat incoherently suggests as an outcome indicator fine-tuning of scope of functions of the PPO in accordance with the Venice Commission recommendations and other European standards and best practices. This outcome could not be attained through the suggested actions and measures, since it required constitutional, legislative, institutional changes.[30] This omission has been accordingly remedied by the PRM.

Moreover, the PRM suggests cross referencing and links this assessment area to Chapter 10 activity (10.1.1) that envisages streamlining of the duties and powers of each body involved in criminal investigations and related measures and included an outcome concerning the PPO function of procedural guidance (referred to as procedural and disciplinary oversight), organising and directing pre-trial investigations, introduced by the CPC and developed by the recent constitutional changes.

[30] See the Joint Venice Commission and Directorate General of Human Rights 2013 Opinion referred to in the preceding section.

PRM Matrix on Assessment Areas

8.2. The PPO responsibilities and 10.1. Streamlined competences in criminal investigations[31]

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Streamlining the responsibilities of the PPO and their exercise in accordance with the recommendations of the Council of Europe	1. Review of the Constitution and entire legislative framework on the responsibilities of the PPO	- PPO functions and responsibilities comply with the CoE standards/VC (Venice Commission) recommendations[32]	Expert report	IDP International Development Partner (CoE)[33]	2017-II
	2. Further enhancement of the legislative, institutional, and methodological basis for carrying out the function of procedural leadership within the framework of criminal procedure	- Legislative framework, including instructions and guidelines, PPO institutional setup, staffing level and personnel capacity apt for efficient procedural leadership and supervising operational (detective) activities	Functional analysis	GPO or IDP	2018-I
			Focus group	Council of Public Prosecutors of Ukraine	2019-II[34]
		- Number of criminal files (procedures) per prosecutor - Average cost of handling procedural leadership per case (procedure)	Administrative Data	GPO	2018-I 2019-II[35]
Streamlining of duties and powers of each body involved in criminal investigation (10.1.1)	1. Reviewed regulatory framework on bodies involved in criminal investigation and operational activities	- Legislative framework, including instructions and regulations, institutional setup, staffing level and personnel capacity of the competent agencies apt for efficient investigations	Functional analysis and third party report[36] Focus group	Justice Reform Council or IDP	2018-I 2019-II[37]
		- Number of criminal files (procedures) per investigator/ detective - Average length of pre-trial investigations - Average costs of pre-trial investigations	Administrative data	GPO	2017-II 2020-II

[31] The results, intervention areas have been merged into one assessment cluster for the purposes of the PRM due to their overlap and close interrelation.
[32] See above the list of applicable international standards and documents.
[33] The Council of Europe is suggested as the appropriate actor to provide relevant assessment due to its extensive expertise in the matters in this issue.
[34] It is suggested supplementing the initial functional analysis with subsequent assessment of the indicators through a set of (preferably multi-actor) focus group discussions.
[35] To be syncronised with the assessment of the preceding indicator.
[36] In case of availability of sufficiently comprehensive and substantial third party reports, an expert assessment could be replaced by or reduced to their analysis.
[37] It is suggested to supplement the initial functional analysis with subsequent assessment of the indicators through a set of (preferably multi-actor) focus group discussions.

8.3. Performance management in PPO

Baseline

The underdeveloped performance management tools in the PPO is one of the deficiencies specified in the Strategy's chapter on the state of affairs in the sector. The AP also mentions the need to advance performance management in the PPO.

The Joint Venice Commission and Directorate General of Human Rights 2013 Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine highlighted that there is a need to introduce a performance evaluation system in the Law. Based on the findings, it suggested that such a system should provide for objective criteria for evaluations and include necessary guarantees for appeals against negative evaluations.

Moreover, it addressed a specific aspect of the existing system of performance indicators. It recommended that the PPO Law should explicitly rule out that an acquittal of a person accused by a prosecutor can result in disciplinary proceedings against the prosecutor unless the charges were brought due to gross negligence or bad faith. It seems that because of the fear of performance indicators and of disciplinary proceedings prosecutors exert pressure on the judges to avoid acquittals. Currently prosecutors seem to feel obliged to win all cases lest they face disciplinary action. In a democratic system under the rule of law, prosecutors are parties subject to the principle of the equality of arms and necessarily lose cases without this resulting in disciplinary action against them.

The related deficiencies were once more confirmed by the expert assessment of implementation of the new CPC carried out by the CoE consultants. Accordingly, they recommended that effective implementation of the provisions in the Code relating to prosecutors necessitates the complete modification of performance indicators, targets and the introduction of a relevant performance management system for prosecutors.

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The matrix on the interventions concerning *performance management* in PPO expands the relevant clause of action/result 1 of Chapter 5.8 of the Strategy and is based on the AP entries related to actions 8.2.4 tackling individual Prosecutors Performance and 8.2.5 relating to the PPO Effectiveness Evaluation systems.

The matrix maintains and highlights the difference between performance management, criteria of individual prosecutors and institution as a whole and its regional and local offices. At the same time, in view of the close interrelation of the specific measures and outputs envisaged by the AP that are relevant for measuring progress in this area and their combined contribution to the outcome indicators, the Matrix groups them (the measures) in two blocks without immediately aligning indicators to each of them.

PRM Matrix on Assessment Area

8.3. Performance management of PPO

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Implementation of individual Evaluation of Prosecutors' Performance (EPP) system for improving career management at PPO (8.2.4)	1. Transparent and objective system of individual evaluation of prosecutor's performance implemented 2. Reviewed human resources policy, using ratings (score-based) EPP system for appointments, re-assignments and promotion	- Application of a Standard procedure of regular (every two years) EPP of every prosecutor by his hierarchical superior - Prosecutors of central PPO office are evaluated by the PG and his Deputies - Due relevance given to a mixture of quantitative and qualitative standards as part of the EPP - Standard sample (template) of questions as part of the EPP - Additional questions for prosecutors holding management positions introduced for evaluations of their managerial qualities	Desk research Survey among prosecutors	Council of Public Prosecutors of Ukraine[38]	2017-II 2017-II
Implementation of institutional PPO Effectiveness Evaluation (PEE) system for improving institutional role (8.2.5)	1. Transparent and objective institutional PPO performance evaluation system (PEE) implemented through carrying out and publishing relevant research and analysis in Annual Activity Reports on PPO 2. Trainings of PPO employees and CP members on research and analysis, strategic planning, financial planning, and risk management tools 3. Practice guides and instructions on application of the PEE developed, disseminated and regularly reviewed	- PPO regularly submits its Annual Activity Report, in order to evaluate PPO's efficiency and undertake appropriate measures for improvement - Regional PPO units submit their regular reports to PG; local PPO units submit their regular reports to relevant regional PPO units	Administrative data	Council of Public Prosecutors of Ukraine	Annually-(I)
		- Relevant clear and coherent set of performance indicators of the PPO in general and separate offices designed and applied, due relevance given to mixture of quantitative and qualitative standards as part of the PEE	Expert report	GPO	2018-I
		- Number of trainings and seminars organised for relevant staff of the PG and CP (100%) to increase the quality of analysis and reporting	Administrative data	GPO/ Council of Public Prosecutors of Ukraine	2018-I

[38] Although these issues do not fall under the competence of the Council of Public Prosecutors, it is suggested that the Council carries out the evaluation in order to avoid self-assessment on this issue.

8.4. Professional and continuous training systems of PPO

Baseline

The wording of action / result 5.8 of the Strategy has highlighted a need to introduce changes to the professional and continuous training systems of prosecutors. The introductory part to Chapter 8 of the AP also refers to a reform of the training system in the PPO.

Although the Joint Venice Commission and Directorate General of Human Rights 2013 Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine did not make any specific recommendations as to the system of training and the National Academy of Prosecutors (NAPU), it addressed the special training courses of candidate prosecutors by specifying that they are to be explicitly linked to the training at the NAPU. Moreover, it required that such training is subject to assessment and any disputes regarding its success are finally settled.

The ongoing reforms and enactment of the new CPC has increased the importance and need for specific and targeted in-service training of prosecutors once more confirmed by the findings and relevant report on the monitoring on its implementation carried out by the CoE experts.

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The matrix on the interventions concerning *training* in PPO expands the relevant clause of action/result 1 of Chapter 5.8 of the Strategy. The AP addresses it through actions/outputs 8.2.2 and 8.2.3 concerning respectively initial and continuous training and corresponding set of outcome indicators.

In view of the close interrelation of some of the specific measures and outputs envisaged by the AP that are relevant for measuring progress in this area and their combined contribution to the outcome indicators, the Matrix groups them (measures) in two blocks without immediately aligning indicators to each of them.

Moreover, taking into account that the NAPU-based initial training constitutes a pre-condition for becoming a prosecutor, the Matrix suggests an expanded set of outcome indicators on fairness of relevant testing.

PRM Matrix on Assessment Area

8.4. Professional and continuous training systems of PPO

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Implementation and modernisation of the system of initial training of candidate prosecutors (8.2.2)	1. Reviewed regulatory framework on the status of National Academy of Prosecutors of Ukraine (NAPU) as sole institution for initial training of candidate prosecutors	- The legislative framework provides for NAPU as the only institution for initial trainings for candidate prosecutors - Number of exceptions to the general rule - The percentage of newly appointed prosecutors that underwent initial training at the NAPU	Desk research	GPO	2017-I
		NAPU has access to and effectively spends financial, human and organisational resources for the initial training of candidates for prosecutors	Functional analysis or Expert panel[39]	GPO	2018-II
	2. Curricula of initial training of prosecutors developed, based on discussions with HEIs, SGS, lawyers and international experts 3. Curricula of initial training of candidates public prosecutors regularly reviewed, updated and disseminated through electronic libraries 4. System of training of trainers (TOT) for initial training of prosecutors implemented aiming at delineation between academic and professional approaches 5. Satisfaction surveys, including for trainees, carried out regularly, identifying needs in adapting initial training curricula[40]	- Well-balanced curricula developed for the initial training of prosecutors - The initial training programme individualised in accordance with the experience and role the prosecutor is expected to perform - Curricula of initial training focuses on improving practical skills and problem-solving - Ukrainian and international practitioners, including prosecutors and lawyers are regularly involved as trainers - Ensured continuous training of researchers at NAPU, increased volume of research & analysis activities - Ensured continuous TOT for initial training of prosecutors, including by their internships in relevant foreign institutions and trainings involving international experts - Selection procedure for filling the PPO staff includes the stages of training, of professional and psychological training - Number of satisfaction surveys carried out and their appropriateness	Expert report	GPO	2020-II
		- Curricula annually updated and accessible on the NAPU website	Administrative data	GPO	Annually (II)

[39] The choice for specific assessment method to be used (functional analysis or expert panel) is to be made on the basis of available resources and the expected scope of evaluation.

[40] Due to evident editorial shortcomings, the formulation of the measure/output concerned has been amended.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
	6. Format and content of practical assignments and anonymous testing for candidates developed	- Anonymity and conformity of assignments and tests to curricula and relevant professional requirements by way of annual updates	Desk research	GPO	2017-II 2019-II
		Number of complaints against the results of the testing upon completion of the initial training	Administrative data	GPO	2018-I 2020-I
		-The system of initial training and testing regarded as appropriate and fair	Survey among prosecutors	Council of Public Prosecutors of Ukraine	2020-1I
Modernisation of the system of continuing training of prosecutors (8.2.4)	1. Continuing training curricula harmonised with professional requirements in framework of PPO reform. 2. New system of testing after continuing training course implemented 3. Ukrainian and foreign lawyers involved as trainers for continuing trainings of prosecutors 4. Curricula of continuous training of prosecutors regularly reviewed, updated and disseminated through electronic libraries 5. System of training of trainers (TOT) for continuous training of prosecutors implemented 6. Satisfaction surveys, including for trainees, on trainings of the PPO staff carried out regularly, identifying needs in adapting continuous training curricula[41]	- All the prosecutors (100%) covered by and benefiting from the regular continuous raining scheme - Content of continuing training curricula reviewed, new courses introduced - Special courses for prosecutors holding management positions to increase skills in HR, strategic planning, budget and financial policy formulation, M&E of subordinated employees' efficiency, PR/communications - Joint courses and seminars with judges and advocates, police officers and those from agencies carrying out detective activities, role plays of court hearings (moot court exercises) - Ukrainian and international practitioners, including prosecutors and lawyers, regularly involved as trainers - Regular study visits to, ECtHR, ECJ and prosecutorial bodies of EU MS for prosecutors achieving high sores in the continuous training programme - International trainers and mentors among regular participants in the continuous training system - Information management systems at the PPO interoperable with those of other justice sector stakeholders, police, agencies carrying out detective activities and governance bodies, and the HEIs	Administrative data Focus group Survey among prosecutors	GPO GPO GPO	2019-I 2019-I 2020-II[42]

[41] Due to evident editorial shortcomings the formulation of the measure/output concerned has been amended.

[42] In addition to the initial assessment by means of holding focus group meetings it is suggested to supplement them by subsequent survey among prosecutors.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
		- Curricula of continuous training for prosecutors annually updated and discussed publicly among users, taking into consideration the results of Annual Activity Report of PPO, curricula fully accessible at the NAPU official website - Ensured TOT for continuous training of prosecutors, including by their internships in relevant foreign institutions and trainings involving international experts			
	7.System of incentives to continuous training in place, including[43] through sending the prosecutors with the best test score result to study visits at foreign institutions	- System of incentives introduced - Number of prosecutors encouraged	Desk research	Council of Public Prosecutors of Ukraine	2020-II

[43] The word 'including' incorporated in the formulation by the PRM authors.

8.5. Ethical and disciplinary frameworks for prosecutors, internal oversight mechanisms and fight against corruption in PPO

Baseline

When outlining the key deficiencies in terms of ethical and disciplinary rules and internal and external oversight tools, including for fighting corruption in the PPO, the Strategy specifies that they were underdeveloped. The AP echoes it by stressing the need to focus on further reform and clarification of the ethical and disciplinary framework.

The Joint Venice Commission and Directorate General of Human Rights 2013 Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine emphasises the absence of objective criteria and a fair procedure for disciplinary action against public prosecutor and identified the lack of clear interrelation between a violation of prosecutorial ethics and disciplinary grounds leading to the imposition of disciplinary sanctions. The Opinion equally specified the absence of any independent oversight over the operation and management of the Public Prosecutor's Office and need to properly provide for a duty to make an annual declaration of assets, income, expenses and financial liabilities. It proposed an array of recommendations in order to introduce a clear and consistent disciplinary framework, relevant basis for disciplinary actions against prosecutors and appropriate range of sanctions, fair and effective procedures with a special decisive role attributed to the SGS, in particular the Qualifications and Disciplinary Commission.[44]

There have been recent developments concerning the introduction of electronic declaration of assets envisaged by the Law on Prevention of Corruption, including delays in launching the system, applicable to prosecutors in Ukraine.[45] Moreover, on the basis of the transitional provisions of the Law on PPO the decree of PG of 16.06.2016 N206 has launched integrity testing of prosecutors.[46] At the same time, there are serious obstacles and concerns as to efficiency and compliance with the best practices and international standards of both tools.[47]

With regard to fighting corruption, although the Strategy chapter listing the major problems within the sector treats it as a general problem and does not link it specifically to prosecution, it is indicative that Chapter 5.8 singles it out as a separate block as to practical and effective investigation of corruption and other serious offences committed by prosecutors.

Until recently there have not been any specific, easily accessible statistical data on the results of investigations and prosecution of prosecutors for corruption and other crimes or disciplinary proceedings against them. In parallel to the development of the policy framework in issue, there were considerable changes in the legislation and institutional reforms that besides the outlined preventive framework included the adoption of the Law on and establishment of the National Anti-Corruption Bureau of Ukraine, as well as specialised Anti-Corruption Prosecutor's Office and PPO Internal Security Department, which, however, were followed by inconsistent developments and controversial reports as to efficiency and appropriateness of their operation.

