

# Evaluation Report

on

**Area of Intervention 12.1:  
Improved Policy Development and Coordination  
Through Enhanced Strategic Planning and Regulatory  
Development Capacities of Justice Institutions**

By

International Experts

**Erik Svanidze**

**Marina Matic Boskovic**

October 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 exercise<sup>1</sup> by Erik Svanidze<sup>2</sup> and Marina Matic Boskovic<sup>3</sup> in the capacity of international experts of EU Project PRAVO-Justice (PJ). It is concerned with Area of Intervention 12.1 'Improved Policy Development and Coordination through Enhanced Strategic Planning and Regulatory Development Capacities of Justice Institutions of JSRSAP.'<sup>4</sup>

The evaluation has been conducted in accordance with the area-specific methodology (Matrix)<sup>5</sup> 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 valuable co-operation extended by the High Council of Justice, in particular its Secretariat (Strategic Planning Unit and International Department); Ministry of Justice (its Strategic Planning and European Integration Directorate), General Prosecutor's Office (its International Department), individual representatives and staff of the secretariat of the Judicial Reform Council, leadership and representatives of the Commission on Legal Reform Issues, as well as Regional Justice Reform Councils (operating with the support of PJ), 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.

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

<sup>2</sup> Erik Svanidze, sub-component leader of the EU Project 'Support to Justice Sector Reforms in Ukraine PRAVO-Justice', with more than 17 years of working as a prosecutor and Deputy Minister of Justice on the national level continued on international plane, including as member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, performing numerous extended expert and consultancy assignments for the European Union (leading a number of its justice-sector-related projects in different countries), Council of Europe, and other international organisations, including in Ukraine. Holds LLM in International Human Rights from the University of Lund, Sweden. He is the author of a number of Council of Europe and other international publications (some translated into and published in 7 languages, including Ukrainian).

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

<sup>5</sup> See the assessment-specific activities matrix attached.



## ABBREVIATIONS

AIP(s)	Annual Implementation plan(s)
CMU	Cabinet of Ministers of Ukraine
EUAM	European Union Advisory Mission Ukraine
GAP	Government Action Programme
GPO	General Prosecutor Office
HCJ	High Council of Justice
JRC	Judicial Reform Council
JSRS	Justice Sector Reform Strategy
JSRSAP	Justice Sector Reform Strategy and Action Plan of Ukraine for 2015-2020
MOJ	Ministry of Justice
MT	JSRSAP monitoring tool
PJ	EU funded Project PRAVO-JUSTICE
RIA	Regulatory Impact Assessment
RJRC(s)	Regional Justice Reform Council(s)
RoP	Rules of Procedure
SDPs	Strategic Development Plans
SPEID	Strategic Planning and European Integration Directorate of the MoJ.
SPWG	Strategic Planning Working Group



## BASELINE

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

1. The first set of measures that could be considered as a coherent policy framework related to the administration of justice in Ukraine (after dissolution of the Soviet Union and re-gaining independence by it) dates back to 28 April 1992,<sup>6</sup> when the Parliament adopted the Concept of Legal and Judicial Reform. It provided for key notions, principles and goals to be introduced and followed with the aim of establishing a truly independent judiciary and its specialization, adoption of new legislation and ensuring the right to a fair trial.<sup>7</sup> At the same time, the Concept in issue lacked an implementation mechanism, time-table and other basic elements of a policy instrument and relevant framework. Its time-span extended up to 28 June 1996, when its major deliverable, the Ukrainian Constitution was adopted. The process of its implementation skipped and failed to address quite a number of clauses and stipulations envisaged by this initial policy instrument.
2. Since then, there were only fragmented attempts to consolidate reform efforts in the sector. The most noticeable of them, were so called "Small Judicial Reform" in 2001<sup>8</sup> that led to the amendment of a package of laws regulating judiciary, status of judges and administration of justice in order to align them with 1996 Constitution, and Government's Action Programme that had put particular emphasis on the justice and related reforms (2005),<sup>9</sup> followed by the Concept Paper on Improvement of Justice for the Establishment of Fair Judiciary in Ukraine that was promulgated by the President of Ukraine Decree in 2006. The Concept Paper was drafted by the National Commission on Strengthening Democracy and Establishing the Rule of Law, introduced by the President of Ukraine on July 5, 2005, as a consultative and advisory body to develop proposals for bringing Ukraine into compliance with political components of the Copenhagen Criteria and implementation of the relevant provision of Ukraine-European Union Action Plan.<sup>10</sup>
3. The lack of a single vision led to inconsistent and slow implementation of previous reforms. Instead of being firmly founded on an analytical concept or other relevant basis, judicial reform depended on the political situation, political preferences of the President(s), Legislative (Rada), its fractions and even individual members, Government, political parties and other actors. The 2015 Justice Sector Reform Strategy (JSRS) had rightly identified the existence of systemic problems in strategic planning and regulatory development within the justice sector institutions, including:

6 Parliamentary Resolution of 28.04.1992 on the Concept of Judicial and Legal Reform in Ukraine // Vidomosti Verkhovnoyi Rady. - 1992. – No. 30. - p. 426.

7 Available at: <http://reformsguide.org.ua/analytics/judicial-reform/>, last access 23.09.2019.

8 More on Small Judicial Reform available at: [http://www.pravo.org.ua/files/Sud/indem\\_vera\\_eng.pdf](http://www.pravo.org.ua/files/Sud/indem_vera_eng.pdf); <http://reformsguide.org.ua/analytics/judicial-reform/> last access 23.09.2019.

9 Legal Reforms in Ukraine, Materials of the Centre for Political and Legal Reforms, (Ed.) Ihor Koliushko, Kyiv, 2005. p. 262.

10 Available at: [http://www.pravo.org.ua/files/Sud/indem\\_vera\\_eng.pdf](http://www.pravo.org.ua/files/Sud/indem_vera_eng.pdf), last access 23.09.2019.



- Excessive focus on short-term action in legislative drafting, lack of systemic vision in the reform of the justice sector from the medium and long-term perspective;
  - Lack of strategic planning, proper analysis and research capacities in support of the reform process, including actual regulatory and financial impact assessment of proposed reforms;
  - Underdeveloped monitoring and evaluation (M&E) mechanisms;
  - Insufficient level of coordination and consultations with relevant stakeholders, including civil society organisations;
  - Lack of self-reinforcing dynamics between the justice reform processes and the approximation with EU legislation<sup>11</sup>.
4. The 2015 Justice Sector Reform Strategy (JSRS) and accompanying Action Plan (JSRSAP) were the first comprehensive, sector-wide strategic planning instruments adopted as umbrella documents for guiding consolidated reform of the justice sector. JSRS is outlining fundamental principles, objectives, main directions and priorities and serves as an overall roadmap for reforms to address the shortcomings in the justice sector, relevant priorities and ensure 'effective, efficient and well-coordinated operation of the justice sector based on rule of law, accountability to the citizens of Ukraine, independence from political influence and compliance with EU standards and best practices'.<sup>12</sup> The reform parameters, further itemization, specifics of implementation, including in terms of tentative calendar, responsible institutions, breakdown of interventions were provided for by JSRSAP. It is aligned according to the twelve pillars (chapters) that are further split into areas of intervention, more specific actions, together with a general chronology/timetable, intervention area-related measures/outputs, and outcome and pillar-related impact indicators, and means to implement JSRS.
5. Accordingly, the policy instruments are meant to pool and coordinate efforts of Government, judiciary, including public prosecution, police, bar and other justice-related, justice-chain stakeholders and contributors and serve as a roadmap of the sector-wide reforms. It is to be noted that JSRS and AP have been the first ever sectoral policy instruments in general and related framework in Ukraine.

<sup>11</sup> JSRS, Chapter 1. <http://sudovareforma.org/institution/strategy/en/#strategy>, accessed on 23.09.2019

<sup>12</sup> JSRS, Chapter 1.





## 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.*

6. The policy instruments under consideration and their framework have a complex structure that mirrors the composite and intertwined nature of the sector, its functional diversity, multiplicity of the authorities, and institutions involved. JSRS scope is very wide and is concerned with judiciary, prosecution, criminal justice, fight against corruption, penitentiary system and execution of criminal sanctions, including introduction of probation and alternative sanctions, execution of court decisions, Bar and other slots of the sector in issue. Such a wide scope affected the modality of implementation and need for high level policy setting body – Judicial Reform Council that included representatives of different counterparts. Adoption of wide strategic documents usually require a very detailed action plan or sub-strategies to allow further elaboration of specific issues. In Ukraine the authorities decided to include Action plan and Annual Implementation Plans in this framework accordingly. In addition, wide strategic documents entail complex coordination mechanism and high administrative capacities of the leading institution(s).
7. Although preparation of JSRS and AP involved consultative process and analysis of the situation in the justice sector, it apparently was difficult to cover all the areas and issues in a synchronized and coherent way. This is a risk inherent in proceeding with a single comprehensive sector-wide policy instrument in this sphere over a short period of time. This approach is still justified at early stages of reforming the fragmented justice sectors, where the need in securing conceptual coherence between different sub-sectors and elements, coordination and harmonisation prevails. In view of these, as well as timing, resource efficiency and other considerations it would be advisable **to proceed with further policy steering on a basis of synchronized, but sub-sectoral or thematic policy instruments**.
8. As discussed, JSRS serves as a general, policy-statement instrument. It is divided into twelve pillars, eleven of which concern specific sub-sectors (areas) and one that defines the mechanics of its institutional and organisational implementation. The latter is of immediate relevance to the issues tackled by this report and is entitled: '5.12. Improving the coordination of reforms and interoperability of the justice sector information systems'. It is to be noted that it was supported by the section 'Strategic planning and coordination' that although in general terms, but highlighted their significance. So, in terms of an umbrella, basic document outlining the key directions and principles of the reform, JSRS could be considered as adequate.
9. JSRSAP, as the key strategic planning, more itemized and structured instrument has been designed according to a coherent system and is based on an inbuilt logical framework. It is of particular importance, that apart from the relevant aspirations of the Ukrainian authorities once more declared in JSRS, it has been drafted in accordance with the EU policy development and implementation regulatory framework the classical result chain and other best practices suggested by other internation-



al organisations.<sup>13</sup> The measures (outputs) and set of outcomes offer a systemic delineation of dimensions of the reform accordingly. It has been suggested in this regard, that it introduces ‘a uniform understanding of the set of interrelated terms and indicators comprising the “Input-Output-Outcome-Impact” typology of the EU/EC framework, which quite rigidly links them to the type of performance measurement methods and processes.<sup>14</sup> It is to be mentioned, however, that, reportedly for keeping its clauses and structure as concise as possible, in terms of outlining the qualitative parameters of the reform the substantial emphasis was made on the outcomes. Input and in particular impact indicators are of more technical nature. This led to an occasional lack of consistent linkages<sup>15</sup> and had to be explained and taken into account in the course of implementation, accordingly.

10. The sector-wide scope of the policy instruments and related framework, including their implementation mechanism, their structure and other technical characteristics could be assessed as appropriate taking into account the fragmentation of the sector, its institutions, political landscape and other relevant factors. Moreover, it was justified by some best practices from other jurisdictions. For example, in February 2015 Montenegro adopted Action plan for Chapter 23 as a Sector-wide policy instrument that covers judiciary and prosecution, anti-corruption and fundamental rights.<sup>16</sup> Montenegrin Ministry of Justice is responsible for coordination of implementation and interacts with all involved institutions. Similar pattern was followed in Serbia, where Parliament adopted Action plan for Chapter 23 in April 2016 as an umbrella policy document. Both countries decided to adopt sub-sector strategies, i.e. Judicial Reform Strategy, Anti-corruption Strategy, Anti-discrimination Strategy.<sup>17</sup> This approach has been welcomed by the EU, since it ensures alignment of policies in the whole rule of law sector.
11. At the same time, it is to be noted that the instruments, in particular JSRSAP, some of its elements, set of indicators and other parameters,<sup>18</sup> including Chapter 12 of JSRSAP, could benefit from better coherence and accuracy. More specifically, JSRSAP does not fully cover JSRS (and other way around) in terms of consistency with the envisaged interventions, expected results.<sup>19</sup> As to the Area of Intervention evaluated in this report, some of its outputs and outcomes are not appropriately even substantially aligned with each other. The most isolated in this regard is the outcome ‘PPP agreements with external provider signed to ensure provisions of information service’. It is not supported and does not sufficiently derive from any element of the actions and measures envis-

<sup>13</sup> See Guidelines for EC support to sector programmes, p.p. 82-83; <https://ec.europa.eu/europeaid/sites/devco/files/ec-guidelinesupport-to-sector-prog-2007-final-en.pdf>. See also the most recent OECD-linked publication: Toolkit for the preparation, implementation, monitoring, reporting and evaluation of public administration reform and sector strategies. Guidance for SIGMA partners. SIGMA PAPER No. 57, p.p. 101-105 <http://www.sigmaweb.org/publications/SIGMA-Strategy-Toolkit-October-2018.pdf>. Last access on 24.09.2019.

<sup>14</sup> Progress Review Methodology of the Justice Sector Reform in Ukraine. Guide & Matrices. Prepared with the support of the European Union within the framework of the Joint EU/CoE Project “Consolidation of Justice Sector policy development in Ukraine”, co-funded by the European Union and the Council of Europe and implemented by the latter, 2016, p. p. 7-9. [https://pjp-eu.coe.int/en/web/consolidation-justice-ukraine/images/prm\\_final\\_en.pdf](https://pjp-eu.coe.int/en/web/consolidation-justice-ukraine/images/prm_final_en.pdf) Last access on 24.09.2019.

<sup>15</sup> See paras. 11 and 23 below.

<sup>16</sup> VLADA CRNE GORE ZA POGLAVLJE 23. PRAVOSUĐE I TEMELJNA PRAVA. Available at: <http://www.ujn.gov.me/wp-content/uploads/2015/03/AP23-CG.pdf>

<sup>17</sup> REPUBLIC OF SERBIA NEGOTIATION GROUP FOR CHAPTER 23 ACTION PLAN FOR CHAPTER 23, April 2016, Available at: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>

<sup>18</sup> See relevant sections of thematic reports compiled under the Evaluation exercise.

