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EU Project
"Support to Justice Sector Reforms in Ukraine"

REPORT
On Strategic Screening of the Role and Key Competences of the Ministry of Justice of Ukraine

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Introduction

The Ministry of Justice of Ukraine (MoJ) is composed[1] of the central body consisting of 20 departments, 2 directorates and 1 division, as well as 27 regional territorial offices that are subdivided into district units. In addition, there is the State Penitentiary Service, the Archival Service of Ukraine, the Coordination Centre for Legal Aid Provision, the Centre for Re-Training and Professional Development of Justice Professionals, 6 Forensic Science Institutes and two state-owned enterprises: "Ukrainian Legal Information" (**«Українська правова інформація»**) and "Information Centre" (**"Інформаційний центр"**).

This Report excludes those units of the MoJ central body the core functions whereof are to ensure the activities of other ministerial units – the Department of Material Provisions, the Internal Audit Directorate and the Division for Mobilisation and Secrets.

The changes of the functions and structure of the MoJ recommended in this Report are based on the principles of the rule of law, separation of powers, decentralisation, optimisation of functions (efficiency, cost/benefit ratio), effective governance, accountability, deregulation, reduction and optimisation of the State budget expenditure, user-orientation of justice services, evidence-based policy making.

If acceptable to the Ukrainian policy makers, some of the suggested steps will be feasible to be carried out in the short-term. However, some steps will require more medium-term (from 2 to 5 years) to long-term (more than 5 years) interventions. With this in mind, this Report is to be taken primarily as food for thought for further policy choices to be taken down the road, necessitating planning of more targeted or comprehensive actions as part of the implementation of the Justice Sector Reform Strategy and Action Plan (JSRSAP) 2015-2020 and other wider national reform policies. In this respect, an *Annual Implementation Plan under the relevant Chapter 12 of JSRSAP for 2015-2016* has been prepared and presented as Annex to this Report. It is that document that should be taken as our suggested list of *immediate and short-term priorities* in the MoJ reform. The remainder of the proposed interventions could be considered as suggested for medium and long-term perspective.

I. General assessment of the competence and functions of the Ministry of Justice

The current competence and functions of the Ukrainian MoJ are, in principle, linked with national and international law-making, the implementation of EU law, the administration and regulation of separate sub-sectors (penitentiary, probation, enforcement, insolvency administration, notary, legal aid, registers, etc.), international legal assistance, etc. Such remit and functions of the MoJ are, in principle, in line with the requirements for a European MoJ.

On the other hand, there are several elements of a more general nature in the Ukrainian MoJ that do not fully comply with the European standards, traditions and trends:

(1) A traditional European MoJ is underpinned by coordination and monitoring of the strategic planning and implementation of reforms in the justice sector or its components. Considering the structure of the Ukrainian authorities and the division of their powers, the

[1] Since the Report conclusions were formulated in July 2015, certain changes in the structure of the Ministry took place in the course of the summer 2015. The structural analysis of MoJ presented in this Report should be considered valid, taking into the necessary factual adjustments in line with the currently ongoing MoJ reform..

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MoJ should be more extensively involved into the development and implementation of the justice sector policy. Reforms in separate institutions of the justice sector (e. g., prosecutor's office, courts) also influence the activities of other judicial and law enforcement institutions, hence, strategic planning is necessary and should cover the legal regulation of systems, the planning and ensuring of material, financial and human resources that is traditionally carried out by the MoJ and the Government on the level of the executive power. It could be argued that the MoJ is the most impartial institution within the justice sector[2], hence, it should as a rule draw up most of the draft legal acts necessary for reforms and represent them at the Government, the President's Office and the Verkhovna Rada. Given its position within the executive and its sector-wide focus, the MoJ can *more effectively* represent the interests of justice sector institutions before other branches of power, rather than where those institutions are acting entirely on their own.

(2) Traditionally, the MoJ has to ensure that the principal laws and codes of the state are stable and systematic, therefore, individual law-making departments should be tasked with the supervision of specific laws and codes, e. g., (a) the Civil Code, the Code of Civil Procedure – by the Department of Civil, Financial and Land Law; (b) the Criminal Code, the Code of Criminal Procedure by the Department of Justice and Security; (c) the Punishment Enforcement Code (Criminal Executive Code) by the Department of Legal Institutions, etc. The supervision of codes would cover the monitoring, analysis and assessment of their application practices, the drafting of amendments and supplements; as well as an obligatory evaluation of draft amendments and supplements, and submission of opinions[3]. For the purposes of supervision, the Minister could form special permanent Consultative Councils consisting of the best experts in specific areas – judges, prosecutors, advocates, scholars, MoJ specialists[4]. The MoJ should provide administrative support for the activities of such Councils. It should be noted that expert opinions and conclusions of such Councils could also be sought by Working Groups formed for the implementation of the Justice Sector Reform Strategy and Action Plan (JSRSAP) 2015-2020 and responsible bodies under that policy, when necessary.

(3) MoJ's function entitling it to interpret the legal acts within its competence (e. g., for notaries, public bailiffs (state executive officers), registrars, etc.) is contrary to the principle of the rule of law, according to which law should be interpreted by the subject that applies the law or by court. Moreover, such interpretations of law by the MoJ in some sense replace the law as such, on the other hand, the courts are not obliged to apply the law following the interpretations provided by the MoJ. It should be emphasised that any regulatory ambiguities should be clarified either by the body that has enacted a specific legal act (by revising or amending the legal act) or by the court (or another body that applies the legal act).

(4) MoJ's function entitling it to interpret the legal acts within its competence in a way encourages natural persons and legal entities to contact the MoJ with their requests to clarify certain legal acts or resolve their legal issues (i. e. provide legal aid, in principle). The MoJ's function to reply to such requests of natural persons and legal entities and actually provide

[2] The impartiality of the MoJ stems from the fact that it is not the implementer of specific legal acts - for example, the Criminal Code or the Code of Criminal Procedure - hence, it has less one-sided interest in their contents in contrast to, for example, the prosecutor's office or the courts.

[3] This kind of supervision determines requirements of the principle of evidence based policy making. The supervision function is implemented by the Ministry of Justice of Finland, Estonia, Poland, Sweden, Lithuania, France, Germany, etc.

[4] Such groups are created within the Ministry of Justice of Finland, Estonia, Lithuania, Italy, etc.

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legal aid should be modified substantially: the MoJ should provide only standardised information about effective legal acts, while requests to provide legal aid should be referred (forwarded) to the state institutions and public organisations which provide primary legal aid, as well as to the territorial offices of the Coordination Centre for Legal Aid Provision based on the place of residence of the applicant. Furthermore, such applicants should be informed about their right to contact advocates and other institutions that provide legal services.

