

Evaluation of 2015-2020 JRSRAP as Part of the Policy Cycle. Introductory Review

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February 2019

Kyiv



THIS PROJECT IS FUNDED BY
THE EUROPEAN UNION



EXPERTISE
FRANCE



PRAVO-JUSTICE



This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the EU-funded Project Pravo-Justice and do not necessarily reflect the views of the European Union.



GENERAL CONSIDERATIONS

1. *Strategic planning, policy steering* in the public sector is a key prerequisite of and part of *good governance/administration*, which has become one of the Fundamental Rights enshrined in the relevant EU Charter. It is defined in its Article 41 on the right to Good Administration and comprises the limbs concerned with handling affairs impartially, fairly and some individual-oriented safeguards.
2. The principles of (good) *public administration* derive from international standards and requirements. EU is one of the leaders in promoting and developing them by means of *acquis*, along with other EU guidelines and instructions. They are the core in those areas where *acquis* is in place. Moreover, they are advanced by best practices of member countries of the EU and the Organisation for Economic Cooperation and Development (OECD). As a minimum benchmark of good administration, countries should ensure compliance with these fundamental Principles. They cover an area of the public sector referred to as the *state administration*.¹

KEY REQUIREMENTS AND PRINCIPLES

Key requirement: The leadership of public administration reform and accountability for its implementation is established, and the strategic framework provides the basis for implementing prioritised and sequenced reform activities aligned with the government's financial circumstances.

Principle 1: The government has developed and enacted an effective public administration reform agenda which addresses key challenges.

Principle 2: Public administration reform is purposefully implemented; reform outcome targets are set and regularly monitored.

Principle 3: The financial sustainability of public administration reform is ensured.

Principle 4: Public administration reform has robust and functioning management and co-ordination structures at both the political and administrative levels to steer the reform design and implementation

3. On the EU, its European Commission level these requirements have been itemized and applied under the "*better regulation*" principle, which means designing EU policies and laws so that they achieve their objectives at minimum cost. The concept is applied for ensuring that political decisions are prepared in an open, transparent manner, informed by the best available evidence and backed by the comprehensive involvement of stakeholders. Better regulation covers the whole *policy cycle*.²
4. The policy steering process usually is conditionally split into and follows a universally designed and applied cycle consisting of *planning and implementation* phases with *monitoring and reporting* and *evaluation* being considered the mandatory and specific stages falling under the latter. While reporting and monitoring are concerned with development and execution of a process and system allowing the regular assessment of progress against the plans to support effective and efficient implementation, *evaluation is defined as development and execution of an indicator-based system to assess the attainment of the envisaged reform goals against the defined problems of the*

¹ OECD (2017), SIGMA, The Principles of Public Administration, OECD, Paris, p. 6.

² Better Regulation Guidelines, European Commission, Brussels, COMMISSION STAFF WORKING DOCUMENT 7 July 2017 SWD (2017) 350, p.p. 4-5.



*original state of affairs in order to adjust, refine or stop certain reforms or to support the development of new phases of reforms.*³

