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Free Legal Aid in North Macedonia

Needs assessment for the Free Legal Aid Department and Regional Offices of the Ministry of Justice of North Macedonia

Skopje, 2024

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1. Executive summary: key findings and recommendations of this needs assessment

The free legal aid system in North Macedonia faces some important challenges. Whilst it does in fact function, there is potential risk of overall decline in activity, failure to improve, and deterioration in standards and quality, unless a range of key measures are implemented as soon as possible to reverse any negative direction.

While major and necessary structural changes are needed, this needs assessment also proposes nearly 60 further recommendations that range in urgency from ***immediately needed*** (ie by end of Q3 2023) to ***needed by the end-of 2024***.

1.1 Department for FLA

- There is an ongoing structural problem, with anachronistic historical origins, that the Department for FLA and the Regional offices are part of a Sector for Political System and Department for FLA. The Sector aside from FLA is also in charge of other completely unrelated tasks relating to elections and the political process;
- Department for FLA is currently understaffed, putting pressure on the present team, and causing irksome but resolvable issues to become disproportionately disruptive;
- A number of points of friction exist between Department for FLA and lawyers. These are not intractable and could be ironed out with intensive discussions in a programme of bilateral meetings;
- The failure to set in place the case management software that was intended to streamline the processing application; is impacting negatively on the efficiency of the department;

1.2 MoJ Regional Offices

- Some Regional Offices are at risk of stagnation: extremely low usage, low level of active demand from public, inadequate facilities etc;
- Low motivation in some Regional Offices for improvement and growth;
- No incentives for Regional Office staff to improve the situation;
- No quality assessment or quality control;
- Inadequate (or no) co-ordination and networking between ROs;
- Little evidence of a culture of improvement and excellence. There is a mood of inertia and little evidence of appetite to revive the service, though it should be noted that there is a group of RO employees who even in these circumstances are highly professional and dedicated. The effort of this group should be adequately acknowledged by the MoJ.
- Referrals Protocol is not wholly functioning as a living instrument – it needs reviving and maintaining better

1.3 Training

- Training needs as identified in the November 2022 TNA now need to be met.
- Common training is required for Department for FLA and ROs in
 - IT
 - Specific areas of law relating to clients' substantive advice needs
 - Refresher / updaters training
 - Dealing with aggressive or emotional clients and de-escalating difficult situations
- Common induction training materials for new staff (especially in ROs) are needed

2. This report

The present needs analysis is based on fact-finding in March 2023 by CoE national expert Goce Kocevski and CoE international expert John Eames.

2.1 Methodology

Meetings were held between the two experts – supported and mediated by CoE project team – with

- a number of MoJ Regional Offices
- a newly launched legal clinic at a university law faculty
- Department for FLA
- the staff of the Department for FLA
- the State advisor for free legal aid (Mr Arkin Jahiji), the State secretary at the Ministry (Mr Muhamed Tochi) as well as members of the cabinets of the Minister (Mr Muhamed Berzami) and representative from the Cabinet of the Deputy Minister for Justice

to discuss the current requirements that, in their view, are prerequisite for the urgent improvement of provision of free legal aid in North Macedonia. Discussions were held according to an agenda set by the experts and CoE project team, in order to elicit the interlocutors' frank opinion and free-form thinking about how to improve, and they were given very free rein to elaborate on what is good and what needs improving in the current free legal aid environment.

Further, informal soundings were taken during the March 2023 meeting of the National Co-ordinating Body on Free Legal Aid meeting and the inaugural meeting of the Kumanovo Local Co-ordinating Body on Free Legal Aid.

The experts' own analysis, based on wide experience of this and other legal aid systems internationally, was applied in order to test the opinions and suggestions of the interlocutors as to how appropriate and realistic the recommended changes would be. Hence the left-hand column in the following table, *The experts' findings: need, issue or problem as observed or expressed*, represents an analysis of what appear to be the key problems, shortcomings or areas for improvement as seen through the prism of an international take on how a modern

and functional legal aid system should look. For comparison the experts drew on their own research on and experience of existing norms, as well as real-life experience of free legal aid systems (not necessarily better but always useful comparatively) in the EU, across the wider rest of Europe, and in the non-European anglophone world.

