

Terms of reference for the final evaluation of the Pravo-Justice II project

Date : 07/10/24

# General information

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| Title of assignment | Final evaluation mission for the Pravo-Justice II project |
| Beneficiary / beneficiaries | Expertise France |
| Country | Ukraine |
| Estimated budget or total number of planned days | **34.000 EUR** |

# Background

*General context*

Ever since the early 1990s, the Ukrainian justice system has been characterised by insufficient independence of the judiciary from the executive and legislative branches, corruption, complex and ineffective court system, inconsistent court practice, inefficiency and severe lack of public trust.

Since the Revolution of Dignity in 2014, Ukraine undertook a large-scale legislative effort to adjust the judicial system to the principle of the rule of law and to strengthen the judicial independence in order that the judiciary plays an effective role in ensuring the democratic checks and balances between the different state powers. At the same time, those reforms have also been directed towards making the judiciary more efficient, transparent and above all, more trustworthy. The laws “On the restoration of the trust in the judiciary in Ukraine” and “On ensuring the right to a fair trial” were adopted in 2014 and 2015, followed by amendments to the Constitution and the new Law on the Judiciary and the Status of Judges. The reform efforts were largely guided and underpinned by the 2015-2020 Justice Sector Reform Strategy which was adopted in May 2015.

Despite these legislative efforts, significant challenges remain in the implementation of reforms. The current judicial system suffers from severe shortage of judges, low levels of public trust due to systemic corruption, low efficiency of the courts, poor management of resources and insufficient transparency and uniformity of court practice. The rule of law situation in the country is described by business community, civil society and independent experts as a major weakness impeding investment and economic growth. E-justice solutions are underdeveloped.

The controversial judiciary reform law was adopted in October 2019, which dissolved the High Qualification Commission of Judges (HQCJ), a body in charge of judicial selection and foresaw the involvement of international experts in the re-establishment of the new HQCJ and the vetting of the High Council of Justice (HCJ), the highest judicial governance body in charge of judicial appointments, dismissals and disciplinary procedure. In addition, the law envisaged the reselection and reduction by half of the Supreme Court. The latter aspect was criticised by the Venice Commission and other international partners as undermining judicial independence. In early March 2020, the Constitutional Court annulled large parts of the judicial reform law, including the problematic “relaunch“ of the Supreme Court.

In July 2021, the judicial reform effort resumed with the adoption of the laws on the re-establishment of the HQCJ and the vetting of the HCJ with a meaningful involvement of international experts. This reform was part of the IMF and EU Macro-Financial Assistance programmes and was actively promoted by the international community and the local civil society. In September 2021, the HQCJ Selection Commission involving international experts has been officially established, while the establishment of the special vetting body for the HCJ has been delayed by the Council of Judges. With the support of international donors (amongst which, the EU), vetting of HCJ members resumed over the course of 2023, and the HQCJ Selection Commission was re-established.

Ever since 2014, international donors, among which the EU, have been providing substantial support to the Ukrainian justice sector reforms.

*Global and EU Policy Framework*

Ukraine is a party to the main international conventions and bodies in the justice sector: member of the Council of Europe and party to the European Convention on Human Rights.

The rule of law is a central principle and key area of cooperation between the parties under the EU-Ukraine Association Agreement (Articles 3 and 14). Following the signature of the Association Agreement in 2014, the 2015 EU-Ukraine Association Agenda listed more precise short-term priorities, in particular the adoption of the Justice Reform Strategy including a detailed, comprehensive implementation plan, effective implementation and enforcement of the civil, criminal, economic and administrative codes and legislation on the Bar. Judicial reforms also figured prominently in the EU’s fourth and fifth Macro-Financial Assistance programmes which inter alia required to establish the High Anti-Corruption Court and to launch the reforms of the High Council of Justice and the High Qualification Commission of Judges.

