

Evaluation Report

on

Area of Intervention Chapter 7: Improving the Enforcement System

By

Katilin Popov

Maja Grubisin

Andrii Avtorgov

December 2019

Kyiv



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PRAVO-JUSTICE

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EVALUATION PACKAGE-SPECIFIC INTRODUCTION

The Report has been developed as a part of the overall JSRSAP evaluation exercise¹ by Katilin Popov² and Maja Grubisin³ in the capacity of international experts of EU Project PRAVO-Justice (PJ) and Andrii Avtorgov, a national expert to the same project. It is concerned with Area of Intervention Chapter 7 of the JSRS AP: 'Improving Enforcement System'.⁴

The evaluation has been conducted in accordance with the area-specific methodology (Matrix)⁵ designed on the basis of the relevant template developed for the purposes of the Exercise in issue. It was carried out and benefited from support provided by the PJ team and the co-operation extended by the Ministry of Justice (its Strategic Planning and European Integration Directorate), as well as Regional Justice Reform Councils (operating with the support of PJ), the Association of Private Enforcement Officers in Ukraine (the APEO), individual experts and legal professionals met or interviewed for the purposes of evaluation concerned.

The Report has been drafted according to the uniform table of content and technical template. Its sections are internally structured according to the blocks of outcomes, as they have been grouped for the evaluation purposes in the attached methodological Matrix. Key points and important findings are highlighted (underlined) in the text. As a rule, they are followed by recommendations that are formulated in bold and recapitulated at the end of the Report accordingly.

¹ The Exercise. See the general introduction to the set of assessment reports preceding this compilation.

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⁴ The parts of the Action Plan under consideration are attached to this report. See Annex III.

⁵ See the assessment-specific activities matrix attached.



ABBREVIATIONS

AES/ ACBП	Automated Enforcement System
APEO/CB	Association of Private Enforcement Officers in Ukraine/Chamber of Bailiffs
JRC	Judicial Reform Council
JSRS	Justice Sector Reform Strategy
JSRSAP	Justice Sector Reform Strategy and Action Plan of Ukraine for 2015-2020
LoEB	Law on Enforcement Bodies
LoEP	Law on Enforcement Proceedings
MOJ	Ministry of Justice
MT	JSRSAP monitoring tool
PEO(s)	Private Enforcement Officer(s)
PJ	EU funded Project PRAVO-JUSTICE
RJRC(s)	Regional Justice Reform Council(s)
SEO(s)	State Enforcement Officer(s)
SES	State Enforcement Service at the MoJ



BASELINE

The Chapter outlines the overall state of affairs with regard to the area under consideration prior to the adoption of JSRSAP.

1. The Justice system in Ukraine is undergoing serious reforms which are all part of the policies and goals embodied within the Ukrainian “European path”.

There are preconditions (vision, mission, analysis etc.) that are important as these set the baselines of the entire strategic planning process. These baselines define the pillars of the strategy and moreover they define what can be considered a “must do” within the process of strategic planning.

In setting up national development strategies Ukrainian authorities are “bounded” by the *statements* agreed within the EU integration process. During the process, Ukraine not only must align with the EU legislation requirements and standards (*acqui*) but also it should build up its capacity to understand and rollout in practice all that it is defined in the “package”.

The reforms should therefore address legislative, organizational, cultural and political changes. In this process Ukraine can count on financial, organizational and other support by international donors and EU funded projects, but national authorities must also be aware that it is within them that the change needs to start happening. The necessary change is not only the legislative or organizational one, which is in our case without doubt an important necessity, but also the change in understanding democracy, the rule of law and the fundamental rights in their core.

The idea of EU is not to push its member states or candidate countries to adopt one precise model or organizational structure in its national policies, but rather to embrace some elemental baselines and standards so that the citizens of EU member states or countries on its path to EU, all have equal standards and fundamental rights when it comes to important sectors such as Judiciary, Economy, Ecology etc.

2. One of important sectors in which the Ukrainian authorities are expected progression is the enforcement system. This task was embraced as one of strategically important reforms by the national authorities. In fact, the reform of the enforcement system started accordingly and is now part of the activities supported by the Judicial Sector Reform Strategy for the period 2015-2020. In the JSRS one of the PILLARS is the Improvement of the enforcement system.

From the strategy we see that the national authorities justly recognize the enforcement as area of interest and a challenge within the judicial reform process.

The objective of the JSRS is to define priorities for ensuring the rule of law in the administration of justice, compliance with public expectations for an independent judiciary and fair trial, on the basis of European values and standards for the protection of human rights.

3. The first set of measures that could be considered as a coherent policy framework related to the administration of enforcement in Ukraine (after dissolution of the Soviet Union and re-gaining independence by it) dates back to 1998, when the Parliament adopted consecutively the Law on creation of the State Enforcement Service (SES) and the Law on Enforcement Proceedings. The enforcement of court decisions was moved out of courts and granted to the executive.



In 2015, at the outset of the Strategy adoption, considerable shortcomings of the enforcement system existed, including:

- Low level of actual enforcement of court decisions,
 - Lack of effective incentives for enforcement,
 - Insufficient coordination and interaction between enforcement officers and other public and private institutions.
4. According to the WB Doing Business Index, the cost of enforcing a contract in Ukraine was almost double the EU average. More than UAH 400 billion was locked up in large unenforced civil cases, according to WB estimates.
 5. Non-enforcement of court decisions was the most common complaint against Ukraine before the European Court of Human Rights (ECHR), making up more than 50% of total ECHR violations found. In contrast, new EU Member States had barely, if at all, issues with non-enforcement (A6 and A1/P1), as attested by ECHR practice with regard to the Baltic States, Poland etc. Only 5% of civil court decisions in Ukraine were properly and timely enforced in favour of claimants, while the relevant figure was at least 30% or more in EU member states with private enforcement services.
 6. Privatisation of enforcement services was a general trend in EU and COE jurisdictions. Most new EU Member States, from post-communist countries especially, had either fully private or mixed (combination of private and State) enforcement service. Privatisation of enforcement service was one of rare areas where quick progress had been made to improve the rule of law in those transition countries.



ADEQUACY OF JSRSAP AND ITS PARAMETERS

Overall assessment

The Section assesses the overall adequacy of the set of interventions, structure, indicators, formulations and other parameters of JSRSAP segment under consideration.

7. Overall the provisions of the JSRSAP Chapter 7 (Enforcement) proved to be adequate. It covered practically all aspects of the functioning of the enforcement system, which by itself is challenging. The JSRSAP touched on macro aspects (e.g. enforcement governance system and inter-institutional co-operation, establishment of competitive market in enforcement, public awareness, etc.) without at the same time staying too far general and vague, by providing for tangible outcomes by the end of 2020 as well – e.g. functioning professional insurance of PEOs, SEOs' remuneration linked to performance, transparency of assets, interoperability of enforcement IS, creation of PEOs' self-governance body, admission and licensing of PEOs, etc.
8. Neither the Legislator nor the key implementing institution, the MoJ, stayed always on the main lines laid down by the JSRSAP. Already in 2016, with the adoption of the LoEB, the Parliament diverted from key provisions of the JSRSAP: conditions for equal competition between state and private limbs of the enforcement system, regulatory and oversight competence-sharing between the MoJ and the Chamber of bailiffs. In 2017 and 2018 the MoJ practically neglected the JSRSAP provisions regarding the development of the PEOs profession by focusing mainly on improvement of the State Enforcement Service.
9. As of 2019, the JSRSAP Chapter 7 (Enforcement) provisions are still valid and adequate from a substantial point of view. The level of achievement of the strategy outcomes on enforcement is rather low. The enforcement reform was launched in 2016 but next two years stayed still with no tangible progress. It's advisable for the next policy cycle to only upgrade upon the provisions of the JSRSAP 2015-2020 by adding new (and re-phrasing existing) outcomes within the same policy line.



ACCURACY OF MONITORING OF AND REPORTING ON JSRSAP IMPLEMENTATION

The Section concerns accuracy of monitoring (maintaining the instrument-specific MT) and appropriateness of narrative or other reporting formats on JSRSAP implementation.

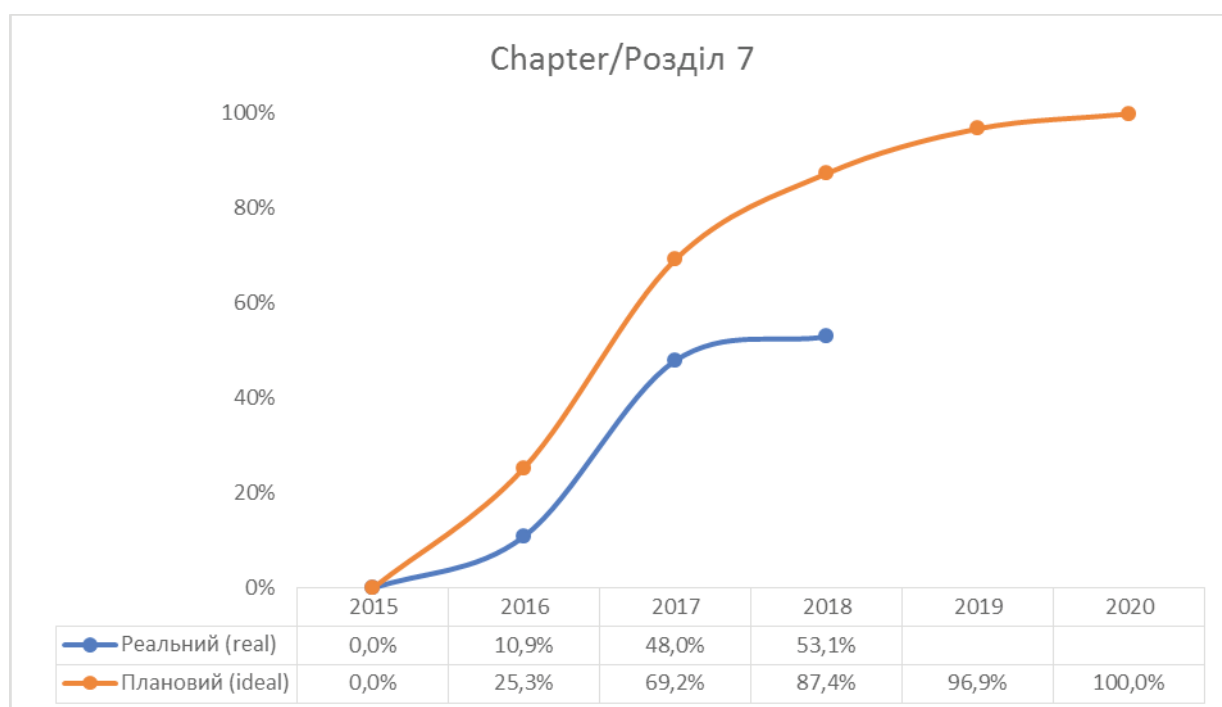
10. Besides the output/measure specific reports that are provided for as the most frequent means of verification throughout JSRSAP, it has included an advanced set of outcomes delineating the overall reporting arrangements.
11. The Governments Decree 864-p. its para. 2 includes a provision that as of 2016, annually, by March 1 of the following years, the Cabinet of Ministers shall be informed about the implementation of the Action Plan during the previous year. This obligation has been undertaken by the MoJ. It annually compiled tabulated narrative technical reports on JSRSAP implementation and just formally submitted them to the Government. The reports submitted on 2016-2017 were predominantly based on data and information available in and to the MoJ. They were drafted and sent to the Cabinet of Ministers in April 2017 and May 2018.⁶ The tables mirroring JSRSAP structure contained narrative description of activities carried out during the years concerned. However, they did not specify progress towards achieving outcome-level indicators. Moreover, they did not provide a clear overview of activities that had or had not been implemented (together with explanation of possible reasons why). They were devoid of graphical overview of key reform achievements and illustrative elements. The reports were not formally reviewed either by the Government or JRC and there was no feed-back from them accordingly.
12. In terms of monitoring, it has been advanced, systematised and facilitated by means of the Tool developed with the support of PJ with extended ownership of JSRSAP institutional coordinators that have taken it over and maintained accordingly. The Monitoring Tool (MT) is an integrated policy-specific instrument for facilitating and guiding structured and consistent implementation of the JSRSAP by means of further (process-related) itemization of measures envisaged by it. The tool is based on a typology-aligned itemization of the outputs. Their breakdown has been adjusted to the specific JSRSAP measures and furnished with a coherent quantitative scoring of each of the structural elements: chapter, area of intervention, action, measure, and stage, accordingly. The MT scoring system is based on the weight assignment that treats each of the elements according to their estimated significance and provides inbuilt incentives. Most important stages, elements are assigned more weight within the corresponding slot/ policy segment that is considered as amounting to 100% or 1. While the absolute dimension has been used for identifying relevant comparative weights (shares) of each of them, the Excel-based computing (output) module is construed according to a cumulative approach (formula) that sums up the weight of all the preceding stages. More advanced stages absorb preceding ones (e.g. an adoption of the normative act concerned covers development of its draft etc.). Moreover, MT has been furnished with the chronology component and formula allowing to measure

⁶ Інформація про стан виконання плану дій щодо реалізації положень стратегії реформування судуострою, судочинства та суміжних правових інститутів на 2015-2020 роки за 2016 рік. Інформація про стан виконання плану дій щодо реалізації положень стратегії реформування судуострою, судочинства та суміжних правових інститутів на 2015-2020 роки за 2017 рік.

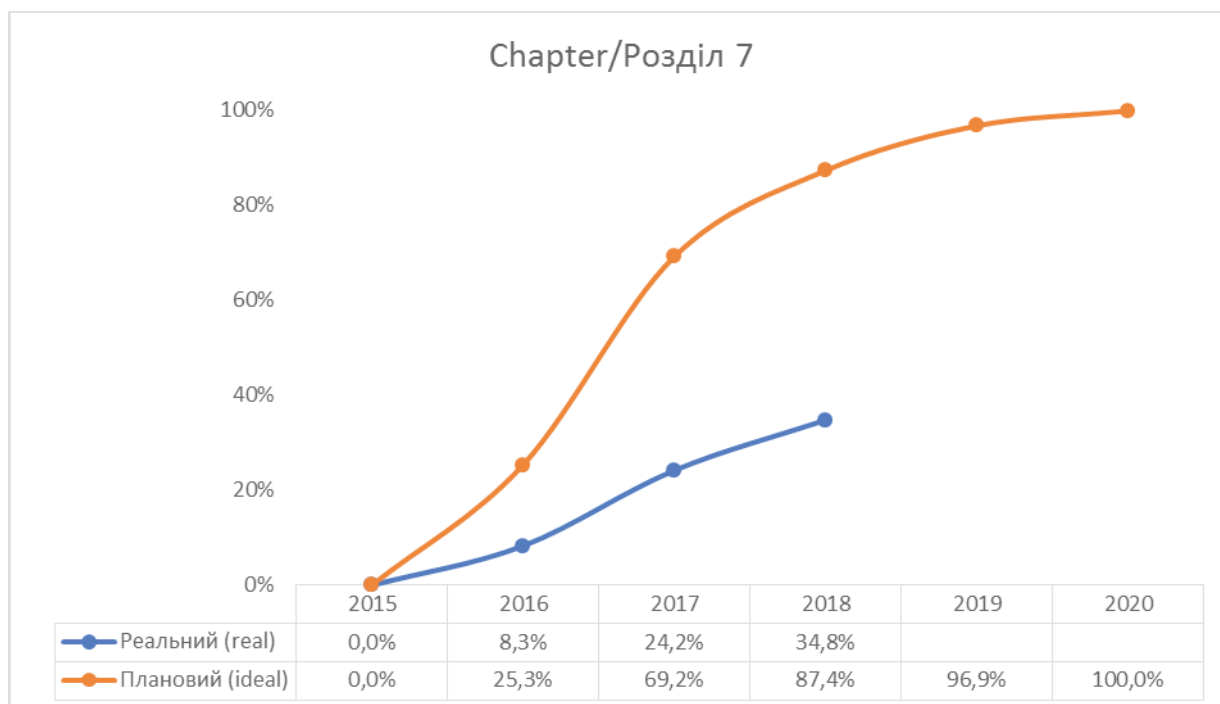
the timing parameters and compliance with the JSRSAP calendar. This has enabled progress and result-oriented and timing stimulation of the stakeholders, as well as streamlining the implementation process and its scrutiny. The MT input module had been populated by the specific measures-related implementation data, supported by relevant references, links or other evidence. The MT (its input and output modules), which is fully operational since September 2018 is owned, maintained and updated on Chapter 7 (Enforcement) by the MoJ. PJ is providing continuous methodological support to the stakeholders concerned.