<sup>19</sup> *Ibid.*



aged for the area. It could be just vaguely implied in outputs concerning practice guides and training modules on strategic planning and regulatory development. The indicator would appropriately serve the purpose if handled as a measure and output and would better guide the stakeholders in terms of achieving the outcomes proper. Although, in such complex instruments it is very difficult to ensure that the policy design considerations are strictly followed, it would be advisable to **ensure that in the future policy framework(s), outcomes and other key indicators are formulated and used in greater compliance with the classical result chain pattern.**

12. In terms of structuring JSRSAP, it would be preferable to **secure consistent structuring of the policy instruments, including in terms of not merging the means of verification in a column with the responsible institution.** In addition to that, means of verification are not sufficiently itemized or specific. For the majority of outputs they were defined as reports, decisions, publications, trainings, agreements and MoU. E.g, for output 'Practice guides and training modules on strategic planning and regulatory development, as well as on substance of all major justice-sector related reform initiatives, developed, disseminated and updated regularly', listed sources of verification are decisions, trainings, publications. It would be more useful to include precise sources of verification like what specific decision, trainings or publications would verify implementation of output.
13. The JSRS and AP have been drafted in two languages, English and Ukrainian, and adopted accordingly. The Ukrainian version was supposedly treated as definitive, authentic. At the same time, there were certain discrepancies between them. E.g. while measure 12.1.1.9 in the English version is formulated as 'Annual Reports developed and disseminated', the Ukrainian is more elaborated and includes the stipulation of doing it by 'every independent and adjacent institution of the judicial system'. Such discrepancies have occurred due to parallel engagement and work of international and domestic experts, as well as national stakeholders. Deployment of national and foreign expert potential is a normal approach and supposedly will be followed in future. At the same time, it would be necessary in the future to **secure that only one (preferably the national) language version of policy instruments is considered and officially identified as definitive and it is ensured that all other language versions or technical translations are fully consistent with the former.**
14. JSRSAP suggests two-year pace calendar for measures, which was useful and important for suggesting overall sequence of their implementation and timing. Although the calendar was further subsequently itemized in annual plans, this approach created difficulties in synchronization of the interaction and activities of different stakeholders. According to the best practices of even these kind of comprehensive and complex **policy instruments for the justice sector reform are to be furnished with more precise calendar with at least annual pace.**<sup>20</sup>
15. One of the major conceptual deficiencies of JSRSAP was related to its financial sustainability. The instruments did not address it, as JSRSAP does not include cost estimates for individual reform activities and sources of their funding. In other jurisdictions the related deficiencies demonstrated that a lack of budgetary planning and cost estimation entail delays in implementation of justice reform strategies. Thus, two Serbian

<sup>20</sup> E.g. the calendar in the Action plan for the implementation of the Justice Sector Reform Strategy for the years 2011-2016 in Moldova suggested quarterly steps. Available at [http://justice.gov.md/public/files/file/reforma\\_sectorul\\_justitiei/srsj\\_pa\\_srsj/PA\\_SRSJ\\_adoptaten.pdf](http://justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_pa_srsj/PA_SRSJ_adoptaten.pdf), accessed on 29.09.2019.



National Judicial Reform Strategies (from 2006 and 2013) envisaged introduction of free legal aid. However, lack of proper cost estimates and budget planning postponed introduction of free legal aid till October 2019.<sup>21</sup> Similar situation is with introduction of probation service in Serbia. It was introduced in 2014 with minimum resources and five years later it is understaffed and underperformed. The JSRSAP also does not contain information on the anticipated financial involvement of donors, even though their contribution is substantial, nor, the assessment of the needed human resources for implementation of the Strategy and Action plan was conducted. The **future policy cycle is to** remedy this deficiency and **provide for general budgetary parameters, in particular cost estimates for individual reform activities and sources of their expected funding.**

16. Having in mind the complexity of the justice sector, existence of many institutions and different branches of government it is important **to set one leading institution responsible for or clear coordination scheme of budgetary planning for the justice sector reform.** In many countries this is also related to the donor support and project planning and it is common to have MOJ at that position. For example, in Serbia in the context of Sector Approach, the Ministry in charge of judiciary coordinates the work of all relevant institutions in the sector in regard to planning, programming, implementation and monitoring of the Justice sector measures/operations which will be supported by EU funds and other international development assistance.<sup>22</sup>

## Institutional framework / Mechanism

17. The coordination mechanism envisaged for JSRS and AP implementation has been designed according to the top-down and reversed approaches. JSRSAP has contemplated its two-tier model comprising sectoral and intra-institutional components.
18. The model envisaged the Judicial Reform Council (JRC) acting as the pinnacle of justice sector reform coordination mechanism at central policy setting and steering level. This kind of a body is particularly important in the justice sector since it comprises a variety of stakeholders, ranging from the line Ministry up to various independent or semi-independent institutions. However, JSRSAP provides for neither structure nor administrative support to the JRC. JRC structure and scope of work was regulated by a separate act – Presidential decree No. 826/2014<sup>23</sup> that established JRC with the aim to develop JSRS and AP and monitor its implementation. It suggested that the relevant officials of the President’s Administration are to act as its Secretariat. The relevant support unit (Department), was devoid of sufficient staff, however.
19. JSRSAP envisaged Working Groups and the MOJ as part of justice sector reform coordination mechanism at central operational level. The latter required dedicated skillful personnel and high administrative capacities. Putting such a complex task to one institution prior to assessing and increasing its capacities could jeopardize implementation of JSRS. It was able to appropriately start undertaking this role upon introduction of a specialized Strategic Planning and European Integration Directorate that has been established within its structure since late 2017 within the EU backed PAR initiative.

<sup>21</sup> Serbia Judicial Functional Review, World Bank, 2014, p. 23. Available at: <http://www.mdftjss.org.rs/archive//file/Serbia%20Judicial%20Functional%20Review-Full%20Report.pdf>

<sup>22</sup> National Priorities for International Assistance (NAD) 2014-2017 with projections until 2020, p. 45, available at: [http://www.evropa.gov.rs/Documents/Home/DACU/12/74/NAD%202014-2017%20with%20projections%20until%202020%20\(english\).pdf](http://www.evropa.gov.rs/Documents/Home/DACU/12/74/NAD%202014-2017%20with%20projections%20until%202020%20(english).pdf), accessed on 29.09.2019.

<sup>23</sup> Decree was amended by NN 243/2015, 267/2015, 476/2015, 44/2018, 281/2019, 421/2019.



20. In general, JSRSAP has rightly provided for the crucial role of the MoJ in the justice sector policy steering, including relevant coordination mechanism. This corresponds to the contemporary understanding and best practices developed in this regard.<sup>24</sup> Besides the budgetary issues,<sup>25</sup> it has been emphasized by specifying as the key counterpart for establishing partnerships with academic circles and civil society.
21. In terms of the intra-institutional component, the relevant scheme suggested to develop dedicated strategic planning capacities, in particular, standing committees, units, staff, of independent justice sector institutions (judiciary, prosecution, Bar, bailiffs) working as justice sector reform coordination mechanism at local/institutional level. During a policy instrument lifetime, it is important to receive feedback from the ground and stakeholders who are implementing reforms on challenges in implementation and adjust activities to the reality. Bottom-up coordination is also adequate approach for ensuring ownership of each institution involved in the Strategy implementation. In addition to complex structure of the justice sector and need to include all relevant stakeholders, Ukraine covers big territory and there is a need to ensure inclusive process of all local representatives. This implied a complex role of the relevant units in securing both the bottom-up coordination vector and facilitation of internal strategic planning within the institutions.

### Institutional framework - interaction

22. JSRSAP does not suggest any standalone activities or measures in terms of regular liaison and horizontal interaction between policy-setting/operational and central/local levels of the justice sector reform coordination mechanism. Reportedly, this was contemplated by its structure and capacity building measures envisaged. The expected results have been outlined by the relevant outcomes. Thus, it has been rightly left for actual implementation and regulations on the JRC and strategic planning units within the justice sector institutions.
23. The essence of expected level and forms of interaction of the stakeholders has been outlined by the outcome concerning increased interoperability and developed IS (Information Systems) coordination mechanisms. Similarly, there is no output in the Area of Intervention 12.1 immediately addressing it. Nevertheless, for the sake of **clarity and appropriate guidance of the stakeholders, these and other relevant outcomes would require indicative inclusion of elements specifically focusing on information systems and technicalities of interaction, itemization of the set of more general or related measures** (e.g. by means of spelling out the interaction, ISs in the measure providing for cooperative relationships between independent justice sector institutions and higher educational institutions) or **more elaborated introductory clauses to the Chapter**.
24. The outcome referring to increased partnerships between MOJ/other justice sector institutions and CSOs, universities (HEIs) in developing strategic documents for justice sector reform, legislative initiatives, research and analysis of the jurisprudence, practice guides on various legal issues, and joint oversight in implementation of all sector-related policies is of a composite nature. It extends over several issues. At the same time, essentially it concerns interaction with and engagement of academic

<sup>24</sup> EU integration process put Ministry of Justice as the key institution responsible for coordination of the justice sector policy making and oversight of implementation of policies (i.e. Croatia, Serbia, Montenegro; but also, EaP countries – Armenia).

<sup>25</sup> See para. 16 above.



and civil society actors and is to be welcome. The universities, CSOs and research institutes are center of excellence and knowledge that should be used in both development of initiatives and oversight of their implementation. It is recognized in the EU documents<sup>26</sup> that science and research institutions should be used in policy planning and legislative initiatives.

## Operational planning and reporting

25. In addition to JSRS and JSRSAP, the system of instruments under the framework in issue has envisaged and included Annual implementation plans (AIPs). Although JSRSAP has skipped an outcome concerning operational planning of policy implementation, it has been provided for by Government Decree of 19 August 2015, no. 864-p (hereinafter, Government Decree N864-p) on Defining the Mechanism of Implementation of the Provisions of the Justice Sector Reform Strategy Action Plan 2015-2020. The same decree provided for submission of annual reports on its implementation. **Although, the JSRSAP framework have addressed the issue and outlined the overall scheme of operational planning to be followed, it would be preferable to specifically envisage it in the body of the instruments and support by a targeted set of policy measures and indicators, including outcomes.**
26. JSRSAP has incorporated detailed and coherent set of elements supporting and related to the important outcome concerning binding obligations of each justice sector institution to submit annual reports evaluating their performance. Existence of the annual performance reports and targets for the next year is a precondition for informed decision making. The AP envisaged establishment of dedicated strategic planning capacities of independent justice sector institutions that should empower evaluations and submission of annual reports. In addition, annual reports have been supported by and derived from relevant outputs and measures.
27. The reporting requirements have been reinforced by more advanced outcome concerning periodic implementation reports, specifying timeframe for their achievement, adjusted and rolled forward to take account of performance experience. It has been furthered by the condition of submission in sufficient time (by mid-calendar year) for any changes to be reflected in institutional budgets. The lessons learnt from many jurisdictions suggest that a lack of financial resources or timely and proper budget planning undermine success of implementation of the strategies. **Linking implementation reports with budget planning process and calendar is a good approach to mitigate the risk of lack of budget funds and should be followed not only as a target, but also in practice.**
28. Introduction of use of statistics in developing policy and regulatory initiatives is another good practice to ensure informed and evidence-based decision making. In many jurisdictions policy documents and legislation are adopted without sufficient information, usually based on perception or subjective views. Statistical data provide insight into performance of institutions and use of specific instruments/tools, which ensure evidence-based approach in any policy or legislative initiative. It is to be noted in this regard, that the limited nature of the preparatory stage of the policy cycle, lack of reliable and consistent baseline data, has predetermined absence of **numeric outcome indicators, which however, should be appropriately used in future policy instruments.**

<sup>26</sup> Article 114. (former 95, paragraph 2 of the EC Treaty) of the Treaty on European Union [2012] OJ C 326/01. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=EN>



## Monitoring and evaluation

29. JSRS operates with general terms of evaluation and monitoring, expected results and certain impact indicators (Chapter 9). JSRSAP in its Area of Intervention 12.1.1 specifies only one measure/output that implies development of certain assessment/review tools. In particular, it provides for: “6. Practice guides and training modules on strategic planning and regulatory development, as well as on substance in relation to all major justice-sector related reform initiatives, developed, disseminated and updated regularly”. This measure/output is set out with corresponding outcomes referring to “complex quantitative and qualitative M&E methodologies applied in designing and reviewing the implementation of all policies relating to the justice sector” and “results-orientation (rather than focusing on procedure) of all reform policies by using output, outcome (result) and impact indicators in all policy documents, with feedback linkages and regular improvements with reference to findings in review (M&E) process”.
30. Moreover, JSRSAP reinforced these arrangements by the outcome concerning internal and external monitoring and evaluation (M&E) mechanisms and review reports that should attest satisfactory degree of implementation of each dedicated chapter of JSRS, and of relevant institutional strategic development plans (SDPs). It is a common approach to require shadow or alternative reporting in this area to ensure existence of external and objective approach in M&E. Introduction of external M&E mechanism in the justice the implementation of the justice sector strategy is a good practice, having in mind sensitivity of area. Thus, the outline of evaluation and monitoring arrangements supposed to be further developed in the course of their implementation could be considered as adequate.

## Financial planning and Programme-based Budgeting

31. Taking into account the nascent level of following financial planning considerations in the justice sector policy development, JSRSAP has appropriately suggested quite straightforward and relevant outcomes indicative of the realistic targets that could be achieved during its implementation in this regard. It envisaged positioning of the MOJ as sector budget integrator, and provided for regular engagement of experts specialized in financial planning to support strategic planners, research and analysis staff. Strategic planning requires multidisciplinary approach and involvement of financial experts. Recognition of this need in JSRSAP and inclusion of financial experts in strategic planning process is a good practice that is applied in many countries.<sup>27</sup>

## Policy development/legislative process

32. JSRSAP has incorporated an advanced set of outcomes concerned with development of a contemporary regulatory framework. In particular, it envisaged medium-and long-term perspective of all regulatory initiatives for justice sector, attested by connection between new regulatory proposals and underlying institutional or sector-wide strategies, acting as prerequisite policy umbrella for all new legislation. Introduction of medium and long-term plans for regulatory initiatives in the justice sector are appropriate for ensuring unified and systematized approach in legislative amendments.

