

## 1. IDENTIFICATION

Title/Number	Reform of the Administrative Legal Framework and Civil Service in Ukraine CRIS: ENPI/2011/022-826		
Total cost	EU contribution: EUR 70 million		
Aid method / Method of implementation	Sector Policy Support Programme: - Sector budget support (EUR 63 million, centralised management); - Project mode for complementary measures (technical assistance – EUR 7 million, centralised management).		
DAC-code	15110	Sector	Public Sector Policy and Administrative Management

## 2. Rationale and country context

### 2.1. Country context and rationale for SPS

#### 2.1.1. *Economic and social situation and poverty analysis*

From 2000 to 2007, Ukraine's economic performance was strong and poverty decreased substantially but the world crisis hit Ukraine hard in late 2008. After experiencing one of the sharpest downturns in the region in 2009, real GDP growth in 2010 was 4.2 percent y-o-y, helped by export-oriented industries, particularly steel. More recently, domestic demand has gained momentum on the back of improving consumer and business confidence and robust wage growth<sup>2</sup>. According to the IMF assessment, growth is expected to increase to 4.5 percent in 2011 helped by stronger domestic consumption and investment (including for the Euro 2012 football tournament). The authorities' major concern in 2011 is to keep inflation below the 10% threshold, which becomes increasingly unlikely as the effects of growing global food and oil prices are becoming more and more pronounced. In early June 2011, National Bank of Ukraine (NBU) indicated that it is ready to tighten the monetary policy to curb inflation but warned that economic growth would slow as a result.

While central bank reserves are at a historical high and the government is boasting a rather strong liquidity position, the continuation of the ongoing Stand-by Agreement with the IMF requires additional reform by the government. While the law on the pension reform passed the first reading in Parliament and may be adopted in 2011, the gas price increase, the second key conditionality of the IMF's programme yet to be fulfilled, is less certain. In June 2011 the IMF stressed again the importance of strong policies and reforms in Ukraine to achieve the programme objectives; reduce vulnerabilities and lay the foundation for sustainable growth. Both parties agreed to continue their close cooperation in the coming months.

#### 2.1.2. *National development policy*

The deepening of relations between EU and Ukraine in the context of the Eastern Partnership through an Association Agreement with a Deep and Comprehensive Free Trade Area (AA/DCFTA) as an integral part involves unprecedented regulatory approximation. To prepare for and facilitate the entry into force of the AA/DCFTA, EU and Ukraine have jointly agreed on an implementation tool, the Association Agenda, which covers key reforms in all areas of the future agreement. The parties agree on priority reforms on an annual basis.

<sup>2</sup> <http://www.imf.org/external/pubs/ft/scr/2011/cr1152.pdf>

The national development framework is broadly defined by the Economic Reform Programme for 2010-2014<sup>3</sup> (ERP), adopted on 2 June 2010 at the meeting of the President's Committee for Economic Reform. The ERP covers important policy goals related to sustainable economic development, improving social services, improving the business climate, attracting more investment and modernising the infrastructure. The ERP is linked to the main priorities of the EU-Ukraine Association Agenda, including the measures related to the establishment of a Deep and Comprehensive Free Trade Area (DCFTA), visa liberalisation, cooperation in energy and other sectors.

By decision No. 1724 of 23 June 2010, the Government of Ukraine committed itself to implement the ERP. Ownership of the ERP by the Government is supposed to be ensured through allotting personal responsibility of Ministers for relevant reforms areas in line with the presidential decree No. 1154 of 21 December 2010.

## **2.2. Sector context: policies and challenges**

### **2.2.1. Sector Policy**

There is a clear understanding in Ukraine that there is a link between the performance of the civil service and the public sector as a whole and economic development. Public Administration Reform (PAR) has therefore been launched mainly with a view to improving the business environment and furthering economic reforms.

Ukraine has recognised public administration reform (PAR) as a pre-condition for the successful implementation of ongoing and planned economic reforms as well as a way to improve the public administration's performance, the quality of public service delivery to citizens and business, as well as the general integrity of the public sector.

Several PAR initiatives have been launched and are being implemented since 2010:

#### *2.2.1.1. The Economic Reform Programme (ERP)*

The announced overall objective of the ERP is to boost economic recovery and to modernise the country's economy. While the draft ERP covers five main reform areas, two have a specific impact on the organisation of public administration: a) improving business climate by reducing government intervention into the economy and by alleviating administrative burden for its development; and b) raising public administration efficiency by reforming the civil service and the system of executive power.