13. As a result, MT provides specific information, computes and generates analytical data, comparative and visual tables and charts with regard to the JSRSAP output-based parameters, including attainment of a specific stage of every JSRSAP measure, compliance with the implementation calendar, supported with links or other evidence of implementation, as well as absolute % and cumulative level of implementation of JSRSAP in general, any of its actions, area of intervention, chapter. Moreover, it makes it possible to calculate levels of performance of sector institutions, leading implementation of the policy interventions.
14. The overall dynamics and score of implementation of the measures envisaged by JSRSAP Chapter 7 (Enforcement) during the period tackled by the evaluation exercise are illustrated by the tables below. In general, according to the MT implemented by the MoJ, JSRSAP Chapter 7 (Enforcement) outcomes had been achieved up to 53,1% out of 87,4% expected by 01.01.2019, while as per the Experts assessment the achievement rate was 34,8%.

Conformity with planned progress in implementing JSRSAP Chapter 7 (Enforcement) by 01.01.2019 as per the MT implemented by the MoJ



Conformity with planned progress in implementing JSRSAP Chapter 7 (Enforcement) by 01.01.2019 as per the Experts assessment as described in details in the next section



15. As to the accuracy of data introduced into the MT with regard to the specific measures and their stages comprised by the Area in issue, the assessment suggests that it was adequate and in general was very close to their actual implementation. It is to be noted that the MoJ, its Strategic Planning and European Integration Directorate, was quite critical and objective with regard to indication of even its own progress and substantial implementation of the measures the MoJ and other sector institutions were responsible for.

ATTAINMENT OF RELEVANT JSRSAP OUTCOMES

The Section concerns findings, data, analysis, assessment results, and suggests approximate estimation of scores in terms of attainment of the outcomes and their relevant blocks indicated in the relevant paragraphs and subtitles.

'Mixed Enforcement System in place

Level of attainment 60%

16. **Private** profession of bailiff created and certain role left for State authorities in enforcement and alternative disputes in some administrative and socially-sensitive civil cases (alimony, childcare, eviction etc.)

After decade of unsuccessful attempts of turning the SES it into modern, customer-oriented, efficient, transparent and accountable organization, in 2016, the Parliament, upon the initiative of the Judicial Reform council (JRC), and in implementation of the provisions of the JSRSAP, adopted the Law on Enforcement Bodies (LoEB) and the Law on Enforcement Proceedings (LoEP) introducing to Ukraine for the first time the figure of the Private Enforcement Officers (PEOs).

First PEOs started their offices in 2017. To date some 212 PEOs (and about 400 assistant staff) are operational, having enforced almost 3 times more judgments per case closed, to compare with the SES, whose number of officers represents some 5,500 persons. The number of PEOs is well below the reform inception policy target of 800 by the end of 2018. Prospective lawyers in Ukraine have not so far recognized the PEOs profession as an opportunity for independent (free of administrative interference), competitive (low cost-benefit ratio) and meaningful (high professional and personal standing) career path.

The experts assess the attainment of that objective as amounting to 50% of the target as long as the current number of PEOs is well below the policy target of 800.

17. **Admission and licensing** requirements for bailiffs determined

The MoJ has adopted the implementation regulation in that area – MoJ Order of 25.10.2016 No 3053/5, regulating the procedure for access to PEO profession. Since its adoption, that Order has been amended 7 times, which is indicative for its quality standing.

In order to enter the profession potential candidates for a position of a PEO should pass cumbersome procedure that starts with the paid one-month initial training operated by nine admitted by the MOJ universities. Then follows one-month internship and three-stage examination. Finally, successful candidate should obtain insurance and duly equip the office. The entire process is disproportionately time and finance consuming for both candidates and state.

The admission exam is operated by the PEOs Qualification Commission at the MOJ and is consisted of automated multiple-choice test, automated practical task, and case study evaluated by the members of the QC. The evaluation of the case study is not automated and does not represent testing, as required expressively by the LoEB. In that part the MoJ Order is in apparent conflict with the law.

The testing software, administrated by the state enterprise NAIS, was never subject to external independent audit and thus alleged to be manipulated.



The requirements as to the PEOs' offices established by the MoJ adopted regulation are awkward and disproportionately burdensome for the new-entrant PEOs. Same goes for the minimum limits of the mandatory professional liability insurance that the PEOs should maintain: the minimum insurance limit should amount to the aggregate value of all judgement claims pending for enforcement with the PEO.

The experts assess the admission and licensing conditions for PEOs as amounting to 50% of the target with flaws lying in the disproportionately time and finance consuming admission process, not fully automated admission examination, non-transparent and unaccountable scoring by the testing software, disproportionately heavy requirements to the PEOs office and professional liability insurance.

18. Partial **harmonization of licensing and oversight systems** of bailiffs with other private professions in justice sector, including, advocates and notaries

Qualification requirements, admission process and oversight mechanisms applicable to PEOs are well harmonized partially with these valid for other private professions in justice sector: attorneys, notaries, bankruptcy trustees. Attorneys are licensed and supervised by the Ukrainian Bar Association, and not by the MoJ.

In Ukraine the oversight systems of justice sector professions need fundamental re-thinking and re-formatting following the main lines already laid down in the judges (and partially attorneys) oversight and scrutiny system. Private justice sector professions' independence (from the Government, executive) should be safeguarded with the same arguments that are valid for justices. Attorneys, bankruptcy trustees, notaries and PEOs should be independent enough (from the Government, executive) in order to allow for full-fledged application of their justice sector delegated authority, particularly when acting against the state agencies/bodies or state-owned enterprises if the law/justice requires. The oversight system should ensure compliance while at the same time safeguarding the independence of the supervised professionals.

Qualification, admission and oversight of SEOs stand far back from the main lines drawn for all other legal professions in the justice sector, PEOs included. As result, SEOs are generally perceived as underqualified, not efficient and unaccountable.

The experts assess the level of harmonization of licensing and oversight systems as amounting to 80% of the target. The strategy requires only 'harmonization' without setting any quality benchmarks for such harmonization. It aims to 'private' justice sector professions, leaving aside the SEOs.

The experts believe that the this strategic objective needs further re-formulation by establishing quality benchmarks for such harmonization that will address existing drawbacks lying in different requirements and licensing/oversight processes applicable to SEOs and lack of sufficient safeguards for professionals' independence implanted into the oversight and scrutiny systems currently in place.

19. Practical and effective conditions in place for **equal competition** between private and State-run limbs of enforcement system

The SEOs and PEOs are operating under the same fee schedules, under the same procedural and operational rules. The latter hampers PEOs efficiency as the rules are designed to respond to the SES' organizational structure and process-flows which are considerably different from the PEOs' ones.

The PEOs' functioning was statutory (by the law and further by the implementing regulations) restricted in many ways to respond to concerns of the justice sector community and the general public regarding PEOs' compliance and to back up smooth transition from state-run to entrepreneurial enforcement system in Ukraine. The PEOs jurisdiction was limited disallowing enforcement against state bodies and state-owned enterprises, evictions, alimony and child custody cases. PEOs were banned from exercise of their economic activity in viable organizational forms which put restraints on their business growth.

Within the assessment period there were issues with the proper transfer of pending enforcement cases from the SES to PEOs upon creditor's request. These issues were gradually overcome and no more reported towards the end of the assessment period.

The experts assess the conditions for equal competition between PEOs and SEOs as amounting to 50% of the target with the restraints lying in the different mandates of SEOs and PEOs and existing overregulation of the latter.

20. Conditions in place to allow gradual move towards wider scope of private model, with a view to **complete privatization** of enforcement services by reference to experience in reform of notary services

The enforcement reform in Ukraine is so far a moderate success. It brings significant outcomes to the society in the form of money collected and legitimate creditors paid, much faster and earlier than the equivalent results appearing in other areas of the justice sector reform.

At the same time it suffers from certain design and implementation flaws that need immediate and mid-term addressing. Programming the PEOs in Ukraine back in 2016 was extremely diffident and too far prudent as at that point it was unclear how PEOs would behave and how the society would react. Now, after 2 years of PEOs operations, we can evidence that neither of risks that were evoked in 2016 have occurred. PEOs are working in line with the law. There is no more good reason to keep all the limitations that were put back in 2016 as safeguards for PEOs' failure. If continue to exist, such limitations would become without any legitimate justification and thus disproportionate and discriminatory.

Despite all the existing limitations in PEOs mandate, creditors trust PEOs more and more each year: the ascending trend of the number of new cases assigned to PEOs for enforcement is indicative.

	2017, Q3-4	2018, Q1-2	2018, Q3-4	2019, Q1-2
Number of new cases filed with PEOs	3,424	11,742	18,734	33,495

The caseload per enforcement officer is higher with PEOs than with SEOs. The MoJ reports 360 pending enforcement cases handled by one SEO, while for the PEOs that number is 450. At the same time all respondents evidence higher satisfaction with PEOs than with SEOs. To conclude: for the short time-span of their operation the PEOs proved to be the preferred choice of creditors and to be more efficient than the SEOs.

The PEOs are working in good compliance with the law. Within the assessment period, the MoJ has carried out some 290 inspections of PEOs, resulting in 43 disciplinary



cases opened, and only 8 disciplinary sanctions levied. In aggregate it makes some 97% compliance rate with no major breaches of the law identified. Keeping in mind that this is a new profession such compliance rate is more than good.

The government put efforts in improving operations of the SES. Still, all these efforts did not succeed in turning the SES into the flagman of the so needed administrative reform in Ukraine by bring it to the level of a modern, customer-oriented, efficient and accountable administration. Historically, all the attempts for reforming the SES were unsuccessful. Thus, the government should stay on the clear policy choice that was made back in 2015/2016 for gradual transition to entirely private enforcement system in Ukraine. Further liberalization of the PEOs profession and activity is the way Ukraine should continue on.

The parallel functioning of SES and PEOs should stay as a transitional solution only. How long such transition will last is the next question. The SES should persist until the point when the number and territorial coverage of the PEOs ensure sufficient level of competition among them throughout the entire territory of Ukraine. The policy benchmark for PEOs number set back at the inception of the reform was 800. Three years after that, Ukraine is far from reaching that target.

The experts assess the conditions for further privatization of the enforcement activity in Ukraine as amounting to 80% of the target with the only restraint lying in the currently insufficient number of PEOs. Conditions, as phrased by the Strategy, are well in place. The Government should recognize it and move towards establishment of full-fledged 'mixed' enforcement system in Ukraine, being the next step towards complete privatization of the enforcement service.

Enforcement Governance System institutionalized

Level of attainment 30%

21. **National Chamber of Bailiffs (CB)** set up as main governance body of private bailiffs' profession; regional Chambers set up taking into account local socio-economic realities

The APEO was established in 2017. Regional Councils were set up in most of the regions. The APEO has carried out two election and two reporting general meetings so far. The APEO formed its proper secretariat.

Although there are some parallel organizations that popped out of the PEOs profession (e.g. FAKT, Alternativa), the APEO is unanimously perceived, by PEOs, other stakeholders and the general public, as being the only legitimate and representative organization of all PEOs.

Nonetheless, the self-governance of PEOs remains weak. The APEO is progressing slowly in developing its institutional capacities, project management and strategic planning abilities, efficient internal and external communication. The linkage between the membership and the APEO's management in Kyiv is broken, assumedly at the area of Regional Councils. The heavy organizational structure and lack of direct voting at the general assembly are to the detriment of the APEO's faster organizational development.

The level of attainment of this outcome could be scored as amounting to 60% of the target with restraints lying in the still not developed organizational capacity of the



APEO and in the detachment of the management from the membership.

22. Streamlined **powers of CB and MOJ**, with limited, clear and foreseeable role of MOJ in regulation, licensing and oversight of profession

The APEO was programmed (back in 2016) by the legislator as ‘no authority organization’. All regulations governing PEOs operations are adopted unilaterally by the MoJ without any prior-to-adoption consultations with the APEO. The PEOs discipline is rendered by an external body (the MoJ) that additionally weakens the PEOs’ self-governance.

The current situation triggers a conflict of interest in the MOJ exercising a dual role of a regulator/controlling body and competitor of PEOs. No regulation governing the PEOs activity was geared at streamlining their efficiency but rather just accommodating the needs and expectations of the SES. Intensity of the MoJ oversight (inspections) exercised over the SEOs and PEOs differs significantly: within the same time-span (2018-first half of 2019) the MoJ carried out 95 inspections of SEOs compared to some 290 such inspections of PEOs. It’s true that the PEOs need intensive oversight at the outset of their operations, but it’s also true that the SEOs are 25 times more in numbers and are generally accused by the creditors and the general public of being inefficient, unresponsive and unaccountable.

The level of attainment of this outcome could be scored as amounting to 20% of the target as long as the regulation of the PEOs profession is carried out by the MoJ unilaterally with no whatsoever consultation with the APEO and the oversight over PEOs is exercised in a manner that raises concerns.

Recommendation:

Shared regulatory competences between the MoJ and the APEO. The MoJ regulatory authority in regard to the PEOs’ activity should be clearly defined in the law by an exhaustive list of sub-normative acts (implementing regulations) to be adopted by the MoJ. Most of these regulations should be adopted by the MoJ in consultation/concordance with the self-governance body of the PEOs, the APEO.

The MoJ should implement effective and transparent, unbiased and accountable oversight over the activity of both SEOs and PEOs.

23. Active **cooperation of MOJ and CB** in developing policy and legislative initiatives with regard to enforcement system, including definition and review of required number and competences of bailiffs

As indicated above the level of the inter-institutional co-operation between the MoJ and the APEO remains very low.

The best European practice shows that in countries where the enforcement is carried out by independent professionals (i.e. PEOs), their activity should not be unilaterally regulated by the executive, e.g. the MoJ, but in co-operation with the self-governance body of the profession, e.g. the APEO.

On the other hand, the self-governing organization of the PEOs is still progressing slowly on its capacity building way. The genesis of the АПВУ – an association with mandatory, as opposed to voluntary membership – renders the process of common values’ and goals’ formulation extremely slow and tense. At the outset of the creation of the new profession, its members had very little in common and thus the АПВУ still



have a lot a way to go.

Nevertheless, experts believe that the institutional development of the АПВУ has no alternative. It's better to have an organization to develop rather to have no organization at all. The АПВУ has a unique chance to be supported by the international donors on its way to maturity, a chance that neither the Notaries Chamber nor the Bar had at the time. With the continuing support of the international donors the АПВУ has much better prospects to turn into the flagman of the so needed rethinking and redesign of the self-governance in Ukraine; to pave the way towards establishment of a real self-governance environment and mechanisms in all regulated legal professions.