(5) In order to improve the management, performance and control of the MoJ central body, its territorial offices and subordinate institutions, the paper-based document management system should be transformed as soon as possible into the e-document system and moved to the electronic space. The first step could cover only the MoJ central body and could subsequently embrace territorial offices and subordinate institutions. Moreover, there should be rules in place in the MoJ central body to be followed to communicate the information (material) collected (developed) by one department or make it available to other departments or MoJ subordinate institutions.

(6) Performance management, risk assessment and inspections. The work should start with the definition of quality standards of public servants working for MoJ. Distinction should be made between procedural control (for instance, of SEOs) which as a rule should be given to the courts on the one hand, and internal control for performance management purposes which should remain a key cross-cutting function of MoJ.

II. Assessment of the functions of individual Ministry of Justice departments

1. Department of Civil, Financial and Land Law (88 employees)
2. Department of Constitutional, Administrative and Social Law (60 employees)
3. Department of Justice and Security
4. Department of Anti-Corruption Policy
Currently, Department of Justice and Security and Department of Anti-Corruption Policy are combined into one and have 27 employees.

Questionable functions of the law-making departments (the Department of Civil, Financial and Land Law, the Department of Constitutional, Administrative and Social Law, the Department of Justice and Security, the Department of Anti-Corruption Policy)

(1) The function related to a systematic and regular review of the laws passed by the Verkhovna Rada by submitting an opinion on their compliance to the President regarding a potential exercise of the veto right[5] appears redundant, imposing an additional heavy and unplanned burden to be handled urgently by MoJ staff. Reduction of the scope of this function (or even its elimination) could be justified by the monitoring and (impact) assessment of draft laws during their deliberations and adoption at the Verkhovna Rada. This function could be undertaken as independent only in exceptional cases of highly important or problematic laws.

[5] This function raises some doubts concerning its compatibility with the requirements of the principle of separation of powers.

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(2) It is necessary to implement in practice the requirement that a concept of a legal act[6] should be always developed when it is sought to regulate a new area (drafting of laws firsthand in such cases is difficult in the absence of a clear direction, methods and when the final result of the legal regulation is unknown).

(3) The function of the Department of Anti-Corruption Policy should be, in principle, taken over by the service specialising in the prevention and control of corruption (National Agency for Prevention Corruption or National Anti-Corruption Bureau of Ukraine). The MoJ should retain the function of anti-corruption impact assessment of legal acts regulating MoJ's own system (this could be transferred to the Department of Justice and Security) and the development and implementation of anti-corruption measures within the MoJ system and its subordinate institutions (as a function of individual services (for example, State Penitentiary Service), regional territorial offices.

Suggested new functions of the law-making departments (the Department of Civil, Financial and Land Law, the Department of Constitutional, Administrative and Social Law, the Department of Justice and Security, the Department of Anti-Corruption Policy)

(1) Changing of the department names should be considered: *the department of Civil, Financial and Land Law could be renamed to the Department of Private Law; the Department of Constitutional, Administrative and Social Law – to Department of Public Law; the Department of Justice and Security – to the Department of Criminal Justice and Security.*

(2) The MoJ is already responsible for policy-making and implementation in the area of execution of sanctions. Moreover, the setting up of the probation system should commence in the near future. These elements will undoubtedly make it necessary to assess and, if necessary, revise the criminal policy pursued by the State[7]. It should be considered whether the MoJ (the Department of Justice and Security) should be assigned the responsibility for the initial analysis and assessment of the national criminal policy as well as for policy-making by suggesting amendments or supplements of criminal laws to the Government and the President[8]. The Department would be assisted in this function by permanent Consultative Council on Criminal Policy (e.g. Criminal Code, Code of Criminal Procedure) and other working groups functioning under the MoJ, State Penitentiary Service, etc.

(3) MoJ should strengthen its role in systematic and obligatory monitoring of the implementation of newly adopted legal acts (in particular, laws). Each department of the MoJ should carry out the annual implementation monitoring of one or several legal acts within

[6] It should be considered whether the concept contents of a legal act embrace the following elements: (a) existing factual and legal situation (substance of the fact and its prevalence, national law requirements, case-law, EU law requirements and the case-law of the CJEU, requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the case-law of the ECtHR); (b) actual and legal issues to be solved; (c) rationale and objective of the intended legal regulation; (d) principal provisions of the legal regulation; (e) potential positive and negative effects on the State's budget, financial system, economy, social environment, criminogenic situation, etc.

[7] Criminal policy is understood as crime prevention and control developed by the Government, the President and the Parliament by adopting criminal laws and implemented by the prosecutor's office and courts through the application of criminal laws.

[8] This function is implemented by the Ministry of Justice of Finland, Sweden, France, Estonia, Germany, Netherlands, Lithuania, United Kingdom, Belgium, Slovakia, etc.

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the area of its competence in a planned way[9]. The MoJ should approve the monitoring procedure and the scope of information to be collected during the monitoring, the procedure and structure of reporting, conclusions, etc.[10] This function could be carried out by the present Department of Systematisation and Registration of Legal Acts. In order to avoid potential overlapping in the implementation and monitoring of legal acts (laws), it is recommended that this activity should be commenced and subsequently coordinated by sharing the competences in monitoring with all implementers of (responsible bodies under) JSRSAP 2015-2020, until it is fully taken over by the MoJ and other state institutions at the final stage.

Certain aspects of law-making outside the MoJ competence to be addressed

(1) It is necessary to carry out an assessment of the legal regulation of the entire law-making process and individual competences of state institutions (the MoJ, the Government, the President and the Verkhovna Rada) during this process. Special attention should be paid, *inter alia*, to the following aspects of the legislative process: (a) supervision of the stability and systemic nature of the principal laws and Codes; (b) development of the concept of a legal act when it is sought to regulate a new area; (c) legal expertise on draft laws regarding their conformity with the ECHR and case-law of the ECtHR; (d) legal expertise on draft laws regarding their conformity with the requirements of EU legal acts and the CJEU jurisprudence; (e) registration of legal acts; (f) legal expertise in the MoJ on laws, which have been adopted by the Verkhovna Rada and submitted to the President for signature; (g) systemic monitoring of the implementation of legal acts.

(2) Weak law-making units in line ministries making it necessary, for example, for the Department of Civil, Financial and Land Law not only to carry out the functions of the MoJ in the law-making process but practically to take over some of the functions of the line ministries. It is necessary to strengthen law-making units in line ministries by employing qualified lawyers and specialists (possibly through fixed-term secondments or permanent relocation of MoJ specialists to the leading positions of the law units in line ministries).

