

## **Twinning Project Fiche**

**“Implementation of the best European practices with the aim of strengthening the institutional capacity of the Apparatus of the Ukrainian Parliament Commissioner for Human Rights to protect human rights and freedoms (Apparatus)”**

## **1. Background**

1.1. Programme: European Neighbourhood Instrument

1.2. Twinning Project number: **UA/47b**

**1.3. Title:** Implementation of the best European practices with the aim of strengthening the institutional capacity of the Apparatus of the Ukrainian Parliament Commissioner for Human Rights to protect human rights (further - HR) and freedoms.

**1.4. Sector:** Justice and home affairs

**1.5. Beneficiary country:** Ukraine

## **2. Objectives**

### **2.1. Overall objective**

To ensure the effective prevention and response to violations of human rights by strengthening the effectiveness of the Ombudsman institution as an efficient mechanism of parliamentary control over the observance of human rights and freedoms at the national level, taking into account the best European best practices.

### **2.2. Project Purpose**

To strengthen the capacity of the Apparatus by improving the legislation in the field of the human rights protection and activities of the Ombudsman, establishing practice in applying this legislation, as well as bringing the institutional framework of the Apparatus and its internal procedures in compliance with the international and European best practices.

### **2.3. Contribution to the EU policy and action plans**

The project is aimed at providing support to the development of the institution of the Ukrainian Parliament Commissioner for Human Rights as a national human rights institution, and is in line with the following:

#### **European Neighbourhood Policy (ENP)**

Through its European Neighbourhood Policy (ENP), the EU works with its southern and eastern neighbours to achieve the closest possible political association and the greatest possible degree of economic integration. This goal builds on common interests and on values - democracy, the rule of law, respect for human rights, and social cohesion.

The EU offers its neighbours relations based on a mutual commitment to common values (democracy and human rights, rule of law, good governance, market economy principles and sustainable development).<sup>1</sup>

### **EU-Ukraine Association Agreement**

In 2014 after the tragic events of Maidan, Ukraine took a decisive step towards its European future. The Ukraine - EU Association Agreement (AA)<sup>2</sup> was signed and established a "platform" for cooperation and convergence of Ukraine's and EU policy, legislation and regulation across a broad range of areas, in particular democratization and human rights.

One of the aims of the association between Ukraine and EU, as it is provided for by **Article 1** of the AA, is to enhance co-operation in the field of justice, freedom and security with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms.

According to **Article 14** of the AA in their cooperation on justice, freedom and security, the Parties shall attach particular importance to the consolidation of the rule of law and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation will, in particular, aim at strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption. Respect for human rights and fundamental freedoms will guide all cooperation on justice, freedom and security.

As provided for by **Article 6** of the AA, the Parties shall cooperate in order to ensure that their internal policies are based on principles common to the Parties, in particular stability and effectiveness of democratic institutions, the rule of law and respect for human rights and fundamental freedoms.

**Article 15** of the AA envisages that the Parties will cooperate in order to ensure an adequate level of protection of personal data in accordance with the best European and international practices, including the relevant Council of Europe instruments, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the Additional Protocol to this Convention regarding Supervisory Authorities and Transborder Data Flows, in particular. Cooperation on personal data protection may include, inter alia, the exchange of information and of experts. Under the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of the Institutional System of Personal Data Protection" which came into force on 1 January 2014, the Ombudsman of Ukraine is defined as the authorized body for the personal data protection in the sphere of exercising control over observance of legislation on personal data protection.

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<sup>1</sup> [http://eeas.europa.eu/enp/index\\_en.htm](http://eeas.europa.eu/enp/index_en.htm)

<sup>2</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:161:FULL&from=EN>

Therefore the AA provides for that the principle of observance of human rights is basic for any sustainable development and reform, being crucial for their success. Considering such an approach, improvement of the national human rights protection system and capacity building of the institution of the Ombudsman are needed.

## **National policy**

The President of Ukraine Mr Petro Poroshenko in his inauguration speech in June 2014 said: "We want to be free... to live freely under a political system that guarantees rights and freedoms of person and nation."