However, the description of measures aimed at raising the efficiency of Ukraine's public administration drafted in February 2010 was not included in the final text of the ERP published in June 2010. The only reference to this priority is a footnote announcing that the block of reforms towards modernization of the public administration system will be presented in autumn 2010.

On 13 October 2010 a restructuring of the central administration was launched by presidential decree, which tasks the President's Committee Economic Reform and the Government to prepare proposals for the improvement of the central executive system and to draft amendments to the current legislation. These proposals were introduced by presidential decree on 9 December 2010 (see next section).

#### *2.2.1.2. Re-organisation of the central administration launched by the President's decree No. 1085 of 9 December 2010*

The decree established a new typology of executive bodies and a new approach to redistribution of functions and responsibilities. Six types of central executive agencies were defined: ministries (in charge of policy making), services (in charge of policy implementation and service delivery), inspections (in charge of control and auditing), agencies (in charge of programme implementation),

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<sup>3</sup> Unofficial translation in English is available at [http://www.usubc.org/site/files/Ukraine\\_Program\\_of\\_Economic\\_Reforms\\_2010-2014.pdf](http://www.usubc.org/site/files/Ukraine_Program_of_Economic_Reforms_2010-2014.pdf)

independent regulators and agencies with special status. The number of central executive agencies was reduced from 112 to 63: 16 ministries, 28 services, 12 agencies and 7 inspections.

In the course of the re-organisation (liquidation) of central executive bodies, the Government is expected to reduce the number of civil servants by 30% in central administration and by 50% in the secretariat of the Government of Ukraine. This process is on-going, although no clear timetable or criteria of dismissal have been communicated so far.

#### *2.2.1.3. Adoption of a new legal framework for central executive bodies and revision of the law on the Cabinet of Ministers*

In the follow-up to the restructuring process launched in December 2010, a new law on central executive bodies (No. 3166) and amendments to the law No. 2591 on the Cabinet of Ministers of 7 October 2010 (No. 3165) were adopted by Parliament on 17 March 2011.

The above-mentioned laws confirm a new institutional set-up and redistribution of functions between the main political actors: Ministers, the Cabinet of Ministers and the President, including his Administration.

However, according to a number of experts, the new institutional framework leads to an excessive control by the President and his Administration over the Government. The prerogative to appoint all deputy ministers, heads of agencies and senior and middle level public officials could entail a weakening of the system of checks and balances, decrease transparency in decision making and indicate a return to the previous "Ukaz (presidential decree) system". It does not provide adequately for a clear differentiation between political appointees and professional civil servants, as required in a number of recommendations (e.g. OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan Monitoring), and is incompatible with the principle of a merit-based civil service.

#### *2.2.1.4 National Action Plan for the ERP's implementation in 2011*

The National Action Plan (NAP) for the ERP implementation in 2011 was adopted by the President in April 2011 by decree No 504. It covers all reform priorities targeted by the ERP and includes action plans on the reform of civil service (section 20 of the NAP), administrative legal framework, including public service delivery (section 9 of the NAP) and executive bodies (section 19 of the NAP). The following priority measures are foreseen to be implemented in 2011:

##### *Administrative legal framework:*

- development and adoption of the law on administrative services (establishing a typology and modality of the provision of services to citizens) and the Code of administrative procedures (laying down basic principles of administrative procedures);
- development and adoption of the secondary legislation aimed at simplification of the administrative procedures;

##### *Civil service:*

- adoption of a new law on civil service;
- adoption of a new regulation on the Main Department of the Civil Service (MDCS);
- development and adoption of the secondary legislation on civil service management;
- reform of the National Academy of Public Administration;
- reform of the civil service training system.

The above-mentioned measures of the National Action Plan for the ERP's implementation in 2011 represent orientations for an administrative and civil service reform. However, it should be mentioned that they focus on adoption of the legislation rather than on its effective implementation and make no reference to financial or other resources needed.

Therefore, after the adoption of the laws necessary to advance the above-mentioned reforms, it would be crucial to elaborate and put in operation comprehensive implementation plans for each reform, including activities, resources, timeline, output indicators and entity in charge. The disbursement of the variable tranches of this budget support will be linked to the implementation of these plans and the achievement of measurable results.