5. Department of Systematisation and Registration of Legal Acts and Legal Education (59 employees)

Questionable functions of the Department of Systematisation and Registration of Legal Acts and Legal Education

(1) The functions related to the registration of legal acts:

[9] This function is implemented by the Ministry of Justice of Finland, Poland, Germany, Lithuania, etc.

[10] The monitoring of implementation of legal acts should assess: (1) the effectiveness of the legal regulation measures set forth in legal acts in achieving the legal regulation objectives; (2) the positive impact and negative effects of the legal regulation on the area regulated and other areas (economy, state finances, social environment, public administration, legal system, criminogenic situation, extent of corruption, environment, administrative burden, regional development, etc.), individuals or their groups; (3) direct and indirect benefit of the legal regulation, recipients of this benefit; (4) conformity of the outcomes of the legal regulation to the objectives and outcomes planned when implementing the legal regulation; (5) the necessity to change or eliminate the legal regulation.

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– the segment of registration of legal acts, which covers the legality control of adopted, signed and similar legislation, is redundant because the body that has adopted the legal act should bear the responsibility for it. Meanwhile the existing registration procedure shifts such responsibility on the MoJ and to some extent violates requirements of the principles of separation of powers and effective governance. Where necessary, the MoJ could carry out legal expert examination of important legal acts as well as provide methodological recommendations, training and capacity building. Conclusion of legal expert examination of the legal act should have binding effect for the institution preparing the draft of this legal act;

– the right of the MoJ to subject officials to administrative liability for failure to present legal acts for registration is questionable by reference to the principle of separation of powers. The legality control of legal acts should be carried out by a higher institution (e. g., the Government that has the right to annul legal acts enacted by subordinate institutions) or (administrative) courts upon application of the person concerned;

– in order to ensure the quality of the legislation being prepared, there is a need for a separate law to regulate the types, legal effect, internal structure, procedure of preparation, adoption, publication, registration and entry into force of legal acts[11], etc. and also the need for the training of specialists of ministries and other state services;

(2) The functions related to the management of the register of legal acts:

– the systematisation and registration of legal acts (without verification of legality control) in the Register of Legal Acts (RLA) should be as soon as possible transferred to the electronic space (to get ready for the phasing out of the publication of the hard-copy "Official Gazette of Ukraine"[12]). All legislation of Ukraine should be registered in the RLA, i. e. there should be laws, legal acts of the President, legal acts of the Government, and legal acts of regional territorial institutions in the register. The technical administration of the RLA could be commissioned to the State Enterprise "Ukrainian Legal Information" or "Information Centre" (or a newly established state enterprise), which could expand its contents on a commercial basis to include, for example, the case-law of the Constitutional Court of Ukraine, the case-law of the Supreme Court of Ukraine, etc. Moreover, free-of-charge access to the RLA should be provided to all interested persons not only from personal computers but also in territorial offices of the MoJ (in particular, at the district level);

– with regard to the requirements of principles of optimisation of functions and reduction of the State budget expenditure, to transfer responsibility for the publication of official sets of legal acts and codes, law newspapers and magazines by handing over these functions to the State Enterprise "Ukrainian Legal Information" or "Information Centre" (or a newly established state enterprise), and the private sector. In such a case, the MoJ would only acknowledge that the texts of the sets of legal acts and codes published by the State Enterprise "Ukrainian Legal Information" or "Information Centre" (or a newly established state enterprise) are official;

– with regard to the requirements of principles of optimisation of functions and separation of powers, to withdraw the function of coordination of the activities of ministries and other central executive institutions concerning the systematisation of legal acts,

[11] Such law is in force in Lithuania, whereas some other countries apply recommendations, for example: Germany – Handbook of Formal Requirements for Drafting Legislation, Finland – Legislative Drafting Process Guide, United Kingdom – Legislative process: taking a Bill through Parliament (2013), etc.

[12] For example, the hard-copy "Official Gazette of Lithuania" has not been published since 1st January, 2014 in Lithuania.

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verification of the condition of these activities, recommendations and proposals for their improvement and elimination of shortcomings. The MoJ could provide methodological recommendations and assistance on these issues[13].

(3) The functions related to the supervision of legal services:

– it is recommended that the MoJ should withdraw from providing methodological guidance for legal work (legal services) in ministries and other central executive authorities, territorial administrations of local authorities, state-owned enterprises, institutions and from providing professional development to legal services; it should withdraw from inspecting the quality of legal work in the above-referred institutions and from providing recommendations for its improvement, proposals for the elimination of shortcomings, and for subjecting officials to liability; it should also withdraw from providing conclusions regarding the heads of legal services in ministries and other central executive authorities. These functions are not only "outdated" in terms of their expediency as it is sufficient to set clear quality requirements for candidates to these positions in order to ensure the quality of legal services and their heads. Moreover, these functions are partly in breach of the principle of the separation of powers because a head of an independent institution or enterprise is not in the position to make a decision on his/her own on the appointment of his/her subordinate to a specific position.

(4) The functions related to the legal education of the public:

– it is recommended that the MoJ should withdraw from coordinating public legal education carried out by ministries, other central executive authorities, territorial administrations of local authorities, state-owned enterprises and institutions, educational institutions and from providing methodological assistance and inspecting the status of these activities. These functions are "outdated" in terms of their expediency as legal education of the public will be considerably more effective by using incentive-based rather than administrative methods. The public legal education function should be handed over to NGOs, universities and higher education schools, other educational institutions, etc. The MoJ could allocate financing for the implementation of this function from a separate MoJ budget programme by means of special public legal education projects selected in public tenders. Besides, part of this function pertaining to the provision of information about legal regulation (this is, in principle, primary legal aid) is already carried out by local authorities and supplementary input is possible by territorial offices of the Coordination Centre for Legal Aid Provision.

(5) The functions related to training of lawyers:

– it should be considered whether it is possible to limit the MoJ functions related to the education of lawyers in higher education schools – the MoJ should only establish requirements for the programmes of studies in legal acts. Meanwhile the compliance with such requirements should be controlled as well as licensing and accreditation of the speciality "Law" should be carried out by the Ministry of Education and Science that is responsible for higher education.

Suggested new functions of the Department of Systematisation and Registration of Legal Acts and Legal Education

[13] Such function is implemented by the Ministry of Justice of Finland, Sweden, Germany, Poland, Estonia, Lithuania, Slovenia, etc.