As suggested, there are no separate international indices addressing performance of prosecution systems, but some of relevant exercises concerning the judiciary and the rule of law in general consist of the evaluation of relevant specific factors. Thus, the Rule of Law Index suggests a breakdown in terms of different problems facing criminal investigation systems, including corruption among prosecutors. According to the data collected on the relevant variable in the

[44] CDL (2013)039, paras. 30, 70, 72, 126-140.

[45] See http://nazk.gov.ua/news/systema-e-deklaruvannya-zapracyuye-z-1-veresnya-nazk

[46] http://www.gp.gov.ua/ua/nddek.html?dir_id=113137

[47] https://www.transparency.org/news/pressrelease/ukraine_must_certify_e_declaration_anti_corruption_tool_to_make_it_effectiv. See also Venice Commission Interim Opinion on the Draft Law on Integrity Checking of Ukraine, CDL-AD(2015)031.

course of preparation of 2015 Rule of Law Index by the World Justice Project, the prosecutorial corruption in Ukraine has been identified as very significant (the highest possible level).[48]

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The matrix concerning the assessment area in issue is based on the specific block of actions/results singled out in Chapter 5. 8. of the Strategy. It has been addressed within the intervention area 8.3 aiming at Increased Accountability of PPO comprising actions 8.3.1-2 concerning internal and external oversight mechanisms and disciplinary policy, standards and ethics respectively.

Moreover, due to the inconsistency of structures of the Strategy and AP in terms of singling out the result concerning practical and effective investigation of corruption and other serious offences committed by prosecutors, the Matrix is adjusted to the latter. At the same time, it has provided as an additional action under the intervention area 8.3 aiming at Increased Accountability of PPO and equipped with corresponding outcome indicators.

As to measure 3 and related indicators on anti-corruption vetting of candidates dealt with in the AP under action 8.2.1, they have been reallocated to assessment area 8.5 concerning ethical and disciplinary frameworks and fight against corruption in PPO.

Due to the outlined recent developments in terms of integrity testing and asset declaration, the PRM matrix has incorporated an amended formulation of relevant actions/measures and adjusted set of related outcome indicators.

[48] See Global Insights, Problems Facing Criminal Investigation Systems. http://worldjusticeproject.org/problems-facing-criminal-investigation-systems

PRM Matrix on Assessment Area

8.5. Ethical and disciplinary frameworks for prosecutors, internal oversight mechanisms and fight against corruption in PPO

Action/Result	Major Outputs/Measures	Outcome indicators	Methods	Actors	Timing
Development of internal and external oversight mechanisms to combat and prevent corruption (8.3.1)	1.Reviewed regulatory framework on responsibilities of the PPO Internal Security Department (ISD), including as to the role in conducting annual integrity checks of prosecutors 2.Reviewed regulatory framework on the procedure and mechanism of conduct of annual integrity checks of prosecutors and special anti-corruption check of candidates for prosecutors	- Review of the Law on the PPO so that it complies with the entire anti-corruption framework - ISD is subordinated and accountable to the PG, with the requisite degree of operational autonomy - Special liability established for ISD staff for non-performance of duties, avoidance of appropriate response to potential or actual offenses, improper examination of declarations or conduct of integrity checks - Online applications regarding prosecutor integrity declarations effective - Generic standardised data on results of integrity checks, including information on bringing criminal actions against prosecutors, included in the PPO Annual Activity Reports, with due account of relevant personal data protection requirements	Expert panel	Civil Society Organisations/ NGOs	2017-II
		- Relevant capacities of 100% of ISD staff increased by means of dedicated continuous training curricula for ISD staff, including regular study visits in order to share best practices	Administrative data	GPO	2018-I
		- Legal framework on advanced integrity checks compatible with international standards (Venice Commission recommendations) introduced - Advanced integrity checks system fully operational	Expert report	IDP (CoE)	2019-I
	3. Reviewed regulatory framework on asset, income and expenditure declarations of prosecutors. Regular monitoring/verification of conformity of income and expenses of prosecutors, and members of their families, in order to define scope of annual integrity check	- Annual asset, income and expenditure declarations of all prosecutors accessible online - Regular monitoring/verification of asset, income and expenditure declarations of prosecutors by ISD and the National Agency for Prevention of Corruption - Procedures in place for immediate passing of complaints on illegal enrichment of prosecutors from QDC or ISD	Desk research	Civil Society Organisations/ NGOs	2017-II

Action/Result	Major Outputs/Measures	Outcome indicators	Methods	Actors	Timing
	3.[1]Ensuring practical and effective investigation of corruption and other offences committed by prosecutors. 4. Reviewed regulatory framework on the immunities of prosecutors	- Legal framework on the distribution of investigative jurisdictions, operational and procedural interaction of PPO (ISD), NABU and Anti-Corruption Prosecutors advanced, instructions and other methodological guides in order to effectively investigate allegations of corruption, serious human rights violations and other offences attributable to prosecutors have been developed - No carte blanche (structural) immunities of prosecutors; practical and effective tools for investigation of prosecutorial corruption, including streamlined system of authorisation of special investigative techniques (SITs) against allegedly corrupt prosecutors, while putting in place proper procedural safeguards against executive abuse	Expert report Public survey	IDP Civil Society Organisations/ NGOs	2017-I 2019-I
	5. Implementation of Article 12 of the Law on Anti-Corruption Measures as to introduction of relevant Programme for combating it in the PPO	- PPO Anti-Corruption Programme is compatible with the relevant entire domestic policy and legal framework - Level and timeliness of implementation of the PPO Anti-Corruption Programme - Reports on implementation of the PPO Anti-Corruption Programme are regularly published	Administrative data	GPO GPO	2017-II Annually
Implementation of clear and foreseeable disciplinary policy and standards of prosecutorial ethics and discipline (8.3.2)	1. Reviewed Disciplinary Statute of Prosecutors and relevant procedural regulations to harmonise disciplinary practices with European standards 4.[49] Online system for filing complaints against prosecutors in place 5. Statistics on disciplinary cases and ensuring its public accessibility	- Scope and extent of powers of the QDC in disciplinary proceedings are determined in line with the international standards (Venice Commission recommendations)	Expert report	IDP	2017-II
		- Ensured accessibility, objectivity and consistency of disciplinary practice at the PPO - Applicability and efficiency of disciplinary rules in case of violation of law; consistent, clear and foreseeable disciplinary proceedings concerning the responsible prosecutor - Explicit prohibition of bringing disciplinary proceedings following the legitimate exercise of prosecutorial discretion	Expert report Survey among prosecutors	Council of Public Prosecutors of Ukraine Council of Public Prosecutors of Ukraine	2018-II 2017-II 2020-II[50]

[49] The Matix maintains the numbering of outputs/measures as in the AP.

[50] See also the relevant rows of the Impact Indicators Matrix for Chapters 8 and 10.

Action/Result	Major Outputs/Measures	Outcome indicators	Methods	Actors	Timing
		- *Mens rea* of disciplinary offense (intent or negligence) and consequences or damage taken into consideration when defining a disciplinary penalty - Principle of proportionality applied when deciding on the necessity of a sanction and on defining the type of sanction - Ensured the right of the prosecutor or of other PPO employees to obtain access to his disciplinary case-file, scope and extend of obligations to give access to information on disciplinary proceedings to third parties and public - Single (judicial) avenue for appeals in disciplinary proceedings			
		- Online tool for filing complaints against prosecutors, and system of online-reporting to QDC for handling complaints, in place - The public provided access to analytical and statistical data on the disciplinary practice at the PPO, taking into account the need to protect the presumption of innocence and the right to respect for privacy	Administrative data	GPO	2017-I
	2. Reviewed Code of Professional Ethics of Prosecutors, regularly updated and annotated 3. Practice guides and training materials on ethical and anti-corruption training of prosecutors developed, regularly reviewed, disseminated and trainings conducted	- Code of Professional Ethics and Conduct of Prosecutors provides for: - a system of individual incentives in place depending on individual achievements - a developed system of norms of professional ethics of prosecutors and of other PPO employees with clear and foreseeable substantial components; - accessible and consistent practice of its application - Repeated or serious violations of ethics amounting to a ground for instituting disciplinary proceedings	Expert panel Survey among prosecutors	Qualifications and Disciplinary Commission	2018-I 2017-II 2020-II[51]

[51] See also the relevant rows of the Impact Indicators Matrix for Chapters 8 and 10.

Action/Result	Major Outputs/Measures	Outcome indicators	Methods	Actors	Timing
		- Set of specialised training materials and courses respectively designed and regularly carried out through pre- and in-service training arrangements at the NAPU and through ToT	Desk research	GPO/NAPU	2017-II
		- Number of prosecutors (newly admitted) that undergo the trainings concerned	Administrative data	GPO/NAPU	Annually

8.6. Transparency of PPO

Baseline

Although the Strategy has referred to a lack of communication capacities in the PPO in the chapter on the state of affairs in the sector, it omitted to introduce a corresponding element in the blocks of PPO-related actions and results envisaged in Chapter 5.8. In contrast, while omitting to tackle it in the introduction to Chapter 8, in addition to including several specific measures concerning its reporting format and communication, the AP has rightly dedicated a separate intervention area to PPO transparency.

Clearly keeping in mind the importance of proper transparency of the PPO operation, the Joint Venice Commission and Directorate General of Human Rights 2013 Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine welcomed its introduction on the level of legislative provisions.[52]

The existing transparency and communication-related deficiencies of the PPO operation could be illustrated by the quoted results of the domestic survey that measured public trust in its reform. As suggested, over 50 percent of those questioned expressed a negative perception..[53]

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The matrix on *transparency of the PPO* mirrors the framework of intervention area 8.5 and suggests the most appropriate methods and other parameters for assessing its implementation accordingly.

At the same time, the Matrix advances the AP, which focuses on the PGO and SGS and its bodies, by extending relevant entries with references to the regional offices.

[52] CDL (2013)039, paras. 38 and 44.

[53] ДУМКИ ТА ПОГЛЯДИ НАСЕЛЕННЯ УКРАЇНИ щодо Конституції, конституційної, судової реформ і реформи прокуратури, Грудень 2015. Дослідження проведено Фондом «Демократичні ініціативи» імені Ілька Кучеріва на замовлення Центру політико-правових реформ в рамках проекту: «Спідометр конституційної та судової реформ», фінансованого Європейським Союзом, http://pravo.org.ua/ua/news/20871276-scho-ukrayintsi-dumayut-pro-konstitutsiyu,-reformu-sudu-i-prokuraturi

PRM Matrix on Assessment Area

8.6. Transparency of PPO

Action/Result	Major Outputs/Measures	Outcome indicators	Methods	Actors	Timing
Establishment of a system of relations with the media, to promote access by the public to information about the PPO (8.5.1)	1.Reviewed regulatory framework relationship with media and access to information	- The PPO Communication is based on the relevant legislative framework and carried out in accordance with a strategy/plan in place with a high level (%) of its implementation - The PG press service, press offices at QDC, CP and regional offices operational (% of filled positions) provide consistent and user-friendly information through interviews, press releases, online publications - Public access to all PG orders is provided, with the exception of those protected by statutory secrecy, and with due account of the relevant PDP requirements - Regular publications in media informing the public about the process of the implementation of the new legislation and PPO reforms - Prosecutors' and media representatives' satisfaction with the communication and transparency levels	Administrative data and Focus group	Council of Public Prosecutors of Ukraine	2018-I 2019-II[54]
	2.Specialised staff responsible for media and public relations at the PG press service QDC and CP, as well as the regional PPOs	- Qualification of staff responsible for training leaders of the PG to press conferences and for other events involving the media increased	Survey among prosecutors and Focus group	Council of Public Prosecutors of Ukraine	2018-I 2019-II
Increasing transparency of PPO through enhanced and permanent communication with civil society and public (8.5.2)	1. Online surveys and questionnaires to determine scope and extent of further PPO reforms 2.Specialised units at the PPO for response to public dissatisfaction and emergency event fully operational, working in timely consultation with representatives of civil society	- Contemporary methodologies of monitoring and assessment of public needs, expectations and opinions applied - Professionals, including sociologists, are involved in assessment of the PPO reform, based on results of public surveys - Timely and adequate response by the PPO in all communication with the public - Advanced communication techniques in place to interact with the public	Expert Panel Public survey	GPO GPO	2018-I 2019-II

[54] It is suggested to repeat the assessment in order to assess dynamics and sustainability of outcomes.

Action/Result	Major Outputs/Measures	Outcome indicators	Methods	Actors	Timing
	3. Consultative Council at PGO fully operational	- Consultative Council meetings held on regular basis (number per year) - Extension of the scope of issues discussed at the CC - Quality and publicity of the decisions and work of the CC increased	Focus group	PPO Consultative Council	2017-II

8.7. Impact assessment under Chapter 8

These indicators are included in the relevant part of Chapter 10 below.

9. ENHANCING FAIRNESS AND DEFENCE RIGHTS IN CRIMINAL PROCEEDINGS

9. Enhancing fairness and defence rights in criminal proceedings

INTRODUCTION

Overall Structure

Pillar 9 aims to increase the fairness of criminal proceedings by ensuring that the rights of defendants are guaranteed at all stages of the criminal proceedings and during the implementation of restrictive measures. In addition, this part of the JSRS seeks to enhance the rights of victims in criminal proceedings. The measures within this pillar respond to challenges in the implementation of the fundamental reform of Ukraine's criminal justice system and to the difficulties judges, prosecutors, defence counsel and law enforcement officers face in changing the traditional working culture and switching to an adversarial system. Pillar 9 tackles the procedural rather than institutional aspects of Ukraine's criminal justice system. The efficiency of the prosecution service, independence of the judiciary, and organisation of the FLA scheme and the bar association, all of which impact on the fairness of the proceedings, are tackled in other pillars.

The JSRS proposes eight actions/results in order to achieve this aim. These results have been numbered below in accordance with the order in which they appear in the JSRS. The JSRS numbering is referred to throughout this chapter, and as it does not match the numbering in the relevant AP, references to the AP are separately indicated. The matrix adopts the verbatim text of the action/results from the JSRS, matches it to the AP numbering and refers to the strategy numbering in the footnote.

9.1. Providing defendants with a wide range of procedural rights at the pre-trial stage, at trial, and on appeal, ensuring equality of arms in the handling of evidence, greater judicial oversight of detention and other restrictive measures;

9.2. Formalising the standards of proof for the sake of greater clarity and foreseeability of procedural law and practice;

9.3. Extending jury trials to cover a wider range of criminal offences;

9.4. Striking a balance between the respect for the right of victims to accessible justice and the defendant's rights to adversarial proceedings;

9.5. Granting victims additional procedural rights both at the pre-trial and trial stages;

9.6. Improving the regulation of detention on remand;

9.7. Ensuring that the defence is obliged to participate in all private prosecution cases and certain summary proceedings;

9.8. Improving the rules regarding the notification of suspicion, placement on the wanted list, extradition, seisure and confiscation of assets, data security and protection in the Unified Register of Pre-trial Investigation, including grounds for and procedure in an appeal against actions or failure to act in cases in which there has been a breach of data protection rules.

The eight actions/results of Pillar 9 can be logically grouped into three areas:

- procedural rights of the defendant (JSRS actions/results regarding the procedural rights of defendants (9.1), regarding standard of proof (9.2), regarding jury trials (9.3, 9.7); as outlined in AP area of intervention 9.1),

- procedural rights of victims (JSRS actions/results with a view to striking a fair balance between the respective rights of victims and defendants (9.4), and regarding the introduction of additional victims' rights (9.5); as outlined in AP area of intervention 9.2 and
- defendants' rights during the implementation of coercive measures (JSRS actions/results regarding detention on remand (9.6) and regarding other measures of restraint (9.8); as outlined in AP area of intervention 9.1.