#### *2.2.1.5. New law on civil service*

A new law on civil service has been adopted in first reading in April 2011 and there is an intensive policy discussion in Parliament with involvement of political decision makers (Presidential Administration, Ministry of Justice, Main Department of the Civil Service) concerning its final wording. While the draft law contains some improvements, there are serious deficiencies remaining, related, *inter alia*, to the division of political and administrative posts.

#### *2.2.1.6. Conclusion on sector policy*

Ukraine has no formal strategic document on Public Administration Reform. In addition, the annual character of the National Action Plan for the ERP implementation does not provide a medium-term perspective, which would be needed in order to ensure continuity, coherence and sustainability, and also for budgeting in order to finance the foreseen activities. Moreover, the approach so far has been to implement reforms *ad hoc* and top-down, without an inclusive public debate involving stakeholders or a proper communication strategy.

However, given that the performance of public administration is a crucial element of Ukraine's economic and social development and a pre-condition for deeper cooperation with the EU, it would be advisable to take advantage of the current dynamics in this area and support the on-going efforts of the Government to improve efficiency of public administration and to ensure that best practices are used.

In the absence of a formal sector strategy, the EU support will focus on clearly defined components in areas where some preparatory work has been conducted, including by SIGMA and EU-funded projects and a reform commitment can therefore be assumed. Benchmarks for reform are therefore being formulated in the following 3 fields: administrative legal framework, administrative justice, and civil service reform. These 3 fields represent the sector for this intervention.

The implementation of this SPSP in line with the proposed approach will allow further synergy and strong complementarity with the Comprehensive Institution Building (CIB) programme under the Eastern Partnership. While the CIB programme focuses on strengthening capacity of the key institutions related to the future Association Agreement between the EU and Ukraine, the SPSP will support improvements of the key elements of Ukraine's governance system, which can have a sustainable impact on the overall performance of the public administration and thus improve Ukraine's capacity to implement the Association Agenda. Therefore, combining these two programmes could have a catalytic effect, promoting reform efforts in other related areas such as fight against corruption, judiciary reform, as well as improvement of the economic competitiveness and the investment climate.

This SPSP together with the CIB programme could improve the framework for EU assistance to Ukraine with an aim to preparing ground and ensuring further effective implementation of the future Association Agreement between the EU and Ukraine.

### **2.2.2. Sector Context and MTEF**

There is neither an overall Medium Term Fiscal Framework (MTFF) nor a Medium Term Expenditure Framework (MTEF) for the whole public administration. The effective allocation of funds is subject to specific parameters of the annual state budget.

The absence of a formal sector strategy makes it difficult to estimate financial and other resources needed for future reforms in the target areas mentioned above. The ERP implementation plans have no measurable impact indicators to guide the implementation process. An *ex ante* legal and regulatory impact assessment of the laws drafted and/or endorsed is missing, which will favour *ad hoc* allocations which are difficult to track, monitor and audit. For instance, the impact of the dismissal of civil servants on social budgets such as pension and unemployment funds has not been calculated yet. Upon request by the Government the European Commission is ready to offer its support to address these weaknesses through technical assistance.

Following the adoption of a new Budget Code and Tax Code, the Government has stated its commitment to gradually progress towards a MTFF/MTEF, which will be encouraged and monitored under this and ongoing SPSP and within the overall EU-Ukraine cooperation. The on-going 2011 PEFA<sup>4</sup> exercise by the World Bank and the Commission has already confirmed for the first time the introduction of a medium term dimension into budget planning for the 2012 Budget.

### ***2.2.3. Coordination with beneficiary country and other donors***

At political level, reforms of the administration are decided on by a working group "Legal and Institutional Changes for Reforms" within the President's Committee for Economic Reforms (CER). This group is led by the Minister of Justice and includes two sub-groups: civil service reform (Deputy Head of the President's Administration and the Main Department of the Civil Service/MDCS) and executive power reform (Ministry of Justice/MoJ). The work related to the administrative legal framework is carried out by a working group "Deregulation and entrepreneurship development" led by the First Vice Prime Minister – Minister of Economic Development and Trade with support of the Minister of Justice and other relevant public bodies.