3. Needs assessment in detail

First, three fundamental structural deficits are flagged, all of them areas where radical restructuring and remedial re-staffing is urgently needed. Below, in section II, detailed findings about current functionality, this needs assessment highlights a wide range of shortcomings large and small, all of which need immediate attention in order to rescue the free legal aid scheme from decline.

3.1 I: Structural deficits in Department for FLA and the ROs

A: Severe understaffing at Department for FLA

The Department for FLA currently operates with only three administrative servants of whom one serves as head of the Department while the other two are positioned as junior associates (V4 level). With the current staffing the Department is at risk of not being capable of implementing all different competencies and duties that are stemming from the LFLA that include:

- conducting administrative procedure upon filed complaint on 1st instance decisions;
- representing the MoJ before the Administrative Court in cases related to FLA;
- processing requests for payment by lawyers;
- supervising of primary and secondary legal aid providers;
- enlisting legal aid providers into registries; funding of associations and legal clinics

as well as other tasks related to the FLA system.

Aside from the insufficient number of administrative servants, there is a concern about their job position levels. The junior associates are considered as entry level positions pursuant to the Law on Administrative Servants for which no previous job experience is necessary. In practice, both employees of the Department, have more than five years' practical experience working there. Without realistic and tangible prospects of promotion it is highly likely that the MoJ will face a high turnover of experienced staff.

Suggested response

The MoJ, with CoE input and support, should consider how this can be urgently addressed, and should acknowledge frankly how badly this adversely affects Department for FLA performance and morale.

A short term priority should be given to ensuring that there are, as bare minimum, three more administrative servants while at the same time ensuring that the current staff is promoted to a level that corresponds with their experience, qualifications and skills. Lack of urgent action will result with further burnout and demotivation of the staff at the Department, increased likelihood of staff turnover and insufficient performance in managing a complex system such as the FLA system.

B: Inadequate internal organization of the MoJ

The existing structure, according to which matters related to free legal aid are carried out by a department within a Sector for free legal aid and the political system, is obsolete and has proven to be inadequate. It is an unreformed remainder of the time when the general administration and the electoral administration fell within the competencies of the MoJ (before they were moved to the Ministry of Information Society and Administration and the State Electoral Commission respectively).

Linking two essentially different issues such as free legal aid from one, to matters related to the political system is an artificial conflation of completely different subjects. Working on these two topics requires completely different knowledge and skills, which negatively affects the human resources available to the Ministry of Justice.

The Department of Free Legal Aid is required to manage the overall FLA system that among other things includes coordination and management of the Regional Offices while, from an organizational point of view, the RO are not subordinated to the Department. The Head of the Department and the Heads of the RO are hierarchically on the same level. This is causing problems in establishing a clear chain of command in the FLA system. On one hand the Department is required to conduct tasks such as coordination of the RO while formally they the RO do not respond to the Department.

Suggested response

Amending the Acts for Systematisation and Internal Organization of the Ministry in accordance with the provided proposal from the Council of Europe. The reform should at minimum include:

- The RO should be structurally subordinated to the Department for Free Legal Aid
- The Department for Free Legal Aid should be raised to the level of Sector for Free Legal Aid

The Sector for Free Legal aid should include the following departments:

- Department for policy making and monitoring
- Department for training and coordination of regional departments; and
- Department for handling administrative procedures.

C: The absence of legal aid from the State Reorganisation report

The FLA administration was omitted as competency that falls under the MoJ in a report on State Administration Reorganization adopted by the Government.

In 2022 the Government adopted a Synthesis Report on State Reorganisation, prepared within the auspices of EU funded project (EuropeAid/144876/DH/SER/MK). The function of the report is to serve as a blueprint for the envisioned overall reform and reorganization of the state administration. It maps the existing competencies of the Ministries and proposes their allocation to Agencies, Inspectorates or remaining within the Ministries. The management of the legal aid was not indicated in the section related to the Ministry of Justice nor was it mentioned at all in the report. This raises concern about the prioritization of the legal aid among key policymakers.

Suggested response

The management of the FLA should be indicated in all strategic documents and should be kept high on the priority.

D: Lack of co-ordination of ROs – an emergency proposal

This is to be addressed more permanently by the longer-term structural changes proposed in the foregoing paragraphs. A better coordination of the regional offices will flow from improvements to the hierarchy and structure and lines of responsibility, along with streamlining regional offices' fundamental purpose to legal aid.