A strong catalyst of that process might be the hand given by the Government. The Government should be ready to share regulatory and oversight authority with the self-governance organization of PEOs, the АПВУ. The State should regard the self-governance organization of PEOs as an indispensable and valuable partner, an ally, in all efforts geared at improvement of the enforcement system to the benefit of all citizen and businesses in Ukraine.

The level of attainment of this outcome could be scored as amounting to 20% of the target.

Chamber of Bailiffs Organizational Building

Level of attainment 35%

Independence and Efficiency of Governing Bodies

Level of attainment 30%

24. Increased independence and efficiency of **governance bodies** (including disciplinary) within bailiffs' corporation

The area of work of the Chamber is set up in the LoEB. The office of the CB in Kiev is organized with staff of two administrative/organizational employees and the President. There are regional offices spread out in different districts of the country that act as CB branches. Services such as the financial bookkeeping are outsourced. The Chamber is currently not conducting activities such as the training of enforcement officers or regular control over the work of the PEO. This is so due to their lack of financial and organizational capacity as well as the lack of adequate legislative regulation.

The Chamber is still lacking strong leadership which is often the result of passiveness towards the chamber by other authorities such as the Ministry of Justice or perhaps entities that participate in the enforcement procedure and should, by nature of their role, cooperate closely with the service and its representatives. Here we especially underline poor communication with the police that is often deafening to requests and inputs by the CB and enforcement officers themselves. The public authorities should be supportive towards the development of the Private enforcement service and find ways to resolve the gaps in the system.

The private enforcement service was established with the purpose to raise efficiency of the enforcement system. But slowing down the development of the service slows down its capacity to be more effective in this task and therefore the goal to create an objective and effective enforcements system cannot be reached. Private enforcement service is by its nature more motivated to be efficient, to develop and grow but also, what is most important for the efficiency, to be in line with all modern technologies and



organizational frameworks.

Building organizations and establishing and growing leadership calls not only for leadership capabilities but more of planned approach and strategy combined with discipline to stay focused on the path.

Therefore, the attainment of that outcome could be scored as amounting to 30% of the target implied in the JSRSAP-specific scheme.

Recommendations

The public authorities should be supportive towards the development of the Private enforcement service and find ways to resolve the gaps in the system.

In order to manage the change from one model that has performed poorly to a new better one that should resolve challenges met in the past, different competences are required:

- Implementing change – the competency to communicate the organization's need for change to all parties/counterparts involved. This is achievable through training activities, sectorial workshops etc.
- Empowering others – the competency for sharing information, fostering professional development, providing feedback, expressing positive expectations and recognizing positive results
- Flexing for innovation – the willingness and ability to change structures and processes as needed. The needs are detected within previous assessment activity (fact based decisions).
- Facilitating team activities – the group process skills needed to understand and value the inputs of diverse groups of people to work together effectively to achieve strategic goals and objectives.
- Adapting to circumstances – the ability to adapt rapidly and function effectively in any unordinary situation or environment in order to champion new products, services, and production processes.

25. Internal and external **Monitoring and Evaluation (M&E) mechanisms** and review reports attest satisfactory implementation of strategic planning within bailiffs corporation

The authorities did not prove to be using comprehensive, uniform, automatized system of monitoring the functioning of the enforcement system. The Monitoring and Evaluation mechanisms that could attest implementation of strategic planning within the bailiff corporation are not in place.

The monitoring of the implementation of the strategic planning is NOT POSSIBLE without analytical data. This gap should be addressed without delay. According to information obtained during the mission there is a plan to create comprehensive database of all relevant information available in public registers and ICT systems, as well as the modern BI tool to create standardized reports for policy makers and practitioners. This should become one of priorities and should be supported by not only the international community but overall the political leadership from the highest level. The financial needs to build this system are substantial and therefore stronger support by all sides involved is needed.



In order to clarify the reasons for this urge (to create a systematic, standardized, automated, analytical reporting system) it is important to underline the following:

Strategic planning process is not aimed for, nor does it materialize only with, issuing and adopting a strategic document such as the JSRS. There is much more to it than fulfilling forms and formalities. It is very complex long term process which should always be set up taking into account all its phases seriously and comprehensively. The process can be described in several steps: Preparation, Planning, Implementation, Adjustments, Finalization, and Assessment. During all these phases a regular, standardized and uniform model of analysis and reporting on the implementation should be in place. At this moment this is not the case in the enforcement system reform process. The reports such as this one can give somewhat an objective view of the fulfillment of the reform but it cannot in any circumstance replace missing statistical reporting model of the system (in all stages of the organization and procedural framework).

Strategic planning starts with “thinking” about the vision (where we want to be at the end of our strategic period). The vision statement (and the mission) should lead the strategic process, from planning to the realization. In this phase of the new upcoming strategic period the leaders (in this case The Government and its executive bodies) are responsible for setting the vision and the mission statements of the new reform period. In this stage, it is important to identify the ways and means of achieving these. An analysis of strengths, weaknesses, opportunities and threats at this point should reveal critical areas surrounding the system and services that need attention. Most important precondition, even more important than setting the vision and the mission, is to analyze fulfillment of the previous reform process.

Based on the findings, conclusions and recommendations that have been elaborated on, it could be suggested the level of attainment of this outcome could be scored as amounting to 30% of the target.

Recommendation

Establishment of the well-functioning, integrated, process based ICT system, with modern data base solutions capacitated for all needs of the judicial system - is a precondition for fulfillment of many strategic goals/outcomes set in the JSRS. Here as well, for this outcome it must be taken as a precondition for fulfilling the goal.

26. **Consistent response** of CB to any interference with independence of bailiffs and violations of their rights

The Chamber is still not efficient nor does it have enough capacities at this moment to respond to all possible interferences with the independence of bailiffs and violation of their rights. Attempts to protect the PEO are seen in terms of providing assistance during the disciplinary proceedings. The Disciplinary Commissionaire, who is elected by the Chamber, acts as legal representative of the PEO, during the disciplinary proceedings. This assures that the defense adequate and the rights of the PEO are safeguarded. Nevertheless this is far from what the Chamber would be expected to do.

The Chamber, with the support of counterparts (MoJ, PEOs, European and international donors) should work harder to strengthen the position of the Chamber and thus the private enforcement service. All authorities should at all times withhold from any action that could be considered as interference with the independence of the profession. This especially counts for actions that are part of the nomination, inspection and

disciplinary proceedings. Many doubtful cases were discussed during the missions and experts believe that completely new and upgraded approach to the inspection and disciplinary proceedings is needed.

The responsiveness of an organization lies in its ability to react to system demands. System demands can be divided into regular demands and extraordinary demands (ad hoc). Organizational capabilities are officials and employees with knowledge and skills that in overall provide with the ability to respond to demands (tasks and challenges), but still remain flexible to changes in the system, all within the adequate legislative framework.

The skills and knowledge of enforcement officers and the administrative staff should allow the organization to direct those skills to achieve better results and finally to achieve the goals set up in the JSRS. This also means that lack of knowledge and skills reduce organizational capacity, necessary to achieve not only better results and strategic goals but also to regular every day demands.

Training programs, clear workflows and effective recruiting process are organizational capabilities that ensure a knowledgeable workforce. This is the area where there must be much more efforts by the CB and other competent authorities. The employees at enforcement offices as well at the chamber offices have relevant base knowledge and elemental skills but their capacities and professional development are bounded by the organizational framework as well as the leadership decisions and actions.

The system should be set up so that it is at all times clear what the Input, the throughput and the output is. This scheme helps managers to structure the processes and workflows so that their organization is capable to respond to the demands. Of crucial importance is that all parties (enforcement officers, administrative staff, policy makers, the legislator) comply with procedural and organizational rules that are set up in the laws, bylaws and other regulations and official instructions. At this moment the regulatory framework is not properly set up to allow the institutions, especially the Chamber, work as effectively as the capacities they have would allow them.

Based on the findings, conclusions and recommendations that have been elaborated on, it could be suggested the level of attainment of this outcome could be scored as amounting to 30% of the target.

Recommendation

The Chamber, with the support of counterparts (MoJ, PEOs, European and international donors) should work harder to strengthen the position of the Chamber and thus the private enforcement service.

All authorities should at all times withhold from any action that could be considered as interference with the independence of the profession. This especially counts for actions that are part of the nomination, inspection and disciplinary proceedings.

The CB should keep and analyze the track record of the inspections and disciplinary proceedings. These should be summarized and distributed to all members of the private service as preventive and informative measure.

There should be objective and effective system of reporting cases of interference with independence of the service. The legislative framework should be adjusted so that the independence and the interference are much more clearly defined with strict and clear protective measures.



Regulatory Capacity

Level of attainment 30%

27. Bailiffs **participation in decision-making processes** of other justice sector institutions when interests of bailiffs are affected

Decision making process should be seriously revised and upgraded. There are gaps in communication between the Ministry and the Chamber (as mentioned before). The lack of reciprocal understanding and respect makes it very difficult to set up proper legislative framework that includes all relevant sides: the Chamber, the academic community, business representatives sector etc. Feedback provided by the actual entities who implement the legislative provisions (in practice) is as important as the feedback and instructions provided by the academic community.

The legislative procedure to consider:

- Setting clear strategies/legislative needs for the upcoming legislative activity
- Appointing the working group. Possibly, establish two working groups to speed up the consultation procedure and to filter the necessary proposals from those that do not fit in the strategic idea.
- The working groups should be publicly announced.
- The two groups can be the narrow working group and the expanded working group. In the narrow WG the members should be officials from the legislative department of the ministry and one or two experienced members of the profession (both private and public). The expanded WG should be composed of representatives of different organizations and institutions and it would be composed of bigger number of members.

The procedure could be set up as follows:

- After the appointment and announcement that the WGs were set up, the policy makers (leaders) announce also the strategic guidelines that the WG shall be considering during their work
- The narrow working group makes initial preparatory work (gathering analysis, making initial proposals on different areas to address)
- The expanded working group assesses the preparatory documentation and gives their feedback
- There should be enough cycles of consultation to finalize the final draft to be presented to the Minister.
- After the minister and his advisors give their feedback, there should be new cycle of consultations. Finally, when the draft is consolidated it can be sent to other counterparts (members of the private/public enforcement service, judges etc.)

Clear legislative procedure that involves relevant authorities ensures the legislative proposals are based all on the available knowledge and experience. This is important to create a better legislative environment. At this moment there is an urge to interfere with the enforcement legislation, in major scale. Making this process of drafting legislation (or Strategies, as a matter of fact) more transparent and comprehensive raises the public trust in institutions and generally in the rule of law.



The Chamber is putting efforts to collect as much information from its members to give constructive proposals for the upcoming (announced) legislative activities. The experts became aware that the communication between the Chamber and the Ministry is so poor that legislative amendments that were drafted by the Chamber members, even though sent to MoJ, were never considered or discussed. The ideas and the feedback was apparently simply neglected and lost in communication. This proves that there is an urgent need to set up a calendar of meetings that should have clear form and structure, so that information is exchanged and then used for further legislative activities. The Ministry and therefore the Government cannot be successful in their attempts to reform the judicial sector or any other sector if in the process of the decision making they do not take into consideration constructive proposals made by those who implement the legislative framework.

Therefore, the level of attainment of this outcome could be scored as amounting to 20% of the target.

Recommendation:

Decision making process should be seriously revised and upgraded.

Set up a calendar of meetings between the CB, MoJ and other authorities. These meetings and consultations that should have clear form and structure, so that all relevant information is exchanged and then used for further legislative activities.

28. CB and bailiffs provide regular and constructive **inputs for major policy and regulatory initiatives** related to justice sector reform

This outcome is not attained and once more this is the problem of bad communication between relevant authorities. Circumstances that are preventing the realization of the outcome are following:

- Uncertain protocol of communication
- No feedback to information and inputs provided
- No inclusiveness in the process of legislation drafting (from start)

In different outcomes discussed in this assessment report, the communication gaps have been mentioned and addressed as primary problem in the functioning of the enforcement system.

In the case of this specific outcome, the CB did prove to be somewhat proactive in giving their feedback and ideas/initiatives related to the reform activities, but according to the counterparts interviewed, there was no feedback or discussion on the “other side”. The expert, during the mission, handed to MoJ representatives the copy of the proposals made by the CB (that got lost in communication and was never discussed), hoping this could be the moment where the communication on related proposals should start happening. This Strategy outcome implies that on the other side there will be somebody willing to listening and accept the constructive and argumenta ideas.

It could be suggested the level of attainment of this outcome could be scored as amounting to 35% of the target.



Capacity to Communicate

Level of attainment 30%

29. **Internal communication** channels (including electronic workflow system and web-portal) between CB, bailiffs, and other State/non-State actors in justice sector formalized and used regularly

Internal communication between authorities involved in the enforcement procedure is not productive. This challenge can be outlined as one of the most important in the system. Until different authorities within the same area of work do not communicate constructively and regularly, there will be no real progress in the reforms.

The PEOs has their Facebook group were the main internal communication among them is happening. The APEO is currently designing its proper web-portal but progressing very slowly on that path.

Still, the main communication flows rest on paper which results in considerable delays, reform fatigue and unproductive/distractive (or absent) communication.

The ability of the system to conduct reforms and restructurings lies primarily on its ability to constructively communicate within and throughout all levels of the organization. In our case it is the Government, the Ministry, the Chamber, the private and public enforcement officers and some other authorities (academic community, the police, the tax administration etc.) and last but not least, the citizens.

The rules on the fluctuation of different information at different levels should be set up in a form of unified standards that all sides comply with fully.

Ways of communication:

- Internal „procedural“ communication
- Internal „organizational“ communication
- External communication (members of civil society, academic community, citizens etc.)

There should be one official, effective way to communicate or exchange important information which is at this moment missing. This works both for a situation where the enforcement officer is investigating debtors assets (accessibility to information contained in public registers) as well as the situation when policy makers analyze different information in order to make fact based policy decisions (such as the statistical data). Access to data in general should be facilitated in all areas where modern technologies have accessible solutions.

We can categorize information considering its purpose. Organizational information is the financial data, the case flow, HR, infrastructure, training, data on the system performance etc. Procedural information is mostly one contained in the public registers of movables, tax administration, bank accounts of debtors, pension funds, citizenship status registers etc.

The workflows on access to information should be set in such way that these help the service to be efficient, effective, professional, liable and transparent. Moreover, transparency of procedures (workflows) not only helps the organization to perform better its tasks but it also rises public trust in judicial system, and the rule of law generally. Transparency acts further and it assures predictability of judicial procedures.

This is the best demonstration of an independent judiciary, fully based on the rule of law. If the procedures are predictable to parties it means it is difficult to interfere with them (independence) and at all times cases are “waged” uniformly, using same legal norms, values, mechanisms, standards and reasoning (objectivity).

It could be suggested the level of attainment of this outcome could be scored as amounting to 20% of the target.

30. **User satisfaction surveys** used regularly by CB to measure and improve quality of member services

The importance of the satisfaction surveys is still not acknowledged by the CB or other authorities such as the MoJ. The office staff at the CB has all means and capacities to coordinate the drafting and the distribution of satisfaction surveys, but as mentioned in this report already, the employees depend on the instructions by leaders.

In 2018, with the support of international projects, the APEO carried out its first survey among its members. Still, the core data and conclusions that were drawn from that survey were never published and made available for further use or reference.