## Project presentation

The action “Support to Justice-related Reforms in Ukraine II” (further - Pravo Justice Phase II) seek to assist Ukraine in the ongoing rule of law reforms by providing the necessary technical resources, equipment and capacity building for sustainable reform and effective implementation of the relevant sector strategic documents. The Multi-Donor Action Pravo Justice Phase II is implemented by Expertise France, through indirect management mode in cooperation, for a total budget of 10.270.480 EUR (with the EU contributing to the Action’s budget to the tune of 10.000.000 EUR, and the French Ministry of Foreign Affairs contributing an additional 270.480 EUR to the programme budget).

The initial Delegation Agreement between EUDEL and Expertise France (transformed into a Multi-Donor Agreement, from 08/23 onward) was subject to 2 amendments:

* 10/2022: Extension of the implementation period from 24 to 28 months (i.e. from June 1st, 2021, until September 30th, 2023) and inclusion of two new specific objectives, reorienting the programme’s focus as a result of the Russian full-scale invasion;
* 08/2023: Extension of the implementation period from 28 to 31 months (i.e. until December 31st, 2023), and inclusion of the co-financing from the French Ministry of Foreign Affairs.

The programme inter-alia support the following state and non-state entities:

* The *Verkhovna Rada Committee on Legal Policy* – it is a preparatory parliamentary body for the legislative initiatives in the justice sector, which also takes part in policy-making settings.
* The *Supreme Court* – it is the highest court in the country established in 2017 as part of the 2016 judicial reform. It has higher capacity, trust in and recognition within the legal community compared to other courts. Yet, its organisational structure remains complex and it still struggles with uniformity of case law and backlog of cases.
* The High Council of Justice (HCJ), High Qualification Commission of Judges (HQCJ) and the State Judicial Administration (SJA) – they are the main judicial governance bodies in the country dealing with judicial appointments, dismissals, discipline and administration of courts. There was a gradual decline in their effectiveness and efficiency since 2017. In autumn 2019, the HQCJ was dissolved and the process of judicial selection and qualifications assessment of sitting judges remains on hold, pending the re-establishment of the new HQCJ on the basis of the new judicial reform legislation adopted in July 2021. The process fully resumed from 2023 onward.
* The *Ministry of Justice* (MOJ) – it is the main policy-making and regulatory body in the wider justice sector, in particular engaged in the regulation and oversight of notaries, enforcement agents, and bankruptcy trustees. It is also managing the free legal aid, registration, penitentiary and probation systems. Despite some shortcomings in its structure and business processes, the MOJ has continued to be a proactive, responsive, constructive, and results-oriented partner.
* The *Notaries*, the *Private Enforcement Officers* (PEOs) and *Bankruptcy Trustees* (BTs) and their associations – are three private legal professions playing an important role in the functioning of the justice system. The gradual emancipation of PEOs, BTs and notaries from the MOJ has been a clear trend since at least 2017 – which the previous phase of the project contributed to.
* The *Prosecution Service*, including the *Office of the Prosecutor General* – it is in charge of maintaining public prosecution in criminal cases and developing a well-coordinated prosecutorial and criminal justice policy in the country. The prosecution service has seen a major reform following the September 2019 amendments to the Law on Public Prosecution.
* The civil society organisations – a diverse group of CSOs operate in the justice sector. Their range from specialised CSOs such as the Ukrainian Bar Association, legal aid providers and mediation organisations, to legal think tanks and advocacy-focused CSOs. CSO expertise and activism potential is still concentrated in a limited number of mostly Kyiv-based organisations. Pravo Justice II is supporting the Regional Justice Reform Councils in 6 regions of Ukraine, in order to nurture the development of regional civil society groups focused on justice sector reforms and evidence-based support to the central-level policy makers.