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(1) Systematic and obligatory monitoring of the implementation of newly adopted legal acts (in particular, laws). Each department of the MoJ should carry out the annual implementation monitoring of one or several effective legal acts within the area of its competence in a planned way. The MoJ should approve the monitoring procedure and the scope of information to be collected during monitoring, the procedure and structure of reporting, conclusions, etc. (This function could be carried out by the present Department of Systematisation and Registration of Legal Acts).

6. Department for Relations with Other Authorities and Informative-Analytical Work (25 employees)

Questionable functions of the Department for Relations with Other Authorities and Informative-Analytical Work

A major drawback in the responsibilities of this Department is that it embraces specific law-making activities in the areas of territorial justice institutions, execution of sanctions and archives and is responsible for the planning, coordination and control of these activities. In the expert's opinion, these two responsibilities are mutually exclusive, hence, the Department should be split into two parts: **the Department of Legal Institutions** to be responsible for execution of sanctions issues, the activities of the State Penitentiary Service and the future probation service (**Division/Directorate of Execution of Sanctions**), for archives and the activities of the Archival Service of Ukraine (**Division/Directorate of Archives**), territorial justice institutions (**Division/Directorate of Territorial Justice Institutions**). In addition, this Department should incorporate a restructured **Division/Directorate of Notaries and the Division/Directorate of the Bar and Legal Aid**.

The second part after the restructuring should become the **Department of Strategic Planning, Research, Analysis and Coordination** (SPRAC)[14], to be responsible for relations with the Verkhovna Rada, the President's Administration, the Government, the Judicial Reform Council (JRC), other justice sector institutions. SPRAC (**Cooperation Division/Directorate**) would be responsible for planning, organisation, coordination, quality assurance and oversight of the law-making process both in ministries and other central government authorities as well as within the MoJ. It should also be responsible for organising and coordinating the drawing up of JSRSAP 2015-2020, the strategic plan of the MoJ and other policy documents of the sector, and for the organisation, coordinating and control of its implementation (**Division/Directorate of Legislative Planning**), relations with the public, NGOs, political and religious organisations, etc. (**Division/Directorate of Public Relations**) in the processes of justice policy-making and implementation.

Questionable functions of the Department for Relations with Other Authorities and Informative-Analytical Work (including territorial justice institutions)

(1) The functions related to disciplinary investigations and disciplinary liability. In respect of the requirements of principles of decentralization and optimisation of functions the MoJ should have the right to initiate such investigations with regard to all officials and

[14] Such structural units (that might be named differently) are within the Ministry of Justice of Latvia, Lithuania, Estonia, Poland, Belgium, France, Slovakia, etc.

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employees, while the investigations should be carried out by the services or territorial justice institutions.

(2) The MoJ functions related to inspections of activities of services and institutions comprising of inspections of the central bodies of the services and regional territorial justice institutions in respect of the requirements of principles of decentralisation and optimisation of functions are acceptable. Whereas inspections of other units of the services and lower territorial institutions should be carried out by the central bodies of the services and by relevant regional territorial justice institutions.

(3) The function of international technical assistance for prisons and probation, legal aid and archives (with approval of the MoJ) should be fully handed over (in respect of the requirements of principle of decentralisation and optimisation of functions) to the State Penitentiary Service, the Coordination Centre for Legal Aid Provision and the Archival Service of Ukraine.

Suggested new functions of the Department of Strategic Planning, Research, Analysis and Cooperation

(1) organising and coordinating the drawing up of JSRSAP 2015-2020, the strategic plan of the MoJ and other policy documents of the justice sector; organising, coordinating and control of the implementation of such plans or separate parts thereof;

(2) operational support to JRC in the design and implementation of justice sector reforms;

(3) coordination of inputs in the conduct of justice sector reforms with other sector institutions (their strategic planning units);

(4) collection, updating and publication of statistics regarding the functioning of the whole justice system;

(5) planning, organising, coordinating and controlling a systematic monitoring (to be undertaken by other MoJ departments responsible for specific areas) of the implementation of legal acts (in particular, laws);

(6) development of medium-term budget framework (MTBF) for the whole justice sector (and/or the sector reform policies) in coordination with the Ministry of Finance (MOF) and other justice sector institutions;

(7) donor coordination in the implementation of justice sector reforms; regular or on-demand assistance to the MoJ EU Department in all questions related to coordination of EU aid for the sector.

Suggested new functions of the Department of Legal Institutions

(1) It is important to respect the principles of the rule of law and separation of powers while ensuring control by the State of some requirements imposed on the Bar by statute – which could entail a new function for MOJ in defining the procedure of examinations to the Bar, formation of examination commissions (which could consist not only of advocates), approval of the scope of examination programmes and tests; at the same time, all the suggested functions should be *a priori* discussed and agreed with the self-government bodies of the Bar, before any transfer to the Ministry. It must be seen that the Ministry only complements the role of the Bar self-governance bodies where such complementarity is reasonable from the point of view of greater accountability and efficiency of the Bar.

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Moreover, the MoJ should act as a representative of the Bar in preparing and submiting the draft legislation necessary for the Bar to the Government, the Verkhovna Rada, etc.

(2) it is recommended that this Department should hold a supervisory (mentoring) function in relation to the Coordination Centre for Legal Aid Provision – the Centre would remain subordinated directly to the Minister; however, the Department of Legal Institutions would be responsible for consideration and adoption of all documents submitted to the MoJ by the Centre.

7. Department of the Activities of Courts (60 employees planned, 37 employees in the meantime)

8. Department for Representation of Interests of the State in International and Foreign Courts

Questionable functions of the Department of the Activities of Courts (as merged)

(1) Since the Department provides the MoJ and the Government with a summary of the cases instituted against the State, the President, the Government, the MoJ, ministries and other central authorities, as well as their officials, proposing legal and organisational measures on how to improve the situation, the implementation of the function related to inter-institutional coordination of the representation of the State's interests in courts may be ceased.

(2) It should be considered (in respect of the requirements of principles of effective governance and optimisation of functions) whether the function of representation of the interests of the State, the President of Ukraine, the Government, ministers, ministries, other central executive authorities and their officials in disputes between a foreign entity and Ukraine in the institutions of foreign jurisdiction could be taken over by the central executive authorities responsible for the protection of investments (Ministry of Economy) or even by the Cabinet of Ministers.

3) The functions related to the issues of forensic examination. It should be considered (in respect of principles of effective governance and optimisation of functions) whether:

– the legal regulation for the introduction and recognition of methodologies for new forensic examination types is adequate;

– the regulation on the binding character of forensic examination methodologies for private experts is adequate;

– the coordination of court expert activities, good practice and experience sharing, professional development, etc. is appropriate;

(4) Some obligatory requirements regarding the structure of forensic research institutes (e.g., regarding a research unit) apparently could be replaced by requirements of advisory nature, or such research unit could be positioned only in one institute, which is the strongest in terms of scientific research and which would be in the position to carry out this function for all institutes, when necessary.