<sup>27</sup> See also paras. 15,16, 20, and 27 above.



33. Improvement of legislative process should also relate to the secondary legislation since it is necessary for application of laws in the practice. Many jurisdictions included these aspects in strengthening of legislative process and legislation. Therefore, it is to be welcome that JSRSAP has comprised the outcome on strengthened analytical and research capabilities to contribute to practice guides on problematic aspects in interpreting certain pieces of legislation in justice sector, in order to strike a balance between regulation by statute and secondary legislation.
34. Introduction of Regulatory Impact Assessment (RIA) and gap analysis in policy development and regulatory initiatives is another good international practice and EU requirement that has been tackled by JSRSAP outcomes. It has been coupled with acknowledgement and awareness of regulatory and budgetary impact of all intended regulatory initiatives. Many countries are lacking proper fiscal impact assessments of new legislation which cause impediments in implementation of new laws. It is a right step to increase awareness on relevance of regulatory and budgetary impact, however there is a need to set capacities and obligation to prepare fiscal impact assessments together with justification of draft laws or amendments. JSRSAP does not identify one leading institution for implementation of RIA and gap analysis, which is very important since the MOJ does not have leading role in legislative initiatives. So, it would be necessary **to identify specific stakeholders or envisage the need to in future policy frameworks for handling all specific tasks and responsibilities.**

## Communication

35. One more key deficiency of JSRSAP with regard to overall strategic planning framework is constituted by the lack of adequate stipulations and indicators concerned with communication of the reform in general. Although, there are specific elements envisaged for the judiciary and other areas in the relevant chapters, there is just a very limited element in its measure 12.1.2.7 that addresses these considerations in general. It envisages dissemination of reports developed by each of independent justice sector. As to an outcome indicator, they are vaguely concerned with by one that provides for PPP agreements with external providers signed to ensure provision of information services. Moreover, PPP agreements are usually challenging in transitional environment, due to lack of trust and corruption-related misgivings. In view of the **crucial importance of communication, in particular in its overall strategic dimension, that exceed sub-sector-specific or institutional arrangements, the future policy framework is to single it out as a standalone area or direction, which is to be supported by targeted systemic planning instruments and implementation.**

## Substantive dimension

36. The various aspects of consistency and coherence of JSRS and AP, their compliance with Public Administration reform requirements, including in terms of best practices, system of interventions, and indicators have been tackled in the preceding part of this section. On a general note, it could be reiterated that while the chosen sector-wide format, three-level structure of instruments, were justified in the country-specific context, it makes it difficult to secure coherence and clear interrelation between the documents, their internal structure, correlation between indicators. In particular this applies to reversed linkages of outcomes, as well as ensuring that cross-cutting items and issues are consistently followed. In addition to the complex and clumsy structure,





engagement of multiple stakeholders under one framework causes challenges in implementation.

As to the impact indicators suggested in JSRSAP, it sticks to a limited number of them that are clustered for a number of Chapters accordingly. This is an appropriate approach in the context of the initial strategic instruments due to the absence of itemized baseline data. Chapter 12 is furnished with impact indicators related to the international ranking of Ukraine judiciary – World Bank Governance Indicators and Rule of Law Index (in 2015 Ukraine had 22.12 rank out of 100, while in 2018 had 24.05 rank out of 100)<sup>28</sup>; World Bank Doing Business (in 2015 Ukraine was ranked 96 out of 189 countries, while for 2020 it advanced to 64 out of 190 countries)<sup>29</sup>, WEF Global Competitiveness Report (2015 - ranked 75 out of 140, in 2019 is ranked 85 out of 141 countries)<sup>30</sup>, rankings by Freedom House (in 2015 Ukraine was scored as partly free country, and in 2019 Report it remains partly free with 60/100 aggregated freedom score)<sup>31</sup>, World Justice Project Rule of Law Index (2015 - 70 out of 102, and in 2019 it was 77 out of 126 countries),<sup>32</sup> Transparency International CPI (In 2015 - 130 out of 167 countries for CPI, in 2019 it was 120 out of 180 countries)<sup>33</sup>, and Bertelsmann Stiftung Transformation Index (in 2014 – 57 out of 129, while in 2018 Ukraine was ranked 36 out of 129 countries)<sup>34</sup>. In addition, their set has included a benchmark of satisfactory level of implementation of JSRS Action Plan noted by international and external (CSO, international stakeholders) observers. Although the latter could be treated as numeric outcome, these indicators are apt for demonstrating a general, cumulative numeric parameters indicative of qualitative of effects of the implemented reforms in relation to the regulative framework (in particular doing business and contract enforcement indexes), effects experienced by the service users and perception with regard to the justice system and sector in general. This type of impact indicators are usually included in the policy exercise in many transitional countries since they are perceived as objective.

28 Worldwide Government Indicators, 2015 and 2018 are available at: <https://info.worldbank.org/governance/wgi/Home/Reports>, accessed on 22.09.2019.

29 Doing Business 2015 Going Beyond Efficiency Comparing Business Regulations for domestic firms in 189 Economies, World Bank Group Flagship Data for 2015 are available at: <https://openknowledge.worldbank.org/handle/10986/20987>; Report Doing Business Comparing Business Regulation in 190 Economies 2020, World Bank Group, 2020, data for 2019 are available at: <https://www.doingbusiness.org/content/dam/doingBusiness/country/u/ukraine/UKR.pdf>, accessed on 22.09.2019.

30 The Global Competitiveness Report 2015–2016; Data for 2015 are available at: [http://www3.weforum.org/docs/gcr/2015-2016/Global\\_Competitiveness\\_Report\\_2015-2016.pdf](http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf); The Global Competitiveness Report 2018, data for 2018 are available at: <http://www3.weforum.org/docs/GCR2018/05FullReport/TheGlobalCompetitivenessReport2018.pdf>, accessed on 22.09.2019.

31 FREEDOM IN THE WORLD, 2015, Freedomhouse, Report is available at: <https://freedomhouse.org/report/freedom-world/2015/ukraine>; FREEDOM IN THE WORLD, 2019, Freedomhouse, Report is available at: <https://freedomhouse.org/report/freedom-world/2019/ukraine>, accessed on 22.09.2019

32 World Justice Project Rule of Law Index 2015, Report is available at: [https://worldjusticeproject.org/sites/default/files/roli\\_2015\\_0.pdf](https://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf); World Justice Project Rule of Law Index 2019, Report is available at: <https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf>.

33 CORRUPTION PERCEPTIONS INDEX 2015 available at: <https://www.transparency.org/cpi2015#results-table>; CORRUPTION PERCEPTIONS INDEX 2015, available at: <https://www.transparency.org/country/UKR>, accessed on 22.09.2019

34 BTI 2014 | Ukraine Country Report, available at: <https://www.bti-project.org/en/reports/country-reports/detail/itc/ukr/ity/2014/itr/pse/>; BTI 2018 | Ukraine Country Report, available at: <https://www.bti-project.org/en/reports/country-reports/detail/itc/UKR/>, accessed on 22.09.2019



37. Bearing in mind that JSRS and AP 2015-2020 was the first set of a comprehensive and coherent policy instruments in the justice sector of Ukraine, which accordingly lacked meaningful experience in policy steering, the problem setting and formulation in this area, as well as solutions proposed could be assessed as adequate. At the same time, in addition to the shortcomings already suggested in this section, the evaluation has suggested some other deficiencies in this regard. **The future policy cycle and instruments would also benefit from a more systemic vision of the reform of the justice sector in terms of clear grouping of results, in particular outcomes, into short, medium and long-term benchmarks, as well as structuring them in thematic blocks.**<sup>35</sup> Next policy cycle is to be based on more profound analysis and research for problem identification and necessary interventions, it is to suggest specific set of interventions for **introducing regulatory and financial impact assessment approaches in the policy and specifically law-making/legislative process.**

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<sup>35</sup> E.g. as it has been done for the purposes of this Exercise, where the outcomes have been grouped for the methodological purposes. See also the structuring of the relevant reports.



## 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.*

38. 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. As outlined,<sup>36</sup> Area of Intervention under consideration is referring to periodic implementation reports, specifying individual stakeholder and sector-wide responsibilities, milestones and performance, indicators, and specific timeframe for their achievement, adjusted and rolled forward to take account of performance experience, in sufficient time (by mid-calendar year) for any changes to be reflected in institutional budgets. This is supplemented by the binding obligations of each justice sector institution to submit annual reports evaluating their performance and setting targets for improvement for next year. Moreover, they are furthered by the benchmark-type outcome requiring that internal and external monitoring and evaluation (M&E) mechanisms and review reports attest satisfactory degree of implementation of each dedicated chapter of JSRS, and of relevant institutional strategic development plans (SDPs).
39. As discussed,<sup>37</sup> the practicalities of the reporting formats under the policy framework in issue have been briefly touched upon in 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.<sup>38</sup> 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.
40. There was no consistent system of submission of information by other sector institutions. The majority of them would develop annual reports,<sup>39</sup> but they were not specifically designed for JSRSAP purposes. Thus, the requirement to submit annual reports evaluating their performance was not observed. Even more, the JRC has limited consideration of implementation of JSRSAP to an oral reporting by key institutions and

<sup>36</sup> See the preceding section of this Report.

<sup>37</sup> See para. 25 above.

<sup>38</sup> Інформація про стан виконання плану дій щодо реалізації положень стратегії реформування судустрою, судочинства та суміжних правових інститутів на 2015-2020 роки за 2016 рік. Інформація про стан виконання плану дій щодо реалізації положень стратегії реформування судустрою, судочинства та суміжних правових інститутів на 2015-2020 роки за 2017 рік.

<sup>39</sup> E.g. see the institution-specific annual report of the High Council of Justice [http://hcj.gov.ua/sites/default/files/field/file/shchorichna\\_dopovid\\_za\\_2018\\_rik.pdf](http://hcj.gov.ua/sites/default/files/field/file/shchorichna_dopovid_za_2018_rik.pdf) , accessed on 24.09.2019.



Secretariat at its meetings in July 2018 and April 2019. The data and overall information as to the state of affairs reported during the later has been used for populating the relevant web-page of the JRC (upgraded) web-site.<sup>40</sup>

41. The reporting format and discipline have been improved since the intensification of focused technical assistance of PJ that construed it as a targeted support to the Strategic Planning Working Group (SPWG) composed of the representatives of JRC Secretariat and dedicated staff of MOJ, HCJ, PGO acting as institutional coordinators (as contemplated by Government Decree N864-p). The scheme was facilitated by introducing JSRSAP-based reporting templates and relevant capacity building of the sector institutions, as well as support in using infographics and other communication-oriented formats. The first version of the report has been developed and presented at the SMWG in May 2018 and updated in 2019.<sup>41</sup> **The future policy cycle and framework, including the mechanism should be immediately (from the outset) supported by appropriate reporting scheme, formats and discipline, as well as consistent monitoring, preferably facilitated by an integrated policy-specific tool.**
42. Monitoring and evaluation were also lagging behind the actual implementation of policy interventions. Similarly to an appropriate annual reporting on JSRSAP implementation, its adequate monitoring and evaluation had not been set up as of the beginning of the process. The relevant efforts of development partners comprised the Council of Europe intervention that developed Progress Review Methodology for reviewing, measuring the advancement and results of the justice sector reform (PRM). PRM presented in December 2016 was suggesting indicative systematized log-frame, calendar, appropriate methods and other parameters of thematic assessment exercises for evaluating JSRSAP implementation. Apart of some of its elements, it has not been meaningfully put into operation. The current exercise is the first systemic evaluation of JSRSAP implementation accordingly.
43. 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

40 10 Facts About the Judicial Reform; <http://sudovareforma.org/en/information/10-facts-about-the-judicial-reform/> , accessed on 23.09.2019.

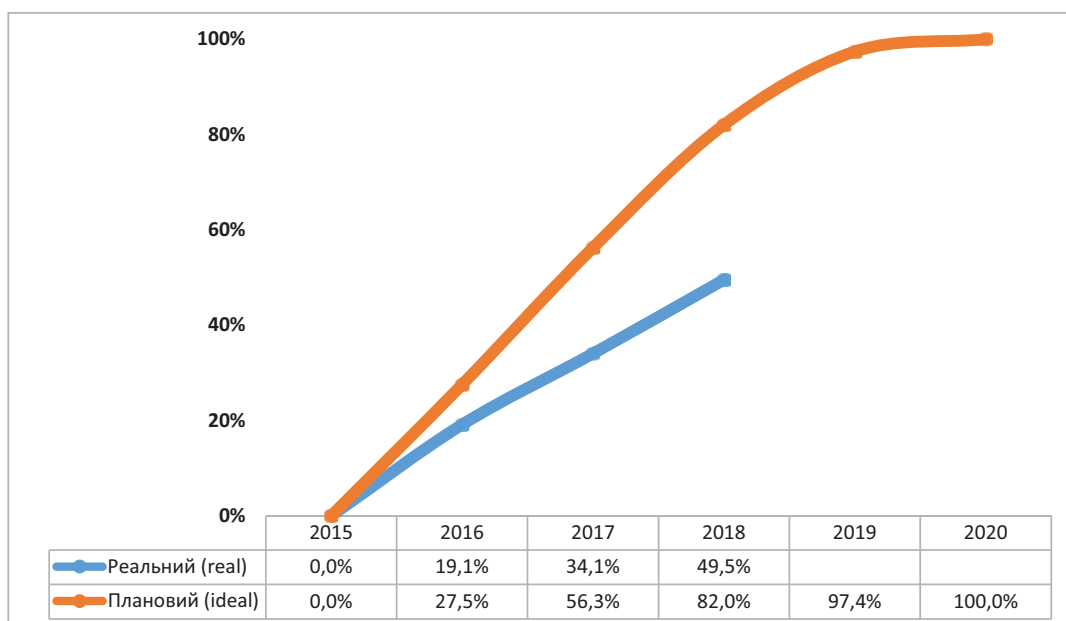
41 See para. 49 below.