However, a short-term emergency measure proposed in this assessment will achieve some immediate gains if implemented during Q3 and Q4 of 2023.

The short-term emergency measure also highlighted in the table of measures below at recommendation 55 should be implemented immediately and last for up to 2 years. Staff in over-staffed ROs would be invited to apply for the following role by registering an expression of interest.

The successful candidate would be seconded to the role of **peripatetic** (ie roving) **Regional Office support worker** role, say 6 or 12 months at a time – it could rotate between individuals. The peripatetic Regional Office support worker will assist and service ROs across the country. They would not take on extra authority. ROs would not be accountable to, or managed by, the support worker. It is a support and assistance role, not a line-manager and not above the ROs in a hierarchy. No salary increase would be payable in the short term but adequate travel costs and per diems payable as s/he would need to physically visit ROs often. This concept to be developed and costed by end of Q3 2023 with brief feasibility assessment, and implementation to begin by end 2023.

3.2 II: Detailed findings on the shortcomings in the system

The experts' findings: need, issue or problem as observed or expressed	Suggested response / recommendation	If achievable, by when?	Next step
Resources and training for Department for FLA and RO staff			
Lack of qualified staff – poor experience of new / younger RO colleagues	1. Training – review TNA if there are significant numbers of such new staff	End of Q3 2023	
RO and Department for FLA staff need for education on legal areas relating to clients' substantive advice needs: law on property rights, inheritance law, consumer rights, labour law, family law, administrative law, notary and execution processes , rights of victims etc.	2. Review the TNA, the extent of its implementation so far, and whether additions should be made per the present document. 3. Design and deliver this training	End of 2023	See December 2022 TNA
For some of the employees in the RO there are concerns that they are still grasping with the concept of providing legal advice, what it encompasses, to whom to provide it and how to provide it.	4. Clarify better what these issues and misunderstandings are 5. Clarify with Department for FLA which training they are suggesting should be repeated 6. Reprise of the primary legal aid training for the representatives of the RO.	End of Q3 2023	Consult Department for FLA again
Poor IT skills in ROs	7. IT training for ROs including <ul style="list-style-type: none"> • basic training for spreadsheets and • using case management software (if adopted) 	End of 2023	

The experts' findings: need, issue or problem as observed or expressed	Suggested response / recommendation	If achievable, by when?	Next step
Inflexibility about Department for FLA and RO staff getting cost of paid-for training reimbursed (eg online webinars – or other types of training)	<p>8. Better training policy needed that will allow budget for staff to choose their own online training options from a prescribed list of providers and up to a maximum financial limit per person per year. The trainings on FLA should be planned annually as specialized trainings (in accordance with art. 58 of the Law on Administrative Servants).</p> <p>9. Actual provision of face-to-face training in accordance with staff's self-stated and self-diagnosed training needs</p>	End of 2023	<p>Write proposal for a self-directed training budget per member of staff</p> <p>Plan 2023-24 training programme</p>
Systems and procedures causing Department for FLA unnecessary extra work or not fit for purpose			
Excess of time-consuming administrative tasks:		End of Q3 2023	
<ul style="list-style-type: none"> • Payment of lawyers 	10. Further detail needed: ascertain what is <i>unnecessarily</i> time-consuming		Consult Department for FLA again
<ul style="list-style-type: none"> • Reviewing cases 	11. Further info needed on what exactly is <i>unnecessarily</i> time-consuming		
<ul style="list-style-type: none"> • Producing / getting documents to support a case 	12. Improved agreed procedures including more electronic submission of receipts and e-service of documents: we can assist drafting them		Set up discussions