Indicators

Indicators are set at the outcome level. The number of indicators per cluster varies due to the different scope of the clusters. For the sake of the overall consistency of the evaluation framework, indicators on restrictive measures are listed in the third part of the matrix.

Set of Methods

The review methodology is outlined in Matrix 9. When defining how to measure the indicators, the PRM considered particular problems in the existing system, identified by project interlocutors or during the desk research. Hence, it relies on comparing data that has been identified throughout the implementation of the JSRS that is easily available but particularly indicative of improvements in weak areas. The proposed methodologies to measure the progress in this pillar are: collection of statistical/administrative data, surveys and expert evaluations or reviews (ER). Periodic findings of UN treaty bodies and CoE committees on compliance with Ukraine's international commitments should form an integral part of the review process, as a special form of expert reviews (Third Party Reports). Matrix 9 references these sources, where applicable.

Expert Reviews and Third Party Reports

Various types of ERs are suggested to measure the results of the implementation of this part of the JSRS.

Third Party Reports, namely periodic reports of UN human rights treaty bodies and CoE committees regarding the extent to which Ukraine has complied with its international commitments, form an integral part of the PRM. Of particular relevance are:

- reports by the European Committee for the Prevention of Torture (CPT),[1]
- the report by the European Group of Experts on Action against Trafficking in Human Beings (GRETA),[2]
- Concluding Observations by the UN Committee against Torture,[3]
- Recommendations of the Universal Periodic Review (UPR).[4]

The timing of relevant CoE mechanisms is convenient with the next CPT visit scheduled for 2017[5] and the GRETA second cycle report scheduled for June 2018.[6]

[1] Available at: http://www.cpt.coe.int/en/states/ukr.htm, accessed on 10 August 2016.
[2] Available at: http://www.coe.int/en/web/anti-human-trafficking/ukraine, accessed on 19 August 2016.
[3] Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/UKR/CO/6&Lang=En, accessed on 19 August 2016.
[4] For timelines on the UPR see: http://www.ohchr.org/EN/HRBodies/UPR/Pages/UASession14.aspx, accessed 7 August 2016.
[5] See: http://www.cpt.coe.int/fr/visites/2016-04-14-fra.htm, accessed on 7 August 2016.
[6] See: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806659ec, accessed on 7 August 2016.

In addition, regular reports of national organisations and institutions should be part of the PRM, including in particular reports and assessments by:

(a) the Ukrainian Ombudsman, especially its findings in its capacity as National Preventive Mechanism (NPM)[7] and the findings of its trial monitoring project;

(b) the Ukrainian National Bar Association (UNBA)[8];

(c) the Free Legal Coordination Centre (FLACC), and

(d) expert civil society associations.

The Ukrainian Ombudsman assessed the CPC's application on the basis of its trial monitoring observations of the district courts and court of appeal of Kyiv.[9] Ideally, this project would be continued throughout the implementation period of the JSRS, as it provides a uniquely detailed insight into the implementation of multiple actions/results of Pillar 9.

One dedicated ER has been proposed regarding one aspect of the criminal procedure that requires more detailed review, namely, compliance with defence rights during investigations. The review should focus on the judicial practice of protecting defence rights during the investigations, including the application of Article 203 of the CPC, an innovative provision of the new Code that aims to improve human rights protection during the pre-trial phase. The application of Article 203 has not yet been comprehensively analysed.[10] This analysis should also consist of a closer review of the extent to which law enforcement agencies, security services and prosecution in charge of criminal investigations comply with defence rights. A dedicated analysis of investigative actions is warranted with a view to the redistribution of powers in the revised procedural framework.[11] The analysis should be carried out by an international expert assisted by a national NGO with particular expertise in this area, within a timeframe of four months in 2018-II.

In addition, it is proposed that certain ERs are to be carried out by national NGOs on specific topics such as analysis of

(a) selected Ukrainian judgements on whether they refer to the jurisprudence of the ECtHR;

(b) participation of defence in private prosecutions and summary proceedings;

(c) coverage of victims' support services;

(d) implementation of international obligations on victims' rights in Ukrainian legislation;

(e) of the application of data protection standards and norms.

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[7] Law on amendments on NPM to the Law on Ukrainian Parliament Commissioner for Human Rights (Ombudsman), adopted 2 October 2012.

[8] Available at: http://en.unba.org.ua/ , accessed on 19 August 2016. E.g. Ganna Boriak, How to guarantee a human right to defence in a court?, 20 January 2016 // http://en.unba.org.ua/publications/1032-publications.html.

[9] Ukrainian Parliamentary Commissioner for human rights, Special report concerning the results of the pilot monitoring of application of the new Criminal Procedure Code of Ukraine in Kyiv courts, 2015 // Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680657b51, accessed 10 August 2016.

[10] Report on an Evaluation of the Implementation of the Criminal Procedure Code of Ukraine, CoE Experts (2015), para 172: "the carrying out of a study on the practice of using this article, with particular attention being paid to the scope and manner in which the matters raised are examined, the interrelationship between it and any mainstream procedures against the individuals responsible for the alleged human rights violations of and the details of rulings that have been issued and the extent of their implementation." The report is available at: http://www.coe.int/en/web/criminal-justice-reform/cpc-assess-title; accessed on 1 September 2016.

[11] See also Law „On amendments to the Criminal Procedure Code of Ukraine Relating to Implementation by Ukraine of Visa Liberalisation Action Plan and Specification of Jurisdiction of Pre-trial Investigation Bodies» № 771-VII on 10 November 2015 // http://zakon0.rada.gov.ua/laws/show/771-19.

Administrative Data

The administrative data analysis and comparison of statistics proposed under this pillar rely on data available to both the courts and prosecution. It should be compiled at a central level, and co-ordinated by the central review body for the strategy.[12]

International Standards

The right to a fair trial is enshrined in Article 6 of the ECHR[13] and Article 14 of the ICCPR.[14] In addition to these key articles, other provisions of the ECHR and the ICCPR or specialised human rights treaties set out standards that are relevant to criminal proceedings, including the

(a) prohibition of torture; and

(b) the right to

(i) life;

(ii) liberty and security of the person;

(iii) respect for family and private life; and

(iv) to an effective remedy.

Ukraine has also ratified international treaties within the CoE or the UN in relation to the prevention and repression of (serious) crimes.[15]

In assessing the framework on the rights of victims, three international tools should be taken into account, although they are not (yet) legally binding for Ukraine:

- the European Convention on the Compensation of Victims of Violent Crimes (1983, ETS. No. 116),
- the CoE Convention on preventing and combating violence against women and domestic violence (2011, ETS. No. 210),
- EU Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime

These instruments set out important standards regarding victims' rights. Ukraine has signed both CoE Conventions (on 8 April 2005 and 7 November 2011 respectively). As the timeframes and preparatory actions for the ratification of these Conventions are provided for in the Action Plan on the National Human Rights Strategy, [16] the ratification is used as an indicator in the Matrix.

[12] See supra, introduction.

[13] The Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force on 3 September 1953. The Convention was ratified by Ukraine on 11 September 1997.

[14] The International Covenant on Civil and Political Rights (adopted by General Assembly resolution 2200A (XXI) on 16 December 1966). This Covenant was ratified by Ukraine on 12 November 1973.

[15] An overview of CoE conventions ratified by Ukraine is available at: http://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/country/U/RATIFIED?p_auth=Oup5QOFw, accessed on 1 August 2016; an overview of UN Conventions on crime prevention and repression ratified by Ukraine is available at: https://www.unodc.org/unodc/en/treaties/index.html?ref=menuside, accessed on 1 August 2016; an overview of UN Conventions on human rights ratified by Ukraine is available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=183&Lang=EN, accessed on 1 August 2016.

[16] Action Plan on the Implementation of the National Strategy in the Area of Human Rights for the Period until 2020, Appendix to the ordinance of the Cabinet of Ministers of Ukraine dated 23 November 2015, No.1393Ap.

Other relevant standards include:

- CoE CM Recommendation No. R(85)11 on the Position of the Victim in the Framework of Criminal Law and Procedure, 28 June 1985,
- CoE CM Recommendation Rec(2006)8 on assistance to crime victims, 14 June 2006,
- UN GA (A/RES/40/34), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985.

9.1. Enhancing fairness and defence rights in criminal proceedings

Baseline

Chapter 3 of the JSRS outlines the following shortcomings related to the fairness of criminal proceedings (at the time of the drafting of the JSRS):

- "Lack of adversarial approaches in criminal proceedings, insufficient practical and effective tools to sanction prosecutors for violations of the principles of fairness and adversarial proceedings and other human rights;
- Inconsistency between procedural powers and actual institutional functions of various players at the pre-trial and trial stages;
- Lack of individualised, evidence-based approaches in the prevention of crime, rehabilitation and re-socialisation; insufficient application of probation mechanisms, and limited use of alternative sanctions."[17]

The relevant part of Ukraine's National Human Rights Strategy reads as follows:

"The right to independent, impartial and unbiased trial is not ensured in a proper way. In particular, it is proved by the facts that judges are dependent from executive and legislative authorities; the judiciary is appointed in non-transparent way; procedural instruments to protect the rights and interests of persons are imperfect; system of legal aid does not include new categories of people who need it; systematic failure of court decisions; insufficient unity and consistency of jurisprudence; justice legislation and its application do not comply with international standards."[18]

The parts of the Action Plan to the Human Rights Strategy[19] related to the right to a fair trial should be read together with the JSRS's Action/Result 9, it is referenced in the review methodology accordingly.

International and national assessments of the new criminal procedure framework and its implementation in Ukraine include:

- Report on an Evaluation of the Implementation of the Criminal Procedure Code of Ukraine, CoE Experts (2015);[20]
- Ukrainian Parliamentary Commissioner for Human Rights Special Report Concerning the Results of Pilot Monitoring of New Ukrainian Criminal Procedure Code Implementation by Kyiv Courts, Ombudsman of Ukraine (2015);[21]
- Implementation of the New Code of Criminal Procedure of Ukraine in 2013, Monitoring Report, Centre for Political and Legal Reforms (2013);[22]
- Assessments of aspects of the criminal justice system by the UNBA;[23]

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[17] Justice Sector Reform Strategy, *see supra*, at 3.

[18] Decree of the President of Ukraine 501/2015 of 25 August 2015 on the Approval of the National Human Rights Strategy of Ukraine, at (4) "Ensuring the Right to a Fair Trial".

[19] Action Plan on the Implementation of the National Strategy in the Area of Human Rights for the Period until 2020, Appendix to ordinance of the Cabinet of Ministers of Ukraine dated 23 November 2015, No.1393Ap.

[20] Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168044f56a, accessed on 13 August 2016.

[21] Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680657b51, accessed on 10 August 2016.

[22] Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168009854e, accessed on 9 August 2016.

[23] E.g.: http://en.unba.org.ua/publications/1032-publications.html, accessed on13 August 2016.

– The Functioning of the System of Free Legal Aid in 2013, Free Legal Aid Coordination Centre (2013);[24]

– Free legal aid system in Ukraine: the first year of operation assessment, International Renaissance Foundation (2014);[25]

– Assessment of the free secondary legal aid system of Ukraine in the light of Council of Europe standards and best practices, Council of Europe (2016).[26]

These reports make a valuable contribution to establishing a baseline for Pillar 9.

In addition, valuable data can be found in the periodic reviews of Ukraine's compliance with international treaty obligations, including, in particular:

– reports by the European Committee for the Prevention of Torture (CPT);[27]

– the report by the European Group of Experts on Action against Trafficking in Human Beings (GRETA);[28]

– Concluding Observations of the UN Committee against Torture.[29]

The new *Criminal Procedure Code (CPC)*, introducing party-driven and adversarial elements in Ukraine's criminal justice system, entered into force on 20 November 2012. Since then, both national and international assessments and judicial practice have identified areas, where further reforms and adjustments are needed.

The Constitution of Ukraine guarantees the defendant certain fundamental rights during criminal proceedings.[30]

The introduction of the new CPC in Ukraine has been generally viewed as a step towards greater fairness in criminal proceedings and led to the 'humanisation' in/of criminal proceedings.[31] The JSRS has proposed some amendments to the CPC. Some shortcomings are due to the failure to align related laws or flaws in the application of the CPC, as members of the judiciary, prosecutors and defence lawyers are still used to working within the confines of an inquisitorial, rather than adversarial, procedure or need to become more familiar with the provisions of the CPC.

Pillar specific considerations

Measures related to procedural rights of the defendant (JSRS actions/results regarding: procedural rights of defendants (9.1), standard of proof (9.2), jury trials (9.3), 9.7; as outlined in AP area of intervention 9.1), seek to achieve the following key outcomes (for other outcomes see also AP):

- improved normative framework in criminal proceedings;

- enhanced fairness of the trials and better balance in the implementation of equality of arms;

- enhanced participation of the defendant in specific type of proceedings.

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[24] Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802e8dae, accessed on 3 July 2016.

[25] Available at: https://issuu.com/irf_ua/docs/hr-2014-4_fin_engl, accessed on 3 November 2016.

[26] Available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a4c6a, accessed on 3 November 2016.

[27] Available at: http://www.cpt.coe.int/en/states/ukr.htm, accessed on 10 August 2016.

[28] Available at: http://www.coe.int/en/web/anti-human-trafficking/ukraine, accessed on 19 August 2016.

[29] Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/UKR/CO/6&Lang=En, accessed on 19 August 2016.

[30] Constitution of Ukraine, Chapter II; see: http://zakon3.rada.gov.ua/laws/show/1401-19, accessed on 30 October 2016.

[31] Report on an Evaluation of the Implementation of the Criminal Procedure Code of Ukraine, CoE Experts (2015), see *supra*, paras 12 seq.

Measures related to the procedural rights of the victims (JSRS actions/results regarding the balance between the rights of victims and those of the defendants' (9.4), and the introduction of additional victims' rights (9.5); as outlined in AP area of intervention 9.2.) seek to achieve the following key outcomes (for other outcomes see also AP):

– increased participation and compensation rights of victims of crime,

– striking a fair balance between the rights of the defendant whilst strengthening victims' rights.

Neither the JSRS nor the AP[32] includes measures for the protection of victims in cases in which their participation and testimony at trial could place them at risk.

Measures related to rights during the implementation of coercive measures (defendants' rights during the implementation of coercive measures (JSRS action/result regarding detention on remand (9.6) and other measures of restraint (9.8); as outlined in AP area of intervention 9.1 seek to achieve the following key outcomes (for other outcomes see also AP):

– increased protection and rights of the accused in relation to pre-trial detention;

– increased information rights;

– better data handling.

[32] See: http://jrc.org.ua/strategies/9/en, accessed on 1 August 2016.