5. These approaches apply to the *justice sector(s)*. At the same time, its specifics determine *particularities and complications of policy steering* in this area. Justice is a complex chain comprising institutions and areas cutting across different branches of power (judiciary, executive, legislature), while including various independent, autonomous or semi-autonomous bodies, as well as private and professional associations. Likewise, many of the crosscutting relationships in the justice sector (i.e. prevention of crime and corruption) are dealt by way of a larger chain involving the interior (home affairs) sector and security intelligence authorities.
6. The justice sector has its own, sector-specific, regulation, such as the procedural codes, the institutional rules relating to the courts organisation etc. Because of the existence of the European and other international standards on how the justice sector should be organized, operate, and delivered – most notable of these being the principle of independence of the judiciary, among others – the strictly justice-sector related policy-making is difficult and challenging. Those who are involved in creating the rules to regulate the justice sector should not be excluded from the process of applying them – by reason of a lack of formal statutory mandate or actual experience and capacities – and vice versa.
7. In addition, a real change in the behaviour of justice sector players can be achieved only by a marked improvement in the sector actors' capacity / willingness to go alongside statutory or institutional changes – a mere change in a legislative instrument is not sufficient to affect the justice sector in a practical and effective manner. Practice has proven that the justice sector frequently remains the most reactionary, conservative force resistant to any reform, due to a combination of factors, such as the judiciary's actual control of whether any "new law" has to be applied and how it is to be interpreted in a particular case, or the dogmatic academic context that frequently views the domestic justice sector as the last paragon of state sovereignty and tradition, which makes it allegedly immune to comparative trends in neighbouring and foreign countries – even in the face of hard evidence of what makes a reasonable and practical reform policy. Moreover, by reason of the international standards most limbs of the justice sector are either not fully 'owned' or coordinated by the executive or the Ministry of Justice (MOJ) in the daily performance. It is because of the competition of the independent or autonomous limbs of the sector that is able to provide checks and balances against the *potential or actual executive abuse*. Nevertheless, overall policy setting and related responsibilities are incumbent on the executive branch.

JSRSAP-specific considerations⁴

8. The evaluation exercise (the Exercise) concerns implementation of Justice Sector Reform Strategy and Action Plan of Ukraine for 2015-2020 (JSRSAP), in particular the latter, as more itemised reform instrument. They were designed and carried out in line with the particular rationale and considerations. In general, the Exercise is meant to address the need to measure attainment of substantial indicators and result chain

³ Toolkit for the preparation, implementation, monitoring, reporting and evaluation of public administration reform and sector strategies. Guidance for SIGMA partners. SIGMA PAPER No. 57, p.p. 12-14.

⁴ On the overall characteristics of JSRSAP see the evaluation report on Area of Intervention 12.1 Improved Policy Development and Coordination through Enhanced Strategic Planning and Regulatory Development Capacities of Justice Institutions, (P-6) included in the Exercise package.



targets as required by the outlined contemporary, including EU-specific approaches to preparation, implementation, monitoring, reporting and evaluation of public administration reform and sector strategies.⁵ To put it differently, taking into account the scope and particular significance of the policy framework in issue, a comprehensive *evaluation* of JSRSAP implementation was necessary in order to assess whether and to what extent the *outcomes (and impact, where applicable)*, i.e. results chain indicators are achieved. It has been specifically envisaged by both JSRS and AP in their respectively Chapter 9 and by Area of Intervention 12.1.1.⁶

9. The initial step in this regard was made in December 2016, when the Council of Europe presented the Progress Review Methodology (PRM).⁷ It was developed by a group of experts in cooperation with the stakeholders and suggested indicative systematised log-frame, calendar, appropriate methods and other parameters of thematic assessment exercises for evaluating the JSRSAP implementation. However, it has not been put into a meaningful operation.
10. The need in an enhanced measurement of progress of the JSRSAP implementation on process and output levels was addressed by means of introducing a tailored Monitoring Tool (MT) designed and implemented by the key sector stakeholders with technical assistance of Pravo-Justice.⁸ When launched and populated with data it provided almost real-time information as to implementation of 550 outputs found in JSRSAP over its 5-year timeline. The Monitoring Tool was fully used by the Ukrainian authorities for various annual planning and reporting purposes.
11. Taking into account that in the first half of 2019 the JSRSAP implementation had passed its mid-term point, it was decided to supplement and synchronize its monitoring with corresponding (mid-term) *evaluation exercise* (MTE) that would be fed by and based on the MT, but go beyond it in terms of result chain-oriented assessment. Against the background, the Exercise was launched for measuring and suggesting an overview of the degree of achievement of more substantial/qualitative results, dimensions of the reform.
12. In the course of conducting the MTE exercise the radical political changes occurred since mid-2019 have led to significant justice sector-related consequences that affected its policy framework and steering arrangements. The JSRSAP-based sector reform, its coordination and implementation mechanisms have been discontinued and significantly reshuffled respectively. The immediate creation of the Commission on Legal Reform Issues (LRC) President's Decree of 21 June 2019 N421 meant to act as the top policy development and implementation body has marked this development accordingly.
13. The MTE that commenced as a mid-term implementation assessment has *turned into JSRSAP final evaluation*. Its results, conclusions and recommendations, therefore, has gained particular *topicality and importance for further steering the sector reform*. The analysis, expert recommendations provide valuable guidance for proceeding with and continuing the policy cycle.