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 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. It is done by the institutional coordinators upon consulting other sector stakeholders, where necessary. Thus, MT (its input and output modules), which is fully operational since September 2018 is owned, maintained and updated by HCJ (Chapters 1-5), MoJ (Chapters 6,7,9,11,12) and GPO (Chapters 8,10). PJ is providing continuous methodological support to the stakeholders concerned.

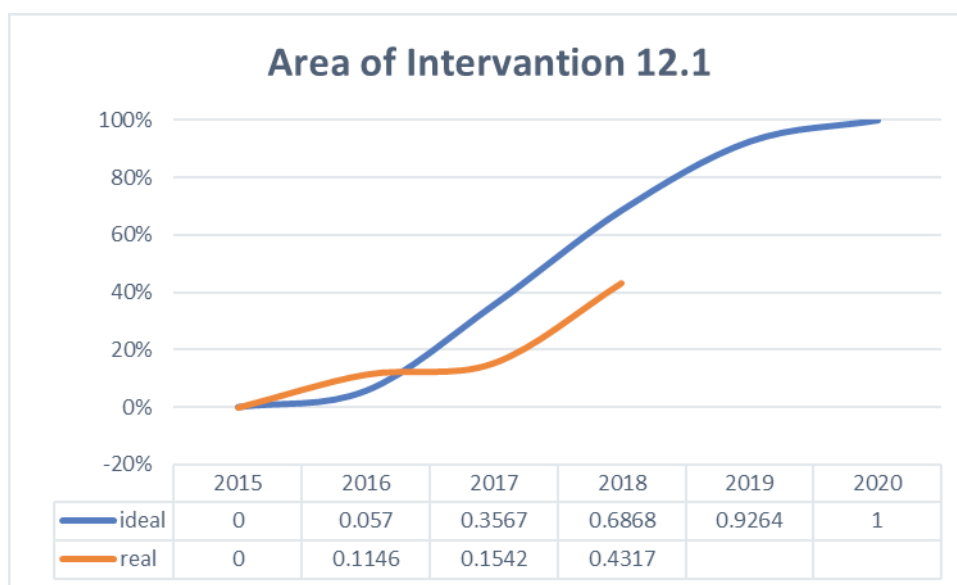
44. As a result, MT provides specific information, computes and generates analytical data, comparative and visual tables and charts with regard to the JSRSAP output-based parameters, including attainment of a specific stage of every JSRSAP measure, compliance with the implementation calendar, supported 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. The overall dynamics and score of implementation of all the measures envisaged by JSRSAP during the period tackled by the evaluation exercise are illustrated by the table below. In general, according to MT, JSRSAP measures had been implemented up to 49,5% out of 82,0% expected by 01.01.2019.

### Conformity with planned progress in implementing JSRSAP by 01.01.2019



45. In terms of Area of intervention 12.1, the breakdown of stages for implementation of the measures under it, weight assigned to them, identification and adjustment of responsible institutions demonstrate positive dynamics and satisfactory understanding of the structure of interventions, JSRSAP and basics of policy development and strategic planning in general. MT had attested the following parameters of its implementation.

### Conformity with planned progress in implementing Aol 12.1 by 01.01.2019



46. 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 corresponded 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. For example, although there were annual reports produced by some institutions, including HCJ and MoJ,<sup>42</sup> that could be considered as meeting the requirements of measure 12.1.1. 9, the relevant stage (annual reports developed and disseminated) has not been ticked as at least partially implemented. It could be considered as performed at least in terms of the preparatory stages comprising identification of reporting formats and use of monitoring and evaluation instruments. Reportedly, this has not been considered as properly implemented due to the specification that it is to be done by all institutions.<sup>43</sup>

<sup>42</sup> See paras. 42-43 above.

<sup>43</sup> See para. 13 above.

## 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.*

### Institutional framework / Mechanism Level of attainment 50%

47. JSRSAP straightforward outcomes dealing with the institutional framework established for advancing the policy cycle, coordination of its implementation are introduced by the relevant indicator delineating the role of the top body responsible for its implementation. It is formulated: “*Judicial Reform Council (JRC) acting as part of justice sector reform coordination mechanism at central policy-setting level (top-down coordination)*”

As discussed, the overall model of JRC was appropriate in general and complied with the relevant sectoral policy steering standards and practices.<sup>44</sup> It consisted of up to 45 members (its composition was updated periodically). Reportedly it held 22 meetings<sup>45</sup> in 2015-2019 (April) and it was contemplated as a central body of the justice sector reform coordination. It had rather inclusive and representative membership, consisting of top domestic decision-makers and international counterparts. It managed to process and secure adoption of the first ever structured sector-wide policy document in Ukraine of its kind, in terms of its complexity and M&E system.

At the same time, its working formats and composition were excessively formalistic, including in terms of representation of the sector institutions. It was only in 2018, when it has introduced electronic voting format of decision-making that significantly increased its efficiency in this regard. Besides the adoption of the justice sector policy instruments, facilitating their implementation through processing the AIPs, very cursory reporting schemes, it served as an ad hoc framework for drafting amendments to Civil, Commercial procedural, and Administrative Justice Codes, as well as the legislative package on the Bar and some other laws. Thus, it was used as a top-level networking body for several key justice-related legislative initiatives, thereby at times reducing the amount of discussions and facilitating their eventual adoption at Rada. JRC was involved mostly in the “middle-level” policy-making chain (discussion of legislative bills), at the expense of “high-level” policy form and content. JRC never discussed any budgetary needs of any justice institution, or any financial impact of the sector reforms. JRC did not involve any relevant non-legal expert communities – for instance, business, banking, international investors – in any of its policy discussions, despite the fact that many of the initiatives tackled had a tremendous impact on the business climate. The role of the Cabinet of Ministers (Cab-Min) in the JSRSAP implementation and JRC operations was very vague and formalistic. It acted as a recipient of a “report on the policy implementation”.<sup>46</sup>

Moreover, JRC was called irregularly, and had no clear and foreseeable agenda for a longer period. Its operation was not systemic, including in terms for reporting, holding its sessions, their documentation (no minutes are available). Although it held 22 meetings, the JRC was

<sup>44</sup> See paras. 17-19 above.

<sup>45</sup> Report 2014-2019, Judicial Reform Council, April 2019. available at: <http://sudovareforma.org/wp-content/uploads/2019/06/CP-Brochure-English-Site.pdf>, accessed on 22.09.2019.

<sup>46</sup> See paras. 25-27 above.



called irregularly and after initial enthusiasm the structured agenda was missing over more recent years. In practice this high-level body was missing operational technical support. It lacked dedicated Secretariat, over-relying on very scarce in-house resources at the President's Administration. The existing back-office (strategic planning, analytical and research, secretarial) capacities of the executive (MOJ) or judiciary (HCJ) institutions were underused by JRC.<sup>47</sup>

In general,<sup>48</sup> the level of attainment of this outcome could be scored as amounting to 40% of the target (as outlined in its formulation and interpreted in line with the relevant standards and best practices).

Therefore, it is of crucial importance to **provide the Top Policy Formulation and Coordinating Body of this kind and all key elements of the coordination mechanism with sufficient dedicated, standalone immediate secretarial and preferably balance its composition in terms of expertise-oriented criteria and not considerations of formal representation of institutions, as well as envisage involvement of business, banking, international investors and other relevant non-legal expert communities, where appropriate. It should operate according to a clear and foreseeable agenda, as well as make best use of contemporary (electronic) working and decision-making formats.**

48. The preceding outcome is logically linked to the following one that concerns WG, MOJ working as part of justice sector reform coordination mechanism at central level.

As indicated above, in 2017 the MOJ established a specialized unit – Directorate for Strategic Planning and European Integration (SPEID). This move has been a part of a broader public administration reform in Ukraine. In 2017, separate directorates for Strategic Planning and EI were established in 10 out of 18 ministries.<sup>49</sup> It has been planned that these units should be centers of excellence within each ministry. Selection of their staff was based on objective criteria and transparent competition formats. To ensure high competition, the working conditions are significantly better than in the rest of public administration. In June 2018 the Minister of Justice adopted the Statute of the Directorate to regulate in more details its competences, obligations and duties of its leadership. Main tasks of the Directorate are: strategic planning for the MOJ, coordination of European affairs within the responsibility of the MOJ and coordination and monitoring of international technical assistance and donor support. Moreover, its staff involved specialist(s) for introducing the budgetary linkages into the strategic planning process.

At the same time, its key staff members contributed to operational steering of the reform within the format of the Strategic Planning Working Group (SPWG) comprising the 3 key sector institutions (MOJ, HCJ, PGO) representatives. Other sector institution representatives were invited to its specific meetings, e.g. on reporting arrangements, as necessary.<sup>50</sup>

SPWG was designed and introduced according to the expert advice and with the support of PJ in view of the limited human and other resources available at the JRC secretariat. It has been contemplated as an intermediary implementing (monitoring and reporting) structure. HCJ, MoJ and GPO acted as facilitators with regard to Chapters 1-5; Chapters 6,7,9,11,12

<sup>47</sup> See also the following para. of this report below.

<sup>48</sup> See also the preceding considerations on the JRC, policy steering mechanism and other related issues suggested throughout the report.

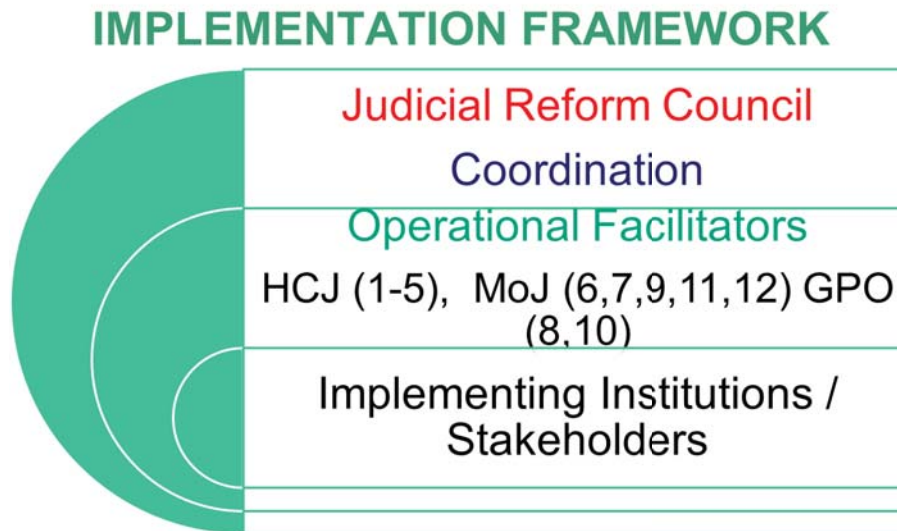
<sup>49</sup> Decision of the CMU No. 644 of 17 August 2017 on Some Issues Related to the Structure of the SCMU, the Apparatus of Ministries and Other Central Executive Authorities.

<sup>50</sup> See para. 42 above.



and Chapters 8,10 respectively. This approach reflected the specific institutional role of the HCJ within the judicial limb of the sector. As to the MoJ it would comply with its functions of operational coordinator in line with the relevant provisions of Chapter 12 of the JSRSAP. In terms of GPO, it was based on its constitutional function of procedural and organisational leadership of pre-trial investigation and related law-enforcement activities. In general, the resultant institutional scheme of policy steering in the justice sector of Ukraine under JSRSAP 2015-2020 has taken the shape that can be illustrated by the following chart:

### Institutional Set-up for JSRSAP implementation framework



Besides SPWG, JRC would establish and operate in format of *ad hoc* (informal) working groups created for processing legislative package on the Bar, procedural codes and similar justice-related legislative initiatives.

It is to be highlighted that the Strategic Plan of Activity of the Ministry of Justice of Ukraine for 2019-2022 approved on 11.02.2019 has provided for Priority IV entitled 'Ministry of Justice effectively coordinates the justice sector and appropriate legislative drafting within the Government'. It has rightly indicated that MoJ is expected to expand its role in this regard and specified that it is to improve its policy-making, regulatory framework so to ensure effective process of implementation of reforms and achievement of strategic goals. Implementation of reforms in the justice sector is to be improved by advancement of institutional capacities and reinforcement the Ministry of Justice's role as coordinator of the justice sector.<sup>51</sup> In particular, as an initial step in this direction, MoJ has been fully assuming the role with regard to donor coordination by virtue of the specifically designed online appliance/platform.<sup>52</sup> In general, **the future policy framework could further reinforce prevalent approach to an European model of Ministry of Justice, which is underpinned by its role in the strategic planning, including its budgetary limb, coordination, monitoring and implementation of reforms in the justice sector or its components, including the judiciary.** In particular, it should be a key player in charge of contributing to the development and implementing some of "high-level" policy content defined by the highest coordinating body (JRC under JSRSAP scheme) both in the areas where MOJ plays a dual regulator / service provider role (legal

<sup>51</sup> Стратегічний план діяльності Міністерства юстиції України на 2019-2022 роки, <https://minjust.gov.ua/strategy> accessed on 25.09.2019

<sup>52</sup> See para. 53 below.



aid, prisons etc.), and also in the wider coordination of the policy implementation affecting the whole of the justice sector (for instance, in implementing activities requiring legislative changes with regard to the courts and other justice sub-sectors).

The level of attainment of this outcome could be scored as amounting to 45% of the target.

49. As reviewed above, the policy steering system envisaged by the JSRSAP relevant outcomes comprised dedicated strategic planning capacities (Standing committees, units, staff) of independent justice sector institutions (judiciary, prosecution, Bar, bailiffs). They should be working as justice sector reform coordination mechanism at local/institutional level (bottom-up coordination).

Creation of SPIED within the MoJ<sup>53</sup> has significantly reinforced and appropriately streamlined the intra-ministerial strategic planning system and workings. It has become a lead institutional unit within the ministry in this regard and has been adequately delineating its overall policy steering functions and distributing the responsibilities with thematic and other departments that would be in charge of substantial, legislative policy development and monitoring.