PRM Matrix on Assessment Area

9. Enhancing fairness and defence rights in criminal proceedings

9.1.1 Procedural Rights of the Defendant

Action/Result	Major Outputs	Outcome Indicators	Methods	Actors	Timing
Providing defendants with a wide range of procedural rights at the pre-trial stage, at trial, and on appeal, ensuring equality of arms in the handling of evidence, greater judicial oversight of detention and other restrictive measures.[33] (AP 9.1)	1. Assessment of legislative shortcomings in provisions concerning the right to a fair trial set out in CPC and related by-laws. 2. Revision of the CPC in accordance with a needs-assessment. 3. Measures ensuring enforcement of the CPC in accordance with the right to a fair trial.	Evaluation of the fairness of the criminal procedure in the periodic reports of: (1) international organisations reviewing the compliance by Ukraine of its obligations under human rights treaties and (2) national organisations.	Expert Report and Third Party Reports	International organisations[37] and national organisations/ institutions (CoE/UN), Ukraine National Bar Association (UNBA), national NGOs, Ombudsman	2017-2020
		Compliance with the rights of the defendant in criminal investigations: (1) Assessment by an international expert of the human rights compliance of law enforcement agencies, public prosecution service and courts in the investigative phase; (2) assessment of the application of Article 206 CPC.	Expert Report	International Development Partner (IDP) in cooperation with judges, prosecutors, law enforcement agencies	2018-II
		Involvement of defence lawyer in gathering evidence: (1) Percentage of searches according to Article 236 in which the defence lawyer was recorded to be present; (2) number of motions filed in accordance with Article 303 CPC in order to challenge investigative actions; (3) percentage of the motions granted in accordance with Article 303 CPC; (4) number of requests submitted by the defence to conduct investigative actions (in accordance with Article 93(3)).	Administrative Data Collection and Analysis	UNBA, Free Legal Aid Coordination Centre (FLACC), the courts, prosecution service	2017-2020 Annually-(I)I

[33] In the JSRS this is action /result 9.1.

[34] Assessment of international monitoring bodies CoE (CPT, GRETA, GRECO) and UN special procedure and treaty body mechanisms.

Action/Result	Major Outputs	Outcome Indicators	Methods	Actors	Timing
		Requalification of status of defendant/ requalification of criminal charges (1) Percentage of cases in which the charges were re-qualified as more lenient; (2) percentage of cases in which the defendant was initially interviewed as a witness.	Administrative Data Collection and Analysis	The prosecution service/ courts/Ombudsman in trial monitoring reports/ FLACC/ UNBA	2017-2020 Annually-(II)
		Frequency of references to the ECHR in court decisions/judgments: Review of final judgements in selected cases regarding the reference to the case law of ECtHR).	Expert Report[35]	Ukrainian NGO in cooperation with the courts/prosecution service/ Ombudsman, financially supported by IDP	Monitoring 2017-2019 with report in 2019-II
Formalisation of standards of proof for greater clarity and foreseeability of procedural law and practice[36] (AP 9.1)	Revision of the CPC and regulations to clarify the provisions on the standards of proof for different areas within the investigation and trial.	Consistent application of the standard of proof through assessments by: (1) national institutions and civil society; (2) international institutions.	Expert Report and Third Party Reports	International organisations[37] and national organisations/ institutions (CoE/ UN), UNBA, NGOs, Ombudsman	2017-2020
Extension of jury trials to cover a wider range of criminal offences.[38] (AP 9.1)	Revision of the legislative framework to extend the application of jury trials and adoption of necessary regulations.	Frequency of jury trials in Ukraine (1) Number of completed jury trials per year and (2) per region.	Administrative Data Collection and Analysis	Courts, MoJ	Annually in 2017-2020 (II)

[35] A national expert NGO assesses the references in judgements throughout the country to ECtHR fair trial standards related case law in identified criminal proceedings.
[36] In the JSRS, this is action /result 9.2.
[37] Assessment of international monitoring bodies CoE (CPT, GRETA, GRECO) and UN special procedure and treaty body mechanisms.
[38] In the JSRS this is action /result 9.3.

Action/Result	Major Outputs	Outcome Indicators	Methods	Actors	Timing
Obligatory participation of the defence in all private prosecutions cases and certain summary proceedings.[39] (AP 9.1)	Review and revision of mandatory defence rules and extension to summary proceedings and private prosecutions. Adoption of amendments to the CPC and relevant legislation.	The assessment of the mandatory participation of the defence in periodic reports by: (1) national institutions and civil society; (2) international institutions.	Expert Report and Third Party Reports	International organisations[40] and national organisations/ institutions (CoE/ UN), UNBA, NGOs, Ombudsman	2017-2020
		Dedicated assessment of the current practice of participation of the defence representative in private prosecutions and summary proceedings.	Expert Report	Ukrainian NGO in cooperation with the courts/prosecution service/ UNBA and FLACC financially supported by IDP	Monitoring 2017-2019 with report in 2019-II

[39] In the JSRS this is action /result 9.7.

[40] Assessment by international monitoring bodies CoE (CPT, GRETA, GRECO) and UN special procedure and treaty body mechanisms.

PRM Matrix on Assessment Area

9. Enhancing fairness and defence rights in criminal proceedings

9.1.2. Procedural Rights of Victims

Action/Result	Major Outputs	Outcome Indicators	Methods	Actors	Timing
Striking the balance between respect for the victim's rights of accessible justice and the defendant's rights to adversarial proceedings.[41] (AP 9.2)	1. Revision of the procedural laws to ensure that there is a fair balance between the rights of the defendants and those of victims 2. Measures ensuring such a fair balance regarding the application of victims' rights in practice (including by law enforcement agencies).	Level of support available/provided to victims and witnesses. Assessments by (1) national institutions and civil society; (2) international institutions;	Expert Report and Third Party Reports	International organisations[42] and national organisations/ institutions (CoE/ UN), UNBA, NGOs, Ombudsman	2017-2020
		Comparative needs-assessment on the extension of victim support services available and provided in Ukraine, taking into account the specific obligations in relations to victims of gender violence and trafficking in human beings.	Expert Report	Ukrainian NGO in cooperation with the courts/prosecution service/ and FLACC financially supported by the IDP	2019-I
		Number of facilities which support victims (including safe-houses for victims of trafficking and domestic violence) available per region in Ukraine.	Administrative Data Collection and Analysis	MoJ	Annually in 2017-2020 (II)
		Compensation awarded to victims: (1) Number of victims awarded compensation; (2) percentage of violent crime cases in which compensation was awarded.	Administrative Data Collection and Analysis	Courts	Annually in 2017-2020 (II)
		Level of training in relation to the protection and rights of victims and witnesses: (1) Number of training courses offered to law enforcement, judicial and prosecutorial staff per year; (2) Number of participants in training per year.	Administrative Data Collection and Analysis	MoJ/ courts/ prosecution service/ law enforcement agencies	Annually in 2017-2020 (II)

[41] In the JSRS this is action /result 9.4.

[42] Assessment of international monitoring bodies CoE (CPT, GRETA, GRECO) and UN special procedure and treaty body mechanisms.

Action/Result	Major Outputs	Outcome Indicators	Methods	Actors	Timing
Granting the victim additional procedural rights at the pre-trial and trial stages.[106] (AP 9.2)	1. Review of normative framework on victims' participation rights in criminal proceedings. 2. Legislative changes to address identified needs for additional victims' rights.	Ratification by Ukraine of the Convention on the Compensation of Victims of Violent Crimes (ETS. No. 116) and the Convention on preventing and combating violence against women and domestic violence (ETS. No. 210).	Administrative Data Collection and Analysis	MFA/CoE	Annually in 2017-2020 (II)
		Adoption by Ukraine of adequate implementing legislation in relation to the Convention on the Compensation of Victims of Violent Crimes (ETS. No. 116) and the Convention on preventing and combating violence against women and domestic violence (ETS. No. 210)	Expert Report	Ukrainian NGO in cooperation with the courts/prosecution service/ MoJ, financially supported by the IDP	2019-II
		Level of participation of victims in pre-trial and trial proceedings (1) Percentage of hearings in which victims appeared during the pre-trial and (2) trial stage; (3) average percentage of motions (within the criminal proceeding in one case in relation to all motions in the case) filed by victims in the pre-trial and (4) trial stage.	Administrative Data Collection and Analysis	Courts/Ombudsman report	Annually in 2017-2020 (II)

[43] In the JSRS this is action /result 9.5.

PRM Matrix on Assessment Area

9. Enhancing fairness and defence rights in criminal proceedings

9.1.3. Measures regarding the use of restrictive measures

Action/Result	Major Outputs	Outcome Indicators	Methods	Actors	Timing
Improving the regulation of detention on remand.[44] (AP 9.1)	Legal and institutional changes regarding detention.	Assessment of the normative framework on detention and its application by international and national organisations.	Expert Report and Third Party Reports	International organisations[45] and national organisations/ institutions (CoE/ UN), UNBA, NGOs, Ombudsman	2017-2020
		Access to legal assistance in detention: 1) Number of cases of in which the legal assistance provider was notified in accordance with Article 213 paragraph 4 CPC in relation to the recorded total cases of detention; (2) percentage of police stations displaying a notice setting out the detainee's rights, in particular a right for legal aid; (3) percentage of cases, in which the defendant held in pre-trial detention was acquitted at the end of the trial.	Administrative Data Collection and Analysis	FLACC, UNBA	Annually in 2017-2020
		Use of restrictive measures: (1) Percentage of cases involving detention and alternatives to detention imposed; (2) number of appeals against restrictive measures; (3) percentage of appeals granted regarding restrictive measures.	Administrative Data Collection and Analysis	Prosecution	Annually in 2017-2020

[44] In the JSRS this is action /result 9.6.

[45] Assessment of international monitoring bodies CoE (CPT, GRETA, GRECO) and UN special procedure and treaty body mechanisms.

Action/Result	Major Outputs	Outcome Indicators	Methods	Actors	Timing
Improving the rules regarding the notification of suspicion, placement on the wanted list, extradition, seizure and confiscation of assets, data security and protection in the Unified Register of Pre-trial Investigation, including grounds for and procedure in an appeal against actions or failure to act in cases in which there has been a breach of data protection rules.[46] (AP 9.1)	1. Legislative amendments and adoption of prosecutorial instructions and regulations to improve notice given to affected persons. 2. Legislative and procedural measures to improve data protection.	Evaluation of notification and data protection	Expert Report	Ukrainian NGO in cooperation with the courts/prosecution service/ MoJ, financially supported by the IDP	2019-II
		Appeals against violations of data protection:[47] (1) Number of appeals lodged regarding breaches of data handling rules in criminal proceedings; (2) percentage of appeals granted.	Administrative Data Collection and Analysis	Courts/ the prosecution service/ Ombudsman report	Annually in 2017-2020 (II)

[46] In the JSRS this is action /result 9.8.

[47] Courts/prosecution service collect and compare data on an annual basis: (1) Appeals against breach of data handling in criminal proceedings filed; (2) percentage of those appeals granted.

9.2. Impact assessment under Chapter 9

The Ukrainian criminal justice system stands out for its low acquittal rate.[48]The increased fairness of the criminal justice system is expected to impact on the acquittal rate.

PRM Matrix on
Impact assessment under Chapter 9

Impact	Impact Indicators	Methods	Actors	Timing
Acquittal rate raising	Acquittal rate: In Ukraine; In regions.	Administrative data	MoJ/ Courts	Annually in 2017-2020 (II)

[48] Report on an Evaluation of the Implementation of the Criminal Procedure Code of Ukraine, CoE Experts (2015), paras 261 seq.

10. INCREASING THE EFFECTIVENESS OF THE JUSTICE SECTOR IN THE FIGHT AGAINST ORGANISED CRIME AND CORRUPTION

10. Increasing the effectiveness of the justice sector in the fight against organised crime and corruption

INTRODUCTION

Structure of the Chapter

The JSRS and AP have rightly avoided expanding into the security sector. However, they are of legitimate concern to some borderline issues, including the role of institutions in the chain of justice (i.e. all bodies engaged in the administration of justice and the execution of judgments, including the courts and the prosecution) or investigative and other relevant components of law enforcement agencies. These issues are primarily addressed in Sub-Chapter 10 of Chapter 5 of the JSRS and Chapter 10 of AP respectively. The former has been further sub-divided into the following four blocks of activities and results:[1]

1. Developing internal and external oversight mechanisms in order to increase accountability and fight corruption within the judiciary and prosecution service;

2. Promoting a more comprehensive application of research, analysis, and risk management to guide the prevention and investigation of crime;

3. Improving the substantive and procedural legal framework to bring Ukraine closer to the EU Acquis in the area of criminal justice, most notably legislation in the field of combating organised crime, including the development of effective mechanisms and procedures to recover the proceeds of crime;

4. Enhancing inter-agency cooperation in preventing and investigating crime at the domestic and international levels, including enhanced cooperation with Eurojust, other EU agencies, and Member States.

However, as the JSRS and AP, as well as the PRM provide for specific activities in order to prevent and fight corruption within the judiciary and the PPO, the assessment of the relevant action/result is dealt with under areas covered by Chapters 3 and 8.[2] .

For the purposes of streamlining and facilitating performance assessment and designing the remaining elements of the PRM for this Chapter, the actions/results are re-grouped into the following four thematic clusters (assessment areas) that match the remaining intervention envisaged by the AP:

2. Enhanced capacities in fighting organised crime[3]

3. Increased checks and balances provided by the justice sector to counteract abuse in criminal investigations

4. Increased effectiveness in combatting corruption by dedicated capacities of justice sector

Thus, besides merging the second and third action/results, the PRM follows the AP and sets out as a separate area, a series of interventions addressing abuses in criminal investigations,

[1] The blocks of activities and results have been numbered for the purposes of the PRM.
[2] See PRM tools in Chapters 3 and 8 respectively.
[3] The numbering is adjusted to the discussed transfer of the first intervention and corresponds to the numbering of the remaining AP intervention areas in this chapter.

which, alongside corruption, constitute one of the most serious failings adversely affecting and undermining the Ukrainian statehood in general.

International Standards and Country-Specific Reference Documents

- Council of Europe Convention on Money Laundering, Search, Seizure and Confiscation of the proceeds from crime
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
- Council of Europe Convention on the Prevention of Terrorism
- Convention on Cybercrime
- Civil Law Convention on Corruption
- Criminal Law Convention on Corruption
- CoE CM Rec (2001)11 concerning guiding principles on the fight against organised crime
- EU Convention establishing a European Police Office (Europol), 1995
- Accession to UN Convention against Transnational Organised crime mandatory. Approved on behalf of the European Community by Council Decision (2004), Council Decision 2004/579/EC of 29 April 2004, OJ L 261/69
- Council Framework Decision on the fight against organised crime (2008), Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime. OJL 300/42
- EU Stockholm Programme – An open and secure Europe serving and protecting citizens, OJ C 115, 4.5.2010
- 2005 EU Counter Terrorism Strategy
- EU Council conclusions adopted on 6 and 7 June 2013 on setting the EU's priorities for the fight against organised crime between 2014 and 2017, 12095/13
- EU Council conclusions on Terrorism and Border Security of 6 June 2014
- European Commission Communication of 20 June 2014, "The final implementation report of the EU Internal Security Strategy 2010-2014
- Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, OJ L 182/1.
- Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ L 309/15.
- Directive 2014/42/EU of the European Parliament and the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJ L 127, 29.4.2014
- Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, adopted on 30 March 2011 at the 1110th meeting of the Ministers' Deputies
- Roman Zakharov v. Russia, judgment (Grand Chamber) of the ECtHR of 4 December 2015
- Malone v. United Kingdom, judgment of the ECtHR of 2 August 1984

– Report on an evaluation of the implementation of the Criminal Procedure Code of Ukraine, February 2015, prepared as part of the Project "Support to Criminal Justice Reform in Ukraine.[4]

[4] With further references to country-specific documents and the ECtHR judgments against Ukraine.

10.1. Enhanced capacities in fighting organised crime

Baseline

When outlining the deficiencies to be remedied by the reform, the JSRS has suggested that there are underdeveloped formal and practical channels of communication, including information exchange networks, between the PPO, executive investigative bodies, and other authorities and European/international partners. Moreover, it highlighted the lack of individualised, evidence-based approaches in the prevention of crime.