The experts' findings: need, issue or problem as observed or expressed	Suggested response / recommendation	If achievable, by when?	Next step
<ul style="list-style-type: none"> Costs calculations 	<p>13. Get lawyers to produce better-prepared claims that are ready for Department for FLA to approve (or not) without onerous further research and enquiry: require that claims are submitted electronically in a decision-ready format</p> <p>14. Require that costs claims must readily tally with receipts and proofs without forensic arithmetic by Department for FLA</p>		<p>between Department for FLA and Bar Association</p>
Department for FLA procedures relating to lawyers' claims			
<p>Lawyers claiming reimbursement for costs not covered / claims exceeding what is allowable – plus subsequent dispute mechanisms including court – need to get documents from ROs in these cases – currently a manual paper-based system</p>	<p>15. Consider how the process can be streamlined through electronic uploading of documents and a systematic prescribed procedure in excess claims cases;</p> <p>16. Consider whether a process tool (Guidelines) agreed by all parties (Department for FLA and the lawyers) could streamline this. CoE could assist with developing this tool</p>	<p>End of Q3 2023</p>	<p>Set up discussions between Department for FLA and Bar Association</p>
<p>Lawyers not paying attention to what is eligible for reimbursement and what is not – lawyers claiming too much whether deliberately or inadvertently</p>	<p>17. Renewed information to lawyers – a printed instruction leaflet on what is claimable</p> <p>18. Raise as an issue at NCB and LCBs and have a training item in NCB agenda</p>		<p>Add to NCB June 2023 agenda</p>

The experts' findings: need, issue or problem as observed or expressed	Suggested response / recommendation	If achievable, by when?	Next step
Lawyers' registration	19. Ascertain what the problem is and what is unnecessarily time-consuming and why?		Consult Department for FLA again
Deletion of inactive lawyers from register	20. Ascertain what if anything is unnecessarily time-consuming about this task, and why?		
Lawyers with excessive rejections of claims are not sanctioned	21. Establish and implement a policy of Department for FLA giving brief reasons for rejection of lawyers' claims (if this policy is not already mandatory which it ought to be) 22. Better implementation of ultimate sanction of striking out the lawyer from the FLA list – assess how often this fails to happen when it ought to 23. Raise as an issue at NCB	End of Q3 2023	Discuss with Department for FLA Add to NCB June 2023 agenda
Lawyers' need for training on FLA law	24. Design and deliver more training for lawyers on FLA law including practicalities of claiming. Ensure that trainings on FLA are part of the training centre of the Bar.	End of 2023	Discuss with Bar Association and agree to design training

The experts' findings: need, issue or problem as observed or expressed	Suggested response / recommendation	If achievable, by when?	Next step
<p>Lawyers calling Department for FLA to ask practical questions which they could answer themselves if better informed</p>	<p>25. Facilitating new and better communication between the MoJ and the Bar 26. Create an FAQ page on the FLA website with answers to those problems 27. Include common FAQs in a series of articles in the FLA Bulletin 28. Raise as an issue – and give briefing – at NCB</p>	<p>End of Q3 2023</p>	<p>Discuss with Department for FLA and agree FAQs Add to NCB June 2023 agenda – agree who will give briefing (not Department for FLA)</p>
<p>Tariffs for lawyers seemingly 'uncontrolled and not systematically limited'</p> <p>Some lawyers claiming disproportionate costs compared to the winnable benefits of the case – consequent need for Department for FLA staff to calculate these matters</p>	<p>29. Improved understanding by lawyers of what is excessive and what is not – training and briefing for lawyers and a written guide setting out the rules 30. Clarification of the rules on excluding disproportionate legal fees in low-value cases and guidance on exercise of discretion as to disproportionate fees 31. [on Department for FLA's suggestion:] NCB to debate this question and review lawyers' fees</p>	<p>End of Q3 2023</p>	<p>Broker discussion between Department for FLA and Bar Association Add to NCB June 2023 agenda</p>

The experts' findings: need, issue or problem as observed or expressed	Suggested response / recommendation	If achievable, by when?	Next step
Referrals and mis-referrals			
Referrals Protocol not actually used fully in practice	32. Refresher training on Referrals Protocol and workshops / meetings to reassert the need for it and gain providers' agreement to try to use it 33. Consider whether update and revision of Referrals Protocol is necessary 34. Raise as an issue at NCB	End of Q3 2023	
Courts advising parties to go directly to Department for FLA rather than to ROs	35. Better liaison with the courts to correct this, if they are misdirecting parties to Department for FLA 36. Raise as an issue at NCB 37. Programme of education of judges and court staff around referral practicalities	End of 2023	Set up meeting with judges and court staff to encourage higher quality referrals from courts
Inadequate referral system from official info-points in immediate vicinity (eg municipal Citizen Information Center downstairs from Shtip RO in same building)	38. Supportive visits to ROs to advise and encourage better more visible links from one advice point to the RO (& v.v.)	End of 2023	

