

FEASIBILITY STUDY OF THE AUTOMATED SYSTEM OF ENFORCEMENT PROCEEDINGS

EU Project Pravo-Justice experts:

Ivan SHERSTYUK

Natalia KOVALKO

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TABLE OF CONTENTS

ABBREVIATIONS	4
PREFACE	5
OVERVIEW	6
History	6
Nowadays	6
Userbase	6
FEEDBACK	7
Minor improvements	7
Mandatory improvements	7
Increased interoperability	8
P0 – Automatic assets freezing	8
P0 – Register of Enforcement Writs	9
P0 – State Treasury Service of Ukraine and banks.....	9
P1 – SETAM.....	9
P1 – State Register of Encumbrances on Movable Property	9
P2 – The National Commission on Securities and Stock Market	10
P2 – Unified Register of Debtors	10
P2 – State Border Guard Service of Ukraine.....	10
APEO	10
NAIS	10
RECOMMENDATIONS	12
Change in paradigm: ASEP is a System, not Register	12
User centricity	12
Unify interoperability	13
Unified State Register of Enforcement Writs	13
Bankruptcy Trustees	13
3rd party software	13
SEV OVV	14



ABBREVIATIONS

ASEP	Automated System of Enforcement Proceedings
NAIS	State Enterprise «National Information Systems»
MoJ	Ministry of Justice of Ukraine
APEO	Association of Private Enforcement Officers of Ukraine
SES	State Enforcement Service of Ukraine
SEO	State Enforcement Officer
PEO	Private Enforcement Officer
MIA	Ministry of Internal Affairs of Ukraine
EKAZNA	Software to interact with the Treasury of Ukraine
USREP	Unified State Register of the Enforcement Proceedings
SEV OVV	Electronic Document Exchange Platform
Trembita	Interoperability System
UJITS	Unified Judicial Information and Telecommunication System



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PREFACE

Main task of this feasibility study is to understand ASEP weak points and propose realistic and achievable ways of their resolution.

The set of fact-finding meetings were organised during the preparation stage with:

- the representatives of APEO;
- the representatives of State Enforcement Service of Kyiv Region;
- the representatives of NAIS.



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OVERVIEW

History

ASEP development started September 28, 2016 and the first production release was made in 3 months on January 5, 2017. The development contract for 1 year with the overall amount of 27.5 Mln HRN, which by that time was a tiny less than 1 Mln Euro was signed with the IQusion IT company. Ever since **IQusion IT continues to develop ASEP permanently**.

Back in 2016 the enforcement officers have already been using an IT solution called Unified State Register of Enforcement Proceedings (further USREP) for daily operations, so **ASEP was not created from scratch but rather became an USREP global update**. It will be fair to state that half of the functionality of USREP migrated to ASEP. Main changes were introduced to technology stack: ASEP became web-oriented system built on Ukrainian-based modular solution UnityBase promoted by IQusion IT.

Nowadays

NAIS holds the Product Ownership role, setting up requirements, managing contracts and accepting development deliverables. ASEP is still being developed by IQusion IT company, a project team consisting of 10 people: 3 analytics, 2 testers and 5 developers. There are 2 people from NAIS enrolled in the process, both are analytics. JIRA software is used for development management, acceptance is done in the test environment, maintained by NAIS. Monthly releases are targeted.

All the information from USREP has been backed up and still available via ASEP with certain limitations.

Userbase

Total number of internal users is around 5000, there are 4500 civil servant users, including SEOs, accountants and general clerks. Also, since 2016 when the institute of PEOs was introduced, there are 500 private sector users – PEOs and their assistants.

All of them use ASEP on a daily basis, as by Law **every single enforcement proceeding must be introduced via ASEP**.

Also, Debtor and Creditor have a possibility of web access to their enforcement proceeding. It is a read-only access mode which allows to track the current status. Access credentials are stated on the enforcement proceeding initiation order.



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FEEDBACK

While working on this study there were interviewed a couple of SEOs, accountants, general clerks as well as the summarised feedback from PEOs via APEOs was obtained. **56 improvement requests from SEOs and 99 from PEOs were raised.** Thus, the user community is active, and they clearly know how ASEP should develop.

It is important to mention that most of these requests intersect in both lists, which clearly shows that both PEO and SEO have almost identical business processes.

Obtained feedback can be grouped into the following 3 categories: *obvious bugs*, *mandatory improvements* and *increased interoperability*.