The introductory comments on Chapter 10 of the AP, have in turn, highlighted that the reform needs to ensure a greater application of research, analysis and risk management to guide crime detection and prevention policies, coupled with greater factual control of the executive investigation services by the prosecution and enhanced inter-agency cooperation in the detection and prevention of crime at the domestic and international levels. Moreover, substantive and procedural legal framework will have to be improved to bring Ukraine closer to the EU Acquis in criminal justice, most notably the legislation in the field of combatting organised crime. Common standards in substantive and procedural criminal law would also facilitate judicial cooperation in criminal matters, facilitating the building of closer cooperation with Eurojust, other EU agencies and Member States.

In terms of organisation and the institutional format of coordinating the fight against organised crime, it is to be noted, that they are regulated by the amended, but essentially outdated Law on Organisational-Legal Basis for Combatting Organised Criminality from 1993. In particular, it envisaged that at the central national level it would be led by the Coordinating Committee of the President of Ukraine, which, however, was abolished by a decision of the Constitutional Court in 2004.

Taking into account the recent constitutional changes, in particular, the amendments to Article 131,[1] it is to be concluded that Ukraine has opted for a model of advanced prosecutorial engagement in organising and supervising both investigative and detective activities of law-enforcement agencies. There are further provisions in the draft Law on Detective Operations currently processed in the Verkhovna Rada.

There is no regularly gathered statistical data that would be aligned in accordance with the contemporary understanding of organised crime on the web-sites of the MIA, National Police and the PPO. Since 2012 the overall statistics have been uploaded on the PPO web-site. However, the forms and data provide breakdowns in accordance with the chapters and the articles of the Criminal Code. The majority of crimes that could be attributed to the category in issue, including establishment of a criminal organisation (Article 255 and the following of the CC) are covered by the Chapter on Crimes against Public Security. In 2015, 3304 pre-trial proceedings were initiated (registered in accordance with Article 214 of the CPC) under this chapter, including just three on Article 255 of the Criminal Code. Some of the relevant exercises concerning the rule of law in general comprise an evaluation of relevant specific factors. Thus, the Rule of Law Index suggests a breakdown in terms of different problems faced by criminal investigation systems, including the use of proactive methods of investigation and the inadequacy of resources in this area. According to the data collected on the relevant variable when preparing the 2015 Rule of Law Index by the World Justice Project, for Ukraine it was identified as significant and serious problems respectively.[5]

[5] See Global Insights, Problems Facing Criminal Investigation Systems. http://worldjusticeproject.org/problems-facing-criminal-investigation-systems

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

The matrix on the PPO independence-related interventions is based on the actions/results 10.2.1 10.2.2 and 10.2.3 itemised in the AP. In substance they provide for respectively greater specialisation, application of research, analysis and risk management to guide crime detection and prevention; enhancing domestic and international cooperation in criminal investigation; and development of mechanisms and procedures to recover proceeds of crime.

At the same time, the Matrix suggests more extended set of outcome indicators related to Measure 10.2.1.2 on implementation of EU Acquis in fighting organised crime, as well as proposes missing specific indicators concerning Measures 10.2.2.2 on electronic communication channels and 10.2.3.2 on operation of the asset recovery agency.

The matrix remedies the lack of immediate consistency in listing the outcome indicators in the relevant block of the AP for the risk-assessment measures/outputs 10.1.2.3 and groups them accordingly.

PRM Matrix on Assessment Area

10.1. Enhanced capacities in fighting organised crime

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Promoting greater specialisation, application of research, analysis and risk management to guide crime detection and prevention (10.2.1)	1. Specialised units fully operational, tasked with fighting cybercrime, trafficking in human beings (THB), money laundering, illicit drugs and arms dealing, terrorism, other major organised crime categories	– An increase in the specialised capacities of justice agencies to deal with organised crime – The institutional and operational system of fighting organised crime and coordination designed and established	Expert panel	Justice Reform Council or institution indicated by it	2017-II
	2. Implementation of EU Acquis in fighting organised crime	– Core EU legislation on fighting organised crime implemented in Ukrainian law, including directives and framework decisions on confiscation, money laundering, THB, and cybercrime	Expert report	International Development Partner (EU)	2017-II
	3. Standard operating procedures (SOPs) developed and reviewed regularly for each major category of organised crime, including provisions for undercover operations, effective joint investigative teams (JITs), and procedures for resolving jurisdictional issues	– Research and analysis units at the PPO producing risk assessment reports, defining risks and threats and providing guidance for activities of specialised units dealing with each major category of organised crime – Constant feedback and flow of information between research and analysis units and specialised units fighting organised crime	Desk research	PPO[6] or a coordinating entity created for combating organised crime	2018-I
	4. Risk assessment reports developed and regularly produced, recommending improvements in fighting each major category of organised crime. SOPs updated regularly by reference to risk assessment	– Risk assessment reports updated and exchanged regularly between authorised domestic and European and international counterparts, serving as feedback to constantly update the SOPs – Risk management serves as the key guidance for intelligence operations and the application of special investigative techniques (SITs)	Desk research	PPO or a coordinating entity created for combating organised crime	2018-I 2020-I[7]

[6] Although para.2 of Article 25 of the Law on the PPO as to the coordinating role has not been fully implemented, the PRM assumes that it will retain this function. If a different entity is established to combat organised crime, see the second option.

[7] It is suggested repeating the assessment in order to assess the dynamics and sustainability of the outcomes.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
	5.Practice guides and training modules on investigating each major category of organised crime developed, disseminated online, and updated regularly	– Specialised methodological and forensic capabilities for fighting each major category of organised crime, including cybercrime, THB, money laundering, illicit drugs and arms dealing, terrorism – In-service training scheme for the staff of the agencies combatting organised crime operational – Number of trainings and trainees	Desk research Administrative data	PPO or a coordinating entity created for combating organised crime	2018-II
Enhancing domestic and international cooperation in criminal investigation (10.2.2)	1.International cooperation networks in place involving Eurojust and other important European and international counterparts	– Introduction of tools based on the mutual recognition (including forensic reports, expert opinions, administrative decisions, extradition requests), for information sharing and to facilitate joint investigations and operations – Advanced cooperation with EU structures, Europol, Eurojust, Frontex, Counterterrorism Coordinator established	Desk research	PPO or a coordinating entity created for combating organised crime	2018-II 2020-II[8]
	2.2. Electronic communication channels between the justice sector and other bodies, and international counterparts in fighting organised crime, in place and used effectively	– 'Task force' approach, joint investigative teams and other modalities of enhanced domestic and international inter-agency cooperation applied regularly – Electronic communication channels (similar to operational network - @ON[9]) operational	Desk research	PPO or a coordinating entity created for combating organised crime	2019-I
Development of mechanisms and procedures to recover the proceeds of crime (10.2.3)	1.Reviewed regulatory framework on confiscation of proceeds of crime	– Criminal law providing for confiscation, non-conviction based confiscation, third party confiscation, freezing of assets in line with new EU legislation etc.	Expert report	IDP	2019-I

[8] It is suggested repeating the desk research in two years' time.

[9] EU Justice and Home affairs Council Resolution on Creation of an operational network - @ON - to counter mafia- style serious and organised crime groups, 4 December 2014.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
		– Formalisation of standards of proof with regard to different confiscation proceedings, with a particular emphasis on the clear and foreseeable regulation of the reverse onus of the burden of proof – Signature, ratification, and application of mutual legal assistance instruments and international communication channels involving Ukraine, EU, and other international counterparts, in order to implement confiscation, freeze assets, and other orders with regard to the proceeds of crime	Expert report	IDP	2019-II
	2. Asset recovery agency fully operational	– Improved institutional establishment of the asset recovery agency	Desk research	MoJ	2019-I
		– Number of asset recovery proceedings successfully completed	Administrative data	MoJ, PPO	2020-I

10.2. Increased checks and balances provided by the justice sector to counteract abuse in criminal investigations

Baseline

Abusive practices comprising serious violation of human rights and other legitimate interests of people by detectives (operatives), investigating and prosecuting agencies, failures of the justice system to effectively counter them constitute one of the most important deficiencies to be addressed by the reforms in these institutions, the security sector and the country in general. For many years Ukraine has had a very negative record in this respect that reflected in an array of domestic and international reports, which included a skyrocketing number of ECtHR judgments against it. The violations found by the ECtHR concern an unlawful detention, manipulating both the grounds for and the actual length of the detention;[10] torture, ill-treatment, often combined with illicit measures to gather evidence;[11] a defective framework and use of surveillance measures[12] and other human rights violations attributable to the wide-spread abusive and reportedly corrupt practices and related impunity.[13]

Although both the JSRS and AP have not specified this when outlining the situation and key deficiencies of the sector, importantly, the AP has still incorporated the intervention area in issue.

However, by the time the JSRS was launched, serious measures had been undertaken to tackle these shortcomings. According to the CPC (in force since 2012) all stages in criminal proceedings and actors, the use of relevant serious investigative, intrusive and compelling measures must comply with the well-defined framework accompanied by appropriate guarantees and safeguards, judicial control and allow for a meaningful engagement of suspects and affected persons. Moreover, it extended the basics of adversarial proceedings and the fair trial guarantees throughout the stages of criminal proceedings, including by introducing a formal ban of admissibility of evidence obtained beyond the CPC framework. It rightly prohibits any unauthorised intervention by members of 'operative units' in the criminal process. Both domestic and international monitoring data has clearly suggested that the CPC has brought about relevant positive changes, including in terms of reducing ill-treatment and other serious human rights violations.[14] The CPC and corresponding laws, including on the PPO and the State Bureau of Investigations have introduced independent institutions for investigating crimes, including serious human rights violations by law enforcement officials, prosecutors and judges. However, this system still needs to be properly developed and made fully operational.

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[10] E.g., *Osypenko v. Ukraine*, no. 4634/04, 9 November 2011, *Doronin v. Ukraine*, no. 16505/02, 19 February 2009 *and Garkavyy v. Ukraine*, no. 25978/07, 18 February 2010; *Ichin and Others v. Ukraine*, nos. 28189/04 and 28192/04, 21 December 2010, *Kornev and Karpenko v. Ukraine and Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, 21 April 2011.

[11] E.g. *Afanasev v. Ukraine*, no. 38722/02, 5 April 2005; *Vergelskyy v. Ukraine*, no. 19312/06, 12 March 2009*Khaylo v. Ukraine*, no. 39964/02, 13 November 2008 and *Mikhalkova v. Ukraine*, no. 1091905, 13 January 2011; *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, 21 April 2011.

[12] E.g. *Mikhalyuk and Petrov v. Ukraine*, no. 11932/02, 10 December 2009. *Vladimir Polischuk and Svetlana Polischuk v. Ukraine*, no. 12451/04, 30 September 2010.

[13] When examining the ECtHR statistics and judgments it is necessary to take into account that in terms of indicating the actual state of affairs they have a delayed nature due to the requirement of exhausting domestic remedies and, particularly, the length of procedures before it. Accordingly, the most appropriate approach for using these data as indicators, it would be necessary to introduce an additional criterion related to the year of applications or take into account the average time-period needed for exhaustion of domestic remedies and completion of the ECtHR proceedings.

[14] See, *inter alia*, the Report to the Ukrainian Government on the visit to Ukraine carried out by the CPT from 9 to 21 October 2013 (CPT/Inf (2014) 15. Report evaluating the implementation of the Criminal Procedure Code of Ukraine, February 2015, prepared as part of the Project "Support to Criminal Justice Reform in Ukraine.

In addition, there is a need to advance the amended, but still outdated Law on Detective Activities dating back to 1993, and improve the prosecutorial and judicial control over the operation of law enforcement bodies in this regard.

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

In view of the modified scope of the functions of the PPO, including on the constitutional level (amendments to Article 131[1]) as to its leading role in the criminal proceedings, comprising or combined with an advanced engagement in organising and supervising both investigative and detective activities of law-enforcement agencies, the PRM attempts to reconcile them with the JSRS and AP structures, and suggests differentiating between them in order to measure the progress in their implementation. The former is covered by the Chapter 8 tool, in particular, the Matrix on intervention area 8.2. The latter is addressed by the present tool and the matrix below.

The Matrix on the area in issue considerably advances the set of measures and cursory indicators suggested in the AP. By reformulating Measure 10.3.1.3 and suggesting additional indicators, it expands the set of measures from special investigative techniques (SIT) over investigative and detective, overall intrusive (forceful) measures, including apprehension, and provides for the advancement of the external control (by the PPO and the judiciary). Furthermore, the Matrix proposes improvements in the indicators so that they address not only the use of weapons, but force in general, (with regard to measure 10.3.1.2), splits them and provides for the indicators concerning the domestic public monitoring framework (with regard to measure 10.3.1.4).

Moreover, it introduces special (additional) measure concerning the effective mechanism of investigating serious human rights violations and other abuses attributable to representatives of law-enforcement agencies (10.3.1.5).

PRM Matrix on Assessment Area

10.2 Increased checks and balances provided by justice sector to counteract abuse in criminal investigations

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Development of internal and external oversight mechanisms (10.3.1)	1. Reviewed regulatory framework on case assignment and management	– Clear, foreseeable, and applicable rules for case assignment and management systems at the PPO and criminal investigation services, providing safeguards for functional independence of prosecutors and investigators	Desk research	PPO	2019-I
	2. Reviewed regulatory framework on the use of lethal and non-lethal weapons	– Clear, foreseeable rules on use of weapons and force and their effective application	Third party reports	NGOs	2017-II
	3. Reviewed regulatory framework of the PPO and judicial oversight (control) system over investigative and detective operations, including the use of special investigative techniques (SITs) extending (not only) to the authorisation but also the conduct of intelligence and undercover operations, as well as apprehension and other intrusive means envisaged by the CPC and Law on Detective Operations	– Improvements to the Legal framework on Detective Activities so that it complies with international standards and best practices, including introducing clear, foreseeable and applicable rules on the use of SITs	Expert report	IDP (CoE)	2017-I
		– Efficiency of prosecutorial oversight and judicial control on the investigative and detective activities of the relevant agencies (investigative and detective) both under the CPC and the Law on Detective Operations	Focus group Survey among legal professionals/NGOs	IDP/NGOs NGOs	2017-II 2019-II[15]
		– Efficiency of parliamentary control including by the ombudsman institution, and civil society monitoring arrangements over the investigative and detective activities of relevant agencies (investigative and detective) both under the CPC and Law on Detective Operations	Focus group Survey among legal professionals/NGOs	NGOs NGOs	2018-I 2020-I[16]
	4. Risk assessment reports produced regularly, recommending improvements in management at each branch of the system of law enforcement	– Mixture of consultative and coercive approaches in performance management systems – Risk management effectively used as a performance management tool	Desk research	Law enforcement agencies	2019-I

[15] It is supplementing the initial focus group panel assessment with a subsequent relevant survey among legal professionals.

[16] It is suggested supplementing the initial focus group panel assessment with a subsequent relevant survey among legal professionals.

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
	5. Effective mechanism of investigating serious human rights violations and other crimes and abuses attributable to law enforcement agencies	– The mechanism of investigation of serious human rights violations and other crimes and abuses attributable to law enforcement agencies complies with the ECHR and derivative standards	Expert report Third party reports	IDP (CoE)	2018-I 2019-II[17]

[17] It is suggested supplementing the initial expert report with a subsequent assessment of the indicator by means of an analysis of third party reports (including international monitoring).

10.3. Increased effectiveness in combatting corruption by dedicated capacities of the justice sector

Baseline

In parallel to the improvements to the Anti-Corruption policy framework, the JSRS has rightly envisaged two key directions and relevant interventions to reinforce the sector contribution to preventing and combatting corruption in Ukraine. The JSRS therefore deals with preventing and combating corruption within the sector itself, and in particular within the judiciary and the PPO (primarily in Chapters 3 and 8).[18]

Furthermore the JSRS in Chapter 4 where the pillars of the reform are enumerated has specified that one of them should concern increasing effectiveness of the justice sector in the fight against organised crime and corruption. The AP has spelled out the intervention under consideration accordingly.