Furthermore, an Economic Reforms Coordination Centre has been established within the CER. It has a special mandate from the President of Ukraine for coordinating PAR implementation.

On a technical level, the process is mainly being promoted by the MoJ, the MDCS, the Ministry of Economic Development and Trade and the Presidential Administration, High Administrative Court as well as other relevant institutions in the areas targeted by this SPSP.

However, recent experience shows that this complex coordination structure – where so far no clear mandates were assigned to all the individual bodies involved - leads to confusion of roles and increases the policy functions of the Presidential Administration to the detriment of the line ministries. This can potentially lead to an opaque policy making with unpredictable outputs.

The coordination with donors is supposed to be ensured by a specially created donor-government sub-group for PAR led by the MDCS. However, this sub-group is still not functioning as no meeting has been convened by the MDCS since the launching meeting of the sub-group held in September 2010.

### ***2.2.4. Assessment of institutional capacity***

The PAR will require strong political support. The involvement of the Presidential Administration, the Cabinet of Ministers and the Parliament (including relevant committees), the coordination between these individual institutions and the assignment and monitoring of clear mandates to each of them will be of crucial importance for its successful implementation.

A number of factors that limit the institutional capacity of Ukrainian public bodies should be pointed out:

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<sup>4</sup> Public Expenditure and Financial Accountability

- A highly centralised policy making system that is exposed to weak coordination;
- A prevailing conviction that with the adoption of the legislation, the implementation process starts automatically. Therefore, there is limited practice of detailed implementation plans, including budget forecast for implementation of the legislation, drafting and approval of the secondary legislation, internal and external communication, obligatory training on implementation of new legislation;
- A politicised civil service, which is not guided by an integrity framework and a code of ethics. Pay and motivation are generally low, while staff turnover is high, which makes it difficult to create and maintain teams that could work in a sustainable manner in designing and implementing reforms over longer periods of time.

Finally, the current Ukrainian approach to the initiation of a PAR lacks transparency and inclusiveness. The main political actors need to be convinced that the effective incorporation of European principles of governance envisage involvement of stakeholders outside the inner circles of decision- and lawmaking such as independent experts, NGOs, business associations and that modern policy making tools are both efficient and compliant with a participatory democracy.

### ***2.2.5. Performance Monitoring***

There is no formal sector-wide performance monitoring system in place to date.

An output-based monitoring of the reform of civil service and legal administrative framework is only partly possible based on the targets established by the annual National Action Plan (NAP) for the ERP' implementation. The NAP does not include any indicators and sources of verification in terms of implementation and impact of the legal acts that are planned to be adopted in 2011.

It is therefore proposed to design with SIGMA programme support a performance monitoring system connected to three areas targeted by this SPSP (the administrative legal framework, administrative justice and the civil service), as well as to the horizontal dimensions of the public administration (integrity, public finance, policy making, etc).

### ***2.2.6. Macroeconomic framework***

The global economic crisis seriously affected Ukraine in late 2008 and 2009. The real GDP declined by 15.1% in 2009 and recovered by timid 4.2% y-o-y in 2010, with the general government public deficit reaching 9% of GDP in 2009 and 5.9% in 2010 (not including bank recapitalisation costs). Public debt rose rapidly, to 40% GDP in 2010, with both external and domestic debt surging.

To cope with the consequences of the crisis, the Government has implemented a number of measures envisaged by the ERP, which are also supported by the IMF stand-by agreement. After a 14.8 percent GDP decline in 2009, the economy grew 4.2 percent in 2010, and posted 5.2 percent grow in the first quarter of 2011. The current account deficit widened in 2011, but remains financeable. The fiscal stance remains fragile and could be further undermined by delays in pension and utility tariff reforms and new spending initiatives<sup>5</sup>.

The IMF and the Government of Ukraine continue their close cooperation in order to reach the objectives of their programme.

### ***2.2.7. Public Financial Management:***

The legal and institutional responsibilities in the field of public finance management (PFM) in Ukraine are, in general, clearly defined and assigned. In addition to key legislation, the government has approved a resolution on the PFM modernisation strategy in October 2007, which is, however, of a general nature, and has not yet been implemented. A more practical approach to the elaboration of

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<sup>5</sup> World Bank economic update June 21, 2011

PFM sector development was introduced as a chapter in the recently approved Economic Reform Programme, which however requires further refining and precision.