Support to the aforementioned actors seek to advance the following general and specific objectives:

* **The Overall Objective** is to support national authorities in strengthening the Rule of Law system in Ukraine and in aligning Ukrainian justice system with the best European and international practices.
* **Specific Objective 1:** Management of justice sector reforms improved in terms of strategic planning, coordination, monitoring and evaluation of reform implementation in the sector
* **Specific objective 2:** Independence, efficiency, quality, integrity and transparency of the judiciary, and access to a fair trial enhanced
* **Specific objective 3:** Enforcement of court decisions enhanced in civil and criminal cases
* **Specific objective 4:** Justice sector digitisation policy instruments and e-justice solutions implemented
* **Specific objective 5:** Accountability for international crimes and serious violations of human rights in Ukraine promoted
* **Specific objective 6:** Administration of justice during wartime secured and key beneficiaries’ swift recovery supported

In order to achieve the aforementioned objectives, the Pravo-Justice II has relied on a wide of interventions methods, deploying technical assistance (in the form of support to policy development, legislative development, monitoring and coordination of sectoral policies, and institutional capacity-building), trainings (ad hoc trainings, study-visits and embedded expertise), designing IT solutions, and procuring equipment and other needed material assistance. So as to support the wide array of beneficiaries listed above (encompassing civil servants, legal professions - such as judges, prosecutors, lawyers, notaries, bailiffs – and civil society organisations at large), the project has mobilized a team of 20 staffs (bringing together legal experts and supports staff in administrative, financial and procurement matters).

# OBJECTIVES AND RESULTS SOUGHT

## Assignment objectives

### Purpose and objectives of the evaluation

With regards to the stakes and complexity of the project, the substantial budget, the multi-actor/multi-donor dimension, and in accordance with the recommendations of the monitoring-evaluation plan adopted for the project, the project team wishes to carry out a final external evaluation.

The final evaluation of Pravo-Justice II will take place nine months after the closure of the program, and at a time when a subsequent phase of the program, Pravo-Justice III, has already begun. While it was initially envisaged to carry out the final evaluation of the program prior to the formulation of the subsequent phase (in order to inform the appraisal and adapt the implementation methodology if necessary), a marked deterioration in the security context in Ukraine in autumn-winter 2023 (further complicating the implementation of an evaluation mission in face-to-face format), coupled with uncertainties over the continuity of energy supplies over the same period (limiting the ability to deploy a remote evaluation mission, due to restricted internet access to project partners and beneficiaries) prevented this exercise from taking place over the period initially envisaged.

This final evaluation mission will serve a dual purpose: firstly, it is a milestone for the project to ensure its accountability to the donor (European Union and French Ministry of Foreign Affairs), the implementing agency (Expertise France), and the project's beneficiaries, notably the Ministry of Justice, the Office of the Attorney General, and the High Judicial Council. Furthermore, it aims to identify lessons learnt and best practices, so as to guide the implementation of the subsequent phase.

### Overall objectives and expectations of the assignment

The main objective of this evaluation is to provide the national partners (i.e. Ministry of Justice, Office of the Prosecutor General, High Council of Justice, Supreme Court, National Association of Private Enforcement Officers, National Association of Bankruptcy Trustees, Notary Chamber, other Justice Sector Institutions (JSIs), Private Legal Professions (PLPs) and their self-regulating bodies, Office of the President, Verkhovna Rada (Parliament), Government (Cabinet of Ministers) as well as other institutions involved in policy development and implementation in the justice sector, civil society organizations), the agency Expertise France (field and head office teams), the donors (European Union and French Ministry of Foreign Affairs) with:

* a comprehensive, independent assessment of the performance of Pravo-Justice II, paying particular attention to the results achieved, against the agreed objectives,
* lessons and recommendations, to improve, where relevant, current and future work.

The evaluator should provide evidence to explain the analyses, cause and effect linkages and attempt to identify any factors that are enhancing or hindering progress. Their work must foster accountability, decision-making, and learning.

## Scope of the evaluation

The scope of the evaluation will include the following:

**Period**: June 1st, 2021 – December 31st, 2023.

**Components**: All four components of the programme.

**Country**: Ukraine

**Beneficiaries**: Ministry of Justice, Office of the Prosecutor General, High Council of Justice, Supreme Court, National Association of Private Enforcement Officers, National Association of Bankruptcy Trustees, Notary Chamber, other Justice Sector Institutions (JSIs), Private Legal Professions (PLPs) and their self-regulating bodies, Office of the President, Verkhovna Rada (Parliament), Government (Cabinet of Ministers) as well as other institutions involved in policy development and implementation in the justice sector, civil society organizations

# Criteria and evaluation questions

The evaluation will use the criteria defined by the Organization for Economic Co-operation and Development (OECD) Development Assistance Committee (DAC) (relevance, effectiveness, efficiency, impact and viability) as well as an EU-specific criterion (EU added value).