By the time of the adoption and implementation of the JSRS and AP, the Ukrainian authorities had also adopted the Law on the PPO and the NABU, handling transparent and merit-based procedures of selection and appointment of NABU and Anti-Corruption Prosecution leaderships, as well as the recruitment of their staff and launching their operations. However, there are recent reports and indications concerning inconsistent developments as to efficiency and the strict application of the jurisdictional criteria.

In terms of indicators of the efficiency of combating corruption, there had been no clear statistical data. It used to be artificially boosted by inclusion of crimes not falling under the notion of corruption. However, there exists filtered analytical data as to the situation in 2015.[19] As to the regularly compiled international indices, besides the Corruption Perception Index (CPI) and related ones produced by Transparency International,[20] there are corruption-related components of some global indexes, including the Control on Corruption Dimension by Worldwide Governance Indicators (WGI) project by the World Bank Institute,[21] Index of Economic Freedom developed by the Heritage Foundation that is based on ten components including the freedom from corruption. In 2015 it was 26 out of 100.[22]

[18] See relevant PRM tools on the Chapters/Pillars concerned.

[19] АЛЬТЕРНАТИВНИЙ ЗВІТ ЩОДО ОЦІНКИ ЕФЕКТИВНОСТІ ДЕРЖАВНОЇ АНТИКОРУПЦІЙНОЇ ПОЛІТИКИ, p.p. 181-340.http://ti-ukraine.org/en/system/files/research/shadow_report_anticorruption_policy_ti_ukraine.pdf\

[20] http://www.transparency.org/country/#UKR

[21] www.govindicators.org

[22] Ukraine related graph is available on http://www.heritage.org/index/visualize?cnts=ukraine&type=9

Particularities of the Assessment Area-specific Interventions, Results, Indicators and their Grouping

In line with the distribution of assessment areas on sector-specific/internal corruption and its capacity to contribute to corruption in general, the assessment area concerns the second type of it. It should be applied, however, keeping in mind a synergy with the measurements carried out under Chapter/Pillar 3 and with regard to assessment area 8.5.

The Matrix modifies the formulation of Measure 10.4.1.1 (in comparison to that suggested in the AP) in terms of indicating the Anti-Corruption Prosecutors' Offices as the relevant units and omitting an erroneous definition of their function as 'investigating corruption', which according to the enacted legal framework concerns procedural guidance and supervision on detective operations, as applicable. The Matrix suggests a relevant set of indicators corresponding to the Measure (missing in the AP). The same applies to Measure 10.4.1.2 concerning courts, where it is intended to introduce a relevant system of anti-corruption courts.

Taking into account the investigative jurisdiction of the NABU and its possible procedural contribution to the prosecution of corruption offences, in particular 'elite' ones, by amending the formulation of measure 10.4.1.5 the Matrix extends the requirement of availability of statistics and their publication in annual reports to the Bureau accordingly. In addition, in view of the lack of an appropriate composite definition (scope) of corruption-related offences and statistics, it suggests an indicator specifically addressing it.

PRM Matrix on Assessment Area

10.3. Increased effectiveness in combatting corruption by dedicated capacities of the justice sector

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Development of the capacities of the prosecution and judiciary to deal with corruption cases, including 'elite' corruption (10.4.1)	1. Specialised PPO (Specialised anti-corruption Prosecutors' Offices), especially 'elite' corruption, are fully operational	– Specialised anti-corruption prosecution institutionally established and staff recruited through appropriate selection procedures – Procedural interrelation and jurisdictional aspects with the NABU fine tuned	Desk research Functional analysis	PPO IDP	2017-II 2018-II
	2. Specialised sections of judges (anti-corruption courts) for dealing with corruption cases, especially 'elite' corruption, fully operational	– Legal framework on specialised sections of regular courts (anti-corruption courts) adopted in accordance with the best practices from other jurisdictions – Specialised sections of regular courts (anti-corruption courts) institutionally established, judges appointed through appropriate procedures	Expert report Focus group	IDP HCJ	2017-II 2018-I[23]
	3. Reviewed regulatory framework on protection of prosecutors and judges from undue pressure when dealing with corruption cases	– Enhanced degree of protection from undue pressure in law and practice for prosecutors and judges dealing with corruption cases	Judges/ prosecutors survey[24]	HCJ, Council of Prosecutors of Ukraine	2018-I
	4. Practice guides and training modules for prosecutor and judges dealing with corruption cases developed, disseminated and updated regularly	– Research and analysis units at the PPO and courts regularly suggest improvements in the regulatory framework and practice in order to mend "gaps" established in analysing unsuccessful attempts to prosecute corruption in selected types of wrong-doings	Desk research	Specialised Anti-Corruption PO, State Judicial Administration	2019-I
		– A functional training scheme covering specialised anti-corruption judges and prosecutors (100%)	Administrative data		2018-II
	5. Statistics on prosecutions and trails of corruption cases published and analysed in Annual Activity Reports of the PPO, judiciary and the NABU	– An appropriate composite definition (scope) of corruption-related offences introduced and statistics scheme maintained	Desk study	Specialised Anti-Corruption PO, NABU, SJA	2017-I
		– Information on successful and unsuccessful prosecutions of corruption available online	Administrative data		Annually

[23] It is suggested supplementing the initial expert report with subsequent assessment of the indicator by analysing focus group discussions.

[24] It stands for a survey among anti-corruption prosecutors and relevant judges and supporting staff.

10.4. Impact assessment under Chapters 8 and 10

Baseline

The baseline for subsequent measurement of the impacts of the interventions under the Chapters in issue is outlined in the relevant sections of the preceding Matrices on assessment areas concerned.

Specifics of Chapter-relevant Impact Indicators and their Grouping

The Matrix proposes the most appropriate methods, actors and timing for measuring the impact indicators already envisaged by the AP for its Chapters 8-11.

The general guide[25] provides comments and suggests approaches to measuring impact-related results of the reform, the implementation of actions and measures envisaged by the JSRS and AP. In addition to that the PRM suggests, where appropriate, more assessment-area specific or combined impact indicators' matrices, which, in turn, mainly follow the approach that groups impact indicators per Chapters 1-4, 5-7 and 8-11 accordingly. It should be noted, however, that the indicators concerning the ECtHR statistics (suggested in the AP) reflect the actual state of affairs in Ukraine dating back at least five years. When examining and comparing the ECtHR statistics and judgments, it is necessary to take into account that in terms of indicating the actual state of affairs, they have a delayed nature due to the obligation to exhaust domestic remedies and, particularly, the length of national proceedings. Accordingly, the most suitable way of using this data as indicators would require the introduction of an additional criterion related to the year of applications or take into account the average time-period needed to exhaust domestic remedies and complete the proceedings before the ECtHR.

Due to the complexity of the impacts expected to be produced by the proposed interventions and the angle from which they are looked at, the Matrix suggests a set of actions/results for measuring them. Each of the specific assessment areas or their groups are accompanied by a separate block of indicators, which, in their turn, are expected to be measured by using the suggested methods.

The Matrix (in footnotes) suggests specific comments as to the grouping, expected dynamics and other explanations regarding the set of indicators, methods and assessment arrangements. It implies possible synchronisation with some assessment exercises with regard to outcome indicators under the same actions/results proposed by relevant chapter-specific matrices.

[25] See paras. 19-26 of the Guide (introductory comments on the PRM).

PRM Matrix on

Impact assessment under Chapters 8 and 10

Assessment Area(s) (Action/Result)	Impact Indicators	Methods	Actors	Timing
Prosecutorial Independence (8.1)	– The perception of legal professionals of a ten percent increase in the independence and accountability of the PPO in comparison to the initial survey[26] – Public trust in the PPO in general has increased by 20%,[27] public (general or users') perception as to the independence and accountability of PPO has improved by 25 percent[28]	Survey among legal professionals and NGOs[29] Public survey[30]	Council of Public Prosecutors of Ukraine /NGOs Council of Public Prosecutors of Ukraine NGOs	2017-II[31] 2020-II[32]
	– The PPO independence variable of the Rule of Law Index has reached a satisfactory level	Third party reports	PPO	Annually (as updated)
PPO Responsibilities (8.2) Streamlined Competences in Criminal Investigation (10.1)	– Statistical data concerning the efficiency of the activities of the PPO and the criminal investigation agencies: the average number of incoming and resolved cases per prosecutor/investigator; clearance (prosecution) rates; average cost per case; average duration of the pre-trial proceedings; number of investigations pending for more than one year[33]	Administrative data	PPO	Annually

[26] The initial survey (planned for 2017-II) is to be considered as a baseline since there are no relevant specific surveys to be used as such.
[27] The general target has been specified in the AP (calculated in accordance with the average adjustment to the period between the proposed initial and subsequent assessments).
[28] The initial survey (planned for 2017-II) is to be considered as a baseline since there are no relevant specific surveys to be used as such.
[29] To be based on the relevant detailed tool (elaborated questionnaire) mirroring the key criteria and standards introduced through corresponding interventions (as in the AP/PRM Matrix).
[30] To be based on a tool (questionnaire) mirroring the key parameters contributing to the appearances of independence and improved accountability (as in the AP/PRM Matrix).
[31] Supposed to be synchronised with the relevant assessments of actions/results 8.1.2, 8.1.3, and 8.1.4.
[32] Supposed to be synchronised with the relevant assessments of actions/results 8.1.2, 8.1.3, and 8.1.4.
[33] Taking into account the expected improvement in the criminal justice and law-enforcement systems, its fully-fledged introduction and efficiency is expected to be achieved by the end of 2018. Accordingly, the dynamics of the relevant statistical data should rise to the end of 2018. After that and until the end of 2020 it should decrease again. The target could be 15 percent (5 percent per year – in terms of duration of pre-trial proceedings) a reduction in comparison to the 2018 data.

Assessment Area(s) (Action/Result)	Impact Indicators	Methods	Actors	Timing
	– The perception of legal professionals as to the appropriateness of the scope of the PPO's responsibilities and the distribution of jurisdictions in criminal proceedings has improved by ten percent in comparison to the initial survey[34] – Public trust in the PPO in general has increased by 20 percent,[35] public (general or users') trust as to coherence and efficiency of the role of the PPO and investigative agencies in the criminal justice system in comparison to the initial survey has improved by 30 percent[36]	Survey among legal professionals and NGOs[37] Public survey [38]	Council of Public Prosecutors of Ukraine /NGOs Council of Public Prosecutors of Ukraine /NGOs	2017-II[39] 2020-II[40]
Performance Management of PPO (8.3)	– The impacts of improved performance management of the PPO will have indirect effects on its effectiveness, improvement of public confidence and other indicators (including in different global ratings etc.). Thus, the PRM suggests no assessment area-specific impact indicators. The outcomes are suggested in the relevant Matrix.	-	-	-
Professional and continuous training systems of PPO (8.4)	– The impacts of improved training in the PPO will have indirect effects on its effectiveness, improvement of public confidence and other indicators (including in different global indices etc.). Thus, the PRM suggests no assessment area-specific impact indicators. The outcomes are suggested in the relevant Matrix.	-	-	-
Ethical and disciplinary frameworks for prosecutors, internal oversight mechanisms and fight against corruption in PPO (8.5)	– Number of complaints, applications concerning allegations as to and number of disciplinary/ethical violations, administrative and criminal offences (including corruption-related) committed by prosecutors and PPO staff and those held responsible.[41]	Administrative data	PPO/ Council of Public Prosecutors of Ukraine	Annually

[34] The initial survey (planned for 2017-II) is to be considered as a baseline since there are no relevant specific surveys to be used.
[35] Supra note 3.
[36] The initial survey (planned for 2017-II) is to be considered as a baseline since there are no relevant specific surveys to be used.
[37] To be based on relevant a detailed tool (elaborated questionnaire) mirroring the key criteria and standards introduced through corresponding interventions (as in the AP/PRM Matrix).
[38] To be based on a tool (questionnaire) mirroring the key parameters contributing to the appearances of independence and improved accountability (as in the AP/PRM Matrix).
[39] Expected to be synchronised with the relevant assessments of actions/results 8.1.2, 8.1.3, and 8.1.4.
[40] Expected to be synchronised with the relevant assessments of actions/results 8.1.2, 8.1.3, and 8.1.4.
[41] Taking into account the expected improvement in the accountability framework and mechanisms, its fully-fledged application and efficiency is to be achieved by the end of 2017. Accordingly, the dynamics of the relevant statistical data should be increasing up to the end of 2018. After that and until the end of 2020 it should decrease again. The target could be 20 percent in comparison to the 2018 data. When assessing the trends and data, one should take into account a more nuanced interrelation between the number of complaints and outcome of relevant proceedings.

Assessment Area(s) (Action/Result)	Impact Indicators	Methods	Actors	Timing
	– The perception of legal professionals as to the appropriateness of the ethical and disciplinary frameworks for prosecutors, efficiency of the oversight mechanisms and fight against corruption has improved by ten percent in comparison with the initial survey[42] – Public (general or users') trust in the PPO in general has increased by 20 percent,[43] as well as efficiency of accountability framework increases in comparison to the initial survey by 25 percent[44]	Survey among legal professionals and NGOs [45] Public survey [46]	Council of Public Prosecutors of Ukraine /NGOs Council of Public Prosecutors of Ukraine /NGOs	2017-II 2020-II[47]
Transparency of PPO (8.6)	– Public trust in the PPO in general increases by 20%,[48] as well as perception of its transparency improves in comparison to the initial survey by 50 %	Public survey [49]	Council of Public Prosecutors of Ukraine /NGOs	2017-II 2020-II
Enhanced Capacities in Fighting Organised Crime (10.2)	– Statistical data (dynamics) concerning the efficiency of fighting organised crime: the number of the category-specific crimes, number of the category-specific crimes solved/individuals convicted = clearance (prosecution) rates and the value of confiscated and otherwise recovered assets, including by means of international cooperation/assistance[50]	Administrative data	PPO	Annually

[42] The initial survey (planned for 2017-II) is to be considered as a baseline since there are no relevant specific surveys to be used.
[43] Supra note 3.
[44] The initial survey (planned for 2017-II) is to be considered as a baseline since there are no relevant specific surveys to be used.
[45] To be based on a relevant and detailed tool (elaborated questionnaire) mirroring the key criteria and standards introduced through corresponding interventions (as in the AP/PRM Matrix).
[46] To be based on a tool (questionnaire) mirroring the key parameters contributing to accountability (as in the AP/PRM Matrix).
[47] Supposed to be synchronised with the relevant assessments of action/result 8.3.2 (Chapter 8.5 Matrix).
[48] Supra note 3.
[49] To be based on a tool (questionnaire) mirroring the key parameters contributing to accountability (as in the AP/PRM Matrix).
[50] Taking into account the expected advancement of the anti-organised crime framework, including development of a consistent classification, its fully-fledged introduction and efficiency is expected to be achieved by the end of 2018. Accordingly, the dynamics of the relevant statistical data should be increasing up to the end of 2018. As of that period by the end of 2020 it should decrease. The target could be 20 % reduction in comparison to the 2018 data.