Overall, budgeting performs relatively well in Ukraine, with an orderly budget process and the fundamental legislative framework largely in place. The most significant weakness in this area is the continued absence of a publicly verifiable multi-year perspective in fiscal planning. This absence poses a significant risk to overall fiscal discipline as well as to a more strategic use of limited resources and to improved efficiency. While the budget execution system does assure some degree of predictability in the flow of funds, uneven performances and fragmentation of responsibilities negatively impact the quality and transparency of budget execution. No system of internal audit is yet in place.

However, with the adoption in July 2010 of a new Budget Code (which came into effect on 1 January 2011) some improvements compared to the existing framework are made: the Code introduces some elements conducive to the setup of a sound PFM framework, in particular a clear distinction between public control and public audit. It is expected that a comprehensive multi-year budgeting system would include a medium-term fiscal framework (MTFF) in the draft Budget Policy Guidelines, providing medium-term aggregate fiscal objectives, to which the MTEF would be a complement. A major drawback is that the Code still does not improve transparency and accountability in the public finance sector.

The system of public procurement in Ukraine is going through systematic revisions aimed at achieving better transparency, efficiency, competitiveness and, last but not least, compliancy with the EU directives. The public procurement law adopted in June 2010 was assessed by the international community as a firm step towards alignment of the Ukrainian legislation with international standards of public procurement and, particularly, with the EU Directive 2004/18. However, Parliament, in the first half of 2011, has adopted some amendments to the law, which are not in line with international best practices. On 14 June 2011 the President vetoed the proposed amendments and sent it back to Parliament reiterating the necessity to adjust it to the EU Directive 18, 2004 and therefore, to keep the amendments in line with the recommendations provided by the EU and World Bank. According to the established procedure, the Parliament must accept or overrule the Presidential veto within a month.

The final Law on Public Procurement has been adopted by the RADA and signed by the President. The law 3681 (former 7532) constitutes an important step towards approximation of the Ukraine public procurement law with the EU Directives, which is foreseen as an obligation in the currently negotiated Deep and Comprehensive Free Trade Area. Nonetheless, further steps to ensure full approximation of the public procurement law with the EU Directives shall have to be taken by the Government. Further steps in the development of a transparent and efficient public procurement system in Ukraine will include the definition of contracting authorities, the preparation of a medium-term public procurement strategy, and the rationalisation of the utilities' procurement.

### **2.3. Eligibility for budget support**

An analysis of the three eligibility criteria for sector budget support is presented below.

- (1) Although there is no formal sector strategy, there is a commitment at the highest level as well as some draft legislation and orientations contained in the National Action Plan for the Economic Reform Programme (ERP) implementation in 2011.

It can be considered that the administrative legal framework and civil service are the centrepiece of any Public Administration Reform. It is therefore proposed to consider the relevant measures of the National Action Plan for the ERP implementation in 2011 and the two draft laws in these fields as constitutive of a sector strategy, and to include the review of these laws in the light of European principles, as advised by SIGMA, and their adoption into the general disbursement conditions. This would mean that an assessment of the laws

demonstrating that they are generally in line with European principles would be a precondition for any disbursement.

- (2) The macroeconomic stability criterion is met (for detailed assessment see section 2.1.1 and 2.2). The progress in cooperation with the IMF should be subject to continuous monitoring from the EU side in order to allow necessary corrective measures.
- (3) The assessment in section 2.2 also confirms that the eligibility criterion related to Public Financial management is met, with basic elements being in place. However, the PFM system still requires significant improvement, particularly, needed for effective implementation of the new Budget Code and Tax Code, and progress will be needed over the medium-term, in particular on the preparation of a credible MTEF/MTEF. Furthermore, as mentioned in the section 2.2(8) Ukraine's public procurement system requires further alignment with the European principles, as well as development and implementation of the medium-term public procurement strategy. This also requires a close monitoring of proposed amendments to the relevant legislation. The 2011 PEFA exercise with the World Bank will support the Government in defining the reforms still needed to improve Ukraine's PFM system further.

#### **2.4. Lessons learnt**

A multi-project Result Oriented Monitoring (ROM) in the field of public sector reform in Ukraine has been prepared in December 2010 to draw summary conclusions and recommendations on the project's sector logic and strategy, in line with the lessons learned from the past.