Minor improvements

Relatively small section, but **these bugs need to be addressed shortly.**

- Advanced Payment section is no longer required by Law; however, it is still visible in the ASEP.
- Incoming mail register search engine is not working, department name is not shown automatically.
- It is not possible to generate Cover Letter again within the same enforcement proceeding.
- When a user generates a Cover Letter, the enforcement proceeding number and document title are not filled in automatically. Every single time an enforcement officer needs to type it all in manually.

Mandatory improvements

This section holds the greatest number of feature requests, which intend to increase efficiency.

- **Lack of templates.** There is a template engine in the ASEP, however users claim it is quite limited, for instance, such templates as order or letter to the parties or application on explanation of court decision are completely missing. But they are used daily. Immediate decision is following users apply MS Word, where they manually create a similar looking template, fill it in, print it out, scan and then add into the enforcement proceeding as pdf file.
Legally the respective department of the MoJ must define the explicit list of templates, which should be presented in ASEP.
- **Outgoing mail register does not print envelopes.** Current regulations require clerks to form this register, but in fact it is a dead end. They use 3rd party software like Envelope to manage outgoing mail register and do not maintain it within ASEP.
- **Automatic cron-tasks.** Instruction on the organization of enforcement of decisions, approved by the order of the Ministry of Justice of Ukraine dated April 2 2012 № 512/5 (as amended by the order of the Ministry of Justice of Ukraine of September 29, 2016 № 2832/5) (hereinafter - the Instruction), provides that every 2 weeks an enforcement officer should resend a data update request to the State Tax Service of Ukraine. Nowadays it is done by manually opening each enforcement proceeding file via ASEP and sending these requests. Thus, it is suggested to be done automatically.

- **Notifications.** There is no indication of the upcoming answer for the previously submitted electronic request.
- **Consolidated enforcement proceeding.** Fund separation function is totally missing, alongside the corresponding template. It is a known formula stipulated in the Instruction, which enforcement officers have to create in MS Excel.
- **Discovery of parallel enforcement proceedings.** Several SEOs from different units may enforce the same Debtor at the same time without even knowing it.
- **Working with archive.** Searching for information about the debtor does not take into account archival proceedings, it is impossible to add a document to archival proceedings.

Having regard to the above, the following regulations need to be amended accordingly:

- Law of Ukraine «On Enforcement Proceedings» of June 2, 2016 No. 1404-VIII;
- Instruction on the organization of enforcement of decisions, approved by the order of the Ministry of Justice of Ukraine dated April 2, 2012 № 512/5 (as amended by the order of the Ministry of Justice of Ukraine of September 29, 2016 № 2832/5);
- Regulations on the Automated System of Enforcement Proceedings, approved by Order of the Ministry of Justice of Ukraine of August 5, 2016 No 2432/5;
- Regulations on Archival and Records Management by the State Enforcement Service and Private Executive Officers, approved by Order of the Ministry of Justice of Ukraine of June 7, 2017 No 1829/5.

Increased interoperability

This is a globally important but at the same time the most hard to achieve section of the feedback, as alongside NAIS and MoJ it involves other State Bodies. Each functionality is marked with P0-P2, reflecting its priority, with P0 having the most and P2 respectively the least priority.

P0 – Automatic assets freezing

As is: Currently, automatic assets freezing of debtors' funds (legal entities, private persons) is possible only on accounts opened in Privatbank and Universal Bank.

For other banking institutions, the assets freezing is imposed by sending a resolution on the assets freezing of the debtor's funds to the postal addresses of banks in writing by registered correspondence.

To be: Move away from paper to electronic requests should be done. Negotiations in this regard should be handled by NAIS/MoJ preferably with National Bank of Ukraine in order to update required legal proceedings.

NAIS: Respective API has been developed; 20 more banks are testing electronic document exchange. Though specific limits are not defined banks are not legally obliged to connect and use the API.

P0 – Register of Enforcement Writs

As is: Whenever Creditor wants to start an enforcement proceeding, he/she needs to obtain a hard copy of the enforcement writ from the court and then physically deliver it to the respective SES office or PEO. Then, SES general clerk's office using either this hard copy or searching into the Unified State Register of Court Decisions manually enters data into ASEP to start the enforcement proceeding. As soon as the enforcement officer has been assigned to the newly created enforcement proceeding, he/she needs to create and launch asset freezing requests manually.