Within the High Council of Justice, the strategic planning capacities were increased also. Upon the entry into the force of relevant legislative package and creation of HCJ since early 2017, its Secretariat has been furnished with the Strategic Planning Department, which, however, has deployed up to three staff members, including its head. It was a right move to envisage that one of its staff members (Deputy Head) was specifically designated for handling budgetary, including programme-based budgeting and ensure applicability of Mid-Term Budgetary Framework approaches. However, fragmentation of judiciary and insufficiently defined powers has undermined the position of the HCJ as central body for reforming judiciary. Other institutions of judicial governance, including High Qualification Commission, State Court Administration, Council of Judges and National School for Judges were hostile towards HCJ undertaking the lead role in terms of overall policy steering for the judiciary. It was indicative in this regard that all these institutions even formally resisted its role of the institutional coordinator assigned under the JRC and JSRSAP framework during the first round of consolidating the reporting framework in 2018, as well as were reluctant in interaction for maintaining the Monitoring Tool and provision of reporting data, as well as processing AIPs and other strategic planning initiatives. Moreover, these and related difficulties have prevented HCJ from creating a Strategic Planning Commission, envisaged as part of its formal structure. Therefore, it would be crucial to ensure that the future policy cycle and framework in the justice sector are processed and developed, respectively, so that the **strategic planning, including in its budgetary dimension, and policy steering on behalf of the judiciary is performed in consultations with all relevant actors concerned, but coordinated and consolidated by one body (HCJ under the current setting) with this function specifically defined and supported in terms of institutional structure, staffing and other resources.**

As to the GPO, since June 2016 it has formally obtained the leading role within the law-enforcement and crime prevention and detection institutions' chain by the newly defined constitutional provisions as to its relevant procedural and organizational leadership in the pre-trial investigation and related areas. There were controversial developments with regard to its corresponding both intra-institutional and sub-sectoral strategic planning and steering capacities. The initial introduction of a specific unit tasked with the reforms was followed by

<sup>53</sup> In terms of the sector-wide role of MoJ see the preceding para. of the Report with further references.

its abolishment. It was only after the intensification of the JSRSAP implementation-related interventions predominantly supported by PJ, when since early 2018 GPO has reversed the process and started to develop dedicated strategic planning and policy steering capacities. It has taken shape of assigning on a permanent basis the staff (up to 4 members) of its International Department. Although this move has revived GPO capacities in acting as an institutional coordinator for the purposes of JSRSAP implementation, in particular contribution to SPWG, supporting reporting framework, maintaining the Monitoring Tool, processing AIPs and other strategic planning initiatives, the lack of specific institutional set-up and sufficient personnel and other resources were not sufficient in this regard. It had difficulties in consolidating both the intra-prosecutorial, including more efficient design and implementation of the EUAM and other donors-driven Reform Road-Map, that served as its interim policy instrument, and external (within the related chain of institutions) coordination of policies accordingly. It would be crucial to ensure that the future policy cycle and framework in the justice sector are processed and developed, respectively, so that the **strategic planning and policy steering on behalf of the prosecution and related chain of law-enforcement and crime prevention and detection institutions is performed in consultations with all relevant actors concerned, but coordinated and consolidated by GPO with this function specifically defined and supported in terms of institutional structure, staffing and other resources.**

Within other institutions dedicated strategic planning capacities were developed without doling out relevant specific sub-divisions or staff. For the strategic planning, in particular JSRSAP-related coordination activities the majority of them have established permanent contact points and assigned one or two staff members to these tasks, who would perform them in addition to other functions. In addition, contact points were designated by each specific institution on *ad hoc* basis for each specific topic and thematic policy interventions. For institutions and bodies with considerable competence and relevant importance in terms of strategic planning (e.g. State Judicial Administration in its current setting) this was clearly insufficient. In general, **all the sector institutions are to consider further advancement of their strategic planning and policy steering capacities and specifically define this function in their regulatory framework, as well as support it in terms of institutional structure (where appropriate), staffing and other resources.**

The dedicated staff of the institutions concerned benefited from series of capacity building activities and on-the-job coaching provided by PJ, EDGE<sup>54</sup> and some other donors (including in the course of its technical assistance interventions, in particular those concerned with the SPWG, advancement of the reporting framework, design and maintaining the Monitoring Tool, processing AIPs, design and introduction of Donor Coordination Platform and other strategic planning initiatives.

The level of attainment of this outcome could be scored as amounting to 50% of the target.

## Institutional framework – interaction Level of attainment 40%

50. In terms of regular liaison and interaction between policy-setting/operational and central/local levels of the justice sector reform coordination mechanism, which has been set as a key outcome, they have been developed and maintained within the formal avenues established both in top-down and bottom up formats. In addition to the dis-

<sup>54</sup> See EDGE support the implementation of the Results-based Management at the Ministry of Justice of Ukraine <https://edge.in.ua/188-edge-support-the-implementation-of-the-results-based-management-at-the-ministry-of-justice-of-ukraine.html>



cussed specifics of the operational planning, reporting, monitoring and other policy steering and strategic planning modules,<sup>55</sup> it is worth mentioning that their interaction and liaison have been significantly intensified and substantiated in the course of annual cycle for 2019, where the institutions demonstrated increased ownership of the processes and workings. The institutional coordinators and the majority of sector institutions were able to act independently without these processes being expert-driven. It appeared sufficient to provide overall back-stopping and guidance by PJ. The stages of the relevant cycle of annual planning, reporting and monitoring for 2019 had been timely carried out based on the standard operational procedures introduced in the previous years with the technical support of the donors.

Moreover, the outlined mechanism has been supplemented by PJ-backed introduction and operation of the six Regional Justice Reform Councils (RJRCs). Since early 2018 they have been created for and operated in the Odessa, Chernivtsi, Lviv, Dnipro, Kharkiv and Donbas regions. These local structures are supposed to extend inclusiveness of the policy making and implementation process by means of the regional outreach. Their aim is to enable a standing and structured dialogue between central level and the regions. Benefits from RJRCs are twofold: decision makers at the central level are receiving well-structured data and analysis from the regions and can monitor how reforms are implemented on the ground, while regions become important actor and strengthen the regional dimension of reforms. They act as a platform for facilitating two-way (bottom-up and top-down) traffic in policy-setting.

RJRCs operate on the basis of core teams (around 15-20 members in each of them). They comprise active representatives of all major legal professions and academic circles. In those regions where not all relevant players are willing to cooperate with each other (e.g. Odessa), they engage those formally outside the Core Team through supporting specific stand-alone activities. RJRCs are operating through regular sessions and interaction of the members of the core teams (supported by PJ dedicated experts). They are advancing their role of policy generators and formulating needs and proposals for policy interventions through horizontal interaction of their relevant members and pooling capacities accordingly. RJRCs have not been formally incorporated into the coordination mechanism, which could be not necessary provided they establish working contacts and interact with its components on all the levels. It could be achieved through constant and well-structured dialogue and feedback relationship between the regions and the central approach policy-making. In particular, it can take shape of involving representatives and other decision-makers from Kyiv in various regional events, using experts based in regions for various policy development initiatives, conducting user satisfaction surveys and other M&E activities locally. Thus, **there is a need to fine tune and intensify interaction between the sector institutions and central level limb(s) of a policy steering mechanism, including in terms of options to decentralise the justice sector-policy making for securing wider and stronger representation of regional and local legal professionals and business communities, academia and CSOs.**

The level of attainment of this outcome could be scored as amounting to 65% of the target.

51. The outcome concerned with an increased interoperability and developed IS coordination mechanisms addresses the need in contemporary modalities and formats facilitating interaction between the stakeholders and all limbs of the policy steering mechanism in the sector.

<sup>55</sup> See the preceding sub-section of the report above (with further references).

Besides launching the dedicated web-site, it was only at the later stage of JSRSAP implementation, when addressing of the need in issue has been commenced. It has been done within the framework of relevant component of PJ assistance that is concerned with the sectoral policy framework. The set of IS-related interventions comprised the development of the series of online JSRSAP-specific appliances, including the donor (external assistance) coordination platform (the Platform), and Events Calendar that had been completed and launched in testing regime.

The Platform has been designed in consultations with the key stakeholders and development partners. In addition to serving the immediate purpose, the set of events and interventions was designed and contributed to building relevant capacities of all the stakeholders. The Platform is meant to serve as an integrated on-line coordination and information tool for overall management and mutual synchronisation of external inputs, their dynamic adjustment to developments and actual needs. It supplements and streamlines traditional formats of coordination and comprises (together with them) a mechanism for coordination of the sector-related external assistance. It is to prove domestic coherence of the reform and cooperation with external (including non-governmental) partners, as well as reducing transaction costs, avoiding overlaps and enhancing cooperation of the actors involved. It is construed so to reinforce the ownership and demand-driven approach, i.e. follows the international standards, in particular Paris Declaration on Aid Effectiveness and EC Guidelines for support to sector programmes.<sup>56</sup> As a result, the Platform has been designed as an online interactive regularly updatable tool (web-resource) put at the disposal the institutional coordinators, stakeholders and donors, other international contributors for facilitating the process of planning, implementing and coordinating external assistance provided for JSRSAP implementation and justice sector reform in Ukraine in general. It mirrors and is structured according to the policy instrument in issue. In addition, its (recently added) supplementary module is designed for providing information and coordinating interventions beyond measures envisaged and areas covered by the JSRSAP. It is to serve also as a data hub for accumulating comprehensive itemised information on overall and specific inputs and outputs comprising donor contribution. It is generating relevant disaggregated and analytical information. The Platform could be maintained and operated in Ukrainian and English. Both versions are considered authentic and complementary to each other. In order to ensure interoperability, it is to be linked to the JRC's (or relevant body's), institutional coordinators' of JSRSAP implementation and other sector stakeholders' web-sites. The Platform is technically supported (maintained) by the MoJ, the SPEI Directorate. Although the Platform has been rightly aligned with and made JSRSAP-specific, but the approach and model, in particular its additional module, could be used for managing and facilitating external assistance in the course of future policy steering cycle in the sector.<sup>57</sup> In general, it is of crucial importance **to ensure compliance with the best practices and relevant international standards concerning coordination of donor (external) assistance, where its traditional formats are supplemented and streamlined by an IT-based tool and inclusive mechanism.**

As to the Events Calendar, it has been designed as an additional tool for scheduling, mapping and coordination of the JSRSAP-related and other sector reform events held by the sector institutions and international or civil society partners. It would serve as an itemized

<sup>56</sup> Paris Declaration and Accra Agenda for Action, <https://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagenadaforaction.htm>, accessed on 29.09.2019. See also, supra note 13.

<sup>57</sup> The political changes and related developments indicative of re-launch and re-shaping of policy cycle and framework in the sector that have been taking place during the evaluation exercise and drafting this report inevitably would affect the use of the Platform and other policy-instrument specific appliances.



(thematic, JSRSAP interventions-related) data-hub and provide information and access to key documents (agendas, list of participants other documents/handouts).<sup>58</sup>

In general, an advanced policy framework **should comprise and make best use of contemporary modalities and formats, including IT-based appliances, facilitating interaction between the stakeholders and all limbs of the policy steering mechanism in the sector.**

In spite of the development of important elements of an IS supporting the policy framework and taking into account that they have not been effectively put into operation, the level of attainment of this outcome could be scored as amounting to 20% of the target.

### Operational planning and reporting Level of attainment 40%

52. Notwithstanding the omission in JSRSAP stipulations concerned with the policy instrument-specific overall operational planning, including the lack of relevant outcome, that has been partially remedied by introductory and supplementing regulatory framework,<sup>59</sup> the experts suggest to consider it as an outcome providing for an appropriate format of overall operational planning being applied and facilitating JSRSAP (the policy instrument) implementation, including in terms of its further itemization and adjustment.

Chapter-specific AIPs have been designed and adopted for years 2016-2019. Initially they were primarily developed with the technical assistance of the relevant EU Project and other international partners. Moreover, the formats of annual plans for 2016 and 17 did not sufficiently correlate with the JSRSAP and its structure.<sup>60</sup> In the course of their advancement, due to the capacity building of the stakeholders, furnishing them with relevant appliance, AIPs (in particular AIPs for 2019) were fully aligned with JSRSAP structure and developed by sector institutions. They were meant for ensuring further itemization, specific detailed inputs and flexibility of the mechanism in term of its adjustment to the dynamics of the reform and developments.<sup>61</sup> In this format, they became derivative (secondary) but important instruments providing methodological support by means of suggesting indicative year-specific itemisation of activities. They outline some specific, more detailed inputs, which cumulatively would contribute to implementation of JSRSAP.

In early 2019 the AIPs-based operational planning was furthered by PJ-led cycle of output/measure-specific review of implementation of interventions envisaged by 2018 AIPs. It demonstrated advanced understanding of the purposes and process of operational planning and awareness of the institutional coordinators (HCJ, MOJ, GPO) of the state of affairs and level of implementation of the majority of activities planned. It has been confirmed that the monitoring scheme and in particular MT introduced for facilitating and structuring it has significantly contributed to adequacy of performance of the SIs in this regard (JSRSAP implementation monitoring).

As to the key SIs, only some of them, in particular, MoJ and HCJ, have specifically synchronized AIPs and JSRSAP interventions with their internal annual and other operational plans

<sup>58</sup> It has been finalized, but not put into operation due to the political and related developments. See the preceding note.

<sup>59</sup> See para 25 above.

<sup>60</sup> AIP 2016, <http://sudovareforma.org/plan/12/2016/>, accessed on 12.09.2019.

<sup>61</sup> Ukraine justice sector reform strategy action plan (jsrsap) 2015-2020, Annual implementation plans for 2017 (chapters 1-12); 2018 ukraine justice sector reform strategy action plan (jsrsap) 2015-2020 annual implementation plan for 2018 (chapters 1-12); ukraine justice sector reform strategy action plan (jsrsap) 2015-2020 annual implementation plan for 2019 for 2017 (chapters 1-12).

for 2018-19. Although they have not formally developed relevant institutional SDPs, they developed a coherent practice in this regard. In general, it would be important in future to **introduce regulations or/and SDPs that would harmonize and incorporate policy instrument-specific operational planning with other internal planning schemes of sector institutions.**

Therefore, the attainment of operational planning-related requirements could be scored as amounting to 60% of the target implied in the JSRSAP-specific scheme.