The evaluation questions detailed below (developed in a participatory manner) ought to be reviewed by the evaluator during the evaluation start-up phase, in order to suggest a final version in the inception report approved by the steering committee.

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| Evaluation criteria | Specific evaluation questions |
| Relevance | * Were the project objectives relevant to the needs expressed by beneficiary spokespersons and with the identified problems? * To what extent has the project managed to remain relevant with regards to the evolution of the intervention context (Russian full scale invasion and EU enlargement process)? |
| Efficiency | * Is the way that the project is managed (human resources, division of roles and responsibilities, organization chart, interactions, financial decisions linked to strategic choices) optimal to achieve results? * Which of the assistance tools or their mix used by the programme (eg. strategic reform advocacy, technical advice, capacity building/trainings, provision of ICT equipment/software, grants) were the most effective and efficient in achieving the Action outputs and outcomes in each of the four components? Which of the tools were not effective and should be adjusted? How can the assistance toolbox be further improved? |
| Effectiveness | * To what extent have project objectives been achieved: for each output and outcome indicator (especially following the project’s reorientation, in October 2022)? * To what extent did the project contribute to the furthering of the judiciary reform? |
| Viability / sustainability | * How can the results/tools developed by Phase I be further expanded/replicated country-wide (eg. improved selection of managerial and non-managerial prosecutors, Model Courts tools, improvements in registration, enforcement and insolvency frameworks, capacity-building for judges, IT tools developed under Component 4)? * Will the support provided by the project have a lasting positive impact? How can such impact and sustainability be further reinforced in the subsequent phase of the project? How can the results/tools developed by Phase II be further expanded/disseminated? What are the key lessons learnt from Phase II which ought to be implemented in Phase III? |
| Impact | * What is the project's contribution to achieving the overall objective? * What are the positive and negative, primary and secondary long-term effects brought about by the project either directly or indirectly, and either expected or unexpected? |
| Coherence | * To what extent does the Action ensure coherence and complementarity with other international partners, including the EU Advisory Mission, USAID and their Justice4All programme, US INL-funded IDLO programme, Canadian and Norwegian justice sector programmes, Council of Europe, World Bank and their justice sector programmes ? * To what extent do the activities undertaken remain coherent with the development of cooperation policy pursued by the EU in relation with Ukraine? |
| EU added value | * The extent to which the Intervention brings additional benefits to what would have resulted from Member States' interventions only in the partner country. It directly stems from the principle of subsidiarity defined in the Article 5 of the Treaty on European Union (<https://www.europarl.europa.eu/factsheets/en/sheet/7/the-principle-of-subsidiarity> ). |

The consultant is expected to provide a value judgment on each of the evaluation questions raised by going through the criteria. As part of this analysis, the consultant will ensure that the judgments made for each of the six evaluation criteria make it possible to cover all of the key stages of the project cycle.

The consultant should also verify whether the cross-cutting issue of *good governance* was taken into account when documents were identified / developed and to what degree they were present in the implementation and supervision of the work.

# Assignment description

## Procedure [optional if the methodology is described in the previous section]

The consultant(s) is asked to closely link with Expertise France (i.e. the Project Team Leader, the Project Manager, and Expertise France in-house Monitoring and Evaluation Coordinator) when setting out their reasoning, and regularly throughout the assignment, from the point of developing the scoping outline up to the meeting to present the draft report. In particular, observations and initial areas of analysis must be shared at the end of the assignment, before the draft report is written.