The experts' findings: need, issue or problem as observed or expressed	Suggested response / recommendation	If achievable, by when?	Next step
Regional Office performance and resourcing issues			
New computers not in use because they 'cannot' be set up	39. Ascertain in which ROs this is the case; have MoJ IT staff visit and set them up and train staff who'll be using them	End of Q3 2023	Check which ROs are affected Identify source of one-off IT support
Isolation of ROs from each other and poor lines of communication; poor co-ordination	40. Set up e-mail group and Viber/WhatsApp (etc) groupchats etc for circulation of information and views See idea below for peripatetic RO support worker	End of Q3 2023	All of these are matters to be addressed strategically by secondment of a support person
ROs said not to understand 'how to give legal advice'	41. Clarify with Department for FLA what this issue is? 42. Department for FLA suggest repeat of previous training – which training	End of Q3 2023	
Poor state of repair of premises	43. Instigate a programme of redecoration, refurbishment and new furnishings, and new signage. The MoJ should adequately plan and budget such activities.	End 2024	

The experts' findings: need, issue or problem as observed or expressed	Suggested response / recommendation	If achievable, by when?	Next step
<p>Inadequate accommodation: no space for private consultations and no real appetite to rectify this</p> <p>Sometimes no access for people with mobility problems</p>	<p>44. Educate ROs about need for private consultation areas – encourage demands for more rooms</p> <p>45. Encourage better-developed policy on assisting mobility-impaired clients (agreement to use other rooms, not just the lobby or on the street, etc)</p>	End 2024	
<p>No attention to security of staff in case of violence or threat</p>	<p>46. Action plan for emergencies; organise furniture in rooms with this in mind</p>	End of 2023	
<p>Need for better choice of information & literature for the public at premises</p>	<p>47. Provide leaflet racks / spinners to ROs that don't have one and encourage ROs to stock up on a wide range of leaflets</p>	End of Q3 2023	Establish how this could be funded
<p>Inadequate, or no access to official or legal databases including Official Gazette</p>	<p>48. Provide access at least to Official Gazette online; corporate subscription by MoJ to a relevant legal database (eg Akademika or Lexis) to cover Department for FLA and all ROs</p>	End of Q3 2023	Get MoJ to subscribe them

The experts' findings: need, issue or problem as observed or expressed	Suggested response / recommendation	If achievable, by when?	Next step
ROs feel constrained about undertaking their own local communication and promotion to the public	<p>49. Agree with FLA Department / MoJ that no permission is needed for local promotions – make this clear to all ROs. The MoJ should provide an official guidance/policy for the RO representatives on how and when should take actions for promotion of the services.</p> <p>50. Produce a template pack for ROs to use for their local promotional materials (posters, leaflets, press-releases, sample e-mails to media or other collaborators); plus ideas pack on local promotion initiatives</p> <p>51. Promote the FLA corporate identity / logo and have it used on all paper and electronic communications and welcome/directional signage; produce and distribute A-boards to put on pavement outside RO premises</p>	End of Q3 2023	<p>Confirm at high level that this is the case</p> <p>Plan content of pack</p> <p>Engage and brief designer</p>
New staff induction needs	52. Design induction training pack for ROs to implement themselves after undergoing ToT	End of 2023	Discuss with ROs what content is needed; put the December 2022 TNA into action

The experts' findings: need, issue or problem as observed or expressed	Suggested response / recommendation	If achievable, by when?	Next step
Lack of leadership to encourage, support, train, quality-monitor and resources the ROs	<p>53. Short-term emergency measure (immediate and for up to 2 years): invite staff in over-staffed ROs to take part in an expression of interest exercise for taking on (being seconded to) a peripatetic (ie roving) Regional Office support worker role, say 6 or 12 months at a time – it could rotate – and then implementing this, with the support worker assisting and servicing ROs across the country. The peripatetic Regional Office support worker would not take on extra authority. ROs would not be accountable to, or managed by, the support worker – ie it's a support and assistance role, not a line-manager and not above the ROs in a hierarchy. No salary increase but adequate travel costs payable as s/he would need to physically visit ROs often.</p> <p>54. Mid-term (1 year+): implement structural reorganisation as per the 2021 organigram</p> <p>55. Long-term: reorganisation as per the single unitary FLA authority plan</p>	End of 2023	Seek MoJ approval for this; persuade ROs and Department for FLA
Risk of stagnation – low motivation, low impetus for change and improvement	<p>(55. See above: implement peripatetic Regional Office support worker role)</p> <p>56. Structural change in incentivising staff though promotion prospects and pay upgrades</p>	End of 2023	Convince MoJ that ROs are in crisis