53. The reporting considerations were furthered by the outcome referring to binding obligations of each justice sector institution to submit annual reports evaluating their performance and setting targets for improvement for next year.

Based on the findings, conclusions and recommendations that have been elaborated on in this Report,<sup>62</sup> it could be suggested the level of attainment of this outcome could be scored as amounting to 35% of the target.

54. There was a related outcome advancing the reporting framework. It has been formulated as follows: periodic implementation reports, specifying timeframe for their achievement, adjusted and rolled forward to take account of performance experience, in sufficient time (by mid-calendar year) for any changes to be reflected in institutional budgets.

There were no formal semi-annual reports prepared during the implementation. It was only in the late 2018 when the MOJ started to introduce cost estimates in practical implementation in designing policy initiatives. PJ supported development of the Cost Estimation Guide and Templates that was followed by further active expert interaction with MOJ, HCJ, and OPG concerning their practical implementation. It has been continued by sampling of the policy costing on the basis of e-Notary project. It has been completed in close cooperation and expert support provided to the MoJ.<sup>63</sup>

Therefore, the level of attainment of this outcome could be scored as amounting to 5% of the target.

55. In terms of use of statistics and evidence-based approach in policy and regulatory initiative, it could be reiterated that it was only in the report for 2018 that included graphs, visual and numerical presentation of achieved results. In general, there is insufficient use of evidence-based law-making and related policy-development.<sup>64</sup> The requirements for evidence-based policy making and for consultations with non-governmental stakeholders are not complied with in practice. Therefore, the quality of policy analysis supporting proposals is weak.<sup>65</sup> In addition to the insufficient application of the methodologies and approaches clearly linked to evidence-based decision and policy making for the purposes of developing the JSRSAP,<sup>66</sup> it could be suggested the level of attainment of this outcome could be scored as amounting to 10% of the target.

Against this background, it **would be necessary to ensure that statistics and evidence-based approaches are more extensively used for developing and implementation of policy and regulatory initiatives.**

<sup>62</sup> See paras 40-43 above.

<sup>63</sup> As to the budgetary dimensions of the policy planning and implementation, see paras. 51 above and 59 below.

<sup>64</sup> G. Svedas, Legislative Development Process, EU Project Support to Justice Sector Reforms, JCI, 2016.

<sup>65</sup> SIGMA/ OECD, Baseline Measurement Report: the Principles of Public Administration, Ukraine, June 2018.

<sup>66</sup> See para. 29 of the Report above.



## Monitoring and evaluation

Level of attainment 50%

56. In view of the structure of the Exercise, the Report has already addressed in details the JSRSAP stipulations and outcomes, as well as interventions undertaken with regard to complex quantitative and qualitative M&E methodologies applied in design and review of implementation of all policies relating to justice sector. As discussed, they have become one of the main directions of capacity building and institutional, as well as technological developments in the strategic planning area.<sup>67</sup>

The key deficiency of the JSRSAP M&E system has been constituted by actual inexistence of its evaluation limb. The current expert-driven assessment should not be seen as a substitute to a well-construed and consistent evaluation scheme to be carried out by the stakeholders. As confirmed by the findings made in the course of this evaluation, the PRM designed and put at the disposal of the sector institutions since late 2016 has not been meaningfully implemented.<sup>68</sup>

Moreover, there is no systemic external monitoring of JSRSAP implementation that would double check and provide alternative data in this regard. There is the UE-funded justice reform monitoring project 'Speedometer 'Ukraine-EU' Constitutional and Judicial Reforms' implemented by NGO Centre of Policy and Legal Reform. However, although the methodology applied also provides numerical scoring system, it is not JSRSAP-based. It measures the level of implementation of recommendations of various international organisations and bodies that concern four spheres and cross-cutting issues related the justice sector, in particular judiciary, prosecution, constitutional reform and anti-corruption.<sup>69</sup> According to the latest data (as per September 2019) the overall score of progress attested by the project amounted to 39.6 (out of 100). The scores with regard to the four blocks comprised: 75.5; prosecution 61.9; constitutional issues 12,6; and anti-corruption 8.4. It is necessary, therefore, **to supplement a regular monitoring inbuilt in the policy coordination mechanism with a systemic external, preferably civil society-driven scheme.**

In view of the particularities of the M&E arrangements under JSRSAP, it would be appropriate to score the level of attainment of the targets inferred in the outcome in issue separately for the monitoring and evaluation limbs respectively. While for the former it could be considered as amounting to 70%, the latter has been achieved to not more than 5% (in view of PRM being developed and available).

57. There is a specific outcome that has introduced the requirement that internal and external monitoring and evaluation (M&E) mechanisms and review reports attest satisfactory degree of implementation of each dedicated chapter of JSRS, and of relevant institutional strategic development plans (SDPs).

Taking into account that with regard to the most simple parameters of JSRSAP implementation, i.e. as far as outputs-related indicators are concerned, the satisfactory level is determined by the calendar and relevant dynamics of their accomplishment, based on the monitoring tool data it could be immediately suggested that by 01.01.2019 the level of attainment of this outcome has reached 60% (49.5% implemented against 82% planned).<sup>70</sup>

In terms of evaluation-based assessment of the degree of implementation of JSRSAP, it is cumulatively suggested by the Exercise.

<sup>67</sup> See paras. 39-50 above.

<sup>68</sup> See para. 43 above.

<sup>69</sup> See the Speedometer web-site <https://eu.pravo.org.ua/uk/>, accessed on 30.09.2019.

<sup>70</sup> See para. 45 above.





## Financial planning and Programme-based Budgeting

Level of attainment 2%

58. The appropriate outcome concerned with the role of MOJ as justice sector budget ‘integrator’ and main strategic planning body for all relevant components of justice sector, remained largely unimplemented.<sup>71</sup> There were just initial steps towards introducing budgetary considerations into the strategic planning arrangements in the MoJ, not to mention other SIs.<sup>72</sup>

Therefore, the level of attainment of this outcome could be scored as amounting to 0% of the target.<sup>73</sup>

59. Unlike the preceding outcome, there was some progress with respect to regular engagement of experts specialized in financial planning to support strategic planners, research and analysis staff at MOJ. In 2018 PJ provided targeted technical assistance to SPEID and produced the Cost-estimation Guide and templates that was supplemented by interaction with the MoJ, HCJ, and GPO concerning their practical implementation and furthered by piloting of cost estimation of the specific policy instrument (e-Notary) developed by MoJ. However, more advanced introduction of programme-based budgeting techniques has been undermined by the budgetary constraints and resultant lack of practicability in pursuing this format for securing allocations. **The financial planning, programme-based budgeting considerations are to re-gain their importance by means of advancement of budgetary regulatory framework and reinforcement of MTBF approaches on the Governmental level and it is to be ensured that they are consistently applied for developing and implementation of policy initiatives in the justice sector.**

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

## Policy development/legislative process Level of attainment 25%

60. The outcome of medium-and long-term perspective of all regulatory initiatives for justice sector, attested by connection between new regulatory proposals and underlying institutional or sector-wide strategies, acting as prerequisite policy umbrella for all new legislation is a key one suggesting the clear linkage between a policy development and legislative process.

It is to be noted that the majority of the developments envisaged by JSRSAP were of legislative character, in particular those comprising some Constitutional amendments and other regulatory interventions implemented.<sup>74</sup> So, the policy instruments in issue have significantly streamlined the law-making, including in terms of secondary legislation and methodological materials. However, the lack of clear and consistent approaches and practice in this regard has been highlighted as a key deficiency of the law-making process in Ukraine.<sup>75</sup> Besides the recurrent failures to regulate the whole legislative process in Ukraine by dedicated law and the archaic (paper-based) law-drafting technologies and processes, the actual unfet-

<sup>71</sup> See para.48 above. Although it falls outside the chronological scope of the assessment and this report, it is to be mentioned that the new leadership of the MoJ, including the Minister Mr. D. Malyuska met in the course of finalization of this exercise, regrettably suggested that the budgetary component of the role of the ministry is not considered as an immediate priority.

<sup>72</sup> See the subsequent para. of this report.

<sup>73</sup> The deficiency has been addressed in the recommendation suggested in para. 48 above.

<sup>74</sup> See other reports produced under the Exercise.

<sup>75</sup> Supra note 64.



tered practice of proceeding with law-drafting and making procedure via MPs leads to controversial legislative developments often undermining the agreed policies. For example, as a result of such practices the key package of JSRSAP-compatible amendments attributed to the Law 'On the High Council of Justice' has been supplemented by the amendments to the Criminal Procedural Code and Law on Operative Search (Detective) Activities of Ukraine concerned with 'the State Penitentiary Service of Ukraine'.<sup>76</sup> The latter conceptual move that actually furnished the penitentiary system with investigative powers and created additional investigative agency in Ukraine has not been envisaged by the policy instruments and even run counter JSRSAP (its Chapter 10).

Moreover, the responsibility of the MOJ for legislative drafting is limited. The MOJ does not have strong internal legislative drafting structure like in other jurisdictions (i.e. Germany, Sweden, Finland, France).<sup>77</sup> Moreover, its influence on the policy development and discipline is still limited.

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

Besides the need and relevant recommendations concerned with advancement of the law-making and legislation, **it is necessary to secure the prevalence of connection between regulatory proposals and underlying institutional or sector-wide strategies, which should be considered as a prerequisite condition for all new legislation that is to be specifically addressed in the drafting and adoption procedures.**

61. The preceding more general outcome has been rightly supplemented by addressing strengthened analytical and research capabilities to contribute to practice guides on problematic aspects in interpreting certain pieces of legislation in justice sector, in order to strike a balance between regulation by statute and secondary legislation.

This has been partially addressed by the relevant Rules of Procedure (RoP) of the Cabinet of Ministers. The RoP foresee adoption of the Government Action Programme (GAP), which stipulates the priority tasks the duration of its tenure and the five-year and annual legislative plans to be prepared by the MOJ on the basis of the GAP. However, the Government has not fulfilled the requirement to adopt a five-year legislative plan that would consolidate necessary legislative initiatives deriving from multiple policy instruments.

At the same time, that practice is also implemented in other countries and lessons learnt could be used in Ukraine. In particular, possibly **like in countries under EU accession process, in addition to a consolidated long-term legislative planning, it could be necessary introducing, at later stage, a multi-annual Programme for the adoption of the EU Acquis that should be supplemented by procedural actions for EU law transposition would have to cover: a) planning (including translation of EU legal acts, b) compliance assessment (gap analysis), c) impact assessment, and d) monitoring / review and relevant capacity building of the personnel of the lead institution, MoJ (if different) and other ministries and government agencies.**<sup>78</sup>

<sup>76</sup> See E. Svanidze, ANNEX to THE POST-ADOPTION REVIEW OF THE LAW OF UKRAINE "ON THE HIGH COUNCIL OF JUSTICE" on the amendments to the Criminal Procedural Code and Law on Operative Search (Detective) Activities of Ukraine concerned with 'the State Penitentiary Service of Ukraine', 2017, Council of Europe, Strasbourg. <https://rm.coe.int/opinion-on-investigation-unit-penitentiary-service-eng-final/168073f9e0> , accessed on 12.09.2019.

<sup>77</sup> Supra note 64.

<sup>78</sup> Supra note 64.

Although the MoJ is acting as a ‘ministry of lawyers’, including in terms of having a say in registration of normative acts, selection and appointment of leadership of legal units of other ministries etc., there is no corresponding and appropriate training on legal drafting. MoJ staff responsible for legal scrutiny are not involved in designing or delivering such trainings. There has not been relevant capacity building modules and methodological materials developed and systematically delivered.

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

62. Taking into account the novelty and nascent stage of introducing relevant regulatory techniques in Ukraine, the set of outcomes under consideration has been rightly furnished with a specific outcome concerned with regulatory Impact assessment and gap analysis methodologies used regularly in all policy development and regulatory initiatives.

There have been certain significant developments under JSRSAP interventions addressing this mandatory element. In particular, since 2017 PJ has initiated although comparatively narrow, but still an important structured monitoring of implementation of Civil and Commercial Procedural Codes and Administrative Justice Legislation amended under JSRSAP.<sup>79</sup> Its ultimate purpose is to improve the legislative process by a modern regulatory approach, which proposes to prioritise impact assessment, bottom-up and evidence-based policy making, deregulation, and resolution of the most of outstanding inconsistencies through practice and rules, not legislative law-making. However, future **policies in the sector and improvements of the overall legislative process should envisage meaningful practical application of ex-ante and overall regulatory impact assessment methodologies in policy development and law-making accordingly.**

Therefore, the level of attainment of this outcome could be scored as amounting to 5% of the target.

63. The same applies to an acknowledgement and awareness of regulatory and budgetary impact of all intended regulatory initiatives.<sup>80</sup>

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

64. There have been no systemic developments that would secure increased partnerships between MOJ/other justice sector institutions and CSOs, universities (HEIs) in developing strategic documents for justice sector reform, legislative initiatives, research and analysis of the jurisprudence, practice guides on various legal issues, and joint oversight in implementation of all sector-related policies.

So far, the considerations in issue have been occasionally addressed by means of using individual expert potential and predominantly events-based consultative processes, which **require intensification and advancing formats of systemic interaction with the academic and civil society for the purposes of policy development and implementation.**

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

<sup>79</sup> See Final Report: Implementation of the Ukrainian Civil and Procedural Codes. Final Report. Pravo-Justice, 31 August 2019.

<sup>80</sup> See also paras. 59-60 above.



## Communication

Level of attainment 10%

65. Since the only communication-related outcome that provided for PPP agreements with external providers signed to ensure provision of information services is very narrow and just partially reflects the importance of this limb of a policy framework,<sup>81</sup> the evaluation will assess it in a wider sense.