### Inception phase

During this preparatory phase, the consultant(s) must:

* Gather and consult all the information and documents relating to the project that need to be evaluated (project outline, implementation and monitoring documents) and that contribute to understanding the project context. Documents to consult will be made available by Expertise France through its cloud system (Wimi).
* Identify all project stakeholders.
* Reconstruct the project intervention logic by reviewing the project's logical framework to: (i) clarify the intervention objectives and translate them into a hierarchy of expected changes and (ii) help to assess the internal coherence of the intervention and III) identify the initial hypotheses (or assumptions, which are often implicit) that guided the project being developed, and retrospectively assess their legitimacy.
* Develop the framework of the evaluation in more depth based on the terms of reference, the documents collected and the reconstructed intervention logic. Specifically, this will involve: (i) outlining the key questions for the evaluation to focus on; (ii) outlining the stages of reasoning that will make it possible to answer the questions (judgment criteria); (iii) specifying the indicators to be used to answer the questions and the corresponding sources of information (documentation, interviews, focus groups, surveys, etc.).

Based on this methodological analysis, the consultant will suggest an overarching evaluation framework document (inception report) once they have begun the assignment. The evaluation framework detailed in the inception report will be discussed with the Project Manager, the Project’s Team Leader, Expertise France Monitoring and Evaluation Coordinator and the consultant(s) to guide discussions about how they plan to structure the evaluation process and to check how feasible it is. The inception report (see outline in Appendix 1) should notably include:

* A detailed description of the evaluation's objectives and challenges
* A detailed description of the scope of the evaluation: temporal, geographical, actions making up the project being evaluated
* A stakeholder analysis
* A review of the project's theory of change
* A reformulation of the evaluation questions ...
* ... associated with success criteria, indices and indicators, and the collection tools that the evaluation team plans to deploy to provide answers, in the form of an evaluation matrix.
* A detailed description of the chosen methodological approach and the collection tools to be used
* An updated timetable for carrying out the evaluation mission
* Appendices: an evaluation matrix (see outline in Appendix 2), a first version of the data collection protocols (interview guides, observation grid, workshop facilitation guide, etc.), including sampling methods.

### Collection phase

Primary data collection is planned between November 12th and December 11th 2024. Due to expected highly degraded security conditions throughout Ukraine over the course of this period (impacting notably access to electricity and heating), the data collection process is expected to be carried out remotely. The collection process ought to rely on the following methods will include:

* Document review
* Interviews
* Surveys
* Focus Group Discussions

**Reporting phase**

An interim report

At the end of the data collection phase, the consultant(s) will produce an interim report summarizing the data collected for each of the data collection tools deployed by the evaluation team. This document, which may take the lighter form of a slide show, should enable the initial data collected to be shared, and ensure that the findings and conclusions of the evaluation can be traced back to the data collected. It serves as the basis for an interim meeting between the selected evaluation team and Expertise France. The main purpose of this meeting is to: i) share a common level of knowledge of the elements collected, ii) to collectively outline the main lines of the cross-analysis, and to iii) identify any gaps in the data collected, requiring additional remote data collection.

A provisional final report

A provisional final report, not exceeding 40 pages excluding appendices (cf. proposed outline in appendix 4 and quality control grid in appendix 3), will be produced on completion of the additional analysis and quality control work carried out by the consultant(s). This provisional final report serves as the basis for a meeting between the selected evaluation team and Expertise France. The main purpose of this meeting is to i) share and discuss the provisional conclusions relating to the evaluation questions, ii) ensure that these conclusions are sufficiently substantiated, and to identify any gaps in the analysis that would require further analysis, iii) adjust their formulation in order to collectively produce definitive conclusions, iv) co-construct the recommendations resulting from the assessment.

Final report and summary

A final report, incorporating the observations of Expertise France and recommendations identified as well as a 2-page summary, will then be produced by the consultant(s).

**Feedback and dissemination phase**

Once the report has been validated, the consultant(s) will conduct a feedback workshop to present the main findings of the evaluation and disseminate the lessons identified and documented during the assessment. This workshop will be aimed primarily at an external audience including similar projects and partners. It will be organized remotely.

## Expected deliverables

The deliverables must be submitted by email in Word format to the recipients who will be indicated to the evaluation team during the start-up phase. They must be written in English.