Assessment Area(s) (Action/Result)	Impact Indicators	Methods	Actors	Timing
Increased Checks and Balances Provided by the Justice Sector to Counteract Abuse in Criminal Investigations (10.3)	– Statistical data (dynamics) concerning the efficiency of combating impunity for serious human rights violations and other abuses attributable to law-enforcement and institutions in the chain of justice: the number of the complaints, allegations/indications received and number of disciplinary violations and crimes registered, those held responsible;[51] number of relevant adverse ECtHR judgments and Council of Europe Committee of Ministers resolutions on the failure to comply with the general measures and enforce individual ones[52]	Administrative data	MoJ/ Ombudsman/ NGOs	Annually
	– Public confidence in efficiency of human rights protection mechanisms and combating/preventing abuses by representatives of law-enforcement agencies framework applicable in Ukraine increases by 30%	Public survey [53]	NGOs	2017-I 2020-I
Increased Effectiveness in Combatting Corruption by Dedicated Capacities of the Justice Sector (10.4)	– Statistical data (dynamics) concerning efficiency of fighting corruption: the number of the category-specific criminal and administrative offences, number of convictions for the category-specific criminal and administrative offences, value of confiscated and otherwise recovered assets[54]	Administrative data	NABU	Annually
	– The standing of Ukraine in the Corruption Perception Index (CPI) and related ones produced by Transparency International, as well as corruption-related components of some global indices, including the Control on Corruption Dimension by the Worldwide Governance Indicators (WGI) project by the World Bank Institute, Economic Freedom index developed by "Heritage Foundation" improves from year to year	Third party reports	NABU	Annually
	– Public confidence in/perception of efficiency of combating/preventing corruption improved by 20 percent and contribution of the justice sector institutions/system to it by 30 percent	Public survey	NGOs (Transparency International)	2017-I 2020-II

[51] Taking into account the expected improvement in the system for combating abuses in the relevant sphere, its fully-fledged introduction and efficiency is expected to be achieved by the end of 2018. Accordingly, the dynamics of the relevant statistical data should be increasing up to the end of 2018. After that and until the end of 2020 it should decrease again. The target could be an annual decrease by five percent and an overall 20% reduction in comparison to the 2018 data.

[52] See, however, impact indicators 3-6 to Chapters 8-11 of the AP. However, see the comments on the specifics (delayed character) of the ECtHR statistics suggested in the introductory comment to the current Matrix.

[53] To be based on a tool (questionnaire) mirroring the key parameters contributing to the accountability (as in the AP/PRM Matrix).

[54] Taking into account the expected improvement in the anti-corruption crime framework, including the development of a consistent classification, its fully-fledged introduction and efficiency is expected to be achieved by the end of 2018. Accordingly, the dynamics of the relevant statistical data should be increasing up to the end of 2019. After that and until the end of 2021 it should decrease again. The target could be reduced by 25 percent in comparison with the 2018 data.

Assessment Area(s) (Action/Result)	Impact Indicators	Methods	Actors	Timing
Overall impacts of the reform of the justice sector	– An improvement in Ukraine's overall standing in various relevant international indices relating to the performance of criminal justice system, including Governance Indicators and Rule of Law Index (World Bank Institute), WEF Global Competitiveness Report, rankings by Freedom House, World Justice Project (Rule of Law Index), Transparency International (CPI etc.), Bertelsmann Stiftung Transformation Index (BTI), WB Doing Business Index (baseline: 2015)[55]	Third party reports	JRC	Annually (upon availability)
	– Acknowledgement of Ukraine's progress in judiciary reform noted in EU reports and various policy dialogue documents, such as the Association Agreement and Visa Liberalisation Action Plan implementation reports (baseline: 2015).	Third party reports	JRC	When available

[55] See relevant impact indicators under the blocks of its chapters.

11. OFFENDER MANAGEMENT

11. Offender management

INTRODUCTION

Overall Structure

The final section of the Justice Sector Reform Strategy mentions 12 issues that come within the general concept of 'offender management'. In order to assist the process of performance assessment, it is recommended that they are re-grouped into the following thematic clusters:

1. Penitentiary service (management issues, reduction in overcrowding, ethical standards, risk management, preventing ill-treatment, healthcare and rehabilitation).

2. Probation service (developing a regulatory and institutional framework, supervising prisoners on parole, strengthening the staff, providing infrastructure support, and working with civil society organisations).

3. Justice for Juveniles (general improvement of this part of the system and specifically providing more effective rehabilitation).

4. Sentencing framework (developing rules on sentencing and reducing the use of custodial sentences).

Indicators

The Action Plan identifies 136 outcomes, each of which could potentially merit several performance indicators. All of them are likely to be of interest at some point within the various departments of the Ministry of Justice. However, for our purpose it has been necessary to be more selective and identify a smaller number of indicators that nevertheless enable reasonably accurate judgements to be made about whether progress is being achieved.

In our proposals, there are two principal methods of monitoring and evaluating these reforms. Firstly, published policies and operating standards of the Ministry of Justice and others will need to be compared with current recommendations from among others the Council of Europe. These tasks will be relatively straightforward, but may necessitate a considerable amount of detail.

However, more difficulties could arise in relation to statistical performance indicators. Penitentiaries are closed institutions and the operational data necessary to measure the impact of reforms will be contained within the Ministry of Justice. We hope that in most cases the Ministry of Justice will agree to pass on this information in the belief that a fuller understanding of the work it is attempting to do will be of general benefit. However, it would not be surprising if some of the information that would assist the monitoring process would be considered rather too sensitive for wider dissemination. One example might be data that would be required to evaluate the cost/benefit of the "private-sector service provision" called for in the strategy. Another example might relate to information about misconduct committed by staff.

Set of Methods

For each of the proposed indicators it will be necessary to collect various types of information, analyse it and propose conclusions. Since a prime beneficiary of the enhanced monitoring of the proposed reforms will be the Ministry of Justice, it is reasonable to expect that its policy staff will be planning to undertake a good deal of the work involved. It also appears that there are a number of independent organisations with a strong interest in the future of these reforms. However, the

nature and extent of their participation will depend on the degree of trust they would achieve with those who hold the information.

Some methods would involve special sampling of a relatively small number of cases, for example to ascertain the proportion of prisoners released without a job to go to. We are aware that in the past, and with the approval of the Ministry of Justice, graduate students in some of the main universities have undertaken such surveys.

International and Country-Specific Reference Documents

Principal Council of Europe standards:

- Rec(2006)2 on the European Prison Rules;
- CM/Rec(2010)1 on the Council of Europe Probation Rules;
- Rec(2003)22 on conditional release (parole);
- R (99)22 concerning prison overcrowding and prison population inflation;
- CM/Rec(2014)4 on Electronic Monitoring.
- R(92)16 on the European Rules on community sanctions and measures;

Other CoE standards to be considered:

- R(99)19 concerning mediation in penal matters;
- Rec(2000)22 on the improvement of implementation of the European Rules on community sanctions and measures;
- Criminal Justice Responses to Prison Overcrowding in EaP Countries Page 8;
- Rec(2006)13 on the use of detention on remand, the conditions in which it takes place and the provision of safeguards against abuse;
- CM/Rec(2008)11 on European Rules for Juvenile Offenders subject to Sanctions and Measures;
- Rec(2012)12 on Foreign Prisoners;
- Rec (2003)23 on the Management of Life-sentence and Other Long-term Prisoners.

Other sources:

- The standards published by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).
- Judgements of the European Court of Human Rights (ECtHR) and by the United Nations.
- Reports on Ukrainian penitentiaries by the CPT.

11.1 Penitentiary reform

Baseline

There is little support nowadays for the penal philosophy inherited from Soviet times in which convicted persons were sentenced to hard labour in camps situated far the home of the detainee. Recommendations adopted by the Council of Europe, backed by international comparative research, propose a new approach based on developing pro-social attitudes, training prisoners in social and vocational skills, restoring broken family relations and providing help and supervision after release.

In recent years, the State Penitentiary Service has become acutely aware of international standards that apply to its work, as a result of study tours, donor projects and penetrating assessments by the CPT. The speed of reform has been slowed by financial constraints and the need to win political support in a highly controversial policy area. The JSRS proposes some desirable changes, but it appears to give more thorough attention to other parts of the justice system. Some significant topics, such as pre-trial detention, are not mentioned. The Action Plan, which was drafted following further international advice, includes a wider range of issues to be tackled.

Although amendments in 2012 to the Criminal Procedure Code have resulted in substantial reductions in the incarceration rate in Ukraine, it is still approximately double that found in most Western European countries. (Comparative figures for the use of imprisonment in Member States can be found in the Annual Penal Statistics published by the Council of Europe. This publication is better known as SPACE - Statistiques Pénales Annuelles du Conseil de l'Europe).

A further set of policy reforms recently announced by the Ministry of Justice will give added momentum to the changes called for by the Strategy. In relation to penitentiaries, new non-militarised staff teams will give greater priority to resocialisation and providing productive work opportunities.

Points concerning Interventions, Indicators and their Groupings

The initial topic of *modern approaches to penitentiary management* is very wide-ranging and fully covered by the European Prison Rules published by the CoE. The European Prison Rules are a useful and reliable means by which Ukrainian legislation can be compared to international standards. Some numerical indicators are proposed to clarify progress with de-militarisation and information systems. A final indicator examines whether a key supervision method has been introduced.

Assessments of *overcrowding* are assisted by straightforward standards issued by the CoE. However, the assessment of the Strategy's commitment to *improve infrastructure and private sector service provision* is likely to be problematic as large amounts of money are involved.

The development of *ethical and disciplinary frameworks* and an *oversight mechanisms* tread familiar ground, but some data – such as that concerning staff discipline – may not be disclosed to independent monitors.

The remaining indicators on *healthcare* and *psychological support* involve surveying prisoners within institutions, for which assistance might be available from university departments.

PRM Matrix on Assessment Area 11: Offender management

11.1. Penitentiary service

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Development and practical application of modern approaches to penitentiary management.[1] (11.1.1)	1. Penitentiary legislation and regulations comply with international standards.	Penitentiary legislation and regulations approved by the CoE.	Desk research	MoJ	2018-I
	2. Penitentiary operations governed by operational standards linked to key performance indicators.	Operational standards on the MoJ website and KPIs published annually.	Expert report	MoJ Civil Society Organisation	2018-I
	3. Civilian (non-military) management methods are in place.	Legislation clearly shows that the Penitentiary Service uses only civilian management methods.	Desk research	Civil Society Organisation	2018-I
		Percentage of manager and staff positions filled by open competitive selection.	Administrative data	MoJ Civil Society Organisation	Annually-(I)
		Staff/prisoner ratios are similar to European standards.	Administrative data	MoJ	Annually-(I)
	4. Managers and staff have proven competence for their positions.	Percentage of all post-holders who have not yet passed the competence test relevant to that position.	Administrative data	MoJ	Annually-(I)
	5. A computerised management and financial information system is in place.	Percentage of operational units covered by accurate cost-effectiveness monitoring.	Administrative data	MoJ	2017 2018
	6. Trained and approved prison officers are the first point of contact with a linked group of prisoners for basic welfare and management issues.	Operational Policies and Standard Operational Procedures specify a 'Personal Officer Scheme'.	Administrative data	Civil Society Organisation	2018-I

[1] (JSRS 11.1)

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Further reduction in overcrowding, improvement of prison infrastructure and private sector service provision.[2] (11.3.1)	1. Rate of incarceration should not exceed European averages.	Percentage by which the number of prisoners per 100,000 of population exceeds European averages.	Administrative data	MoJ	Annually-(I)
	2. Sufficient capacity for all prisoners to be held in regimes that meet minimum international standards.	Percentage of prisoners living in conditions (including space in cells) that are below CPT minimum standards.	Administrative data	MoJ	Annually-(I)
		Percentage of prisoners kept in cells holding over five inmates.	Administrative data	MoJ	Annually-(I)
	3. All hotel services[3] contracted out if better standards can be provided at a lower cost without security implications.	Percentage of prisoners whose meals are prepared by private contractors.	Administrative data	MoJ	Annually-(I)
		Percentage of medical units in penitentiary facilities equipped with necessary equipment and medication.	Administrative data	MoJ	Annually-(I)
	4. Annual review of potential efficiency improvements through introducing modern technology generally found in prisons of the CoE member states.	Annual report by the relevant MoJ department.	Expert report	MoJ	Annually-(I)
Development of the ethical and disciplinary framework and internal oversight mechanisms of penitentiary institutions.[4] (11.1.2)	1. A published Ethical Code covers penitentiary and probation operations.	Ethical standards equate to CoE and UN standards.	Desk research	Civil Society Organisation	2018-I
	2. An inspection service covering penitentiary and probation operations is directly accountable to the Minister of Justice.	All prisons are covered by 3-year full unannounced inspection programme and report published within six months of the inspection	Desk research	Civil Society Organisation	Annually-(I)
		From the end of 2018, the Office of the General Prosecutor is longer responsible for supervising prisons.	Expert report	Civil Society Organisation	2018-I
	3. Outstanding performance by staff is recognised and disciplinary action is taken where necessary.	Awards and discipline statistics in relation to prison and probation staff performance published on the MoJ website.	Desk research	Civil Society Organisation	2018-I 2020-I

[2] (JSRS 11.1)

[3] This notion includes services that one would expect to be provided in a normal hotel such as a bed, food, hygiene and sanitary facilities, heating, etc.

[4] (JSRS 11.2

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Further individualisation of sentencing, risk management and improvement in prison security arrangements.[5] (11.2.1)	1. Action Plans (based on risks and needs assessments) are completed on all prisoners and detainees at appropriate intervals.	Percentage of Action Plans not completed in relation to a prisoner: before the first night in custody; before allocation to the prison; after any significant change of custodial status; and before release.	Administrative data	MoJ	Annually-(I)
	2. Introduction of 'dynamic security' methods in all prisoner areas.	Instruction to implement dynamic security in selected prisons issued by the end of 2017 and to all penitentiaries by the end of 2019.	Expert report	MoJ	2018-I 2020-I
		At least 80 percent of the active supervisory staff are trained in 'dynamic security' by the end of 2017.	Administrative data	MoJ	2018-I
	3. Publication of inmate disciplinary procedures that comply with international standards are published.	By the end of 2017, published discipline standards fully comply with the guidelines contained in the European Prison Rules.	Expert report	Civil Society Organisation	2018-I
Development of mechanisms to combat and prevent ill-treatment in prisons, through external oversight and independent monitoring.[6] (11.2.2)	1. Welfare of prisoners safeguarded by a fully-functioning National Preventive Mechanism.	NPM is properly resourced to carry out its functions.	Expert report	Civil Society Organisation National Preventive Mechanism	2017-I 2019-I
	2. Independent Civil Society monitoring actively supported by the MoJ.	Drafting and adoption of a law on the dual system of prison inspections	Expert report	MoJ	2018-I
	3. Procedures and safeguards for 'whistle-blowers' to draw attention to ill-treatment are implemented.	A system covering requests and complaints meets CoE standards.	Expert report	Civil Society Organisation	2018-I
		Records of all breaches of discipline by prisoners and staff are kept in each prison and monitored by the MoJ.	Administrative data	MoJ	Annually-(I)
	4. All persons involved in incidents of physical violence are examined by a medical professional and a report is submitted to the Deputy Minister of Justice responsible for the Penitentiary Service.	Percentage reduction in the use of each type of sanction.	Administrative data	MoJ	Annually-(I)
		Statistics about disciplinary sanctions against prisoners are collected and published on the MoJ website.	Expert report	Civil Society Organisation MoJ	Annually-(I)

[5] (JSRS 11.4)
[6] (JSRS 11.4)

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
	5. Leaflets written in simple and clear language given to all new prisoners explaining their rights and complaint procedures.	Percentage of prisoners unaware of the leaflets about their rights.	Survey of prisoners	Civil Society Organisation National Preventive Mechanism	2018-I
Improved healthcare in prisons. (11.3.2)	1. Provision of healthcare equates to civilian standards.	Legislation placing prison healthcare under the control of the Ministry of Health is adopted by the end of 2018.	Expert report	Civil Society Organisation	2019-I
		All prison health services meet UN standards of medical ethics.	Expert report	Civil Society Organisation Ministry of Health	
		Percentage of prisoners for whom there is less than one qualified GP doctor per 300 prisoners.	Administrative data	MoJ	Annually-(I)
		Total annual number of deaths in prisons.	Administrative Data	Civil Society Organisation MoJ	
	2. Strategy to prevent suicide and self-harm implemented.	Suicide and self-harm prevention strategy complies with the WHO standards.	Expert report	Civil Society Organisation	2018-I
		Total annual number of deaths by suicide in prisons.	Expert report	Civil Society Organisation Ministry of Health	
Improvement in social, educational and psychological support of prisoners. (11.3.3)	1. Prisoners of all categories should have access to rehabilitation services relevant to their criminal behaviour and the problems that they will face on release that relate to recidivism.	The numbers of psychologists, teachers and work instructors should not be less than the European averages.	Administrative data	MoJ	Annually-(I)
		Percentage of prisoners attending less than five hours supervised constructive activity per week.	Administrative data	MoJ	Annually-(I)
		% prisoners who have left prison without a validated job offer.	Survey of prisoners	Civil Society Organisation	Annually-(I)
		One penitentiary probation officer should be assigned for every 100 prisoners.	Administrative data	MoJ	Annually-(I)
	2. Advice and information should be available to ex-prisoners.	Legislation should require specified agencies to provide informal advice when requested by ex-prisoners	Expert report	Civil Society Organisation	2018-I

11.2. Probation service

Baseline

The Strategy emphasises the need to introduce a modern, functional probation authority. The Action Plan underlines the importance of the reforms that will flow from the new Law on Probation adopted in February 2015. Commitments announced publicly by the MoJ for 2017 gave prominence to the "full implementation of the provisions on probation service".