Apart of the development and advancement of the JSRSAP and JRC web-sites,<sup>82</sup> as well as coverage of individual events and interventions,<sup>83</sup> dissemination of reports and other deliverables, including by means of outsourcing of relevant services to private providers or using technical, including expert assistance, there have not been any systemic planning or consistent set of communication activities under JSRSAP.

In order to remedy the communication shortcomings, some sector institutions requested and received targeted assistance in creating strategic communication capacities. In particular, in 2018 the GPO with the consultancy support provided by PJ identified immediate needs for improving information service and communication, including brand book, visual guidelines, design of reports, Facebook design and content, website design. In addition, the GPO has developed structure for new communication department, including organigram and job description and conduct capacity building activities for existing staff in order to increase internal information service capacities and ensure sustainability. While the GPO decided to increase internal capacities, the HCJ has chosen to select subcontractor (external provider) to develop website, prepare basic branding and video on their activities. The MOJ also worked on enhancement of internal capacities. The MOJ has in-house adviser, who organizes communication process inside the Ministry and was provided support on ad hoc basis (when requested).

The level of attainment of this outcome could be scored as amounting to 10% of the target.<sup>84</sup>

## Substantive dimension

Compatibility and coherence 75%

66. The substantive parameters of JSRSAP and related policy framework, including in terms of the outcomes, in particular consistency and coherence of the policy instruments (Strategy and Action plan); their compliance with PA reform requirements / best practices (in terms of the system of interventions, indicators), as well as adequacy of the problem setting and formulation, solutions proposed have been evaluated and addressed in the section Adequacy of JSRSAP and its parameters<sup>85</sup> and throughout this report.

The adequacy of the structuring, consistency with the PAR and other standards, best practices, as well as substantive dimension of JSRSAP Area of Intervention 12.1 could be scored as 75 out of 100% in terms of corresponding to the context and policy framework-related state of affairs in the sector.

<sup>81</sup> See para. 35 above.

<sup>82</sup> <http://sudovareforma.org/>, accessed on 25.09.2019.

<sup>83</sup> E.g. <https://www.ukrinform.net/rubric-politics/2588805-eu-experts-comment-on-selection-of-judges-in-ukraine.html>, accessed on 25.09.2019.

<sup>84</sup> As to the relevant (composite) recommendation, see para. 35 above.

<sup>85</sup> See paras. 6-38 above.



## CONCLUSIONS

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

67. Experts consider that the implementation of the Area under consideration was satisfactory and there had been a considerable progress 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 42%.<sup>86</sup>
68. With the view of enhancement and intensification of the policy steering in the justice sector of Ukraine, in particular, improving relevant framework and mechanisms, the assessment suggests the following set of recommendations. Taking into account the actual launch of a new policy cycle in the sector after the political developments that have been taking place in Ukraine since mid- 2019, the key **short-term recommendation** would comprise **ensuring accurate re-assessment, including by taking into account the findings and recommendations made under the Exercise, and continuity of steps in the right direction and positive results achieved during the period under consideration with regard to interventions and outcomes concerned, combined with Improved Policy Development and Coordination through Enhanced Strategic Planning and Regulatory Development Capacities of Justice Institutions.**
69. As to **recommendations for the next policy cycle, it is advised to:**

### General Issues

- **Proceed with further policy steering on a basis of synchronized, but sub-sectoral or thematic policy instruments;**
- **Ensure that in the future policy framework(s), outcomes and other key indicators are formulated and used in greater compliance with the classical result chain pattern;**
- **Secure consistent structuring of the policy instruments, including in terms of not merging the means of verification in a column with the responsible institution;**
- **Secure that only one (preferably the national) language version of policy instrument(s) is considered and officially identified as definitive and it is ensured that all other language versions or technical translations are fully consistent with the former;**
- **Furnish policy instruments for the justice sector reform with more precise calendar with at least annual pace;**
- **Provide for general budgetary parameters of policy instrument(s), in particular cost estimates for individual reform activities and sources of their expected funding;**
- **Set one leading institution responsible for or clear coordination scheme of budgetary planning for the justice sector reform;**

<sup>86</sup> Outcomes, their group-specific scoring details are suggested in the preceding section of the Report and indicated in the left column of the attached evaluation Matrix. See Annex 1.



## Institutional framework / Mechanism

- Provide the Top Policy Formulation and Coordinating Body and all key elements of the coordination mechanism with sufficient dedicated, standalone immediate secretariat and preferably balance its composition in terms of expertise-oriented criteria and not just considerations of formal representation of institutions, as well as envisage involvement of business, banking, international investors and other relevant non-legal expert communities, where appropriate. It should operate according to a clear and foreseeable agenda, as well as make best use of contemporary (electronic) working and decision-making formats;
- Reinforce further prevalent approach to a European model of Ministry of Justice, which is underpinned by its role in the strategic planning, including its budgetary limb, coordination, monitoring and implementation of reforms in the justice sector or its components, including the judiciary;
- Perform strategic planning, including in its budgetary dimension, and policy steering on behalf of the judiciary in consultations with all relevant actors concerned, but coordinated and consolidated by one body (HCJ under the current setting) with this function specifically defined and supported in terms of institutional structure, staffing and other resources.
- Perform strategic planning and policy steering on behalf of the prosecution and related chain of law-enforcement and crime prevention and detection institutions in consultations with all relevant actors concerned, but coordinated and consolidated by GPO with this function specifically defined and supported in terms of institutional structure, staffing and other resources;
- Consider further advancement of strategic planning and policy steering capacities of all the sector institutions and specifically define this function in their regulatory framework, as well as support it in terms of institutional structure (where appropriate), staffing and other resources;

## Institutional framework - interaction

- Include elements specifically focusing on information systems and technicalities of interaction to ensure clarity and appropriate guidance of the stakeholders on these issues;
- Fine tune and intensify interaction between the sector institutions and central level limb(s) of a policy steering mechanism, including in terms of options to decentralise the justice sector-policy making for securing wider and stronger representation of regional and local legal professionals and business communities, academia and CSOs;
- Ensure compliance with the best practices and relevant international standards concerning coordination of donor (external) assistance, where its traditional formats are supplemented and streamlined by an IT-based tool and inclusive mechanism;
- Make best use of contemporary modalities and formats, including IT-based appliances, facilitating interaction between the stakeholders and all limbs of the policy steering mechanism in the sector.



## Operational planning and reporting

- Specifically envisage operational planning in the body of the instruments and support by a targeted set of policy measures and indicators, including outcomes;
- Link implementation reports with budget planning process and calendar so to mitigate the risk of falling short of budget funds and follow them in practice;
- Design and incorporate numeric outcome indicators in addition to substantial ones;
- Introduce regulations or/and SDPs that would harmonize and incorporate policy instrument-specific operational planning with other internal planning schemes of sector institutions;
- Ensure that statistics and evidence-based approaches are more extensively used for developing and implementation of policy and regulatory initiatives.

## Monitoring and evaluation

- Immediately (from the outset) support the future policy cycle and framework, including the mechanism, by appropriate reporting scheme, formats and discipline, as well as consistent monitoring, preferably facilitated by an integrated policy-specific monitoring tool;
- Supplement a regular monitoring inbuild in the policy coordination mechanism with a systemic external, preferably civil society-driven scheme;

## Financial planning and Programme-based Budgeting

- Adequately address the importance of financial planning, programme-based budgeting considerations by means of advancement of budgetary regulatory framework and reinforcement of MTBF approaches on the Governmental level and ensuring that they are consistently applied for developing and implementation of policy initiatives in the justice sector;

## Policy development/legislative process

- Identify specific stakeholders and provide for handling the specific tasks and responsibilities for implementation of RIA, including budgetary considerations, and gap analysis;
- Secure the prevalence of connection between regulatory proposals and underlying institutional or sector-wide strategies, which should be considered as a prerequisite condition for all new legislation that is to be specifically addressed in the drafting and adoption procedures;
- Introduce in addition to a consolidated long-term legislative planning, at later stage, like in countries under EU accession process, a multi-annual Programme for the adoption of the EU Acquis that should be supplemented by procedural actions for EU law transposition covering: a) planning (including translation of EU legal acts), b) compliance assessment (gap analysis), c) impact assessment, and d) monitoring / review and relevant capacity building of the personnel of the lead institution(s), MoJ (if different), and other ministries and government agencies;



- Envisage meaningful practical application of ex-ante and overall regulatory impact assessment methodologies in policy development and law-making accordingly;
- Intensify and advance formats of systemic interaction with the academic and civil society for the purposes of policy development and implementation;

### Communication

- Single out communication, in particular in its overall strategic dimension exceeding sub-sector-specific or institutional arrangements, as a standalone area or direction, which is to be supported by targeted systemic planning instruments and implementation;

### Substantive dimension

- Benefit from a more systemic vision of the reform of the justice sector in terms of clear grouping of results, in particular outcomes, into short, medium and long-term benchmarks, as well as structuring them in thematic blocks;<sup>87</sup>
- Base it on more profound analysis and research for problem identification and necessary interventions, and suggest specific set of interventions for introducing regulatory and financial impact assessment approaches in the policy and specifically law-making/legislative process.

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<sup>87</sup> E.g. as it has been done for the purposes of this Exercise, where the outcomes have been grouped for the methodological purposes. See also the structuring of other evaluation reports.





## ANNEX I ASSESSMENT-SPECIFIC MATRIX

Methodology/assessment-specific activities identification matrix<sup>88</sup>

### ASSESSMENT PACKAGE N6

#### Area of Intervention 12.1 Improved Policy Development and Coordination through Enhanced Strategic Planning and Regulatory Development Capacities of Justice Institutions

Outcomes to be addressed <sup>1</sup>	Desk research <sup>2</sup> DR	Third-party reports TPR	Panel discussions <sup>3</sup> PD	Interviews I	Survey S	Data Analysis DA	Other method	Comments	Level of Implementation <sup>4</sup>
<b>I. Institutional framework /Mechanism</b>									<b>45%</b>
– CJR acting as part of justice sector reform coordination mechanism at central policy-setting level (top-down coordination)	1-2		1	1-2		1			<b>40%</b>
– WGs, MOJ working as part of justice sector reform coordination mechanism at central operational level	1-2		1	1-2		1			<b>45%</b>
– Dedicated strategic planning capacities (Standing committees, units, staff) of independent justice sector institutions (judiciary, prosecution, Bar, bailiffs) working as justice sector reform coordination mechanism at local/institutional level (bottom-up coordination)	1-2		1	1-2					<b>50%</b>
<b>II. Institutional framework (Interaction)</b>									<b>40%</b>
– Regular liaison and interaction between policy-setting/operational and central/local levels of justice sector reform coordination mechanism	1-2		1	1-2					<b>65%</b>
– Increased interoperability and developed IS coordination mechanisms	1-2		1	1-2					<b>20%</b>

<sup>88</sup> 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.



III. Operational Planning and Reporting								40%
– The policy instrument-specific overall operational planning scheme designed and consistently applied	1-2		1	1-2			The outcome has not been envisaged by JSRSAP	60%
-Binding obligations of each justice sector institution to submit annual reports evaluating their performance and setting targets for improvement for next year	1-2		1	1-2				35%
– Use of statistics and evidence-based approach in all policy and regulatory initiative	1-2		1	1-2		1		5%
– Periodic implementation reports, specifying individual stakeholder and sector-wide responsibilities, milestones and performance indicators, and specific timeframe for their achievement, adjusted and rolled forward to take account of performance experience, in sufficient time (by mid-calendar year) for any changes to be reflected in institutional budgets	1-2		1	1-2				10%
IV. Monitoring and Evaluation								50%
– Complex quantitative and qualitative M&E methodologies applied in design and review of implementation of all policies relating to justice sector	1-2		1	1-2		1	Monitoring	70%
							Evaluation	5%
– Internal and external monitoring and evaluation (M&E) mechanisms and review reports attest satisfactory degree of implementation of each dedicated chapter of JSRS, and of relevant institutional strategic development plans (SDPs)	1-2		1	1-2				60%
V. Financial Planning and Programme-based budgeting								2%
– Role of MOJ as justice sector budget ‘integrator’ and main strategic planning body for all relevant components of justice sector	1-2		1	1-2				0%
– Regular engagement of experts specialised in financial planning to support strategic planners, research and analysis staff at MOJ	1-2		1	1-2				5%
VI. Policy development/legislative process								25%
– Medium-and long-term perspective of all regulatory initiatives for justice sector, attested by connection between new regulatory proposals and underlying institutional or sector-wide strategies, acting as prerequisite policy umbrella for all new legislation	1	2		1-2				40%

– Strengthened analytical and research capabilities to contribute to practice guides on problematic aspects in interpreting certain pieces of legislation in justice sector, in order to strike a balance between regulation by statute and secondary legislation	1	2		1-2						<b>20%</b>
– Regulatory Impact assessment and gap analysis methodologies used regularly in all policy development and regulatory initiatives;	1	2		1-2						<b>5%</b>
– Acknowledgement and awareness of regulatory and budgetary impact of all intended regulatory initiatives	1	2		1-2						<b>0%</b>
– Increased partnerships between MOJ/other justice sector institutions and CSOs, universities (HEIs) in developing strategic documents for justice sector reform, legislative initiatives, research and analysis of the jurisprudence, practice guides on various legal issues, and joint oversight in implementation of all sector-related policies	1	2		1-2						<b>10%</b>
<b>VII. Communication</b>										<b>10%</b>
– PPP agreements with external providers signed to ensure provision of information services	1			1-2						<b>10%</b>
<b>VIII. Substantial dimension1</b>										<b>75%</b>
– Consistency and coherence of the policy instruments (Strategy and Action Plan); their compliance with PA reform requirements / best practices (in terms of the system of interventions, indicators)	2		1	1-2						<b>75%</b>
– Adequacy of the problem setting and formulation, solutions proposed	2		1	1-2						<b>75%</b>
<b>Overall level of attainment of outcomes under the Area</b>										<b>42 %</b>