## **3. Description**

### **3.1. Context**

Historical experience of other states was to a significant extent taken into account while creating the legislative basis and establishing the Ombudsman institution in Ukraine. Article 101 of the Constitution of Ukraine provides for the establishment of a constitutional body – the Ukrainian Parliament Commissioner for Human Rights (the Ombudsman) – created to exercise parliamentary control over the observance of human and citizens' constitutional rights and freedoms. Article 55 of the Constitution of Ukraine proclaims that everyone shall have the right of appeal for the protection of his or her rights to the Ombudsman. The inclusion of this provision in the Constitution shows the importance of the Ombudsman activity with regard to the control over the observance and protection of human rights and freedoms in Ukraine. The Ombudsman, as an institution, is an essential element of the constitutional mechanism of protection of human and citizens' rights and freedoms which also includes the system of Ukrainian courts, international judicial and other bodies, whose jurisdiction is recognized by Ukraine.

According to international studies, the existing legal framework as regards the status and the scope of activities of the Ombudsman in Ukraine correspond to the "strong ombudsman" model, which has the following distinct features:

- high constitutional status, which is enshrined in the Constitution of Ukraine (articles 55, 85, 101);
- independence from any state or local self-government body and their officials;
- the sole Ombudsman institution (an "integrated model") functioning at the national level and dealing with the whole spectrum of human rights and fundamental freedoms; according to the Ukrainian legislation in force the Ombudsman of Ukraine fulfils functions of the national preventive mechanism, the anti-discrimination body and the national authority of personal data protection.
- wide jurisdiction of the Ombudsman, which extends to the central and local authorities, their officials as well as to the private sector;
- considerable powers to carry out Ombudsman's activities, namely: right to free access to all places of detention (including ad-hoc visits), right to appeal to the Constitutional Court of Ukraine on the correspondence of the laws and regulatory acts of Ukraine (on human rights and freedoms) to the

Constitution of Ukraine, right to submit petitions to the state and local self-government authorities concerning the elimination of the detected violations of human rights and freedoms, citizens' unions, enterprises, institutions and organizations (such petitions must be considered and reacted upon within a month), right to get access to documents including classified ones;

- availability of the Ombudsman services to a citizen: people's petitions can be submitted in person directly to the Ombudsman or to the Apparatus in Kyiv, Ukraine's capital, regional offices and offices of coordinators of public relations (the latter acting on a voluntary basis), by post, e-mail, using the telephone "hot" line;

- the flexibility and "informality" of procedures, freedom of Ombudsman's action as regards initiating proceedings on any HR violation case, etc.

The results of the Ombudsman activities indicate that the establishment of this institution in the country has led to positive changes in the promotion and development of HR and freedoms, raising public awareness in this area, implementation of the best international and European practices into national legislation and administrative practice. People no longer feel alone in their struggle for human dignity, HR and fundamental freedoms; now they have an institution to which they can appeal with their problems. One of the important indicators of effective development of the Ombudsman institution over the years and international recognition is its accreditation in 2009 with status "A" assigned to it in accordance with the decision of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, which operates under the auspices of the UN. This status, which indicates full compliance of the institution with the Paris Principles, gives the Ombudsman the right, in particular, to participate directly in the meetings of the UN Human Rights Council and to address the Council on any issues of the agenda.

At the same time, the functioning of the Ukrainian Ombudsman still needs to be improved.

In July 2012, in the framework of the UNDP project "Development of Civil Society", a UN expert carried out the SWOT-analysis in order to assess the capacity of the Apparatus of the Ombudsman. The expert's report contains a number of recommendations aimed at improving the efficiency of the Apparatus:

Strengths:

- Sufficient legal foundation
- Broad mandate
- "A" Status accreditation by the International Coordinating Committee of National Human Rights Institutions (full compliance with the Paris Principles)
- Good working conditions (a separate building with office premises, necessary equipment, etc).

Weaknesses:

- Lack of appropriate strategic planning;

- Insufficient information-sharing (or lack thereof) among the staff members of the Apparatus and its structural units;
- Incoherent statistical data which hampers the ability to measure the efficiency of the Apparatus;
- Lack of internal procedures for sorting petitions and investigating the facts of HR violations;
- Insufficient cooperation with the national HR institutions of other countries and sharing of experience;
- Scarce information on the Ombudsperson’s activity in the mass media;
- No professional development and training for the staff of the Apparatus.

Opportunities:

- Introduction of a more transparent communication strategies (new website, new PR strategy, sharing priorities of the Ombudsman, publishing main internal documents on website, etc.);
- Establishment of an efficient interaction with non-government organizations, in particular through recently established NGOs Advisory Council under the Ombudsman;
- Regular and more active/dynamic cooperation with mass media;
- Joint projects/programs with HR NGOs and international community.