⁵ In addition to the preceding section of this review, see Guidelines for EC support to sector programmes, <https://ec.europa.eu/europeaid/sites/devco/files/ec-guidelines-support-to-sector-prog-2007-final-en.pdf>. See also OECD-linked publication: Toolkit for the preparation, implementation, monitoring, reporting and evaluation of public administration reform and sector strategies. Guidance for SIGMA partners. SIGMA PAPER No. 57 <http://www.sigmaweb.org/publications/SIGMA-Strategy-Toolkit-October-2018.pdf>.

⁶ Supra note 4, paras. 29-30.

⁷ See Progress Review Methodology of the Justice Sector Reform in Ukraine

⁸ For further details see supra note 4, pp. 18-23. https://pjp-eu.coe.int/consolidation-justice-ukraine/images/prm_final_en.pdf



Overall Approach and Modalities

14. The Evaluation package consists of 10 reports and the current *introductory review*. The package is a composite deliverable and could be viewed as a *consolidated report*, combining findings of separate *thematic assessments* covering Chapters 1-11 of JSRSAP and specific *assessment of the policy steering-related interventions* envisaged by its Chapter 12. At the same time, each thematic report is and could be treated as a standalone deliverable pertinent for the specific area and issues concerned. The evaluation slots and relevant reports have been defined and grouped based on the JSRSAP structure, in-built logical framework, indicators and JSRSAP implementation calendar, as well as their thematic interrelation and importance. The specifics of the policy interventions covered by the reports are outlined in the table annexed to this review.⁹
15. Due to the JSRSAP implementation schedule considerations, the Exercise tackles the *selected policy interventions* that were addressed /implemented to the degree that had been planned and expected to generate identifiable outcomes by the end of 2018.
16. The thematic reports have been drafted under a *uniform template* securing their structural and substance-related, as well as technical consistency. Depending on the working language of the assessment teams the reports were *drafted in English*, apart from the report concerned with Area of Intervention 10.4 Increased Effectiveness in Combatting Corruption by Dedicated Capacities of Justice Sector, which was *drafted in Ukrainian*. The reports have been translated into Ukrainian and English respectively and are made available in both languages.
17. The Evaluation(s) addressed and assessment reports' structure (table of content) has comprised:
 - Baseline data/state of affairs in the areas in issue prior to the JSRSAP adoption;
 - Adequacy of JSRSAP interventions and suggested parameters;
 - Accuracy of monitoring and reporting under the MT (in terms of JSRSAP Outputs);
 - Outline of the established overall progress, including according to third party reports/opinions;
 - Expert view as to the level of attainment of Outcomes envisaged by JSRSAP and maturity of the reform(s) concerned;
 - Short-term recommendations as to the implementation of JSRSAP (within its lifetime);
 - Medium-term recommendations and concrete proposals for future policy interventions and frameworks, including the follow-up Strategy to JSRSAP beyond 2020.
18. The *expert teams* were selected based on their profile, *issue and country-specific*, where applicable, *experience*. Depending on the scope, complexity and other particularities of the areas of assessment, the segment-specific teams involved one or two international and/or national experts.¹⁰ Overall design and preparation of the Evaluation, guidance, organization, methodological support of the thematic expert teams was provided by the author of this review acting in the capacity of the Pravo-Justice international expert leading its sector policy-related activities.

⁹ See Annex N1.

¹⁰ The composition of the expert teams is suggested in the list appended to the review.