## ANNEX II LIST OF REPORTS, PUBLICATIONS AND OTHER DOCUMENTS REVIEWED

- JUSTICE SECTOR REFORM STRATEGY 2015-2020 <http://sudovareforma.org/institution/strategy/en/#strategy>
- Justice Sector Reform Strategy (JSRS) Action Plan <http://sudovareforma.org/institution/strategy/en/#plan>
- DECREE OF THE PRESIDENT OF UKRAINE № 276/2015 On Justice Sector Reform Strategy 2015-2020
- CABINET OF MINISTERS OF UKRAINE WRITTEN INSTRUCTION Of 19 August 2015 # 864-p, On Defining the Mechanism of Implementation of the Provisions of the Justice Sector Reform Strategy Action Plan 2015-2020
- Parliamentary Resolution of 28.04.1992 on the Concept of Judicial and Legal Reform in Ukraine // Vidomosti Verkhovnoyi Rady. - 1992. – No. 30. - p. 426. <http://reformsguide.org.ua/analytics/judicial-reform/>
- Small Judicial Reform available at: [http://www.pravo.org.ua/files/Sud/indem\\_vera\\_eng.pdf](http://www.pravo.org.ua/files/Sud/indem_vera_eng.pdf); <http://reformsguide.org.ua/analytics/judicial-reform/>
- Legal Reforms in Ukraine, Materials of the Centre for Political and Legal Reforms, (Ed.) Available at: [http://www.pravo.org.ua/files/Sud/indem\\_vera\\_eng.pdf](http://www.pravo.org.ua/files/Sud/indem_vera_eng.pdf),
- Guidelines for EC support to sector programmes, p.p. 82-83; <https://ec.europa.eu/europeaid/sites/devco/files/ec-guidelinessupport-to-sector-prog-2007-final-en.pdf>.
- Toolkit for the preparation, implementation, monitoring, reporting and evaluation of public administration reform and sector strategies. Guidance for SIGMA partners. SIGMA PAPER No. 57, p.p. 101-105 <http://www.sigmaweb.org/publications/SIGMA-Strategy-Toolkit-October-2018.pdf>.
- Progress Review Methodology of the Justice Sector Reform in Ukraine. Guide & Matrices. Prepared with the support of the European Union within the framework of the Joint EU/CoE Project “Consolidation of Justice Sector policy development in Ukraine”, co-funded by the European Union and the Council of Europe and implemented by the latter, 2016, p. p. 7-9. [https://pjp-eu.coe.int/en/web/consolidation-justice-ukraine/images/prm\\_final\\_en.pdf](https://pjp-eu.coe.int/en/web/consolidation-justice-ukraine/images/prm_final_en.pdf)
- VLADA CRNE GORE ZA POGLAVLJE 23. PRAVOSUĐE I TEMELJNA PRAVA. Available at: <http://www.ujn.gov.me/wp-content/uploads/2015/03/AP23-CG.pdf>
- REPUBLIC OF SERBIA NEGOTIATION GROUP FOR CHAPTER 23 ACTION PLAN FOR CHAPTER 23, April 2016, Available at: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>
- Action plan for the implementation of the Justice Sector Reform Strategy for the years 2011-2016 in Moldova [http://justice.gov.md/public/files/file/reforma\\_sectorul\\_justitiei/srsj\\_pa\\_srsj/PA\\_SRSJ\\_adoptaten.pdf](http://justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_pa_srsj/PA_SRSJ_adoptaten.pdf)
- Serbia Judicial Functional Review, World Bank, 2014 <http://www.mdtfjss.org.rs/archive//file/Serbia%20Judicial%20Functional%20Review-Full%20Report.pdf>
- National Priorities for International Assistance (NAD) 2014-2017 with projections until 2020, [http://www.evropa.gov.rs/Documents/Home/DACU/12/74/NAD%202014-2017%20with%20projections%20until%202020%20\(english\).pdf](http://www.evropa.gov.rs/Documents/Home/DACU/12/74/NAD%202014-2017%20with%20projections%20until%202020%20(english).pdf)



- Treaty on European Union [2012] OJ C 326/01. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=EN>
- Worldwide Government Indicators, 2015 and 2018 are available at: <https://info.worldbank.org/governance/wgi/Home/Reports>
- Doing Business 2015 Going Beyond Efficiency Comparing Business Regulations for domestic firms in 189 Economies, World Bank Group Flagship <https://openknowledge.worldbank.org/handle/10986/20987>
- Report Doing Business Comparing Business Regulation in 190 Economies 2020, World Bank Group, 2020 <https://www.doingbusiness.org/content/dam/doingBusiness/country/u/ukraine/UKR.pdf>
- The Global Competitiveness Report 2015–2016; [http://www3.weforum.org/docs/gcr/2015-2016/Global\\_Competitiveness\\_Report\\_2015-2016.pdf](http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf)
- The Global Competitiveness Report 2018, <http://www3.weforum.org/docs/GCR2018/05FullReport/TheGlobalCompetitivenessReport2018.pdf>
- FREEDOM IN THE WORLD, 2015, Freedomhouse, <https://freedomhouse.org/report/freedom-world/2015/ukraine>
- FREEDOM IN THE WORLD, 2019, Freedomhouse, <https://freedomhouse.org/report/freedom-world/2019/ukraine>
- World Justice Project Rule of Law Index 2015, [https://worldjusticeproject.org/sites/default/files/roli\\_2015\\_0.pdf](https://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf) ;
- World Justice Project Rule of Law Index 2019, <https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf>
- CORRUPTION PERCEPTIONS INDEX 2015 <https://www.transparency.org/cpi2015#results-table>
- CORRUPTION PERCEPTIONS INDEX 2015, <https://www.transparency.org/country/UKR>
- BTI 2014 | Ukraine Country Report, <https://www.bti-project.org/en/reports/country-reports/detail/itc/ukr/ity/2014/itr/pse/>
- BTI 2018 | Ukraine Country Report, <https://www.bti-project.org/en/reports/country-reports/detail/itc/UKR/>
- ІНФОРМАЦІЯ ПРО СТАН ВИКОНАННЯ ПЛАНУ ДІЙ ЩОДО РЕАЛІЗАЦІЇ ПОЛОЖЕНЬ СТРАТЕГІЇ РЕФОРМУВАННЯ СУДОУСТРОЮ, СУДОЧИНСТВА ТА СУМІЖНИХ ПРАВОВИХ ІНСТИТУТІВ НА 2015-2020 РОКИ ЗА 2016 РІК. ІНФОРМАЦІЯ ПРО СТАН ВИКОНАННЯ ПЛАНУ ДІЙ ЩОДО РЕАЛІЗАЦІЇ ПОЛОЖЕНЬ СТРАТЕГІЇ РЕФОРМУВАННЯ СУДОУСТРОЮ, СУДОЧИНСТВА ТА СУМІЖНИХ ПРАВОВИХ ІНСТИТУТІВ НА 2015-2020 РОКИ ЗА 2017 РІК.
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- SIGMA/ OECD, Baseline Measurement Report: the Principles of Public Administration, Ukraine, June 2018.
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- E. Svanidze, ANNEX to THE POST-ADOPTION REVIEW OF THE LAW OF UKRAINE “ON THE HIGH COUNCIL OF JUSTICE” on the amendments to the Criminal Procedural Code and Law on Operative Search (Detective) Activities of Ukraine concerned with ‘the State Penitentiary Service of Ukraine’, 2017, Council of Europe, Strasbourg. <https://rm.coe.int/opinion-on-investigation-unit-penitentiary-service-eng-final/168073f9e0>
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## ANNEX III EXTRACT FROM JSRSAP

### Chapter 12

#### Improving Coordination and Financial Support of Justice Sector. Ensuring Information Systems

Strategic planning, sector reform coordination, analysis and research capacities of the justice sector stakeholders are the basis for reform implementation. The Strategy foresees the steps for gap analysis, impact assessment and EU law approximation mechanisms, and for overpassing lack of interoperability and integration of various information systems in the justice sector and among law enforcement agencies. Reform coordination at the strategic level is required for more effective interaction among public authorities, CSOs and civil society.

Development of reform coordination mechanism at institutional and regional levels is the basis for strategic planning of operational capacities of the judiciary, PPO, Bar, Notary, Legal Aid providers and other related institutions.

Chapter 12						
Improving Coordination and Financial Support of Justice Sector. Ensuring Information Systems						
Action	Implementation Deadline			Performance Criteria		
	End of 2016	End of 2018	End of 2020	Measures/Outputs	Responsible Body / Means	Outcomes
<b>Area of Intervention 12.1 Improved Policy Development and Coordination through Enhanced Strategic Planning and Regulatory Development Capacities of Justice Institutions</b>						
12.1.1	Development of central level of justice sector reform coordination mechanism			1. Council for Judicial Reform fully operational, involved in approval of all justice-sector related policy initiatives  2. Working groups (WGs) set up under CJR fully operational, involved in design, monitoring and evaluation (M&E) of all justice-sector related policy initiatives  3. Dedicated staff assigned at MOJ to deal with strategic planning and regulatory development issues,  4. Agreements for cooperative relationships between MOJ and higher educational institutions (HEIs) foreseeing initiatives facilitating research into law and practice in order to develop new policy initiatives  5. Research and analysis papers produced regularly, identifying gaps between existing legislation (or international standards and rules and practice) and practice, and making recommendations for improvements by way of new/amended legislation or improvements in practice	CJR, MOJ, WGs / Decisions, reports, trainings   MOJ / Decisions, contracts, job descriptions, placement plans, trainings  MOJ, HEIs / MOUs, decisions, reports  MOJ, HEIs / Publications, reports	- CJR acting as part of justice sector reform coordination mechanism at central policy-setting level (top-down coordination)  - WGs, MOJ working as part of justice sector reform coordination mechanism at central operational level  - Dedicated strategic planning capacities (Standing committees, units, staff) of independent justice sector institutions (judiciary, prosecution, Bar, bailiffs) working as justice sector reform coordination mechanism at local/institutional level (bottom-up coordination)  - Regular liaison and interaction between policy-setting/operational and central/local levels of justice sector reform coordination mechanism  - Binding obligations of each justice sector institution to submit annual reports evaluating their performance and setting targets for improvement for next year  - Use of statistics and evidence-based approach in all policy and regulatory initiatives  - Complex quantitative and qualitative M&E methodologies applied in design and review of implementation of all policies relating to justice sector  - Role of MOJ as justice sector budget 'integrator' and main strategic planning body for all relevant components of justice sector



				6. Practice guides and training modules on strategic planning and regulatory development, as well as on substance of all major justice-sector related reform initiatives, developed, disseminated and updated regularly	MOJ / Decisions, trainings, publications	<ul style="list-style-type: none"> <li>- Regular engagement of experts specialised in financial planning to support strategic planners, research and analysis staff at MOJ,</li> <li>- Periodic implementation reports, specifying individual stakeholder and sector-wide responsibilities, milestones and performance indicators, and specific timeframe for their achievement, adjusted and rolled forward to take account of performance experience, in sufficient time (by mid-calendar year) for any changes to be reflected in institutional budgets</li> <li>- Internal and external monitoring and evaluation (M&amp;E) mechanisms and review reports attest satisfactory degree of implementation of each dedicated chapter of JSRS, and of relevant institutional strategic development plans (SDPs),</li> <li>- Gradual annual reduction in number and increase in length and extent of preparatory steps in legislative development, reducing 'legislative inflation' for justice sector</li> <li>- Medium-and long-term perspective of all regulatory initiatives for justice sector, attested by connection between new regulatory proposals and underlying institutional or sector-wide strategies, acting as prerequisite policy umbrella for all new legislation</li> <li>- Strengthened analytical and research capabilities to contribute to practice guides on problematic aspects in interpreting certain pieces of legislation in justice sector, in order to strike a balance between regulation by statute and secondary legislation;</li> <li>- Impact assessment and gap analysis methodologies used regularly in all policy development and regulatory initiatives; Acknowledgement and awareness of regulatory and budgetary impact of all intended regulatory initiatives</li> <li>- Increased partnerships between MOJ/ other justice sector institutions and CSOs, universities (HEIs) in developing strategic documents for justice sector reform, legislative initiatives, research and analysis of the jurisprudence, practice guides on various legal issues, and joint oversight in implementation of all sector-related policies</li> <li>- Increased interoperability and developed IS coordination mechanisms</li> <li>- PPP agreements with external providers signed to ensure provision of information services</li> </ul>
				7. Periodic review of JSRS on basis of implementation reports,	CJR, MOJ / Decisions, reports	
				8. Sector expenditure plans (SEPs) with non-financial performance indicators, tied to institutional SDPs, sub-sector (probation, penitentiary etc.) and sector-wide strategies and action plans	MOJ / Decisions, reports	
				9. Annual Reports developed and disseminated	MOJ / Decisions, reports	
12.1.2	Development of local/institutional level of justice sector reform coordination mechanism			1. Standing Committees on Strategic Planning and Regulatory Development fully operational within each of independent justice sector institution (judiciary, prosecution, Bar, bailiffs, notaries)	CJ, SC, HSCs, HCJ, SGS/PG, NBC / Decisions, reports	
				2. Dedicated staff assigned at each justice governance body to deal with strategic planning and regulatory development issues	CJ, SGS/PG, NBC / Decisions, contracts, job descriptions, placement plans, trainings	
				3. Agreements for cooperative relationships between independent justice sector institutions and higher educational institutions (HEIs) foreseeing initiatives facilitating research into law and practice in order to develop new policy initiatives	NSJ, CJ, SGS/PG, NBC HEIs / MOUs, decisions, reports	
				4. Research and analysis papers produced regularly, identifying gaps between existing legislation and practice, and making recommendations for improvements	NSJ, CJ, SC, HSCs, SGS/PG, NBC HEIs / Publications, reports	
				5. Practice guides and training modules on strategic planning and regulatory development, as well as on substance of all major justice-sector related reform initiatives, developed, disseminated and updated regularly	NSJ, CJ, SGS/PG, NBC / Decisions, trainings, publications	
				6. Periodic review of institutional SDPs, action plans and other policies	NSJ, CJ, SGS/PG, NBC / Decisions, reports	
				7. Annual Reports of each of independent justice sector institution developed and disseminated	CJ, SGS/PG, NBC / Decisions, reports	



# **Evaluation Report**

on

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

By

**International Experts**

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