(5) It should be considered whether it would be possible for the MoJ, together with subordinate forensic research institutes, to seek membership of at least one of the institutes (for example, the institute of Kiev) in ENFSI (European Network of Forensic Sciences Institutes), where only the Ukrainian State Scientific Research Forensic Centre (SSRFC) of the Ministry of Internal Affairs holds membership in the meantime.

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9. Department of Notaries and Financial Monitoring (29 employees)

Questionable functions of the Department of Notaries and Financial Monitoring (including regional territorial justice institutions).

(1) The functions related to the control of activities of private and public notaries. In respect of the requirements of the principle of rule of law, these functions of control over the lawfulness of notary activities had been handed over to courts in their full extent in Ukraine. Whereas the MoJ should be in the position to control only organisational issues of notary activities (e. g., requirements for notary offices, methods of informing, office hours, culture and ethics of client servicing, etc.). Methodological and practical assistance for notaries, as a function, should be transferred to self-governance bodies of the notaries[15].

(2) The functions related to summaries and assessment of notary practice, proposals for its improvement, etc. In respect of the requirements of the principles of separation of powers, these functions should be transferred to self-governance bodies of the notaries. The MoJ should only obtain such information from the relevant self-governance bodies once per year or more often, if necessary.

(3) The functions related to the prevention and control of money laundering and terrorist financing (including checks, methodological assistance, training, etc.) should be fully transferred to the State Financial Monitoring (Derzhfinmonitoring). It should be considered that suspicious transactions should be reported to the State Financial Monitoring (Derzhfinmonitoring) by the relevant self-governance bodies (when they are operative and effective) rather than directly by notaries, advocates and persons involved in legal practice as well as bailiffs (executive officers).This would ensure respect for legal professional privilege (confidentiality) of the client relationship with notaries, advocates and other legal professionals, and would protect other fundamental rights.

(4) The function of international legal assistance should be transferred to the Department of International Law.

Suggested new functions of the Directorate/Division of Notaries

In the opinion of the expert, it should be considered in the medium-term (within the period of 2 to 5 years) to fully move to the system of private notaries[16]. In the transitional period, it is necessary to amend and settle the legal regulation of notaries by establishing:

– clear system and powers of self-governance bodies of the profession (e. g., an assembly of the representatives of notaries, the Council of Notaries, the Chamber of Notaries, etc.);

[15] Notary system and its activity in Ukraine should be based on the basic principles of civil law notary system, since Ukraine (as the absolute majority of EU member-states) has civil law notary system and is a member of the International Union of Notaries.

[16] Current situation (when notary system comprises of state and private notaries) could be evaluated as particularly discriminatory since the state funds and provides the special competence only for state notaries. Besides, this kind of system is doubtful in terms of its effectiveness for there are other ways of protecting rights of socially vulnerable people (pensioners, big families), for example, by fixing special fees of notary actions for these socially vulnerable groups, etc.

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– transparent procedure for forming self-governance bodies (who elects, in what proportion, verification and approval of mandates of the representatives, etc.);

– streamlined MoJ role related to notaries and the procedure of their implementation. The MoJ should, in principle, control the quantity element of recruitment to the notary profession (by establishing qualification requirements for candidates, formation of examination commissions, drawing up and approval of examination programmes, examination arrangements, etc.) and organisational matters of notary practice (admission, removal from office, substitution, relocation of notaries, approval of the rates for certified deeds, approval of legal acts, etc.). The required number and geographic distribution of notaries should be defined and planned by MoJ;

– duties and powers of self-governance bodies of notaries (e.g. provision of methodological and practical assistance necessary for notaries, recommendations how to deal with identified shortcomings; collection of statistics on notary activities; analysis and summaries of public and private practice of notaries (deeds), clarifications on the issues of practice for notaries, proposals on measures to improve notary activities; setting out the procedure for the professional development of notaries, their assistants and employees; setting out the rules of professional ethics for notaries; etc.).

After the reform of its functions, this Department should be downsized both in terms of its divisions and staff and incorporated as a separate **Directorate/Division of Notaries** into the Department for Relations with Other Authorities (Legal Institutions).

10. Department of Registers (60 employees)

Questionable functions of the Department of Registers

(1) The functions related to the provision of international legal assistance. This function should be fully taken over by the Department of International Law.

(2) The functions related to the registration of real estate, legal entities and natural persons–entrepreneurs in the Department of Registers. It is necessary to revise the groups of real estate types as well as establish more objective and realistic criteria to allow reducing the quantity of registrations carried out by the Department of Registers.

(3) The registration procedure should be regulated (in respect of the requirements of principles of rule of law and effective governance) so that all inaccuracies and mistakes in the documents submitted for registration should be identified at the same time and refusals to register should be supported by clear reasons.

(4) The control of the activities of registrars by the Department of Registers should be narrowed (in respect of the requirements of principle of rule of law) and pertain only to the handling of complaints about refusal to register and attestation/qualification assessment of registrars (e. g., once in 3–5 years). Unlawful registration cases should be decided by courts on the basis of applications of the persons concerned to revoke or modify a legal registration.

(5) The function of civil registry (together with its financing) should be transferred (in respect of the requirements of principle of decentralisation and optimisation of functions) to local authorities. Such transfer should be made after the moving of civil registry data to electronic data bases.

Suggested new functions of the Department of Registers

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(1) In respect of the requirements of the principle of evidence based policy making, it is suggested to form a working group for the registration reform implementation (also consisting, if necessary, of specialists of other units of MoJ) in the Department of Registers to monitor and analyse the course of the reform, make proposals to improve the system of registration, etc. Monitoring, analysis and assessment of the activities of registrars from the local authorities and commercial banks (if they are empowered to perform registrations) should be particularly stringent.

(2) Technical maintenance of the system of registration and individual registers (registers of real estate, legal entities, etc.) should be provided by the state enterprise "Ukrainian Legal Information" or "Information Centre" (or by a newly established state enterprise), which would provide easy, electronic and on-the-spot, access to all existing registries; the advantage of this model includes not only greater credibility of data and accessibility of information to customers, but it also has a feedback effect on how the registries are organised, run and used by State and private stakeholders, as various information products and research and analysis (R&A) tools would be created for evidence-based policy making and implementation (for instance, allowing the tax authorities to track real transaction rates in order to levy property taxes)[17].