Within the frames of this assessment task two questionnaires were drafted and disseminated among PEOs⁷ but the communication with the CB regarding the distribution was ineffective. This is one more proof of the very low communication effectiveness, the ineffective workflows and overall organization of the work. This all affects greatly the implementation of the strategic activities set within the JSRS. The gaps in the organizational sphere of the enforcement system do not allow some even simple measures such as the implementation of the satisfaction survey to be implemented.

It could be suggested the level of attainment of this outcome could be scored as amounting to 40% of the target.

Recommendation:

Leaders should take initiative and create model/system for conducting satisfaction surveys. The office staff can coordinate and later create reports with conclusions. These should be made public and distributed to all relevant authorities.

31. Clear procedures for **public access and participation** at certain CB meetings in place, including timely prior announcement of meeting agendas, publication of CB decisions with regard to enforcement governance system, etc.

The visibility of the PEOs service is rather poor. This is an indication that the public perception is as well very low. In order to make a new profession or service successful, such as the private enforcement service, more efforts in raising public awareness is needed. So far very little or no public campaigns were carried out. Information exchanged with the public on the system is very superficial. Regular reporting is not in place.

The APEO adopted a Communication Strategy. To date the APEO still lacks viable action plan and tangible efforts towards real implementation of this strategy. There must be more progress in this area. The Chamber in cooperation with all relevant authorities must undertake intensive and broad public awareness campaign and other PR/visibility activities. The aim is that the citizens understand the enforcement system, their individual rights and obligations.

⁷ Responses to the questionnaires and key findings are attached to this Report as Annex I.



The common policies on communication to consider:

- Communication of public policies and strategies (within the system and towards the public) that include communication of all stages: planning process, implementation process, assessment and measurement process.
- Exchange of information between counterparts/authorities on organizational matters (administrative, financial, organizational etc)
- Communication with authorities participating in the enforcement process (police, tax administration, banks etc.)
- Communication on legislative processes among main authorities (MoJ, CB)
- Regular communication (to the public) of the case law on: infringements, disciplinary procedures, inspection findings and general statistical data

The access by public is generally not facilitated and relevant legislative or organizational framework is still not fully in place. Procedures and decisions such as the disciplinary one; the organization of the system, the plan of meetings or other activities are still not regularly publicized. Access of public to disciplinary hearings is not facilitated and there is actually no track record on the participation of public to these hearings.

The track record of e.g. inspection findings or other type of documents, describing certain aspect of the enforcement procedure, is also not made public. This prevents the public (but also the members of the profession) to learn from the experience and to be more trustful that inspections proceedings and the system overall is objective and based on the law.

The public so far is not showing great interest in participating at meetings or any other activity (except for parties in the procedure, obviously). As most a reason for this low interest we can see without doubt that it is the system of communication with the public (internally as well for that matter). As it is mentioned in several parts of this report, the communication models generally are major problem within the judicial system. Making information available on the regular basis, opening communication channels with the academic and other interested communities will raise the public interest and this strategic outcome could be achieved. Without facilitating the information fluctuation it is difficult to deliver proper information to the targeted public.

It could be suggested the level of attainment of this outcome could be scored as amounting to 25% of the target.

Recommendation

Interested member of the society should be able to access all hearings without any unnecessary filter (such as waiting for the next meeting to be approved to access some future meetings of no interest).

Case law of e.g. inspection findings or even other type of documents, describing certain aspect of the enforcement procedures, should be made public and available on web pages so that these are easy to access and analyze.

The track record on the fulfillment of the strategic goals and on the functioning of the enforcement system should be constantly updated and public awareness campaigns should be considered for the roll out of this information.



32. **Regular exchanges** between CB/MOJ and European and international counterparts

The CB cooperates and exchanges information with the ongoing projects (European and international). There are some bottlenecks when it comes to exchange of information with the Ministry of Justice. Prior to their field mission the experts agreed to have some additional data delivered but, according to feedback from counterparts in MoJ, new instructions from the leadership were given, so from now on for any data or information the MoJ issues, there should be an official request (paper form, signed and stamped). This new procedure is for sure not effective nor are there any understandable reasons for such new practice.

The list of requested data was the following: Statistical reports on enforcement service (private and public) with KPIs; Regulation on statistical reporting; Organogram of MoJ + Justice sector; Regulation related to inspection service; Report on conducted inspection of enforcement officer office; Report on number of inspections conducted - with outcome (both private and public); Regulation on training; short summary of the ICT strategy etc.

Most of this information should be public and available at all times. In this moment it is difficult, even impossible, to find them on internet or receive upon request from MoJ.

It could be suggested the level of attainment of this outcome could be scored as amounting to 30% of the target.

Recommendation:

Create more effective environment for exchange of information with interested community especially with international donors and projects financed by the EU.

Financial sustainability of the CB

Level of attainment 30%

33. Adequate **financial resources for CB** to effectively perform its role in promoting independence, accountability and competence of bailiffs

The CB is collecting annual fees from the members and these are used for CB activities and administrative expenses. The success in fee collection is not very high. In 2018 only 23% was collected, while in 2019 this percentage is little better and it amounts to 76%.

Currently there is no further flexibility to widen the number of activities financed by CB. Activities financed by some ad hoc financial source (projects, international donors etc.) cannot be considered fully as “adequate financial resources for CB to effectively perform its role in promoting independence, accountability and the competence of bailiffs”.

Even though the financial resources are not flexible there is always space for improvement. Primary the members should understand the importance of paying the membership fee. Also, even with small savings additional useful activities could be delivered by the CB. There are different areas where the CB can act without major financial requirements. It is very often the case of lack creativity and motivation rather than financial resources. For example: organizing lectures, providing relevant information to members in real time, creating data bases of different information (case-law), public campaigns (public awareness), workshops etc., these are all activities that can be financed within the current budget framework, especially if the fee collec-



tion becomes more efficient. The CB needs to activate all resources available to start delivering more to its members.

Establishing “the school for private enforcement officers” is the most important strategic action to conduct in the upcoming period. As the entire process is still at its very early stage, there was not much information provided, but the project PRAVO-JUSTICE and other involved donors will most certainly provide all possible support to the Chamber and the Ministry on this path. Building up a training system for private enforcement officers is recognized by all sides as unquestionable priority and therefore experts believe the entire process will be well thought and decisions on the organizational and functional structures will ultimately meet the needs of the service itself (enforcement officers).

The sustainability of the training system on the other hand must not depend on donors or project primary support. It should be self-sustainable and therefore authorities must find ways to achieve this goal. As possibly the most relevant solution it is the increase of the number of members to increase the incomes. Unfortunately in this moment the profession is not attractive and very low number of new members is admitted. This is then again a political and strategic question that must also be clearly addressed as soon as possible.

At this moment there are 212 private enforcement officers while within the public service there are 5.500 enforcement officers on duty. This discrepancy in the number of member of professionals in the private enforcement service is a result of low perspective of the service due to the lack of clear political and strategic directions on the future of the service; unequal treatment by the authorities (in respect to public service); passiveness of the national authorities to roll out the private enforcement service in the entire country - making it leading service for enforcement; high risk of unjust interference with independence of the work of the private enforcement officers etc.

It could be suggested the level of attainment of this outcome could be scored as amounting to 30% of the target.

Recommendation:

Analyze all future needs of the system (e.g. training activities within the new school for EO) and create strategy for financial sustainability.

Motivate all members to pay membership fee in due time.

Motivate staff and support creativity to implement activities related to independence, accountability and competence.

34. Improved use of **CB resources and funds**

Since the common conclusion is that the finances are not flexible in this moment, considering the real *needs* of the further reforms, this is a challenge indeed. Relying on the information gathered during the meetings with relevant counterparts, at this moment the rising of the fee would *not be accepted well* by the members but collection of all fees is reasonable expectation.

The passiveness of members to pay the membership fee could possibly change if the members are more involved in the policy/decision making and are well informed about the goals and perspectives. This could also help to discuss also eventual raise of the membership fee due to upcoming reforms (school etc.). On the other hand, the



problem (as mentioned earlier) can be addressed with the development of the service by attracting more professionals to enroll in the system. In this case we can start discussing the enrollment system and the public awareness.

Budget table – Chamber of Bailiffs

Budget	Amount (грн.)			
	Budget 2018	Фактичний 2018	Budget 2019	Фактичний 2019, Q 1&2
Income				
Membership fee	4.463.000	1.060.813	4.463.000	2.586.758
Donations	0	0	0	0
Other sources	0	0	0	0
Expenses				
Personnel	-440.000	-154.730	-580.000	-444.736
Outsourcing	-150.000	-144.900	-450.000	-147.118
Rent/Utilities	-420.000	-275.000	-420.000	-240.000
Equipment	-120.000	-52.978	-50.000	-21.711
Office equipment	-20.000	0	-20.000	-18.436
Other expenses	0	-101.797	0	-68.450
Balance:	3.313.000	331.408	2.943.000	1.646.307

It could be suggested the level of attainment of this outcome could be scored as amounting to 30% of the target.

Recommendation:

Make analysis on the CB membership fee system and then decide which model is best and would be more acceptable for the members.

35. More effective use and distribution of private bailiffs **membership fees**, to promote independent and efficient governance

Currently, according to the delivered data, the effective distribution of membership fee is not possible due to rather low rate of collected membership fees. The members should comply with the fee policy and understand what these resources are used for. The distribution of fees at this moment serves only to keep the CB office functioning but not for other activities or projects.

It could be suggested the level of attainment of this outcome could be scored as amounting to 10% of the target.

36. Financial responsibility of private bailiffs to CB by way of due payment of membership fees enshrined among key **ethical rules**

No-payment of the membership fee is a violation of the APEO's Statute and thus represents a breach of the discipline.

Nevertheless, when looking at the CB's budget it is clear that the members of the CB are not regularly fulfilling their financial obligations concerning the membership fee. The estimated amount from fee collection in 2018 and 2019 was 4.463.000 gr. but still, only about 23% of projected amount in 2018 was collected, while the percentages in the first two quarters of 2019 show much better results, so far 57% of the



projected amount was collected. It is not clear if the due membership fees from 2018 are also calculated in 2019 therefore it is not possible to make any further analysis. Also, the projected expenses were not executed as planned, logically due to lack of financial resources.

The CB leadership and the office should undertake actions in order to motivate members to pay their membership fees in due time. The functioning of the CB and its development relies mostly on the self-sustainability and in this moment the sustainability is very weak.

It could be suggested the level of attainment of this outcome could be scored as amounting to 30% of the target.

Recommendation:

The CB leadership and the office should undertake actions in order to motivate members to pay their membership fees in due time.

Make financial data more transparent to raise awareness between members.

Ethics and Disciplinary Oversight systems developed

Level of attainment 40%

Ethics/Disciplinary Frameworks established

Level of attainment 30%

37. **Ethics/disciplinary framework** with sound and implemented substantive requirements and procedural rules, public access

To date the APEO did not adopted neither published its Code of Ethics. Thus, to date, the ethics framework is practically empty.

The DC reported 47 disciplinary proceedings that were initiated to date. In 28 cases the DC found no violation of the discipline, while violations were found in another 15 cases. Seven decisions were appealed: 3 of them were cancelled by the administrative court and 4 are still pending in review.

PEO Name, region	Status	
	Disciplinary commission	Administrative court
Pyroha S.S. Volyn	Disciplinary violation	the decision was not appealed
Klekho A.Y. Volyn	Disciplinary violation	the trial is ongoing
Shmidt K.V., Kyiv	Disciplinary violation	the trial is ongoing
Avtorgov A.M., Kyiv	Disciplinary violation	cancelled
Zhabotynskiy I.V., Kyiv	Disciplinary violation	cancelled
Artemchuk T.V., Kyiv	Disciplinary violation	the decision was not appealed
Pavliuk N.V., Kyiv	Disciplinary violation	the decision was not appealed
Chuliiev A.A., Kyiv	Disciplinary violation	the decision was not appealed
Shemiakin O.V., Kyiv	Disciplinary violation	the trial is ongoing
Hambal O.Y., Odesa	Disciplinary violation	the decision was not appealed
Kliebnikov O.V., Odesa	Disciplinary violation	the decision was not appealed
Blyzniukov Y.V., Kharkiv	Disciplinary violation	cancelled
Babenko D.A., Kharkiv	Disciplinary violation	the decision was not appealed
Kondriuk K.O., Chernivtsi	Disciplinary violation	the decision was not appealed
Krehul I.I., Zakarpattia	Disciplinary violation	the trial is ongoing



Although functioning, the disciplinary framework remains weak.

The members of the DC are not motivated and committed to their work as being arbitrary appointed (no quality competition/election process) and not remunerated. Overall, this results in questionable professional standing and integrity of the DC's members.

The disciplinary process has no its proper regulation in the law, which creates legal incertitude for the parties and the disciplinary panel. The disciplinary decisions are not motivated and are not publicized, which brings suspects for bias.

Disciplinary decisions are enforceable right after their adoption and before being subject to a court review. The judicial review is carried out by the administrative courts which are not necessarily tribunals with full jurisdiction under the notion given in the ECHR's fair trial acquis.

It could be suggested the level of attainment of this outcome could be scored as amounting to 40% of the target.

38. Clear, foreseeable, and applicable delineation of **ethical rules** (positive obligations, principles of behavior) from **disciplinary rules**

No such delineation (or even general understanding of it) in place.

It could be suggested the level of attainment of this outcome could be scored as amounting to 0% of the target.

Disciplinary Process: Access and Transparency

Level of attainment 50%

39. **Right of access to disciplinary case-file** by bailiff concerned, scope and extent of obligation to provide information to third parties and public about pending disciplinary cases defined

Experts did evidence no issues impeding the access to the disciplinary case-file by the PEO. The deliberations on a disciplinary case take place in closed doors, with no attendance of others but the parties to the case. In opposite, the hearing sessions at the administrative courts (acting in review of the DC's decision if appealed) are open to the general public. Complainants are not informed within the disciplinary process cycle or on the outcome of that process.

The decisions of the DC are feebly motivated and are not publicly accessible. No digest/synopsis of the disciplinary case-law made available to interested parties and the general public.

It could be suggested the level of attainment of this outcome could be scored as amounting to 70% of the target.

40. Clear, foreseeable and applicable regulatory basis for **online complaints**, including disclosure of personal details of complainants, fees to be paid

No tool for submitting online complaints available to date. No regulatory base adopted for allowing such online complaint mechanism.

It could be suggested the level of attainment of this outcome could be scored as amounting to 0% of the target.



Application of Ethics/Disciplinary rules

Level of attainment 40%

41. Enlarged **list of disciplinary sanctions**, including lesser sanctions such as fines, remedial measures, and educational measures, consistently and fairly applied

The list of disciplinary sanctions currently consists only of the two extremes: reprimand (too soft) and termination of office (extremely harsh). It limits the DC's flexibility in choosing the proportional sanction to the violation in stake.

It could be suggested the level of attainment of this outcome could be scored as amounting to 0% of the target.

Recommendation

Enlarge the list of disciplinary sanctions to include monetary fine, remedial and educational measures for disciplining the PEOs

42. Delineation and application of principles of **proportionality** and mitigating and aggravating factors in disciplinary cases

Within the assessment period, the oversight by the PEOs DC at the MoJ proved to be overzealous. At the very beginning of its functioning, the DC imposed repeatedly the most severe disciplinary sanction disproportionately to breaches that were occasional (not reoccurring), rather technical and without any damage caused to any party.