In case of PEOs, this process is less complicated and time consuming, but it still requires a hard copy of the enforcement writ for start.

The bottom line is that the way from A to B is quite time consuming and sometimes can take several weeks, which makes plenty of time for the Debtor to dump assets.

To be: As soon as an enforcement writ arrives electronically with the corresponding mandatory enforcement request from the Creditor, enforcement proceeding should be started automatically, enforcement officer assigned and asset freezing requests should be sent also automatically.

P0 – State Treasury Service of Ukraine and banks

As is: Money arrives to one unified account. Automatic funds assignment per proceeding is already working for SEOs after bank statement import into ASEP. PEOs have to split and assign required funds per enforcement proceeding via ASEP manually.

To be: PEOs which are allowed to open accounts in state-owned banks only should also be given the possibility to assign funds per enforcement proceeding automatically.

P1 – SETAM

As is: Enforcement officers are obliged to sell confiscated assets via SETAM, which is clearly stipulated in the respective Regulations. However, there is no integration between ASEP and SETAM so each lot should be transferred manually to SETAM by copy-pasting already existing data from ASEP. Also, 5% commission fee is quite high comparing to the market.

To be: Sales of confiscated assets should be performed via Prozorro. Sales with SETAM being access point for the confiscated lots.

P1 – State Register of Encumbrances on Movable Property

As is: It is impossible to receive a consolidated statement automatically, this is done only on per enforcement proceeding basis. Also, when starting a new search or submitting arrest registration, all input data must be entered manually.

To be: All required information is already available in the enforcement proceeding file and must be taken automatically from there.

P2 – The National Commission on Securities and Stock Market

As is: Enforcement officers don't cooperate with the National Commission on Securities and Stock Market. All the necessary information is viewed on its website. Previously, enforcement officers made written requests.

To be: Automatic document exchange with The National Commission on Securities and Stock Market should be introduced.

P2 – Unified Register of Debtors

As is: The Unified Register of Debtors has been introduced in 2018 and all debtors from the newer enforcement proceedings are imported to this register automatically. However initial import of debtors from earlier cases has not been done.

To be: The Unified Register of Debtors should contain data from all enforcement proceedings, regardless the year. This register tends to be a good social stimulus to pay debts and avoid being published in it.

NAIS: This is a purely legal issue, data from all enforcement proceeding will automatically appear in the register after required amendments done in the Law "On Enforcement Proceedings"

P2 – State Border Guard Service of Ukraine

As is: Enforcement officers can make request to State Border Guard Service of Ukraine for the period from the moment of opening of an enforcement proceeding. From the moment the court ruling enters into force and until the opening of an enforcement proceeding, an enforcement officer is deprived of such a possibility.

To be: Enforcement officers should request State Border Guard Service of Ukraine, starting court ruling date which in most cases is earlier than the date above, as Enforcement officers are executing court rulings not enforcement statement.

NAIS: There is a problem with State Border Guard Service of Ukraine, which automatically rejects requests with a date earlier than the date of commencement of enforcement proceedings.

APEO

At present, the System doesn't meet requirements of PEOs as they were simply fitted in the already existing capabilities of ASEP developed for SEOs, which resulted in shortcuts and limits of their productivity.

As a result, PEOs are quite dissatisfied with ASEP and via APEO are lobbying the idea of another software tailored to their needs.

NAIS

NAIS has a plan for System development, but it is necessary to note that it does not fully reflect the real needs of the users due to the absence of the efficient communication among Users - NAIS - Developer.

At present, NAIS priorities are:

1. Banks: automatic asset freezing of private persons
2. Integration with Privatbank
3. Debtor Register API for MIA and banks
4. API for large collectors on access as a party to the proceedings to the ASEP.
5. Integration with DIIA

All of them are important, however, investing all the effort in these global tasks leads to a total absence of development of less complex but still important tasks which users face daily.



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RECOMMENDATIONS

Change in paradigm: ASEP is a System, not Register

There exists a huge difference in perception between a System and a Register. The main idea is that a System is fully capable of performing tasks by itself and it should involve the user only when it is unable to proceed without him/her. A Register, on the other hand, is a rather tool, like MS Excel, where the user initiates all the actions.

There is a proof of this approach in the ASEP Regulation, Article 2 of Section 4 says: *“Enforcement Officer must enter information about any enforcement action to the System”*.