The analysis of support areas (administrative law, civil service, anti-corruption) covered by the ROM has shown their high relevance, solid ownership throughout the projects on behalf of direct stakeholders and beneficiaries and a positive assessment of outputs produced in quantity and quality, although the assistance in the sector was strongly affected by the volatile political situation during the period under review.

#### **2.5. Complementary actions**

The main donors involved in the sector are the European Commission, Canada, Denmark and USAID (main focus on regional governance, legal reforms, and anti-corruption). Current EU-funded projects include a Twinning with the National Academy of Public Administration and a Twinning with the High Administrative Court. A Twinning with the MDCS is envisaged to start in 2012.

#### **2.6. Donor coordination**

The Government has recently restructured its donor-coordination system and created a special sub-group for PAR led by the MDCS. However, this sub-group is still not functioning as no meeting has been convened by the MDCS since September 2010. Therefore, the system remains weak since government activities and donor interventions are not aligned both content- and time-wise. In this context, coordination among the donors themselves helps to compensate for a lacking capacity/commitment on the side of the government.

### **3. Description**

#### **3.1. Objectives**

The general purpose of the SPSP, which builds on the ERP and the 2011 National Action Plan for its implementation, and the EU-Ukraine Association Agenda is to support Public Administration Reform with a view to rendering government more accountable, effective and efficient, and thus allowing for an improved sector policy planning and implementation, which will enhance Ukraine's capacity to successfully implement the substantive reform agenda linked to the association process, including the AA/DCFTA.

The main objective of this SPSP is to create the necessary conditions for general, fair and effective administrative procedures to be implemented by public service bodies using qualified and professional



civil servants that are recruited and managed exclusively according to their merit, perform their jobs following principles such as legality, impartiality and integrity and in which decisions can be challenged before independent courts that will solve disputes fairly and timely.

The specific objectives of the SPSP are as follows (3 components):

- To contribute to the implementation of a coherent administrative legal framework, including a law on general administrative procedures (or Code of Administrative Procedures) and other relevant legislation in line with acceptable European standards and good practices for improving the quality of public services delivery;
- To support the implementation of a law on civil service in line with European standards and good practices, conducive to creating a professional, politically neutral and merit-based civil service system;
- To improve the overall quality and effectiveness of the administrative justice system, including administrative courts, following European and world good practices.

### **3.2. Expected results and main activities**

The proposed SPSP will therefore encompass the following results:

#### *3.2.1 Budget support:*

##### **Component 1 "Reform of administrative legal framework":**

- improved administrative legal framework (Code of administrative procedures and relevant internal administrative procedures) fully implemented and applied by public authorities;
- Law on Administrative Disputes reviewed and adapted following the adoption of the Code of Administrative Procedures;
- capacity of the public authorities to enforce the new administrative legal framework, including through training, is improved;
- public services for citizens and business delivered in a more transparent and efficient manner, including regular independent monitoring of service quality;
- general access to and provision of information on the administrative procedures related to public service delivery is improved.

##### **Component 2 "Reform of civil service":**

- relevant secondary legislation to the law on civil service and internal administrative procedures is adopted;
- implementation plan for the Law on civil service is adopted and its follow-up is ensured;
- capacity of the public authorities to enforce the law on civil service is improved;
- corruption is significantly reduced and the integrity framework for the public service is enhanced, including through the adoption of the law on Integrity of the civil service, a law on conflict of interest and the implementation of appropriate measures to fulfil international conventions, recommendations (e.g. OECD, ACN);
- efficient human resources management policy, including integrated HRM information systems, developed and implemented;

- co-operation with civil society in addressing various matters of PAR and civil service reform to promote good governance enhanced.

### **Component 3 "Strengthening capacity of the administrative justice":**

- capacity and effectiveness of the administrative justice system is enhanced, including the review of public complaints mechanisms and modernisation of the relevant infrastructure;
- the legal framework related to the functioning of the administrative justice is improved according to European principles;
- general access to and provision of information on administrative justice, including on the relevant administrative procedures, is ensured.
- the capacity of the administrative court system, including the High Administrative Court, to apply the administrative legislation in a timely, fair and independent manner is ensured;
- a monitoring system to measure process and results of the reform processes (e.g. regular surveys on public trust of public institutions and other relevant tools) is developed, applied and disseminated in line ministries.