Disciplinary decisions are currently enforceable before being subject to review by a court which limits the exercise of the right of a fair trial by the PEO disciplined disproportionately.

The reviewing court is the administrative court which is not a tribunal with full jurisdiction in the meaning of the fair trial acquis of the ECHR. The administrative court, by default, could not judge on the proportionality of the sanction imposed by the DC to the gravity of the violation committed.

Nevertheless, out of the 15 PEOs disciplined, 8 did not appeal. They either agreed with the conclusions of the DC and the sanctions levied or were not ready to spend more time and efforts for appealing to court with no good prospects for success. Whatever the reason was, it shows that in these cases the DC rendered proportionate sanctions to the violations committed.

On the other hand, there is no disciplinary decision confirmed by the court so far. Out of 7 disciplinary decisions that were appealed, 3 were cancelled by the court and 4 are still pending in review. Thus, we cannot attest the disciplinary case-law as being in line with the law and the principle of proportionality.

Following the above findings and assumptions, it could be suggested the level of attainment of this outcome could be scored as amounting to 50% of the target.

Recommendation

Ensure that a disciplinary decision would be enforceable only after review by a court with full jurisdiction as defined by the ECHR's fair trial acquis.

43. Consistent application in practice of ethics/disciplinary rules by CB

Disciplinary decisions as a rule are not motivated and are subject to judicial review only on procedural (and not substantive) grounds which by all means hamper the DC's practice harmonization. No digest/synopsis of the disciplinary case-law carried out and publicized.

These render difficult to assess the consistency of the application of ethics/disciplinary rules by the DC. The only indirect indication allowing such assessment could be the number of appealed disciplinary decisions and the number of the disciplinary decisions confirmed by the court. The number of appealed decisions is relatively low, while, at the same time, there is no such decision confirmed by the court so far.

Thus, it could be suggested that the level of attainment of this outcome could be scored as amounting to 50% of the target.

Professional Training System for Bailiffs in place

Level of attainment 20%

44. Organizational Framework for Continuous Professional development of PEOs in place

The LoEB (Art. 17 and 33) mandates to the MoJ regulating and organizing the vocational training of PEOs. The law stipulates that PEOs should constantly increase their professional qualifications, while also taking an examination once every five years to confirm their professional compliance. To date there is no implementation regulation adopted by the MoJ, nor any viable organizational framework set up in that respect.

No ongoing trainings provided to the PEOs and their assistants either by the MoJ or by the APEO. No inception trainings provided to newly appointed PEOs. The only vocational trainings for PEOs so far are provided on an ad hoc basis, financially supported by international donor programs, that is far from being sustainable tool for continuous professional development of PEOs and their staff.

The only structured training is provided to PEO-candidates as part of the PEOs' admission process. That training was initially provided by the MoJ Training Institute. Later, due to the low level of trainees' satisfaction, provisioning of that training was decentralized to currently 9 MoJ-approved university Law Faculties. Just recently the MoJ with the support of international donors programs launched a series of explainer videos to form the base of a future on-line training platform for PEO-candidates.

In November 2019, the APEO decided to create a Training Center to the APEO. Still, that Training Center has no its proper shape; no implementation plan in place. Thus, it is hard to assess how viable the newly established Training Center at the APEO would be.

It could be suggested the level of attainment of this outcome could be scored as amounting to 30% of the target.

Recommendation

The function of initial and continuous professional development of PEOs and their staff should be transferred from the MoJ to the APEO, while giving the possibility to the latter to freely choose training service providers.



The regular (on each 5 years) qualification examination should be cancelled. Instead, regular annual review/attestation and continuous training of PEOs shall be implemented. The law shall specify the mandatory number of days / hours of training for PEOs and their key staff.

45. Training Curricula and Methodology in place and implemented

The training curriculum was set for the initial training only, i.e. for PEO-candidates as part of the PEOs' admission process.

No curricula, or training methodology in place (or even considered) so far for vocational training of acting PEOs and their staff.

It could be suggested the level of attainment of this outcome could be scored as amounting to 10% of the target.

46. Team of Trainers in place

To date there was no structured effort for training of trainers. Two acting EOs were involved in development of the explainer videos for PEO-candidates. They were also involved in the ad hoc training events (seminars, conferences, discussion forums, etc.) sponsored by the MoJ and the APEO and financially supported by international donor projects.

It could be suggested the level of attainment of this outcome could be scored as amounting to 10% of the target.

Conditions in place for Practical and Effective exercise of profession of bailiff

Level of attainment 35%

47. System for malpractice **insurance and indemnity fund** in place to cover civil liability of private bailiffs

To date there is no indemnity fund established and raised. The PEOs' liability for damages caused by their unlawful actions/inactions is backed up by contractual insurance only. While the number of PEOs remains considerably low, it could not be expected for a viable insurance product to be developed and marketed by the insurance companies. In mid- and long-term neither: even if the number of PEOs reaches some 2,000 this number would still be low enough for a marketable product (good value for money) with real coverage to be developed and delivered by the insurance companies. Thus, creation and management of an indemnity fund by the APEO is highly advisable at some point when the financial standing of the APEO would allow it.

The APEO reports that the majority of all 212 PEOs have concluded professional liability insurance contracts in due course. Still, there are flaws in maintaining the insurance by some PEOs which need adequate reaction by the APEO to avoid situations of having even one PEO who is not covered by insurance.

Name of insurance company	PEO insured, quantity		
	2017	2018	2019
Ridna IC	48	121	104
OSTRA IC	6	14	43
Promyslovo-strakhova kompaniia IC	3	10	16
Dobrobut ta zakhyst IC	1	8	11
Skarbnytsia IC	2	5	7
Alpha-Garant IC		1	6
AMG Group IC		1	3
Inter-Plus IC			3
Alpha-Strakhuvannia IC			2
Credo IC			1
PZU IC			1
	60	160	197

Financial reliability of insurance companies remains of concern. The lack of requirements to the financial reliability (stability) ranking of insurance companies, where a PEO may insure his/her liability may result in situation where PEOs address to fake insurer with a high risk of insolvency.

To date, it is hard to assess the functioning of the indemnity system instituted around the PEOs' professional liability insurance. There were no claims for damages instructed to the courts and/or insurance companies so far, and respectively, there is no empirical data to ground such assessment on.

Accordingly, the level of attainment of this outcome could be scored as amounting to 40% of the indicated target. This assessment is made entirely on the factual establishment of the indemnity mechanism without any empirical proves that it is properly functioning.

48. Favourable **taxation regime** for private bailiffs (tax regime of individual entrepreneurs under uniform tax system)

Despite the fact that the LoEP Aart. 44 explicitly provides that the advancing of enforcement costs by the judgement creditor to the PEO does not represent an income of the latter, the Tax Authority constantly ascertains that for taxation purposes these amounts should be considered as income of the PEO. To date that difference in interpretation of the law has not been adjudicated by a court, but it causes a great portion of incertitude and additional compliance costs to the PEOs.

According to the LoEB the PEOs is independent professional; under the terminology of the Tax Code, the PEO is a self-employed person. The Tax Code establishes a limitation for the self-employed person: he/she can exercise his/her independent professional activity with no more than 4 employees. Thus, currently, the PEOs could not employ more than 4 employees. The PEOs' business growth is hindered.

PEOs are taxed on their profit, calculated as a difference between the income and documented operational costs of the PEO. The current tax rate for self-employed persons is 18%; in addition the PEOs are paying 1,5% military tax and 22% social security contributions (but max 13,771 UAH/month). That tax burden is claimed by



the PEOs to be disproportionately high in comparison with the ones of comparable economic players.

Recently, the idea of allowing for simplified taxation of all self-employed professionals (e.g. attorneys, bankruptcy trustees, notaries, PEOs, etc.) was officially launched by submitting the Draft Law No 2200 of Oct 2, 2019 to the Parliament. Nevertheless, the size of the business/enterprise of the self-employed professional should be taken into consideration. The simplified taxation is aimed at sole or micro entrepreneurs, it disregards the expenses for running the economic activity and may not be adequate for all organizational forms in which the PEOs might run their operations.

Accordingly, the level of attainment of this outcome could be scored as amounting to 40% of the indicated target.

49. Reviewed principle of the state **bailiff's remuneration** by establishing direct proportion between the remuneration and results of enforcement of court decisions

In 2016 an additional financial stimulus for SEOs based on their performance was introduced. According to the Decree of the Cabinet of Ministers of Ukraine of September 8, 2016, No. 643 "On Approval of the Procedure of Payment of Remuneration to SEOs and its amount, and the amount of the Enforcement Fee of PEOs" in the event of actual execution (full or partial) of the writ of execution, the following additional remuneration shall be paid:

- 1) to the SEO who is assigned with the case: 2% of the recovered amount, but not more than 200 minimum wages;
- 2) to the head of the SES unit and deputies thereof to whom the SEO is subordinated: 0,5% of the recovered amount, but not more than 200 minimum wages.

In 2018 new, lower limits to the additional remuneration of the SEOs were established by the CoM in response to some valid allegations that SEOs receive disproportionately high additional remunerations in comparison with other employees in the state administration.

The MoJ reports considerable amounts of additional remuneration paid to the SEOs in the five major regions: Dnipropetrovsk, Kharkiv, Kyiv, Lviv and Odessa:

2017		2018		2019 (projected)	
SEOs	Amount	SEOs	Amount	SEOs	Amount
180	74,220,000	180	55,324,000	180	35,000,000

Despite the fact that for the SES it was a new concept, the heads of units did not get any clear rules and procedures for managing that incentives scheme in a transparent and accountable manner nor any training to acquire specific managerial skills that were needed. As result the incentive scheme was alleged to be abusively used by some head staff at the SES and SES units in detriment of its legitimate goal.

The financial incentives remained detached from any further professional development of the SEOs. No enough viable professional training delivered to SEOs and heads of units, no further attestation of professional qualification and skills of SEOs carried out.

Accordingly, the level of attainment of this outcome could be scored as amounting to 40% of the indicated target, with the main drawbacks laying down in the lack of

transparency and accountability of the incentive scheme and the absent link between the additional financial incentives and the continuing professional development of the SEOs.

50. Courts-practice attests qualified approach to **personal data protection** with regard to any actions of bailiffs

No cases of court misinterpretation of the EO's access to personal data reported to the experts. By all means that doesn't mean that there is no potentially room for such restrictive court-practice to develop in the future. Overall, the society in Ukraine is still not as sensitive as the European citizens to breaches of personal data protection rules by state, law enforcement or justice sector authorities.

Still, some misinterpretation of personal data protection rules is already apparent in the practice of key state agencies, the example being the State Fiscal Service. The SFS is declining access by EOs to its database, justifying it with the lack of explicit rule in the fiscal statutory regulations allowing for such access. This is despite the explicit and clear wording of the LoEP in that regard.

Interested parties are trying to resolve that discrepancy within the framework of the inter-institutional dialogue or on a legislative level; still not reverting to the court.

Accordingly, at the date of commissioning of this Report, the experts are not in measure to assess the level of attainment of this outcome.

51. Effective **incentives for voluntary enforcement** of court decisions and sanctions against unwilling debtor in place

Debtors are incentivized to voluntarily comply with a final court decision by the Enforcement **Performance Fee** of 10% on the amount effectively collected with the enforcement proceedings. The debtors naturally seek to avoid paying that fee by making their best to avoid opening of an enforcement case against them.

Another incentive is the publicity gained and the limitations established by the **Register of Debtors**. Enforcement debtors are publicly announced and have limited possibility to alienate their property while in the RoD.

On another hand, in Ukraine there are examples of very powerful ***anti-incentives*** for voluntary compliance that create social hazard and ruin the rule of law.

Lack of statutory established **Default Interest** to incur on all monetary judgement claims until payment in full violates judgement creditor's right of getting compensated for the delayed payment by the debtor. Debtors in Ukraine have no financial incentive for repaying their outstanding debts sooner than later.

Default Interest is a uniform European practice – its absence in Ukraine discourages European businesses from getting involved in commercial transactions or from investing in Ukraine.

The Default Interest should be regarded as an alternative (and not replacement) to the contractual interest (проценти). If the claim does not derive from a contract or the contract does not provide for an interest, then the creditor, upon submission of his/her claim to the court, can request a compensation for delayed payment in the amount of the Default Interest.



Currently, there is a dozen of Enforcement Moratoriums that exempt certain debtors and render impossible enforcement of a final court decision. As a rule, enforcement moratoriums were statutorily established in favor of the state-owned enterprises.

Enforcement moratoriums drain 'protected' companies' liquidity off as well as render their products and services uncompetitive. Moratoriums contribute to the creation of unhealthy and non-competitive suppliers' clusters around such companies. Those suppliers' circles naturally disrupt the competition in the supply chain which results in higher purchase prices for lower quality of products and services furnished. In the end, exemption from enforcement does not contribute to the economic survival of 'immune' enterprises but in contrary – it worsens their economic and financial standings and decreases prospects for healthy restructuring or improved corporate governance.

Enforcement moratoriums ruin the rule of law and the perception of general fairness in Ukraine. They 'justify' none-compliance with the court decisions by all other economic players.

The businesses in Ukraine complain that the State agencies and other administrations very frequently do not comply with final and enforceable court decisions and in particular regarding enforcement of no-monetary obligations, i.e. obligation to act or to refrain from acting. The cases reported to the experts concern mainly non-compliance of the State Fiscal Service and Customs, various state registers, Construction permit agency, municipal authorities.

Currently, there is no viable incentive for the head of the non-complying agency to make his/her best to comply with the court decision. The EO can levy monetary fine just once; law enforcement agencies as a rule do not prosecute the head as the breach does not represent a criminal offence per se.

Accordingly, the level of attainment of this outcome could be scored as amounting to 30% of the indicated target.

Recommendation:

Introduce a statutory determined Default Interest to incur on all judgment monetary claims until payment in full. The interest rate can be established as a fixed percentage (e.g. 20%) or a fixed percentage (e.g. 10%) + variable (e.g. Central Bank discount rate облікова ставка, LIBOR, EURIBOR, etc.).

Remove the enforcement moratorium established by the *Law No. 2864-3 of 2001*, exempting state-owned companies' assets from enforcement. Increase the time-span, established by the *Law No. 4901-6 of 2012 on State guarantees for enforcement of court decisions*, for enforcement against state-owned companies that can be carried out by EOs. Currently it is 6 months but should be extended at least to 18 months to allow for viable enforcement against such companies to be carried out by an EO. Back up *business continuity* of all companies-judgment debtors (state- or privately owned) by introducing a clear rule on proportionality of enforcement. All enforcement actions that constitute a disproportionate infringement of judgement debtor's business continuity should be subject to judicial review and repealed by the court. We can reasonably expect that by such doing state-owned enterprises would be able to diversify their suppliers' portfolios; this will result in cost savings and better quality of purchased products and services. Legitimate pressure from judgement creditors will catalyze business restructuring, improve corporate governance and make state-



owned companies accountable. The rule of law will be restored in the field of the state's business operations. Proportionality of enforcement scrutinized by courts will safeguard the business continuity of all enterprises and those who are provisioning services and products resorting to public order.

Establish a clear rule in the law, allowing for monetary fines to be imposed by the EO to the (head of) non-complying debtor until compliance with the court decision in full. Collection of such fines by the EO should be allowed within the same enforcement proceedings.

52. Optimized **stages** of the enforcement proceedings and **terms** of exercising enforcement actions

Overall, parties in enforcement are complaining that the PEOs are too far active and effective while the majority of complaints filed against SEOs are in just the opposite sense – that the SEOs are too far inactive and slow. Both PEOs and SEOs are working under the same procedural rules. This comes to evidence that the major flaws in the performance of the enforcement system are linked to the deficits lying within the enforcement authorities rather than to the defects of the enforcement procedure.