Legally it is true and correct, however technically it limits ASEP to initiate and perform certain automatic tasks itself, without any user interaction, like sending cron-requests to Tax and MIA, creating Cover Letters etc.

It is very important to shift the overall perception here, update respective Regulations and further implement desired functionality keeping in mind the System, not Register.

User centricity

Any System is primarily designed to make the life of its users easier, too help, to simplify daily tasks, to automate them where possible.

In order to achieve that aim it is very important to get a proper and timely accurate response of the user needs in order to develop a System in a way the user wants, not the developer thinks.

It can be stated that user-centricity with ASEP/NAIS is almost absent. There were attempts to gather user feedback in a centralised manner, general toll-free line and email support are available, however, all this appeared to be a one way only, without any proper feedback from NAIS to users.

In order to strengthen user support, it is recommended to:

1. **Introduce helpdesk.** It can be a Jira Service Desk, side product for already used Jira, or Zendesk or any other. Paid or free, doesn't really matter. But it should be in place, with an issue tracking system and more importantly with a proper NAIS feedback.
2. **Resolve current tasks.** *Obvious bugs* should be closed shortly, a realistic timeline for *Mandatory improvements* given and *Interoperability* should be at least scheduled in general terms.
3. **Launch community forum.** 5000 users are more than enough for an internal community. Let them communicate with each other, share experience.
4. **Create manuals.** ASEP is a relatively understandable System to use, however there exist certain aspects, which require clear manuals. Like, for instance, teamwork between a PEO and an assistant. While working in the study this particular case has been mediated between PEO, who was completely sure this functionality is not working properly and NAIS, confidently claiming the opposite. It took 3 iterations and a non-obvious end-user System usage approach to finally resolve the issue. Step-by-step manual in such cases would be very handy.



Unify interoperability

The nature of enforcement work is vitally closely related to Debtor's assets discovery and freeze, so developing new and efficiently maintaining existing interoperability features is a must. NAIS is doing what they can at the moment to ensure that, however, the further development goes, the more resources it will take to maintain such a diversified pack of solutions.

In order to scale interoperability properly and cost-efficiently, it is strongly suggested to select a unified approach in this regard, which in present reality means start using Trembita.

Such an approach should be taken for all new interoperability features and later to migrate the already existing ones.

Unified State Register of Enforcement Writs

For storage of executive documents within the framework of UJITS the creation of the corresponding subsystem - the Unified State Register of Enforcement Writs is provided. However, in accordance with Article 3 of the Law of Ukraine "On Enforcement Proceedings", decisions on the basis of enforcement documents issued not only by courts but also by other bodies (officials) are subject to enforcement. In this regard, the creation of the Unified State Register of Enforcement Writs is appropriate on the basis of the ASEP, the obligation to both create and support the functioning of which may be undertaken by the Ministry of Justice of Ukraine and NAIS.

Bankruptcy Trustees

There are 1187 licensed bankruptcy trustees in Ukraine at the moment, and this profession doesn't intend to grow rapidly, as it requires a very specific set of knowledge and skills. No specialised software for bankruptcy trustees has been developed yet.

An overall business process of a bankruptcy trustee is very much similar to one, an enforcement officer has: to locate and freeze assets of a Bankrupt and later sell at the highest bid via Internet auction to ensure max possible return to a Creditor. They may be selected differently (by a Commercial court judge) and may have their own legal proceedings to follow, however, the main business process remains similar - locate, freeze, sell.

In order to perform this business process, a bankruptcy trustee should have a similar set of technical functionality and interoperability features as an enforcement officer, thus it is feasible to consider ASEP to be the software for bankruptcy trustees.

Unfortunately, MoJ didn't support this approach, so standalone software for bankruptcy trustees should be developed. Keeping in mind similar intentions of PEOs, it is clear that there is strong demand for such 3rd party software.

3rd party software

Any 3rd party software developed for the needs of bankruptcy trustees or enforcement officers should have the same scope of interoperability features as ASEP has. In order to achieve that NAIS should provide and license an API, ensuring proper interoperability usage.

ASEP may remain the default proposed state-owned System but must be moved to using this very independent API to ensure fair conditions.

SEV OVV

Delivering and receiving official correspondence via SEV OVV will drastically decrease workload for general clerks and give the possibility to deliver official mail almost instantaneously. A huge number of State Bodies are already connected to SEV OVV, NAIS included.

ASEP should incorporate the required functionality to be able to deliver mail via SEV OVV.



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