19. Evaluation of the two segments concerned with the Prosecution and Criminal Procedure (its fairness in terms of development of procedural safeguards for defence) was carried out and the two thematic reports were produced in cooperation with the Council of Europe.¹¹ These assessments and reports were carried out and developed by experts, organisational contribution, and resources of PJ and the CoE Project Human Rights Compliant Criminal Justice System in Ukraine.
20. The Evaluation was designed and carried out under a *uniform methodology*. The segment/area-specific sets of assessment methods were selected and relevant *Matrixes* compiled by the experts in charge based on thematic particularities and aligned with the JSRSAP outcome indicators. It took into account the PRM parameters and indicative methods. The range of the assessment methods (activities) were specified for each of the blocks and included (desk) research, panel or round table, including regional discussions, analysis of third-party reports (including of domestic and international monitoring mechanisms), structured or semi-structured interviews, administrative / statistical and other data collection and processing methods. The individual segment-related Matrixes are attached to each report.
21. Based on their assessment, findings and relevant deliberations spelled out in the reports, the experts were requested to suggest their estimate of the level of attainment of the outcomes envisaged in the JSRSAP segments under consideration. They are indicated in % in comparison to their full (inferred) 100 % attainment. The estimates of the *overall levels of attainment of the outcomes* relevant for the thematic assessment segments are suggested in the table below.¹²

Table N1. Estimated levels of attainment of the reform (JSRSAP outcomes)

ASSESSMENT PACKAGE/Report	Segment concerned/JSRSAP Chapters/Areas of Intervention	Level of Attainment
N1	Judiciary (Chapters 1-4)	64%
N2	Communication/PR in Judiciary (Areas of Intervention 1.2.3 and 5.2.2)	65%
N3	Enforcement System (Chapter 7)	35%
N4	Penitentiary (Chapter 11)	35%
N5	Probation (Chapter 11)	73%
N6	Sector Policy Steering (Chapter 12)	42%
N7	Free Legal Aid (Chapter 6)	78%
N8	Prosecution (Chapters 8 and 10.1)	51%
N9	Criminal Procedure/Enhanced Fairness (Chapter 9)	22%
N10	Justice Sector Anti-Corruption Capacities (Area of Intervention 10.4)	52%

¹¹ See the Report on Areas of Intervention 8.1 Increasing Independence and Autonomy of Prosecutors, 8.2 Increased Competence of Prosecutors, 10.1. Streamlined competences in criminal investigations, 8.3 Increased Accountability of PPO, 8.5 Increased Transparency of PPO (P8) and Report on Area of Intervention 9.1. Enhanced Fairness Through Development of Procedural Safeguards for Defence (P9).

¹² Due to the significant differences in the scope, importance and other substantial parameters of the reform areas covered by the Exercise, further numeric generalization of the level of attainment of the expected/planned results would be inappropriate.

ANNEX

Grouping of policy interventions to be covered under MTE and expert engagement proposals.

ASSESSMENT PACKAGE N1

- *Area of Intervention 1.1* Increased Independence through Balance between Legitimacy and Efficiency in Institutional Set-Up of Judiciary Governance
- *Area of Intervention 3.1* Increased Accountability through Improved Ethical and Disciplinary Framework + Action 2.1.2 Development of internal oversight mechanisms (inspectors)
- *Area of Intervention 2.1* Increased Competence through Improved Career and Performance Management
- *Area of Intervention 4.1* Increased Efficiency through Streamlined Horizontal and Vertical Jurisdictions
- *Area of Intervention 2.2* Increased Competence through Improved Professional Training System

Expert resources: – PJ ISTE 60 WDs. (Ms R. Molene),
 – External ISTE 25 WDs (to be identified/engaged)
 – NSTE 30 WDs (to be identified).

ASSESSMENT PACKAGE N2

- *Action 1.2.3* Development of PR/communication capacities and Measure 5.2.2.1 Dedicated PR/communication capacities of all justice sector governance bodies and sector institutions

Expert resources: – External ISTE 15 WDs (to be identified/engaged).
 – PJ NSTE 15 WDs (to be identified).