The MoJ has received strong encouragement from the Council of Europe to provide a modern probation authority. For more than ten years it has invited cooperation from international donors to assist in developing an overall probation concept together with practical methods suitable for Ukraine. However, the difficulty in achieving significant positive change in the way offenders are dealt with is suggested elsewhere in the Strategy. Thus, there are calls for "proper coordination" between all parts of the justice system, as well as social agencies in the community. Based on the experiences in other countries that are transforming their justice system, it takes considerable time and hard work to develop alternative sanctions to a point at which judges and prosecutors will begin to accept their benefits. It must be hoped that community sanctions will achieve their rightful, substantial place in the penal spectrum before there are calls to provide more prison places.

Points concerning Interventions, Indicators and their Groupings

As with the prison service, the probation service benefits from detailed and generally well-accepted policy guidance from the CoE. Thus, the results from developing the *regulatory and institutional framework* called for by the Strategy can be compared with these standards. One of the indicators we have suggested envisages the Chief Probation Officer fully participating in sector-wide justice coordination.

Parole is an important aspect of penal policy in which Ukraine has failed to comply with European standards. According to the proposed indicator, supervision of parolees by the probation service should be introduced no later than the end of 2018.

Steps have already been taken to *transform the working environment of probation service employees* by providing them with *advanced infrastructure*, but satisfactory completion of this measure will have significant financial implications. The Strategy's objective to extend the *involvement of civil society organisations* may be controversial if it is to proceed beyond formal, passive recognition. Nevertheless, our indicator of targeted financial support for such organisations will be a challenging test of the Government's commitment to this aspect of the reform.

PRM Matrix on Assessment Area: 11 Offender management.

11.2. Probation service

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Development of the regulatory and institutional framework for probation services.[7] (11.4.2)	1. Probation legislation and regulations comply with international standards. 2. Probation service enjoys active links across the justice sector. 3. Probation Service publishes annual strategic development plans aimed at meeting international standards.	Legislation and regulations on probation have been officially approved by the Council of Europe.	Expert report	Civil Society Organisation	2018-I
		The Chief Probation Officer is a full member of a national justice coordination body.	Expert report	MoJ	2018-I
		Strategic Development Plan approved by the CoE on or before 31 March of each year.	Expert report	MoJ	2018-I
Provide supervised release on parole.[8]	1. Parole scheme operates in accordance with international standards.	By end of 2018, the Criminal Executive Code and other legislation is amended in order that they are in line with Council of Europe parole recommendations (CoE Rec 22 of 2003) and provide for the supervision of persons subject to conditional release.	Expert report	Civil Society Organisation	2019-I
	2. Penitentiary judges appointed and trained.	Percentage of parole decisions made by trained penitentiary judges.	CFA (sample of cases)	Civil Society Organisation	Annually-(I)
	3. Probation service provides assessments and proposals regarding the supervision of individual prisoners being considered for early release.	Percentage of parole cases that are supervised at the end of each year in which the detainee is released having considered a report from the probation service.	Administrative data	MoJ	Annually-(I)
		Percentage of prisoners who complete more than 80% of their sentence before release.	CFA (sample of cases)	MoJ	Annually-(I)
	4. Probation service provides supervision and advice appropriate to the assessed risks and needs of each prisoner released on parole.	Percentage of cases in which parole was terminated during the previous year in which the parolee had been visited at home less than three times.	CFA (sample of cases)	MoJ	Annually-(I)

[7] (JSRS 11.6)
[8] (JSRS 11.6)

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Transformation and development of existing penitentiary service employees into a functional modern probation authority.[9]	1. Probation service uses modern civilian (non-military) organisational methods.	At least 70 percent of the workforce consists of public service employees	Administrative data	MoJ	Annually-(I)
	2. The operations of the Probation Service are governed by a quality policy and performance monitoring.	National standards are published for each case supervised by the probation service.	Expert report	Civil Society Organisation	2018-I
		Key Performance Indicators published annually on the MoJ website.	Expert report	Civil Society Organisation	Annually-(I)
	3. Measured competence of all staff and managers is appropriate to their duties.	Percentage of all post-holders who have not yet passed competence test specific to their post.	Administrative data	MoJ	Annually-(I)
Ensuring advanced infrastructure for the probation service.[10]	1. The probation service operates a computerised management and financial information system.	Percentage of operational units covered by accurate cost-effectiveness monitoring.	Administrative data	MoJ	Annually-(I)
	2. Probation staff accommodated in office locations chosen to give maximum access to offenders who are being supervised.	Percentage of persons released on probation in Ukraine whose home is located at a distance of more than 30 minutes' travel (by public transport) from a local probation office.	CFA (sample of cases)	MoJ	Annually-(I)
	3. Probation staff are supplied with suitable offices, computer terminals, and a scheme refunding their travel costs.	Percentage of staff without access to a computer terminal, interview room and subsidised transport to visit offenders and prisons.	Administrative data	MoJ	Annually-(I)
Extension of institutional capacities of CSOs in the probation system. (11.4.3)	1. A CSO liaison scheme is established by the MoJ.	At least three percent of the probation service annual budget is used to secure rehabilitation services from NGOs.	Administrative data	MoJ	Annually-(I)

[9] (JSRS 11.7)
[10] (JSRS 11.7)

11.3. Juvenile justice

Baseline

In relation to juvenile justice, the Strategy disappointingly limits itself to references about improving rehabilitation in juvenile custodial institutions. Likewise, the Action Plan gives the topic less attention than the Council of Europe would like to see. (Rule 23.1 of the European Rules for Juvenile Offenders states that "A wide range of community sanctions and measures, adjusted to the different stages of development of juveniles, shall be provided at all stages of the criminal justice process".)

Whilst the recent restatement of the MoJ regarding its own reform strategy prioritises the introduction of a probation system, it fails to highlight successful results other than a recent collaboration with Canadian donors that is focussed exclusively on juvenile offenders.

Points concerning Interventions, Indicators and their Groupings

Once again, we can turn to the CoE for standards by which to measure the development of this crucial part of the justice system. Recognising that children and young people may offend for a variety of social and family reasons, we have proposed an indicator to measure coordination across the agencies and ministries involved. We suggest sampling random cases in order to assess reforms in the provision of *education and vocational training*.

PRM Matrix on Assessment Area: 11 Offender management.

11.3. Juvenile justice

Action/Result	Major Outputs/Measures	Outcome Indicators	Methods	Actors	Timing
Improving the system of juvenile justice.[11]	1. Juvenile justice legislation and regulations comply with international standards.	By the end of 2018, legislation and regulations on juvenile justice and other relevant legislation are in line with CoE recommendations.	Desk research	Civil Society Organisation Ministry for Social Policy MoJ	2019-I
	2. Effective coordination exists between government departments and civil society organisations involved in supervising and rehabilitating juvenile offenders.	A sector-wide council is established under the joint leadership of the Minister for Social Policy and the MoJ.	Expert report	Civil Society Organisation	2018-I
	3. All justice sector officials dealing with juveniles have the required competence/have passed the appropriate test.	Percentage of officials in each justice sector agency involved with juveniles who have not passed an appropriate test.	CFA (sample)	Civil Society Organisation Ministry for Social Policy	2018-I
	4. Emphasis is on developing knowledge and human values rather than resorting to coercive action.	The percentage of convicted juveniles given a custodial sentence.	CFA (sample)	Ministry for Social Policy	Annually-(I)
Ensuring the right to education and vocational educational training[12].	1. A broadly-based concept of education and vocational training prepares juveniles for a successful life after release from prison.	Teachers, social workers, psychologists and vocational instructors are present in juvenile custodial institutions in equivalent numbers to those found in comparable European institutions.	Administrative data	Ministry for Social Policy	Annually-(I)
		Percentage of juveniles serving custodial sentence attending less than 12 hours supervised education per week during term times.	CFA (sample)	Ministry for Social Policy	Annually-(I)

[11] (JSRS 11.3)
[12] (JSRS 11.3)

11.4. Sentencing reform

Baseline

Sentencing in Ukraine appears to be out of step with equivalent practice in Western Europe, as indicated by the proportionately widespread imposition of custodial sentences. The Strategy calls for the development of rules on sentencing and the reduction in the number of sanctions requiring deprivation of liberty. The Action Plan takes this further by seeking to develop 'sentencing guidelines' that would match the offender and the circumstances of the offence with the range of sentences available. However, neither these documents, – nor the more recent MoJ strategy– explicitly calls for an increased use of community sanctions for mid-range crimes. For the time being, reformers seeking further reductions in the use of custodial sentences will have to hope that this will be achieved by attention attracted by the probation service to the new alternatives it will be providing.

Points concerning Interventions, Indicators and their Grouping

The Strategy's intention to develop *rules on sentencing* is thoroughly supported by the CoE, but could well prove controversial to prosecutors and the judiciary. We have, therefore, proposed an additional indicator requiring the MoJ to publish *standards about the custodial and community sanctions* for which it is responsible.

The Strategy seeks a reduction in the number of *sanctions requiring* a *deprivation of liberty*. To measure this, we have proposed a fairly straightforward set of statistical and qualitative indicators.

PRM Matrix on Assessment Area: 11 Offender management.

11.4. Sentencing reform

Action/Result	Output	Outcome Indicators	Method of Assessment	Proposed Actors	Timing
Development of rules on sentencing[13].	1. Rules agreed across the sector for sentencing offenders in accordance with the standards adopted by the CoE.	Rules on sentencing published on the MoJ website.	Expert report	Civil Society Organisation	2018-I
	2. Relevant criminal justice staff trained in rational sentencing principles.	Percentage of police investigators, prosecutors, judges, penitentiary staff and other justice professionals who have not attended training on the sentencing rules.	Administrative data	MoJ	Annually-(I)
	3. Standards for implementing sentences are agreed.	National standards for the implementation of each sentence published on the MoJ website to inform the justice agencies and the general public about custodial sanctions and community sanctions.	Expert report	Civil Society Organisation	
Reducing number of sanctions involving a deprivation of liberty/custodial sentences[14].	1. Probation service provides the range of community sanctions considered necessary in most European countries.	Published guide (including basic probation supervision, community service, offending behaviour programmes, supervised accommodation, curfew monitoring, electronic tracking, victim support and mediation)	Expert report	Civil Society Organisation	
	2. Mid-range offenders increasingly given community sanctions.	Percentage of offenders convicted of theft, burglary and assault given community sanctions.	Administrative data	MoJ	Annually-(I)
		Breach-rates (by percentage) of supervised community sanctions.	Administrative data	MoJ	Annually-(I)
	3. Courts receive appropriate advice before placing defendants in pre-trial detention.	Percentage of defendants held in pre-trial detention without an assessment from the Probation Service.	CFA (sample)	MoJ	Annually-(I)
	4. Courts receive appropriate advice before passing sentence.	Percentage of convicted offenders who received a custodial sentence without a pre-sentence report.	CFA (sample)	MoJ	Annually-(I)
	5. Community and custodial sanctions are effectively implemented.	The quality of implementation of community and custodial sanctions is the subject of a published annual report by the MoJ Inspectorate.	Desk research	MoJ	Annually-(I)
		Percentage of probation operational teams which have less than two official review meetings with local judges in the previous year.	CFA (sample)	MoJ	Annually-(I)

[13] (JSRS 11.5)
[14] (JSRS 11.5)

PRM Matrix on

Impact assessment under Chapter 11

The outcomes of the actions described above are expected to have a positive impact on the overall goals of the offender management services. Selected indicators for these impacts are proposed below:

Action/Result	Impact Indicators	Methods	Actors	Timing
1. Increased use of alternatives to pre-trial detention	A five percent annual increase in the use of home arrest, electronic surveillance and other forms of supervised restraint as a proportion of cases of pre-trial detention (measured in comparison to the previous full year for which annual statistics are available).	Court statistics	International Development Partner (UN) Bar Association	Annually-(I)
2. Increased use of pre-trial reports	Percentage of cases in which, on conviction, the defendant was given a custodial sentence of less than three years when no pre-trial report was considered (baseline: proportion of relevant cases at the relevant time; suggested 2018 target – 50% of cases; 2020 target – 40%).	Court statistics	UN Bar Association	
3. Increased use of supervised community sanctions	A five percent annual increase in the proportion of cases involving violence and burglary for which the defendant was given a supervised community sanction (baseline: same point in the year preceding the year in which the sanction was given for which annual statistics are available).	Court statistics	MoJ	Annually-(I)
4. Increased application of rehabilitation services	Risk factors relating to repeat offending will be identified and documented during the term of the custodial sentence or the term of the probation. By the end of the sanction, the proportion of offenders that have completed at least one programme designed to impact on such risk factors will increase (suggested 2017 target – 50% of cases, 2018 target – 70%; 2020 target – 90%).	Sample of cases	MoJ	
5. Increased use of parole	Most prisoners are released before serving the entirety of their custodial sentence. For all prisoners released in a particular year, the proportion of their sentences not served should be two percent greater than for the previous year. (The impact of amnesties will not be included.)	Sample of cases or penitentiary statistics	MoJ	Annually-(I)
6. Reduced probation recidivism	This will consider offenders who are convicted of intentional criminal offences within one year of completing of a period of probation supervision. The aim will be to achieve a two percent annual decrease in the proportion of those re-convicted in each category/profile of offender (i.e. juveniles, women etc).	Sample of cases or probation statistics	MoJ	Annually-(I)
7. Reduction in reoffending leading to a further custodial sentence	This will consider convictions for deliberate crimes by offenders within one year of their release from prison. A two percent annual decrease in the proportion re-convicted will be sought in each category/profile of offender (i.e. juveniles, women etc).	Sample of cases or penitentiary statistics	MoJ	Annually-(I)

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

The European Union is a unique economic and political partnership between 28 democratic European countries. Its aims are peace, prosperity and freedom for its 500 million citizens – in a fairer, safer world. To make things happen, EU countries set up bodies to run the EU and adopt its legislation. The main ones are the European Parliament (representing the people of Europe), the Council of the European Union (representing national governments) and the European Commission (representing the common EU interest).

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