Nevertheless, there is enough room for quality substantive improvement of the enforcement process.

Both the LoEP and the LoEB mandate for issuance of multiple sub-normative acts. The existence of multitude ministerial rulings and regulations renders their proper application extremely difficult, jeopardizing the legal certainty in enforcement.

The 2012 MoJ Instruction on Enforcement is strictly oriented to regulate the operations of the SES which by all means differ dramatically from the way the PEO's office should work. The IoE mechanically transfers all inefficiencies of the SES to the PEOs work hampering their performance and efficiency.

The LoEP stipulates for procedural terms in which the PEOs should undertake certain action (e.g. Art. 13, Art. 26, par 5 of LoEP). Such instructive and formalistic statutory provisions represent an overregulation of the PEOs' routine operations. PEOs do not need statutory established deadlines for prompt performance of their duties in due time – they have much stronger incentive for such doing – their performance fee and customers' satisfaction. In the same time, the no-compliance with these deadlines can serve as a basis for formalistic and disproportionate scrutinizing of PEOs by controlling bodies.

Accordingly, the level of attainment of this outcome could be scored as amounting to 40% of the indicated target.

Recommendation:

Smart Regulation. Remove all sub-normative delegations that currently exist in the LoEP: the enforcement process should be governed by the Law only; existing sub-normative acts implementing the LoEP represent clear overregulation and should be dismissed. Frame properly the MoJ's sub-normative mandate in the LoEB to avoid any overregulation and improve the quality of the rules governing PEOs activity. All regulations should be: (1) proportionate to their legitimate goals and (2) adopted in concordance or in consultation with the АПВУ. Revisit all existing MoJ sub-normative acts on PEOs to make them fit into the new frame established by the LoEB as amended.



Discontinue the application of the 2012 MoJ Instruction on Enforcement to PEOs work. Replace it with sets of MoJ established minimum standards (e.g. on record keeping and reporting, accessibility of PEOs office, documenting of enforcement actions and financial transactions, samples of core documents with pre-defined formatting and content, etc.) that are necessary to maintain uniformity and predictability of PEOs operations and outputs.

Replace all statutory deadlines (set forth in the LoEP) for undertaking certain actions by the EO with a general rule establishing the duty of the EO to undertake all necessary procedural actions in reasonable time, by amending accordingly the LoEP.

53. Stages and terms to **kick-start** enforcement process optimised to allow no unjustified refusal

The formalistic approach of the courts and enforcement authorities that existed at the outset of the reform was little by little overcome due to some rulings rendered by the Supreme Court in that respect and due to the introduction of the PEOs in Ukraine.

The court case-law reconfirmed that the absence of debtor's unique identifier in the enforceable title does not prevent opening of an enforcement case. The PEOs proved to be much more proactive than their colleagues at the SES in properly identifying the debtor when such proper identification was missing in the court decision.

On the other hand creditors' access to enforcement in Ukraine is hampered by long lasting court proceedings for issuance of an enforceable title, associated with unreasonably high cost. The Payment Order procedure, although it exists in the Civil Procedure Code, is far from being able to unfold its full potential to the benefit of creditors (and debtors) in Ukraine.

The Payment Order (PO) is a uniform and harmonized instrument in the EU that facilitates tremendously creditors' access to enforcement. By default, it's a cheap and fast way for obtaining an enforceable title and start enforcement of all uncontested claims. On the other hand this fast-track procedure should pay attention to defendants' right to get his/her case heard by a court if the obligation under the PO is disputable. This right could be only safeguarded if there are enough procedural and organizational guarantees for effective service of the PO to the defendant. The cornerstone of the PO instrument is its service to the defendant; without functioning and effective service of process, PO procedure could not bring its real value to the parties.

As of now, the main service of process channel used by the courts and the EOs is the post. More than 70% of the mail sent to individuals (natural persons) by post is being returned as 'not delivered'. Despite that fact, the courts and the EOs continue to insist on the legal fiction and consider these documents as being effectively served to their addressees. This puts in jeopardy the stability of the court decisions rendered in absentia, including the court-issued Payment Orders.

Accordingly, the level of attainment of this outcome could be scored as amounting to 40% of the indicated target.

Recommendation:

Absent debtor situations could be addressed by assigning a legal representative, an attorney of the absent debtor by the EO (or by the court) at creditor's expense to be further reimbursable from the receipts of the enforcement case. Such remedy

will be in line with the ECHR fair trial acquis and will prevent revocation of final court rulings or those issued by the EO within enforcement proceedings. The costs for the appointed legal representative will be balanced by the economic feasibility. The creditors would apply for legal representative appointment only in cases where there are assets to enforce against and thus there are good prospects for successful collection. In no-asset cases, creditors naturally won't opt for legal representative, aiming at keeping their costs as low as possible.

54. Scope and extent of **judicial control** over any activities of bailiffs limited to very limited cases of necessity to protect fundamental fairness

Current procedural law contains provisions that give much room for abuse to the enforcement parties, which causes delays and infringe disproportionately judgement creditor's rights:

- parties of an enforcement case are entitled to go before court if they believe that any of their rights or freedoms (real or alleged) have been violated by the decision, actions or omission of an EO;
- the court may recognize the writ of execution as not enforceable in whole or in part in cases where the debtor's obligation is absent in whole or in part due to its termination, voluntary execution by the debtor or another entity, or for other reasons;
- the mean of enforcement could be only changed by the court that has been hearing the case as a first instance;
- suspension of enforcement by courts is frequently abusively used by debtors as execution-delaying tactic.

Just recently the Supreme Court, in series of rulings issued by the Grand Chamber and by civil and administrative divisions, tried to put some reasonable limits of that unlimited and indefinite scope and extent of court's intervention in enforcement. That attitude and line of action should be encouraged and should at some point find reflection in the legislation.

Accordingly, the level of attainment of this outcome could be scored as amounting to 40% of the indicated target.

Recommendation:

Courts should intervene in enforcement on disputable matters only

The parties' right to challenge EO's actions before the court should be limited so that only substantive (material law) grounds were admissible: distribution of the amount recovered among claimants, enforcement on exempted assets, the determination of the amount of costs of enforcement proceedings (remuneration), etc. Procedural breaches by the PEO could be better remedied by engaging his/her disciplinary, civil or criminal liability.

The EO shall be empowered to recognize the writ of execution as not enforceable in connection with the termination of the debtor, the voluntary execution of obligation by the debtor or another entity. Such decision should be subject to judicial review upon complaint by an enforcement party.

The EO shall be able to determine independently the manner and procedure of execution of an obligation by way of using enforcement means that are envisaged in law.



The EO should be allowed to apply procedural substitution rules without referring to the court in cases of individual or universal succession.

Suspension of enforcement

Experts would recommend disciplining the requesting party, the one who is requesting suspension of enforcement, by provisioning for mandatory bond guarantee (Зустрічне забезпечення) to be provided to the court. This guarantee could be further utilised by the creditor, for compensating the delay in enforcement caused by the abusive/not grounded suspension.

It should be envisaged that when filing an application to the Court of Cassation to suspend the enforcement of a judgment, the applicant must deposit in the court's deposit account the amount which is equivalent to 100% of the value of disputed claim. This will discipline the requesting party but also will serve as a filter to the Court of Cassation – only 'serious enough' cases would eventually go to cassation.

55. Bailiffs practically enabled to **reach debtors assets**

Currently in Ukraine there are number of state registries that the EOs should access independently/separately in order to obtain the full information on debtor's assets and social status. The majority of these registers are accessible off-line only which creates delays and opens the room for human mistakes or wrong doings. Some registers are accessible via the АСВП, some via electronic communication but the majority receive data requests by EOs (and respond) only on paper.

The lack of unique identifier of individuals in Ukraine hampers transparency of debtors' assets. Significant efforts were put together for the creation of the Demographic Register which is still in its juvenile stage of development.

As a palliative solution to such dispersed and hardly traceable information on debtors' assets, Ukraine set the Unified Register of Debtors. It is the integral part of the АСВП and it publishes real-time information about the debtor's outstanding obligations and prevents the alienation of property by the debtors.

The Pension Fund of Ukraine following the enforcement officer request for information about individuals - debtors who receive pensions can size pensions. Also information is available on debtors who work for labor and civil contracts, their last place of employment.

There is electronic connection with the State Border Service of Ukraine on information about the crossing of the state border of individuals (debtor). Also electronic exchange of information is possible with the National Police on vehicles registered on the debtor name (only vehicles registered after 2013).

The Unified State Register of Enforcement Proceedings is proscribed by law. It was set to become part of the Unified Court ICT system. The system was to become operational 90 days after the announcement in the official gazette. The announcement was indeed published on December 1, 2018, but the announcement was then withdrawn on March 1, 2019 due to the system's unavailability. The timetable for the start of work of both systems is unknown.

Enforcement officers do not have electronic access to information or the ability to exchange information (electronically) with the Tax Administration (except on legal entities'/entrepreneurs' bank accounts). Currently, such information is obtained only in



written form. The enforcement officers are obliged to submit paper request to the authority. In some cases the Tax Authority doesn't disclose the requested information arguing lack of clear mandate in the law.

The Order of the Ministry of Justice from July 2019 №2008 / 5 approved the Procedure of information interaction of the automated system of enforcement proceedings and the State Register of Civil Status Acts. The implementation and technical implementation of this interaction is expected. It is not known what the timelines are.

Furthermore, enforcement officers do not have the ability for electronic exchange of information on property rights on real estate and registered agricultural machinery. Enforcement officers receive this information after submitting a request in paper form. Often response takes several weeks.

Information about vehicles is provided electronically only for those vehicles which were registered after January 2013. The information on vehicles registered before this date is not included in the register. The paper search of the debtor's vehicles is not carried out. Moreover, the National Police often refuses to search for agricultural machinery, since such equipment is not registered by the police.

Order of the Ministry of Justice of Ukraine from March 2019 approved the Procedure for automated arrest of debtors' funds in bank accounts for enforcement proceedings on the collection of alimony. The information interaction rules were developed in electronic form. As of August 2019, the automated seizure of debtor funds on bank accounts for enforcement proceedings related to the alimony collection is effective. For other categories of enforcement proceedings, the automated seizure of debtor funds in bank accounts is not provided by law and therefore is not possible at the moment. It is strongly advised to the authorities to implement this system of automated seizure for all types of enforcement cases.

Also, public and private EO do not have access to the Inheritance Register which makes it difficult to recover debtors immovable that are not registered within the property/ownership register.

Accordingly, the level of attainment of this outcome could be scored as amounting to 40% of the indicated target.

56. Practical and effective use of **IS by CB** to advance independence, competence and accountability of CB and bailiffs

The policy making in organization and development of the informational technologies in judicial sector is under inherency of Ministry of Justice and the Government and so regarding the enforcement service as well.

The ITC systems and tools available for use to PEOs and the APEO are exclusively provided and administrated by the MoJ. Such situation infringes PEOs'/APEO's independence, it hampers their efficiency, transparency and accountability as well. The competition among PEOs is restricted – they all use the same case-management system with the same business functionality. They cannot compete on that point which by all means is of detriment to the users of the enforcement system – citizens and businesses in Ukraine.

Statistics on performance of the enforcement system in Ukraine are hardly accessible. Currently, the only possible source of such data is the AES which is administrated



by the state-enterprise NAIS. All the data is overzealously kept by NAIS and is hardly accessible in practical terms. No enforcement performance reports being ever published. No transparent reporting tools in place and available for key stakeholders in the system. No system administrator's accountability tools and mechanisms in place. With no performance data available policy decisions in enforcement are taken 'in dark' which rarely brings positive outcomes. With extremely limited access to performance data, the APEO is in practice excluded from the policy-making process in the enforcement area⁸.

Currently, the PEOs are obliged by law to use the Case-management System (ACBП), administrated by DP NAIS, and the online Auctioning Platform, administrated by DP SETAM. PEOs could not choose other ITC providers for case-management automation and electronic auctioning.

The ACBП is partially developed and not connected to all relevant information sources. Connection to different state registers is possible but many important are still not available. There is a misbalance of positions between the PEOs in respect to the SEOs. It appears that the SEOs have access to some data important for the enforcement procedure that is at the same time not available to the PEOs.

Most administrative and procedural steps done by the enforcement officer must be registered within the ACBП but also parallel bookkeeping in paper form is mandatory. There is no logical explanation for such duplication of actions. Authorities must proceed with introduction of fully integrated modern case management systems and reduce paper files as much as possible. Technological solutions for case management and archiving provide much safer and easier-to-research environment than paper filing does and it is on the other hand also much cheaper and environmentally friendly model.

Over bureaucracy leads to benign mistakes which are in practice used often as grounds for disciplinary actions against private EO, with severe consequences. This is a separate issue that must be seriously addressed not only later in this report but also on all levels of governance.

Accordingly, the level of attainment of this outcome could be scored as amounting to 20% of the indicated target.

Recommendation:

Liberalization of the ITC services provisioning to PEOs

The mandatory use of the ACBП by all PEOs is considered to be a limiting factor that prevents good competition among PEOs and thus limits their capacity to grow and develop.

The solution envisioned is to heel the ACBП as centralized data warehouse and interconnection/access point for the PEOs who opted for other business functionality (client-end) systems. The PEOs would be free to choose any other adequate ICT solution on the market.

⁸ As a consequence, the experts were only provided with extremely fragmented and incomplete data on the performance of the enforcement system and the key institutions involved. It took more than 3 months to the MoJ to respond to experts' data request!

Furthermore it is suggested to allow for PEOs to use ProZorro or the online Auctioning Platform to be eventually developed by the APEO. A PEO would be able to run a public auction of a particular asset on one of these three alternative platforms: CETAM, ProZorro or on the АПВУ platform; one sale is taking place on one only platform at a time, no parallel sales on different platforms.

Expected outcomes of this liberalization could be: decrease of cost of enforcement; improvement of the quality and the efficiency of PEOs services. The access to key data on enforcement cases by the parties and performance data gathering will be safeguarded through the ACBП acting as centralized data warehouse. The fees of online Auctioning Platforms will be set in a competitive market environment that additionally will contribute to decrease of cost of enforcement.

57. **Interoperability** of CB and bailiffs' IS with those of other justice sector actors

Currently, the ACBП is not interconnected with courts' or law enforcement agencies' information systems. This is due to lack of inter-institutional cooperation but also to the fact that key systems in the justice sector are not interoperable.

Turning all these systems interoperable is a priority of the Government but still with very limited tangible results.

Accordingly, the level of attainment of this outcome could be scored as amounting to 20% of the indicated target.



CONCLUSIONS

The section outlines overall views as to the level of attainment of outcomes envisaged by JSRSAP area(s) concerned and recaps recommendations.

58. Experts consider that the implementation of the Chapter 7 (Enforcement) of the JSRSAP 2015-2020 was satisfactory during the three years covered by the assessment in terms of the attainment of the outcomes planned for the total period 2015-2020. The level of their attainment (as they are formulated and interpreted in line with the relevant standards and best practices) could be scored as amounting to median 35%.⁹
59. With the view of further enhancement of the enforcement of court decisions in Ukraine, this Assessment Report suggests the following set of recommendations for the next policy cycle (2020-2025):

General Framework

- The Government should establish a full-fledged ‘mixed’ enforcement system, with a view of full privatization of the enforcement service, by:
 - Setting-up substantive and organizational framework resulting in number of PEOs that would allow for viable competition among them throughout the entire territory of Ukraine; target for the next policy cycle: 1,200 PEOs;
 - Leveling mandates of SEOs and PEOs;
- The Government should provide enhanced access to enforcement to all creditors with uncontested claims by streamlining the Payment Order and Service of Process procedures;
- The Government should ensure transparency of debtors’ assets to courts and EOs.