Under Component 3:

ASSESSMENT PACKAGE N3

- *Area of Intervention 7.1* Improved Bailiffs Governance System
- *Area of Intervention 7.3* Improved Conditions for Practical and Effective Exercise of Profession of Bailiff

Expert resources: – PJ ISTE 25 WDs (Mr. Katilin Popov),
 – External ISTE 10 WDs (to be identified/engaged)
 – NSTE 20 WDs (to be identified).



ASSESSMENT PACKAGE N4

- *Area of Intervention 11.1* Improved Efficiency, Transparency and Accountability of Prison Service through Better Management and Internal Oversight
- *Area of Intervention 11.2* Enhanced Prison Security and Prevention of Ill-Treatment by Individualisation of Approach to Prisoners, Risk Management and External Oversight
- *Area of Intervention 11.3* Facilitated Rehabilitation and Social Reintegration of Prisoners through Improved Detention Conditions

Expert resources: – PJ ISTE X¹³
– External ISTE 35 WDs (Ms. Laura Kikas)
– NSTE 25 WDs (to be identified).

ASSESSMENT PACKAGE N5

- *Area of Intervention 11.4* Improved Rehabilitation and Prevention of Crime through Setting Up of Fully-Fledged Probation Service and Application of Alternative Sanctions

Proposed expert: PJ ISTE (to be selected from those who addressed these issues), (supported by the core Team).

Expert resources: – PJ ISTE 20 WDs (Mr. Rendel Barrows),
– External ISTE 10 WDs (to be identified/engaged)
– NSTE 20 WDs (to be identified).

Under Component 1

ASSESSMENT PACKAGE N6

- *Area of Intervention 12.1 1.* Improved Policy Development and Coordination through Enhanced Strategic Planning and Regulatory Development Capacities of Justice Institutions

Expert resources: – PJ ISTE 25 WDs (E. Svanidze),
– External ISTE 15 WDs (to be identified/engaged).

Slots **not falling under the PJ thematic remit** to be evaluated by experts specifically engaged for the MTE purposes

¹³ The expert previously engaged by PJ are not available.

ASSESSMENT PACKAGE N7

- *Area of Intervention 6.4* Increased Efficiency and Effectiveness of the Legal Aid System and Improved Management
- *Area of Intervention 6.5* Quality Enhancement and Quality Control for Provision of Legal Aid

Expert resources: – ISTE 25 WDs (to be identified)
– NSTE 25 WDs (to be identified)

ASSESSMENT PACKAGE N8

- *Area of Intervention 8.1* Increasing Independence and Autonomy of Prosecutors
- *Area of Intervention 8.2* Increased Competence of Prosecutors + 10.1. Streamlined competences in criminal investigations
- *Area of Intervention 8.3* Increased Accountability of PPO
- *Area of Intervention 8.5* Increased Transparency of PPO

Expert resources: – ISTE 40 WDs (to be identified)
– NSTE 40 WDs (to be identified)

ASSESSMENT PACKAGE N9

- *Area of Intervention 9.1* Enhanced Fairness Through Development of Procedural Safeguards for Defence
- *Area of Intervention 10.3* Increased Checks and Balances Provided by Justice Sector to Counteract Abuse in Criminal Investigations

Expert resources: – ISTE 25 WDs (to be identified)
– NSTE 30 WDs (to be identified)

ASSESSMENT PACKAGE N10

- *Area of Intervention 10.4* Increased Effectiveness in Combatting Corruption by Dedicated Capacities of Justice Sector

Expert resources: – ISTE 25 WDs (to be identified)
– NSTE 25 WDs (to be identified)





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Підписаний до друку 23.07.2020
Формат 60x84 1/8. Папір офс. №2. Офс. друк.
Умов. друк. арк. 1,4. Уч.-вид. л. 1,5.
Наклад 200 прим. Замовлення 1. Ціна вільна

Надруковано в ТОВ "Видавництво "Юстон"
01034, м. Київ, вул. О. Гончара, 36-а т: (044) 360-22-66, www.yuston.com.ua
Свідоцтво про внесення суб'єкта видавничої справи до державного реєстру видавців, виготовлювачів
і розповсюджувачів видавничої продукції серія дк № 497 від 09.09.2015 р.