#### *3.2.2 Complementary measures (technical assistance):*

The technical assistance component will focus on improving the capacity of relevant Ukrainian authorities to steer and implement the above-mentioned reform areas targeted by this SPSP. The technical assistance will support and facilitate the Ukrainian authorities in ensuring the effective and transparent implementation of this SPSP by ensuring high quality and coherence of the implementation measures and maintaining an efficient programming, management, control and evaluation system for the three reforms areas targeted by the SPSP.

The exact components of the technical assistance are to be defined once the above mentioned draft laws have been passed. They are likely to include several Twinning measures with key institutions, including the Ministry of Justice.

### **3.3. Risks and assumptions**

The key risks are the following:

- lack of consensus among main stakeholders resulting in constitutional uncertainty and unclear (or insufficient) division of powers between the branches of government;
- lack of political consensus between the legislative and executive branches after the parliamentary elections in 2012;
- Parliament does not adopt the legislation defined as opening benchmarks or adopted legislation does not meet minimum European requirements, which would lead to non-fulfilment of the general conditions;
- Government and public authorities do not adopt internal administrative procedures in line with the Code of administrative procedures (only partial implementation of legislation);
- persistent corruption in the civil service and in the administrative courts system hampers the implementation of reforms areas targeted by this SPSP;
- lack of support or outright opposition to the changes from inside the civil service.

The SBS hinges upon a number of assumptions:

- the Government is committed to implement the reform of public administration and civil service reform in line with best European practices, thus not merely focusing on the re-structuring of central executive bodies;
- consensus among main political and administrative stakeholders regarding the vision of the public administration and key policy directions and instruments for its reform reached and maintained over its implementation period;
- basic legal framework necessary for the effective implementation of the proposed reform approved by the Parliament;
- real commitment to address corruption.

### **3.4. Stakeholders**

The main stakeholders for this SPSP are the Ministry of Justice (MoJ), the Main Department of the Civil Service (MDCS), the Presidential Administration (Main department in charge of staff policy) and the Ministry of Economic Development and Trade. As far as the administrative justice is concerned, the main player is the High Administrative Court.

The MoJ is playing a crucial role in designing the PAR process and in drafting the necessary legal framework. The MDCS is in charge of the civil service management, it is one of the authors of a new draft law on civil service currently under the consideration of the Parliament.

At political level, the main stakeholders are the Presidential Administration and the Parliament.

Recipients of public and administrative services are important stakeholders. This includes citizens and business frequently facing red-tape and cumbersome, slow and low-quality public services.

As far as non-state actors are concerned, there are a number of analytical centres specialised in the reform of public administration. Furthermore, a range of civil society organisations are engaged in the monitoring of public activities, most prominently in the area of access to information, public procurement and anti-corruption. They will be consulted and involved to the highest possible extent in the course of the implementation of this SPSP.

### **3.5. Crosscutting Issues**

*Good governance and human rights:* increased knowledge of EU standards and practices will raise democratic standards; involvement of civil society organisations will be a guarantee for an efficient and stable surveillance of the reform progress in main area covered by this SPSP.

*Integrity of public administration:* actions envisaged under this SPSP shall include measures aimed at improving transparency of the administration and at eliminating or minimising opportunities for corruption and the misuse of public funds.

*Other issues:* in implementation of this Programme attention will be paid to ensure equal opportunities, sustainable environment as appropriate.

## **4. Implementation issues**

### **4.1. Method of implementation**

Direct centralised management: budget support (EUR 63 million)

Direct centralised management: complementary measures (technical assistance – EUR 7 million)

### **4.2. Procurement and grant award procedures**

1) Contracts

All contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question.

Participation in the award of contracts for the present action shall be open to all natural and legal persons covered by the ENPI Regulation. Further extensions of this participation to other natural or legal persons by the concerned authorising officer shall be subject to the conditions provided for in article 21(7) ENPI.

## 2) Specific rules for grants

The essential selection and award criteria for the award of grants are laid down in the Practical Guide to contract procedures for EU external actions. The maximum possible rate of co-financing for grants is 80%. Full financing may only be applied in the cases provided for in Article 253 of the Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the Financial Regulation applicable to the General Budget of the European Communities.