Institutional Framework

- The MoJ should further improve efficiency, transparency and accountability of the SES by:
 - Establishing a direct link between the additional financial incentives allocated to SEOs (and heads of units) and their professional qualification and skills;
 - Setting up a Continuing Professional Development tool for the SES employees to back up better quality service provided;
 - Implementing effective oversight and scrutiny mechanisms to SEOs, gaining the trust of the general public;
- The Government should support and facilitate self-governance of the PEOs profession by:
 - Sharing and co-exercising regulatory and oversight authority with the self-governance organization of PEOs, the APEO;
 - Transferring the disciplinary authority to the APEO;
 - Continuing inter-institutional co-operation with the APEO;

⁹ Outcomes, their group-specific scoring details are suggested in the preceding section of the Report and indicated in the right column of the attached Evaluation Matrix. See Annex II.

- The APEO should continue its organizational building by:
 - Defining the common values of the profession, e.g. by adopting a viable Code of Ethics of PEOs;
 - Turning into inclusive and participative membership association bringing value to its members;
 - Setting up a Continuing Professional Development tool for the PEOs and their staff;
 - Ensuring financial sustainability of its operation, e.g. by developing profit-generator vehicles;
 - Implementing effective oversight and scrutiny mechanisms to its members gaining the trust of other stakeholders and the general public;
 - Communicating effectively with all stakeholders and the general public.

New Policies to be implemented

- The Government should avoid overregulation of PEOs' operations by applying the Smart Regulation principles;
- The Government should discontinue statutory established monopolies and should liberalize provisioning of ITC services to PEOs, e.g. as regards the case-management and the auctioning systems in use by the PEOs;
- The Government should ensure that the disciplinary decisions rendered against PEOs would be enforceable only after being reviewed by a court with full jurisdiction as defined by the ECHR's fair trial acquis;
- The Government should provide for more incentives for voluntary enforcement of court decisions by:
 - Introducing a statutory Default Interest to compensate the delayed payment of the judgement claim;
 - Removing the enforcement moratorium established by the Law No. 2864-3 of 2001 in favor of the state-owned companies while at the same time backing up the business continuity of all companies-judgement debtors, state- or privately-owned;
 - Continuous levying of financial sanctions to the (head of) non-complying debtor until fulfillment of his/her no-monetary obligation as ascertained by the court;
- The Courts should facilitate and not impede enforcement by:
 - Intervening in enforcement only in situations where a material right is disputed by any of the enforcement parties;
 - Avoiding court-administration of enforcement process;
 - Admitting suspension of enforcement only against provisioning of a bond guarantee by the requesting party.

Monitoring and Evaluation

- The Government, in co-ordination with the APEO should design, develop and implement a Monitoring & Evaluation Tool that will allow further policy-making in the enforcement area and will be available for use to key stakeholders: the MoJ, the APEO and the courts administration.



ANNEX I SURVEYS AMONG PEOs

Survey on PEOs functioning and APEOU, respondents: 47 PEOs, time: November 2019

- 1) **Have you ever experienced interference in your activities as a PEO, or attempt to your independence, including by law enforcement agencies or the Ministry of Justice of Ukraine?**
 - Yes, there have been such cases. (17)
 - No, such cases never occurred. (24)
 - Difficult to answer. (5)
- 2) **Have you ever heard of interference in activities of other PEO, or attempt to their independence, including by law enforcement agencies or the Ministry of Justice of Ukraine?**
 - Yes, there have been such cases. (28)
 - No, I have never heard of such cases. (11)
 - Difficult to answer. (8)
- 3) **Have you addressed to APEOU in connection with interference in your activities as a PEO, or attempt to your independence, including by law enforcement agencies or the Ministry of Justice of Ukraine?**
 - Yes, I have addressed and received efficient help. (4)
 - No, I have never addressed, since I do not see any point in it. (16)
 - There have been no cases of interference or attempt to independence. (24)
- 4) **Would you address to APEOU in case of interference in your activities as a PEO, or attempt to your independence, including by law enforcement agencies or the Ministry of Justice of Ukraine?**
 - Yes, I would address. (30)
 - No, would not address, since I do not see any point in it. (9)
 - Difficult to answer. (7)
- 5) **Do you know whether APEOU responds adequately to interference in activities of PEOs, or attempt to their independence, including by law enforcement agencies or the Ministry of Justice of Ukraine?**
 - Yes, APEOU responds adequately. (12)
 - No, APEOU does not respond to such cases, no, I have never heard of it. (4)
 - Difficult to answer. (30)
- 6) **Do you feel that you, as a PEO, participate intensively in the decision-making process of the Ministry of Justice, if these decisions affect your interests, or the interests of all PEOs?**
 - Yes, I can confirm that my voice is taken into account and I participate in decision-making. (8)
 - No, all decisions that affect my interests as a PEO are made by the Ministry of Justice without taking into account my opinion as a PEO. (16)
 - Difficult to answer. (22)

- 7) **Do you feel that you, as a PEO, participate intensively in the decision-making process of the Association of Private Enforcement Officers, if these decisions affect your interests, or the interests of all PEOs?**
- Yes, I can confirm that my voice is taken into account and I participate in decision-making. **(30)**
 - No, all decisions that affect my interests as a PEO are made by the Association bodies without taking into account my opinion as a PEO. **(2)**
 - Difficult to answer. **(15)**
- 8) **Do you believe that the Association of PEOs of Ukraine shows sufficient initiative in terms of addressing the legislators and the Ministry of Justice for promotion of certain legislative initiatives, the implementation of which would be for the benefit all PEOs?**
- Yes, I believe that the initiative is sufficient. **(22)**
 - No, I believe that the initiative displayed is not sufficient; the Association should make greater efforts. **(16)**
 - Difficult to answer. **(8)**
- 9) **Do you believe that the Ministry of Justice takes into account the opinion of the Association of PEOs when adopting regulations relating to the activities of PEOs?**
- Sufficiently. **(2)**
 - Insufficiently. **(33)**
 - Does not take into account at all. **(11)**
- 10) **To which extent, in your opinion, the self-governance of PEOs at the level of APEOU and the Council of PEOs of Ukraine is effective?**
- Very effective. **(16)**
 - Poor effectiveness. **(28)**
 - Not effective. **(1)**
- 11) **How effective, in your opinion, is the self-governance of PEOs in your district?**
- Very effective. **(16)**
 - Poor effectiveness. **(28)**
 - Not effective. **(9)**
- 12) **How independent, in your opinion, are the members of the Disciplinary Commission of PEOs when making decision?**
- Fully independent. **(8)**
 - More inclined to the opinion of the members of the Disciplinary Commission from the Ministry of Justice of Ukraine. **(9)**
 - Guided by the instructions of the members of the Disciplinary Commission from the Ministry of Justice of Ukraine or other persons. **(13)**
 - Difficult to answer. **(18)**



- 13) How independent, in your opinion, are the members of the Qualification Commission of PEOs when making decision?**
- Fully independent. **(8)**
 - More inclined to the opinion of the members of the Qualification Commission from the Ministry of Justice of Ukraine. **(7)**
 - Guided by the instructions of the members of the Qualification Commission from the Ministry of Justice of Ukraine or other persons. **(8)**
 - Difficult to answer. **(24)**
- 14) How easy do you communicate with the self-governance bodies of PEOs at the level of APEOU and the Council of PEOs of Ukraine?**
- Easy. **(35)**
 - Not easy. **(1)**
 - Difficult to answer. **(9)**
- 15) How easy do you communicate with the self-governance bodies of PEOs at the level of your respective regional council of PEOs?**
- Easy. **(39)**
 - Not easy. **(1)**
 - Difficult to answer. **(5)**
 - No council of PEOs has been created in my district. **(0)**
- 16) Are you satisfied with the work of the self-governance bodies of PEOs at the level of APEOU and the Council of PEOs of Ukraine?**
- Satisfied. **(24)**
 - Dissatisfied. **(2)**
 - Difficult to answer. **(19)**
- 17) Are you satisfied with the work of the self-governance bodies of PEOs at the level of your respective regional council of PEOs?**
- Satisfied. **(25)**
 - Dissatisfied. **(8)**
 - Difficult to answer. **(13)**
 - No regional council of PEOs has been created in my region. **(0)**
- 18) To which extent the activities of the self-governance bodies of PEOs at the level of APEOU and the Council of PEOs of Ukraine comply with the principles of transparency and accountability?**
- Comply. **(31)**
 - Do not comply. **(1)**
 - Difficult to answer. **(13)**

- 19) To which extent the activities of the self-governance bodies of PEOs at the level of your respective regional council of PEOs comply with the principles of transparency and accountability?**
- Comply. **(33)**
 - Do not comply. **(4)**
 - Difficult to answer. **(9)**
 - No regional council of PEOs has been created in my region. **(0)**
- 20) How effectively, in your opinion, are used the resources and funds of APEOU?**
- effectively. **(22)**
 - not effectively. **(1)**
 - Difficult to answer. **(22)**
- 21) Do you believe that APEOU should put annual financial reports on how the APEOU funds have been used on their official website?**
- Yes. **(37)**
 - No. **(6)**
 - Difficult to answer. **(4)**
- 22. Do you believe that the statutory rule according to which the PEOs shall be represented at the congress of PEOs of Ukraine by the delegates who are members of regional council of PEOs rather than by all PEOs of Ukraine, is a good one?**
- Yes, it is a good one. **(22)**
 - No, it is not a good one. **(14)**
 - Difficult to answer. **(9)**
- 23. Are you a member of the PEOs' self-governance?**
- Yes. **(36)**
 - No. **(10)**

Survey on Enforcement Procedure, respondents: 47 PEOs, time: November 2019

Is there a statutory procedure for conducting enforcement proceedings convenient for you as an enforcement officer?

- yes **(2)**
- mostly yes **(32)**
- mostly no **(8)**
- no **(3)**

Are the rules of enforcement legislation clear enough for you as an enforcement officer?

- yes **(1)**
- mostly yes **(15)**
- not clear enough and give room for ambiguous interpretation **(29)**



Are the statutory terms of enforcement actions realistic for you as an enforcement officer?

- yes (5)
- mostly yes (22)
- mostly no (14)
- no (4)

Do you believe the enforcement process to be excessively formalized for you as an enforcement officer?

- yes (15)
- mostly yes (19)
- mostly no (7)
- no (3)

Do you believe certain stages of enforcement proceedings or actions of the enforcement officer excessive or needing optimization?

- yes (30)
- mostly yes (6)
- mostly no (5)
- no (0)

Did it happen to you to return a writ of execution, which in your opinion, could be executed, without actual execution because it did not meet the requirements specified in Article 4 of the Law of Ukraine “On Enforcement Proceedings”?

- yes (21)
- no (22)

Have you heard of cases where the Ministry of Justice of Ukraine filed petitions for disciplinary action against a PEO for the execution of writs of execution, which could be executed but did not formally meet the requirements specified in Article 4 of the Law of Ukraine “On Enforcement Proceedings”?

- yes (14)
- no (29)

Have you ever encountered excessive or unjustified interference of the court in the enforcement proceedings?

- yes (27)
- no (16)

Have you ever had cases where the court would not approve the decision or suspend its execution?

- yes (23)
- no (20)

Have you ever had cases where the debtor's complaint before the court was actually a display of abuse of the right to appeal against your actions?

- yes (33)
- no (10)

Have you ever had cases where the debtor's complaint before the Ministry of Justice of Ukraine was actually a display of abuse of the right to appeal against your actions?

- yes (28)
- no (15)

Has it ever happened to you that the court considers a complaint against your actions on time?

- yes (13)
- mostly yes (16)
- mostly no (10)
- no (4)

Do you find the basic fee collection procedure convenient for a PEO?

- yes (5)
- mostly yes (8)
- mostly no (13)
- no (18)

Do you believe that the procedure of access to the debtor's assets is speedy enough?

- yes (0)
- mostly yes (4)
- mostly no (19)
- no (19)

Do you believe that information about the debtor's assets that can be obtained from the existing registers, is full and reliable?

- yes (1)
- mostly yes, but at times it is not full and /or contradictory (18)
- often not full and /or contradictory (24)

Are you satisfied with the operation of the Automated Case Management System of enforcement proceedings?

- yes (1)
- mostly yes (15)
- mostly no (15)
- no (11)



Are you satisfied with the work of the SE SETAM?

- yes (14)
- mostly yes (21)
- mostly no (7)
- no (1)

Are you satisfied with the cooperation with the National Police of Ukraine?

- yes (0)
- mostly yes (9)
- mostly no (13)
- no (20)

Do you believe the procedure for enforcement of non-monetary claims to be effective?

- yes (0)
- mostly yes (15)
- mostly no (14)
- no (11)

Do you believe that the sanctions which are imposed on debtors who are not willing to comply with the decision are sufficiently severe and effective?

- yes (3)
- mostly yes (0)
- mostly no (14)
- no (26)



ANNEX II ASSESSMENT-SPECIFIC MATRIX

Methodology/assessment-specific activities identification matrix¹

ASSESSMENT PACKAGE N3

Area of Intervention Chapter 7: Improving the Enforcement System

Outcomes to be addressed ²	Desk research ³ DR	Third-party re-ports TPR	Panel discus-sions ⁴ PD	Interviews ⁵ I	Survey ^{6, 7} S	Data Analysis DA	Other method	Comments	Level of Im-plementation ⁸
I. 'Mixed' Enforcement System in place									60%
Private profession of bailiff created and certain role left for State authorities in enforcement and alternative disputes in some administrative and socially-sensitive civil cases (alimony, childcare, eviction etc.)	1								50%
Admission and licensing requirements for bailiffs determined	3								50%
Partial harmonization of licensing and oversight systems of bailiffs with other private professions in justice sector, including advocates and notaries	3								80%
Practical and effective conditions in place for equal competition between private and State-run limbs of enforcement system			1						50%
Conditions in place to allow gradual move towards wider scope of private model, with a view to complete						1			80%
II. Enforcement Governance System in place									35%
National Chamber of Bailiffs (CB) set up as main governance body of private bailiffs' profession; regional Chambers set up taking into account local socio-economic realities			1						60%
Streamlined powers of CB and MOJ , with limited, clear and foreseeable role of MOJ in regulation, licensing and oversight of profession			1						20%
Active cooperation of MOJ and CB in developing policy and legislative initiatives with regard to enforcement system, including definition and review of required number and competences of bailiffs			1						20%
III. Chamber of Bailiffs Organizational Building									30%
Increased independence and efficiency of governance (including disciplinary) bodies within bailiffs' corporation			2		3				30%