Certain aspects relating to registers outside the MoJ competence to be addressed

(1) In respect of the requirements of the principles of effective governance and reduction of the State budget expenditure, it is necessary as soon as possible to create Governmental working group and to carry out a stock-taking of all registers (data bases) administered by the State and individual state institutions, assess their legal status, necessity (expediency) for the state or individual state institutions, their technical condition, capacities of administering state institutions (state enterprises, private companies), etc. It would be possible to decide on the basis of such stock-taking on the necessity (expediency) of specific registers, on their potential merger, responsible state institutions, technical maintenance entities, etc.

(2) The systematic arrangements of the register (data) bases should be based on a general law on registers[18], which should regulate (1) the establishment, administration, reorganisation and liquidation of state registers (cadastres); (2) the system of state registers and general principles of interaction among state registers; (3) duties and powers of leading state registrar institutions, state registrar institutions, supervisory institutions of state registers, administrators of state registers, providers and beneficiaries of state register data, etc.

(3) For the purposes of a coherent reform of real estate registration, the land register (cadastre) should be moved to the area of management of the MoJ[19]. The transfer of other registers, e. g., the population register, etc., to the area of management of the MoJ should also be considered.

(4) Consolidation of the provision of information services – possibly by way of a single state-run company – and administration of a single database providing easy, electronic and

[17] It is recommended to provide opportunity to get familiarised with the activities of the registers of the Republic of Lithuania within the area of management of the Ministry of Justice and of the State Enterprise "Centre of Registers".

[18] For example, Law on State Registers is valid in Lithuania from 1996.

[19] Land register is within the competence of the Ministry of Justice in Latvia, Estonia, Lithuania, etc.

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on-the-spot, access to all existing registries; the advantage of this model includes not only greater credibility of data and accessibility of information to customers, but it also has a feedback effect on how the registries are organised, run and used by State and private stakeholders, as various information products and research and analysis (R&A) tools would be created for evidence-based policy making and implementation (for instance, allowing the tax authorities to track real transaction rates in order to levy property taxes).

11. Department of Public Enforcement Service (State Executive Service) (69 employees)

Questionable functions of the Department of Public Enforcement Service:

(1) In respect of the requirements of the principle of the rule of law, control of the activities of public bailiffs by the Department of Public Enforcement Service should be narrowed and include only the attestation/qualification assessment of bailiffs (e. g., once in 3 to 5 years). Unlawful actions and decisions of bailiffs should be dealt with by courts on the basis of applications of the persons concerned to revoke or modify the results of such actions. The MoJ (Department of Public Enforcement Service) should have the right to receive the information from private and state bailiffs for the implementation of the narrowed function of control of the activities of bailiffs.

Suggested new functions of the Department of Public Enforcement Service

(1) In respect of the requirements of the principle of evidence based policy making, it is suggested to form a working group on the enforcement system reform implementation (also consisting, if necessary, of specialists of other units of MoJ) in the Department of Public Enforcement Service to monitor and analyse the course of the reform, make proposals to improve the enforcement system and solve problematic issues, etc.

(2) The reform of the enforcement system should assess the possibility of expanding the functions of public and private bailiffs in a systematic manner (e. g., carry out the functions of bankruptcy administrators, sell the property of companies under bankruptcy, conduct mediation, etc.) as well as the existing enforcement mechanisms (e. g., electronic auctions, bankruptcy procedures, etc.). It seems that it is the high time to carry out a study and evaluation how bailiffs communicate (enter) the attached property to the data base of electronic auctions.

(3) Within 3-5 years following the current reform which will create the 'mixed system', analysis and assessment of the performance and effectiveness of both limbs of the system (public and private bailiffs) should be carried out and, in case of sufficiently objective results, a decision should be taken regarding the final choice of either public or private enforcement system.

(4) In case the private system is chosen, to define the MoJ functions with regard to the system of private bailiffs:

– clear system and powers of self-governance bodies of bailiffs (e. g., an assembly of the representatives of bailiffs, the Council of Bailiffs, the Chamber of Bailiffs, etc.);

– transparent procedure for forming self-governance bodies (who elects, in what proportion, verification and approval of mandates of the representatives, etc.);

– streamlined MoJ role with respect to such self-governance should, in principle, cover the quality element of recruitment to bailiffs (qualification requirements for candidates,

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formation of examination commissions, drawing up and approval of examination programmes, examination arrangements, etc.) and organisational matters of the activities of bailiffs (admission, removal from office, substitution, relocation of bailiffs, approval of the rates for enforcement actions, approval of legal acts, etc.).

12. Department of Lustration (35 full time positions, 20 employees)

Questionable functions of the Department of Lustration

(1) The functions related to the formation and administration of the State Register of Lustrated Persons, provision and publication of information from the register should be moved (in respect of the requirements of the principles of effective governance and reduction of the State budget expenditure) to the electronic space (the institution that makes a decision regarding lustration should enter it into the Register and those who need information from the Register would get it without any hard-copy versions). The MoJ could be responsible for the supervision of the formation and administration of the Register as well as for methodological guidance.

(2) It should be considered that verifications provided for in the Law on Lustration should be carried out (in respect of the requirements of the principles of effective governance and optimisation of functions) by each central authority within the area of its own system. The MoJ (or the central authority responsible for the civil service or separate special authority for lustration) could be responsible only for methodological guidance for such verifications.

(3) In respect of the requirements of the principles of effective governance and optimisation of functions, it should be considered whether this function could be taken over by the central authority responsible for the civil service or separate special authority for lustration.

13. Department of Bankruptcy Administration (27 full time positions, 23 employees)

Questionable functions of the Department of Bankruptcy Administration

(1) The functions related to organising the training, re-training and professional development of bankruptcy administrators. The MoJ should only establish legal requirements for the programmes of studies after the completion of which the person would acquire the speciality of a bankruptcy administrator, while compliance with such programmes in educational institutions should be controlled by the Ministry of Education and Science. The issues of re-training and professional development should be handed over (in respect of the requirements of the principles of optimisation of functions and reduction of the State budget expenditure) to the self-governance bodies of bankruptcy administrators.

(2) The functions related to procedural participation in bankruptcy proceedings and provision of conclusions on the elements of fictitious or intentional bankruptcy, financial insolvency, unlawful actions in case of bankruptcy to courts and the prosecutor's office (on their request). It appears that these functions pertain to the use of special knowledge and courts treat it as a competence of state or private experts.