- Financing in full (derogation to the principle of co-financing): the maximum possible rate of co-financing for grants is 80%. Full financing may only be applied in the cases provided for in Article 253 of the Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the Financial Regulation applicable to the General Budget.
- Derogation to the principle of non-retroactivity: a grant may be awarded for an action which has already begun only if the applicant can demonstrate the need to start the action before the grant is awarded, in accordance with Article 112 of the Financial Regulation applicable to the General Budget.

### 4.3. Budget and calendar

Budget support (indicative):	EUR 63 million
Related technical assistance (indicative):	EUR 7 million

The budget support will be disbursed in fixed and variable tranches. Variable tranches are to be released subject to the matching of agreed indicators, to be agreed with the main partners. Implementation will be supervised by a Joint Monitoring Group, to be supported with ad-hoc technical assistance. The technical assistance component will include an indicative allocation of EUR 0.5 million for Evaluation, Audit, and Visibility actions.

The exact amount of the fixed and variable tranches, as well as an indicative calendar and tentative breakdown of payments shall be specified in the Technical and Administrative Provisions of the Financing Agreement, based on the consultation process between the European Commission and the Government of Ukraine with support of SIGMA programme.

In case the amount of EUR 7 million foreseen for complimentary measures is not fully contracted, the remaining amount may be allocated to the budget support component.

The indicative operational implementation period is 48 months from the entry into force of the Financing Agreement for the budget support and 48 months after the signature of the contracts for the complementary measures component.

Specific conditionalities for the SPSP shall be included in the Technical and Administrative Provisions of the Financing Agreement. These specific conditionalities will be established and agreed between the EU and Ukraine with support of the SIGMA programme at an appropriate level. This will include a detailed working plan (actions, priorities, outputs, quality control, monitoring mechanism), quality control of the expected pieces of legislation and their implementation plans.

#### **4.4. Performance monitoring and criteria for disbursement**

Performance monitoring will be exerted by a Joint Monitoring Group to be led by the Ukrainian authority designated by the Government of Ukraine and the European Commission. The Joint Monitoring Group will rely on official information provided by Ukraine and verified as appropriate.

Disbursements of all tranches (fixed and variable) will be contingent to general conditions related to a stable macroeconomic environment, progress in PFM reforms and progress in the implementation of administrative reforms targeted by this SPSP, including adoption and continuous implementation of the key pieces of legislation (Code of administrative procedures and law on civil service). Disbursements of variable tranches will, in addition, be contingent to the adoption and progress in the implementation plans related to the above-mentioned laws and results achieved.

The number, amount and disbursement calendar of fixed and variable tranches shall be specified in the Technical and Administrative Provisions of the Financing Agreement, based on the consultation process between the European Commission and the Government of Ukraine with support of SIGMA programme.

#### **4.5. Evaluation and audit**

The programme will be subject to the regular monitoring by the Joint Monitoring group. A specific mid-term evaluation will be organised to, inter alia, review the validity of the monitoring system.

Evaluation of the results achieved will be reviewed and decided by the European Commission. In carrying out such review, the EC will, as appropriate, use the technical advice of external consultants recruited by the EC to verify technical reports and data transmitted by the government of Ukraine. Programme evaluations and audits, whenever necessary, will also be decided and funded by the EU out of the technical assistance component of the programme. Part of the technical assistance component may be used to enhance the local capacities for auditing the programme.

The complementary measures (technical assistance) component may be subject to evaluation/audit following European Commission's standard procedures. Evaluation of the results achieved may be entrusted to independent consultants as well as external audits. Mid-term and final evaluation of the project implementation may be commissioned by the European Commission to assess project performance, achievements and impact.

#### **4.6. Communication and visibility**

The programme will follow the orientations of the "Communication and Visibility Manual for EU External Actions" (e.g. press release at the signature of the FA, visibility for reports and studies, etc) available at this address [http://ec.europa.eu/europeaid/work/visibility/index\\_en.htm](http://ec.europa.eu/europeaid/work/visibility/index_en.htm).

Proper communication and visibility of the action will be achieved via regular joint communication events on the occasion of the achievement of the disbursement criteria, as well as in connection with the results of technical assistance projects in the areas targeted by the SPSP. The complementary measures (technical assistance) may be used for funding activity(ies) aiming at promoting the programme.