The experts' findings: need, issue or problem as observed or expressed	Suggested response / recommendation	If achievable, by when?	Next step
Extremely low usage (eg 10 enquiries per month) by members of the public	57. Active and vigorous local promotion urgently needed – staff need to be enthused and incentivised to undertake this to drastically improve the enquiry rate	End of 2023	Temporary urgent remedial support work as per the peripatetic support worker concept

4. Categories of response and timeframes

The proposed actions in response to the needs identified by the expert team fall into a number of types:

Training

The assessment mission found that the training requirements spontaneously voiced by our interlocutors were very consonant with training directions already elaborated.

The current existing TNA of December 2022 corresponds partly with the needs informally identified in the fact-finding in this report. The present experts would confirm that both the initial and continuous training proposed in that assessment are right on target, and findings in this mission endorse the approach taken by the authors of that report. It should be adopted in its entirety.

CoE can consider assistance with design of training and in some cases delivery of training.

Items 1-9 achievable by end of 2023, some (1 and 6) by end of Q3 2023.

Meetings

Most urgent is a programme of bilateral meetings between MoJ Department for FLA and the Bar Association. Attendees on behalf of the Bar must have authority to negotiate. The resolution of at least 6 key issues could in principle be achieved with solid line-by-line work on guidelines and protocols about:

- excessive claims
- legal fees claims disproportionate to winnable gains in low-value cases
- lawyers calling Department for FLA with easy queries
- de-listing of inactive lawyers
- sanctions against lawyers offending too often against excessive fees claims
- sanctions against lawyers offending in other ways

There could also be bilateral discussion about how to streamline claims by lawyer (adherence to a fixed format if not already prescribed, electronic submission of supporting documents); though the format of claims is ultimately a matter for Department for FLA and within their power to prescribe as to format, media, etc

These discussions if fruitful could in principle unlock an amount of worker-hours at Department for FLA which are presently taken up with resolving those matters.

There also need to be meetings between Department for FLA and representatives of judiciary and court staff to ascertain why mis-referrals are taking place from courts to FLA.

CoE could assist with chairing, mediating and moderating these meetings, and CoE national expert can providing advice on what the legislation says about those modalities.

Timeline: Items 10-23 and 25-31 can be achieved within the framework of meetings between now and end of Q3 2023.

NCB and LCBs

A number of issues will benefit from being discussed at forthcoming NCB and LCB meetings. Currently, the manner of getting items on the agenda is via the CoE portal, and CoE will action this. Many items actionable by end of Q3 2023 can be adopted into the June 2023 NCB meeting agenda.

This includes improvements to the Referrals Protocol: items 32-34 can be achieved in this Q3 2023 timeframe

Simple and easy decisions by MoJ

A number of proposals above suggest that commitment is now needed by MoJ at high level to implement some simple and straightforward changes (eg, corporate subscription to Official Gazette and a legal database, explicit approval for ROs to do their own promotional activities, provide leaflets racks and spinners) – 49-53 – all feasible by end of 2023, some by end of Q3 2023.

Strategic decisions by MoJ

A fast decision to enable the short-term secondment of a peripatetic Regional Office support worker could unlock a number of channels of assistance, support and stimulus for change – starting by end 2023

Technical assistance and RO support

IT support to get dormant computers running

Publicity and promotion pack for ROs

Much of this is achievable by end of Q3 2023, eg items 40-44

Issues around the premises – items 45-47 will be longer term (by end 2024) projects but planning needs to start now.

Issues around information and promotion – items 49-53 – can be achieved by end of Q3 2023; concrete results from vigorous local promotion (item 58) will start to become visible by end of 2023 if implemented by end of Q3 2023.

The peripatetic support role (item 55) for ROs is medium term and is feasible by end of 2023

Steps towards structural improvements (item 53 and the deep structural change advocated in part I above) can be launched by end of 2023 and will come to fruition by mid-2024.

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