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| Deliverables | # pages max. | Delivery date |
| 1. Inception report | 15 | T0 + 15 days |
| 1. Interim report | 20 | T0 + 45 days |
| 1. Final report (draft then final) including a summary of approx. 4 pages | 40 | T0 + 75 days |
| Restitution workshop | 5 | Two weeks after submission of the final report |

# Structure of work

## Project evaluation management and governance

The evaluation is managed by Expertise France’s Project Team Leader, Project Manager and Monitoring and Evaluation Coordinator.

Key roles of this steering group are:

* To facilitate contact between the evaluation team, EU services and external stakeholders.
* Ensure that the evaluation team has access to all sources of information and documentation related to the work being evaluated and that they consult them.
* Identify and set out the evaluation questions.
* Discuss and comment on reports produced by the evaluation team. Feedback from each member of the reference group is collated by the Project Team Leader and then forwarded to the evaluation team.
* To support the feedback process from results, conclusions, recommendations and lessons learned from the evaluation.
* To ensure effective follow-up of the action plan once the evaluation is completed.

## Coordination arrangements

The consultant must work closely with Expertise France to put together their reasoning, through regular contact throughout the assignment, from the scoping outline to the meeting to present the draft report. In particular, observations and initial areas of analysis must be shared at the end of the assignment, before the draft report is written.

## Schedule

The total assignment is estimated at 38 person days, between as detailed below for information:

|  |  |  |
| --- | --- | --- |
| Activities | Location | Period |
| 1. Inception phase | Remote | October 29th 2024  November 12th 2024 |
| 1. Data collection phase | Remote | November 12th 2024  December 11th 2024 |
| 1. Reporting phase | Remote | December 11th 2024  (Where possible) December 31th 2024 |
| 1. Feedback and dissemination phase | Remote |  |

The selected evaluation team must include a detailed work-plan in its bid, including the days worked per activity and per member of the evaluation team, as well as the indicative dates. This workplan will be discussed and approved during the inception meeting.

# Profile and team composition

## Desired profile(s)

### Expected expertise

* 1. **Expected number of experts for this assignment:** 2
  2. Profile of appointed experts to undertake the contract:

Qualifications and experience

* Master degree and/or 3rd cycle degree in law;
* At least 10 years of experience in the justice sector, including at least of 3 years of experience working with public institutions;
* At least 3 years of experience managing/implementing development cooperation projects/technical assistances;
* At least 3 years of experience in relation to monitoring and evaluation, especially with regards to the implementation of external evaluations;
* Prior experience in either policy-making or policy evaluation would be strong asset;
* Good knowledge of the intervention context (Eastern Neighborhood and/or EU enlargement process) would be an asset;

Technical skills:

* Excellent command of the EU project-cycle and general M&E tools (theory of change, logical framework, etc.);
* Excellent command of MS Pack Office;
* Excellent communication and organizational skills

Language skills:

* Excellent command of written and spoken English (good writing, synthesis and analysis skills, etc.).
* Excellent command of written and spoken Ukrainian. In the absence of Ukrainian language skills amongst the suggested team of evaluators, interpretation/translation resources should be included in the financial offer.

## Content of tenders

Tenders should include:

* Technical outline: demonstrate an understanding of and comment on the terms of reference, methodology, composition of the evaluation team, CVs and similar experience, and include the components mentioned in the terms of reference (detailed workplan, distribution of roles and responsibilities), as well as a draft evaluation matrix, to be reviewed during the inception phase;
* Financial outline: overall budget for the evaluation, including the following: daily cost of each participant; breakdown of time spent on each intervention by participant and by phase; additional costs (services and additional documents); translation costs; and proposed terms of payment.

## Tender assessment methods (optional)

Expertise France will select the bid with the best score based on the following table:

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| Criteria | Maximum score |
| Technical outline score, including: |  |
| * 1. Methodology score | 40 |
| Demonstrated understanding of the ToR and the objectives of the services to be provided | 10 |
| Overall methodological approach, quality control approach, relevance of the proposed tools and analysis of the difficulties and challenges encountered | 20 |
| Structure of tasks and schedule | 10 |
| * 1. Evaluation team score | 40 |
| Financial outline score | **20** |
| Total score | 100 |