Internal and external Monitoring and Evaluation (M&E) mechanisms and review reports attest satisfactory implementation of strategic planning within bailiffs corporation			2		3				30%
Consistent response of CB to any interference with independence of bailiffs and violations of their rights			2		3				30%
Bailiffs participation in decision-making processes of other justice sector institutions when interests of bailiffs are affected			2		3				20%
CB and bailiffs provide regular and constructive inputs for major policy and regulatory initiatives related to justice sector reform			2		3				35%
Internal communication channels (including electronic workflow system and web-portal) between CB, bailiffs, and other State/non-State actors in justice sector formalized and used regularly			2		3				20%
User satisfaction surveys used regularly by CB to measure and improve quality of member services			2		3				40%
Clear procedures for public access and participation at certain CB meetings in place, including timely prior announcement of meeting agendas, publication of CB decisions with regard to enforcement governance system, etc.			2		3				25%
Regular exchanges between CB/MOJ and European and international counterparts			2		3				30%
Adequate financial resources for CB to effectively perform its role in promoting independence, accountability and competence of bailiffs			2			1			30%
Improved use of CB resources and funds			2			1			30%
More effective use and distribution of private bailiffs membership fees , to promote independent and efficient governance			2			1			10%
Financial responsibility of private bailiffs to CB by way of due payment of membership fees enshrined among key ethical rules			2						30%
IV. Ethics and Disciplinary Oversight systems developed									40%
Ethics/disciplinary framework with sound and implemented substantive requirements and procedural rules, public access			1						40%
Clear, foreseeable, and applicable delineation of ethical rules (positive obligations, principles of behavior) from disciplinary rules			1				3		0%
Right of access to disciplinary case-file by bailiff concerned, scope and extent of obligation to provide information to third parties and public about pending disciplinary cases defined			1						70%

Clear, foreseeable and applicable regulatory basis for online complaints , including disclosure of personal details of complainants, fees to be paid			1							0%
Enlarged list of disciplinary sanctions , including lesser sanctions such as fines, remedial measures, and educational measures, consistently and fairly applied			1							0%
Delineation and application of principles of proportionality and mitigating and aggravating factors in disciplinary cases			1				3			50%
Consistent application in practice of ethics/disciplinary rules by CB			1				3			50%
V. Professional Training system for bailiffs in place										20%
Organizational Framework for Continuous Professional development of PEOs in place	3									30%
Training Curricula and Methodology in place and implemented	3									10%
Team of Trainers in place	3									10%
VI. Practical and Effective exercise of profession of bailiff										35%
System for malpractice insurance and indemnity fund in place to cover civil liability of private bailiffs	3					1				40%
Favourable taxation regime for private bailiffs (tax regime of individual entrepreneurs under uniform tax system)	3									40%
Reviewed principle of the state bailiff's remuneration by establishing direct proportion between the remuneration and results of enforcement of court decisions	1					1				40%
Courts-practice attests qualified approach to personal data protection with regard to any actions of bailiffs	1						3			N/A
Effective incentives for voluntary enforcement of court decisions and sanctions against unwilling debtor in place	1									30%
Optimized stages of the enforcement proceedings and terms of exercising enforcement actions	1				3					40%
Stages and terms to kick-start enforcement process optimised to allow no unjustified refusal	1				3					40%



Scope and extent of judicial control over any activities of bailiffs limited to very limited cases of necessity to protect fundamental fairness	1									40%
Bailiffs practically enabled to reach debtors assets		2		2	3					40%
Practical and effective use of IS by CB to advance independence, competence and accountability of CB and bailiffs		2		2						20%
Interoperability of CB and bailiffs' IS with those of other justice sector actors		2		2						20%
Overall level of attainment of outcomes under the Chapter 7 (Enforcement)										35 %

- 1 The Exercise is carried out under an implementation plan and uniform methodology, taking into account the PRM parameters and indicative methods, itemizing the JSRSAP Outcome indicators. The package/area specific sets of assessment methods and schedule have been construed by the relevant experts based on thematic particularities. They have been agreed with the lead expert and PJ key-experts. The range of the assessment methods (activities) proposed for each of the blocks included (desk) research, panel conclusions, analysis of third-party reports (including of domestic and international monitoring mechanisms), structured or semi-structured interviews, surveys, administrative / statistical and other data collection and processing methods. Some of the assessments engaged the Regional Justice Reform Councils (RJRCs) already established under the Project, to get a more localized bottom-up view of the reform results.
- 2 Outcomes envisaged in the relevant box of the JSRSAP t have been grouped, taking into account actions for particular outputs envisaged in JSRSAP's and methods to be applied for evaluation of certain group of outputs.
- 3 For every method (desk research, third-party reports, pane discussions, etc.), where it is used, relevant responsible experts are identified accordingly. In some activities all experts have been identified as relevant to be involved (for example, in some panel discussions, etc.). In some activities all three experts are put as "1-2".
- 4 Advanced to focus groups, where necessary.
- 5 Respondents specified in a footnote, where appropriate
- 6 Categories (service users, general public) to be specified, where appropriate.
- 7 The assessments relied on the existing surveys.
- 8 Experts estimate level of attainment of the outcome (based on the assessment/evaluation results) in %.



ANNEX III EXTRACT FROM JSRSAP

Chapter 7 Improving Enforcement System							
Action		Implementation Deadline			Performance Criteria		
		End of 2016	End of 2018	End of 2020	Measures/Outputs	Responsible Body / Means	Outcomes
Area of Intervention 7.1 Improved Bailiffs Governance System							
7.1.1	Strengthening balance of duties and powers within Bailiffs Governance System				1. Reviewed statutory framework, setting up 'mixed' enforcement system involving private enforcement officer (PEO) institution. Chamber of Bailiffs (CB) fully operational to govern private limb of profession.	CB, MOJ, Parliament / Decisions, statutes and rules amended	<ul style="list-style-type: none"> - 'Mixed' enforcement system in place, - with private profession of bailiff created and certain role left for State authorities in enforcement and alternative disputes in some administrative and socially-sensitive civil cases (alimony, childcare, eviction etc.); - Conditions in place to allow gradual move towards wider scope of private model, with a view to complete privatisation of enforcement services by reference to experience in reform of notary services
					2. Internal control and monitoring body set up within private bailiffs' corporation	CB / Decisions, rules	<ul style="list-style-type: none"> - Optimised stages of the enforcement proceedings and terms of exercising enforcement actions; safeguards in place against the refusal to start enforcement proceedings for formal reasons
					3. Reviewed regulatory framework on role of MOJ in regulation and oversight of enforcement system	CB, MOJ, Parliament / Decisions, statutes and rules amended	<ul style="list-style-type: none"> - Effective incentives in place for volunteer exercise of court decisions and influencing the debtor - Institutional enforcement governance system (incl. regional) allowing for requisite decree of self-governance by PEOs - Practical and effective conditions in place for equal competition between private and State-run limbs of enforcement system - More effective use and distribution of private bailiffs membership fees, to promote independent and efficient governance - Increased independence and efficiency of governance (including disciplinary) bodies within bailiffs' corporation - National Chamber of Bailiffs (CB) set up as main governance body of private bailiffs' profession; regional Chambers set up taking into account local socio-economic realities - Streamlined powers of CB and MOJ, with limited, clear and foreseeable role of MOJ in regulation, licencing and oversight of profession - Active cooperation of MOJ and CB in developing policy and legislative initiatives with regard to enforcement system, including definition and review of required number and competences of bailiffs - Partial harmonisation of licencing and oversight systems of bailiffs with other private professions in justice sector, including advocates and notaries - Admission and licencing requirements for bailiffs determined;



7.1.2	Development of strategic planning, budget and financial management, human resources management, public relations and communication capacities			1. CB Strategic Planning and Institutional Development Committee fully operational	CB / Decisions, Reports	<ul style="list-style-type: none"> - Internal and external monitoring and evaluation (M&E) mechanisms and review reports attest satisfactory implementation of strategic planning within bailiffs corporation
				2. Dedicated staff dealing with strategic planning, including policy development, mission statement, budgeting and financial management, human resources, information resources, public relations and communication and outreach	CB / Decisions, contracts, job descriptions, placement plans, trainings	<ul style="list-style-type: none"> - CB and bailiffs provide regular and constructive inputs for major policy and regulatory initiatives related to justice sector reform - Improved use of CB resources and funds - Adequate financial resources for CB to effectively perform its role in promoting independence, accountability and competence of bailiffs
				3. Practice guides and training modules on strategic planning, budget and financial management, human resources management, public relations and communication, and use of information systems developed, disseminated and updated regularly	CB / Decisions, trainings	<ul style="list-style-type: none"> - Internal communication channels (including electronic workflow system and web-portal) between CB, bailiffs, and other State/non-State actors in justice sector formalised and used regularly - - Consistent response of CB to any interference with independence of bailiffs and violations of their rights - Bailiffs participation in decision-making processes of other justice sector institutions when interests of bailiffs are affected
				4. Bailiffs Audit Commission fully operational	CB, MOJ, Parliament / Decisions, reports, statutes and rules amended	<ul style="list-style-type: none"> - Clear procedures for public access and participation at certain CB meetings in place, including timely prior announcement of meeting agendas, publication of CB decisions with regard to enforcement governance system, etc.
				5. CB responsible body in charge of internal communications and external outreach and public relations	CB / Decisions, reports	<ul style="list-style-type: none"> - User satisfaction surveys used regularly by CB to measure and improve quality of member services
				6. Member surveys to determine level of satisfaction of bailiffs with CB services, including on-line questionnaires	CB / Decisions, surveys conducted	<ul style="list-style-type: none"> - Regular exchanges between CB/MOJ and European and international counterparts
				7. CB Annual Reports developed and disseminated	CB / Decisions	
				8. Cooperation network with European and international enforcement institutions fully operational	CB, MOJ / Decisions, MOUs, events, joint activities, visits	

7.1.3	Development of ethics and disciplinary oversight system			1. CB Ethics and Discipline Committee fully operational, responsible for development, implementation compliance, improvement of ethical standards for bailiffs, and enforcement of ethical/disciplinary rules	CB / Decisions, reports	<ul style="list-style-type: none"> - Ethics/disciplinary framework with sound and implemented substantive requirements and procedural rules, public access - Clear, foreseeable, and applicable delineation of ethical rules (positive obligations, principles of behaviour) from disciplinary rules (negative prohibitions, grounds for reprimand) - Consistent application in practice of ethics/disciplinary rules by CB
				2. Code of Ethics annotated and regularly updated through consultative processes and communication coordinated by CB	CB / Decisions	<ul style="list-style-type: none"> - Financial responsibility of private bailiffs to CB by way of due payment of membership fees enshrined among key ethical rules - Delineation and application of principles of proportionality and mitigating and aggravating factors in disciplinary cases
				3. Disciplinary rules and procedures reviewed through consultative processes and communication coordinated by CB	CB, MOJ, Parliament / Decisions, statutes and rules amended	<ul style="list-style-type: none"> - Right of access to disciplinary case-file by bailiff concerned, scope and extent of obligation to provide information to third parties and public about pending disciplinary cases defined
				4. Practice guide and training module on ethical and disciplinary framework developed, disseminated and updated regularly	CB, CBTC / Decisions, trainings	<ul style="list-style-type: none"> - Enlarged list of disciplinary sanctions, including lesser sanctions such as fines, remedial measures, and educational measures, consistently and fairly applied
				5. Online system for filing complaints against bailiffs fully operational	CB, MOJ / Decisions, practice guide, software in place, trainings	<ul style="list-style-type: none"> - Clear, foreseeable and applicable regulatory basis for online complaints, including disclosure of personal details of complainants, fees to be paid
				6. Statistics on disciplinary cases published and analysed in CB Annual Reports	CB / Decisions	
Area of Intervention 7.2 Improved Professional Training System for Bailiffs						
7.2.1	Development of initial and continuing training systems			1. CB Training Centre (TC) fully operational, in charge of implementation of initial and continuous training systems, including management body responsible for setting policy, ensuring operations, and carrying out oversight	CB, CBTC / Decisions, reports, curricula, trainer contracts, job descriptions, placement plans in place, trainings	<ul style="list-style-type: none"> - CB empowered to deliver training for bailiffs - Optional nature of initial training system for bailiffs; conditions in place for eventual move towards mandatory initial training system - CB annual continuous training curricula and sound methodology of training in place - CBTC carrying out training on a regular basis - Initial and continuing training courses for bailiffs and other legal professionals (lawyers, judges, prosecutors, notaries etc.) approximated, some curricula and courses harmonised - Problem-based approach to training - Continuous training system for bailiffs' staff in place - On-line and distance learning training available
				2. Initial and continuing training curricula, including distance learning courses, developed, updated regularly and placed in electronic libraries	CBTC, CB / Decisions	<ul style="list-style-type: none"> - Key initial and continuing training subjects include international human-rights standards, - Permanent pool of well-trained and experienced trainers, including trainers from regions, fully and regularly mobilised
				3. Reviewed regulatory framework on access to the profession, including initial training, internships, professional exam, licensing, etc.	CB, MOJ, Parliament / Decisions, statutes and rules amended	<ul style="list-style-type: none"> - Application of penalties and other practical consequences for failure to take continuous training - Experienced legal practitioners, including European and international counterparts, among regular trainers
				4. Training needs, capacity and quality assessment mechanisms in place and used, including automated tools	CBTC, CB/ Decisions, practice guides, software in place, trainings	



					Area of Intervention 7.3 Improved Conditions for Practical and Effective Exercise of Profession of Bailiff		
7.3.1	Improvement of socio-economic, financial, and operational conditions for exercise of profession of bailiff				1. Reviewed regulatory framework for civil, administrative and criminal liability of bailiffs. Indemnity fund set up to assume civil responsibility for malpractice on behalf of whole corporation	CB, MOJ, Parliament / Decisions, statutes and rules amended	<ul style="list-style-type: none"> - System for malpractice insurance and indemnity fund in place to cover civil liability of private bailiffs - Favourable taxation regime for private bailiffs (tax regime of individual entrepreneurs under uniform tax system) - Reviewed principle of the state bailiff's remuneration by establishing direct proportion between the remuneration and results of enforcement of court decisions
					2. Special taxation, health and social insurance status of bailiffs	CB, MOJ, MOF, , MSP, Parliament / Decisions, statutes and rules amended	
					3. Reviewed principle of bailiff's proportional remuneration with regard to results of enforcement of court decisions	Parliament, CB, MOJ, MOF / Decisions, statutes and rules amended	
7.3.2	Promotion of efficiency of enforcement, while strengthening balance in protection of rights of creditor and debtor				1. Reviewed regulatory framework on powers of bailiffs to reach debtor assets,	Parliament, CB, MOJ/ Decisions, statutes and rules amended, practice guides	<ul style="list-style-type: none"> - Bailiffs practically enabled to reach debtors assets - Scope and extent of judicial control over any activities of bailiffs limited to very limited cases of necessity to protect fundamental fairness; - - Courts-practice attests qualified approach to personal data protection with regard to any actions of bailiffs, - Stages and terms to kick-start enforcement process optimised to allow no unjustified refusal - Effective incentives for voluntary enforcement of court decisions and sanctions against unwilling debtor in place
					2. Reviewed regulatory framework on procedural safeguards of debtor interests,	Parliament, CB, MOJ / Decisions, statutes and rules amended, practice guides	
					3. E-filing of enforcement requests and e-notification of all key procedural steps as part of enforcement electronic case management	CB, MOJ / Internal rules and procedures, practice guides, software in place, trainings, reports	
7.3.3	Development of bailiffs' information systems				1. Internal bailiffs' (CB/ MOJ/bailiffs) electronic communication channels in place and used effectively	CB, MOJ / Decisions, MOUs, feasibility study, Master Implementation Plan, practice guides, hardware and software in place, review reports, trainings	<ul style="list-style-type: none"> - Practical and effective use of IS by CB to advance independence, competence and accountability of CB and bailiffs - - Interoperability of CB and bailiffs' IS with those of other justice sector actors,







Evaluation Report

on

Area of Intervention Chapter 7: Improving the Enforcement System

By

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