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(3) The functions related to the control of activities of bankruptcy administrators – the contents and meaning of control of bankruptcy administrators are not clear (does it cover the legality control, what are the legal consequences, etc.). In respect of the requirements of the principle of rule of law, it should be considered whether such control could be carried out by courts based on applications of the persons concerned because only courts are in the position to revoke the actions and decisions of bankruptcy administrators. The MoJ could carry out control only for attestation purposes for a specific period of activities (e. g., 3 to 5 years). In order to avoid potential abuse in bankruptcy procedures, sanctions could be defined for most important actions and decisions of bankruptcy administrators; such sanctions would be imposed by courts (judges).

(4) The functions related to the ensuring of the activities of the Qualification Commission of Bankruptcy Administrators, the Commission for Granting Qualification and the Disciplinary Commission should be transferred to the self-governance organisation of bankruptcy administrators. It should also be considered whether the self-governance bodies of bankruptcy administrators could be granted more extensive powers.

(5) The MoJ should carry out (in respect of the requirements of the principle of evidence based policy making) the analysis of effectiveness of bankruptcy administrators and (specific) bankruptcy procedures and, if necessary, make proposals for legislation on this basis. Moreover, the regulation of separate bankruptcy procedures should be revised, e. g., auctions should be moved to the electronic space, they should be run by public and private bailiffs, etc.

Major element – in terms of the competence, the activities of this Department are much closer to the area of responsibility of the Ministry of Economy[20].

14. Directorate of the Central Certifying Body (13 employees)

Questionable functions of the Directorate of the Central Certifying Body

The presence of the Directorate of the Central Certifying Body within the structure of the MoJ is questionable: as the experience of the European Union member states and some other states shows, such a unit, as a rule, functions as part of the National Post, Telecom and Communications Service (Hungary, the Netherlands, Bulgaria, Sweden, Luxembourg, Norway, Greece, Germany, Finland, Denmark, Austria, Lithuania, etc.) or of the ministries the competences whereof include the issues of IT or technologies (Spain, Czech Republic, Slovakia).

The Directorate does not have sufficient human and other resources in the meantime for the function of preparation of norms, standards and technical regulations in the area of the electronic signature and there is a shortage of premises for the storage of archives.

In respect of the requirements of the principles of effective governance and optimisation of functions, it should be considered whether the function of national policy-making and implementation in the area of the electronic signature could be transferred in long-term perspective (after legal and organisational preparations) to the ministry (service) that is responsible for communications (telecommunications). The MoJ should carry out the

[20] Otherwise, in some European Union member-states (for example, Latvia, Estonia, etc.) such unit is within the Ministry of Justice.

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function of legal expert examination of laws and legal acts in the area of the electronic signature; this function could be carried out by the Department of Civil, Financial and Land Law.

15. Department of Expertise on International Treaties and International Cooperation (18 employees)

Questionable functions of the Department of Expertise on International Treaties and International Cooperation

(1) The functions related to the secretariat of the Inter-Departmental Commission on the Implementation of International Humanitarian Law and its coordination activities. Given the substance of this function, it should be transferred to the Ministry of Defence and (or) to the Armed Forces, while the MoJ should only be responsible for the part its own competence (e.g., law-making).

(2) Coordination of international technical assistance in the area of the MoJ should be transferred to SPRAC.

(3) It should be considered whether the Department of Expertise on International Treaties and International Cooperation could be combined with the Department of International Law.

16. Department of International Law (21 employees)

Questionable functions of the Department of International Law

(1) The functions related to the execution of extradition applications. Taking into consideration the specifics of execution of applications for such international legal assistance making it necessary to protect rights in criminal proceedings, the extradition procedure provided in the law and implementation of this form of international legal assistance should be changed and transferred exclusively to the competence of courts[21].

(2) The functions related to the transfer of sentenced persons for further service of sentence. The MoJ should be responsible only for the decision taken on behalf of the State to take over (refuse taking over)/transfer (refuse transferring) a person for a further service of the sentence. The matters of adaptation of the sentence and the place of its service of the person taken over for a further service of the sentence should be transferred either to the State Penitentiary Service or to regional territorial justice institutions of MoJ.

(3) In respect of the requirements of the principles of effective governance and optimisation of functions, it should be considered whether the matters of international legal assistance related to the protection of the rights of the child could not be handed over to the central institution of the state, which is responsible for child welfare issues and has territorial units of the protection of the child's rights (Ministry of Social Policy).

(4) In respect of the requirements of the principle of rule of law, control over the implementation of international agreements on legal assistance in civil and criminal matters should be carried out only with regard to the execution of a specific legal assistance

[21] It should be noted that the European Commission has criticised European Union member-states, in which the Ministry of Justice was responsible for the execution of the European Arrest Warrant. This critical evaluation was related to the fact that Ministry of Justice is not a judicial authority.

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application, while general (preventive) control should replaced by methodological guidance and recommendations.

(5) It should be considered whether the Department of International Law could be combined with the Department of Expertise on International Treaties and International Cooperation.

Suggested new functions of the Department of International Law

(1) Preparation of summaries of different forms of international legal assistance and methodological recommendations on their basis together with the Office of the Prosecutor General, the State Judicial Administration and representatives of the judiciary.

17. Department of European Union Integration (8 employees)

Questionable functions of the Department of European Union Integration

1) The functions related to co-ordination of the translation system of EU legislation and its quality control have been agreed to be transferred to the Governmental European Integration Office (GOEI) in the Secretariat of the Cabinet of Ministers as of beginning of 2016. It should be considered whether it would be worthwhile to establish a special unit and/or specifically dedicated programme, which in the beginning could be financed by the technical assistance of the European Union.

Suggested new functions of the Department of European Union Integration

(1) Department of EU Integration can and should focus on the sectorial responsibilities of the MoJ (compliance with the *Acquis* in criminal justice, civil justice, etc.) and ensure better planning of measures necessary to implement the Association Agreement with the EU which fall under the responsibility of MoJ. Better quality of planning and implementation could be ensured by MoJ by providing assistance (local know-how, best comparative practices, etc) to the final implementers in the justice sector (judiciary, prosecution etc.), and better articulation of the needs for support to the EU and other donors by reference to JSRSAP.

(2) It is necessary for MoJ to hold discussions with other relevant stakeholders in order agree who is to perform the functions related to the analysis and summaries of the case-law of the Court of Justice of the European Union (CJEU). Universities and higher education institutions should be involved in the performance of this exercise. Such summaries should be made available to the Verkhovna Rada, Constitutional Court, Supreme Court and other courts of ordinary jurisdiction, Office of the Prosecutor General and other relevant institutions.

(3) Coordination (in close cooperation with SPRAC) in monitoring the implementation of JSRSAP and other justice sector reform policies, regularly updating SPRAC on novelties in EU law and Acquis relevant for the justice sector.

(4) Coordination (in close cooperation with SPRAC) of EU assistance in the implementation of justice sector reforms.

Certain EU-related aspects outside the MoJ competence to be addressed

(1) In respect of the requirements of the principles of separation of powers and optimisation of functions, it is necessary to revise and establish a clear system of interaction

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between the executive and legislative branches as regards European integration (implementation of the Association Agreement with the European Union). The Government's agenda in this regard should be anchored more prominently in the work of Parliament. On the other hand, the Parliament should be taking broader, policy-based views on various issues related to Ukraine's European integration as opposed to narrow analysis of compliance with the EU law. This would enable the Parliament to perform the function of parliamentary oversight of the executive power more effectively, while also improving the quality of public debate on the issues of European integration.

(2) It is also necessary to streamline the units of different institutions (the Government, the Verkhovna Rada) and their responsibilities on the issues of integration into the EU. At the level of the executive, such a system is, as a rule, to be led by the Prime Minister (directly or via the Deputy Prime Minister), while each ministry and state institution should have a vice-minister or deputy director of the relevant service and properly staffed unit for European integration. While the top part of this co-ordination machine (GOEI) has been already established, gradually strengthened and has started to deliver first results, capacity at the level of line ministries and other institutions remains rather weak. Working groups may and perhaps should be formed in specific EU policy areas - for example, in the area of justice, freedom and security it could consist of the representatives of the MoJ, MoI, the Office of the Prosecutor General, judiciary etc. The current (recent) practice of the working groups consisting of the Ukrainian representatives to various Association sub-committees could be used and deepened.

18. Secretariat of the Government Agent to the ECtHR (with the rights of a department) (35 full time positions, 29 employees)

Questionable functions of the Secretariat of the Government Agent to the ECtHR

(1) The functions related to the analysis and summaries of the case-law of the ECtHR. Universities and higher education institutions should be involved in the performance of this function and such summaries should be made available to the Verkhovna Rada, the Constitutional Court of Ukraine, the Supreme Court and lower instance courts, to the Office of the Prosecutor General and other interested institutions.

(2) The functions related to expert opinions on draft laws regarding their conformity to the ECHR and the case-law of the ECtHR. This function should be undertaken (in respect of the requirements of the principle of rule of law) for all draft laws (irrespective of submits the draft), hence, it is necessary to have this compulsory practice in place and implement it.

19. Finance Department (29 employees)

Questionable functions of the Finance Department

(a) The functions related to payments under the decisions of the European Court of Human Rights in the cases against Ukraine. In respect of the requirements of the principle of effective governance, this function could be performed directly by the Ministry of Finance (State Treasury).

Issues related to the financing of the justice sector to be addressed

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1) It should be considered that the Minister should use his discretionary powers (in accordance with the law) to redistribute money between different budget 'programmes' (such as the one on Legal Aid), instead of (as currently) applying an equivalent haircut to all the programmes in case of a lack of resources. In case the law did not provide such a possibility for the Minister, the amendments of the law should be discussed.

(2) MoJ should start planning its own capital expenditure (investment) by having a separate line in the Ministry budget (currently, all capital expenditure is decided by way of one horizontal programme at the Cabinet of Ministers level).

(3) Determination of the whole justice 'sector budget' and its medium-term financial projections, in close cooperation with SPRAC, MoF and other justice sector institutions.

(4) More practical and effective application of results-based budgeting and performance-based budgeting methodologies in the formulation and execution of MoJ budget; development of linkages between the Ministry's performance management (including evaluation) system on the one hand, and the MoJ budget on the other; institutional budgetary requests should be based not on an opaque assessment of 'needs' but rather on 'results' fixed as targets to be achieved by way of an elaborate planning process; the Ministry's performance management system will become practical and effective only when MoJ's annual budget is given for the implementation of its strategic plans and policies to improve the Ministry's performance, given that each element of the performance management system – including the process of evaluation of staff at the bottom level – will work towards the achievement of those targets.

20. Personnel Department (26 employees)

Questionable functions of the Personnel Department

(a) The functions related to annual personnel performance assessment. It appears that this function is formal, without much legal significance (i. e. it is not linked with financial incentives/sanctions), hence, it should be considered whether it is possible to link it with financial incentives/sanctions or replace it by an attestation for a longer period of service (e. g., for 3 to 5 years).

(b) It should be considered whether it is necessary to regulate the principles of granting incentives (principles of motivation) to the personnel of MoJ.

Certain civil service related aspects outside the MoJ competence to be addressed

(a) In respect of the requirements of the principle of effective governance, it should be considered to increase the salaries of civil service employees (in particular, of high-level experts – lawyers, economics, finance specialists, etc.). Considering the shortage of financial resources, at the beginning it would be possible to distinguish a group of "experts" of the civil service where specialists would be elected through attestations[22]. A 200-300% salary increment could be provided for this group of civil servants.

(b) Development of linkages between the MoJ's performance management (including evaluation) system on the one hand, and the MoJ budget on the other.

[22] The Government of Ukraine could establish a general requirement that such group of experts could not exceed, for example, 10% of the staff of the ministry or other central state institution.

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Final remarks concerning priority activities and functions of the Ministry of Justice

(a) Monitoring, analysis and assessment of the reform of the registration system and the activities of registrars from local authorities and commercial banks (if they are empowered to perform registrations) should be carried out;

(b) Implementation of the enforcement system reform should continue based on the actions and results as defined in JSRSAP 2015-2020;

(c) Considering the structure of the Ukrainian State apparatus and the division of powers, the MoJ should be more extensively involved in the development and implementation of the justice sector policy. The Department of Strategic Planning, Analysis and Cooperation (SPRAC) within the MoJ should be established for implementation of this function, which will cover the planning, organising, coordination, implementation, quality assurance and oversight of the legislative process in ministries and other central government authorities, as well as planning and coordination of material, financial and human resources for the justice system;

(d) Implementation of the probation system reform should continue based on the actions and results as defined in JSRSAP 2015-2020. It should be considered whether the MoJ (the Justice and Security department, permanent working groups of the Criminal Code, the Code of Criminal Procedure, etc., together with the State Penitentiary Service) should be assigned responsibility for gap analysis and impact assessment, resulting in amendments and novelties to the broad regulatory framework in criminal justice area;

(e) Consideration should be given to the recommendations proposed in the Report for the MoJ to renounce some of its functions or transfer them to other state institutions and, in case of approval, for a plan to be drawn up for the relevant transfer;

(f) Consideration should be given to the recommendation proposed in the Report for the preparation for the completion of the notary system reform (full "privatisation" of notary services) by way of strengthening duties and powers of self-governance bodies, etc.

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