Threats:

- Possible instability of political situation after elections;
- Economic recession and possible budget cuts;
- Limited knowledge among the general public about the mandate, activity, functions and the responsibilities of the Ombudsperson.

A number of proposals given in the report mentioned above have been implemented, namely:

- the Advisory Councils under the Ombudsman and its Representatives were established, ensuring efficient cooperation with civil society organizations dealing with HR protection and obtaining of expert aid;
- a National Preventive Mechanism (NPM) with “Ombudsman+” model was established;
- The Strategic Plan of the Activities of the Ombudsman for 2013-2017 was approved, which defines the development directions of the Ombudsman institution, promotes a more efficient achievement of the assigned objectives due to clear planning.

### **3.1.2. Project Background**

The proper functioning of the system of HR and freedoms protection is an essential element of the democratic development of Ukraine and requires further improvement based on the best European

practices of national HR institutions of European countries and national HR institutions of the European Union.

The legal framework, internal documents, methodologies and procedures, institutional framework of the institution of the Ombudsman need to be improved in order to harmonize them with the best EU practices, especially taking into consideration the fact that new important functions (national preventive mechanism, supervisory body as regards the compliance with legislation in the sphere of personal data protection, authority on anti-discrimination) have been assigned to the Ombudsman, the Apparatus intends to use the experience of the EU to improve its own HR mechanisms, to strengthen its capabilities.

Therefore the planned Twinning project (further – "Twinning project") is intended to become an effective tool of development and harmonization of the Ukrainian HR protection system, called to assist with applying the best international and EU practices in Ukraine.

### **3.2. Related activities**

The Ombudsman maintains cooperation with international organizations (the UN, Council of Europe, OSCE, European Ombudsman, EU Agency for Fundamental Rights (FRA)<sup>3</sup>. The Ombudsman is a member of associations of National Human Rights Institutions (NHRI)<sup>4</sup> namely: International and European Ombudsman Institutes, International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) and its European network, European Network of Ombudsmen for Children (ENOC). The Ombudsman, its Representatives and officers of the Apparatus participate in important international events on HR held by these organizations, interacts with national HR institutions of other countries in specific cases (currently there are bilateral cooperation agreements of the Ombudsman of Ukraine with the NHRIs of France, Spain, Portugal, Russia, Poland, Azerbaijan, Moldova, Georgia, Turkey, Denmark etc.). Meanwhile, the potential of such cooperation is to be further explored.

#### **The European Union**

In October 2013, the European Delegation to Ukraine launched a project "Support to Justice Sector Reforms in Ukraine" (further - "Justice Reform Project") The project is implemented by a consortium of EU Members led by GIP Justice Cooperation Internationale (JCI). The Justice Reform Project brings together all justice sector stakeholders in order to assist them with the development of the joint sector-wide justice reform strategy and also to ensure the strategy's implementation. The strategy includes a development plan for the Ombudsman-related reforms. Therefore, constant cooperation between the Twinning project and the Justice Reform Project will systematically be sought. There were meetings of the representative of the Apparatus with the team of the EU project in order to discuss the future cooperation.

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<sup>3</sup> <http://fra.europa.eu/en>

<sup>4</sup> <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>

The Apparatus also acts as a partner (one of partners) in a number of projects within the Action Plan of the Council of Europe for Ukraine 2015-2017. (Apparatus is the main partner under one project to promote NPM) and the Program «Good Governance» by the UNDP. Through further co-operation under this Action Plan the operational capacities of the Apparatus will be bolstered, particularly in the areas of ill-treatment in places of deprivation of liberty, non-discrimination, and data protection. Further, actions to strengthen the capacity of the Ombudsman's Office to efficiently carry out its National Preventive Mechanism functions would assist in strengthening the human rights framework in Ukraine. Under the Annual Plan of Action 2016 for Ukraine within the COE/EU Programmatic co-operation framework (PCF) for the Eastern Partnership countries 2015-2017 a number of important activities aimed at strengthening operational capacities of the the Apparatus in the fields of preventing ill-treatment in places of deprivation of liberty, non-discrimination, and data protection will be carried out. The activities of the PCF component 1 "Strengthening the Ombudsperson's Office operational capacities in Ukraine (ill-treatment in places of deprivation of liberty, non-discrimination, data protection)" do not overlap with the Twinning Project.

In 2012-2015 within the bilateral project cooperation the OSCE has been providing the Apparatus with technical assistance, facilitating the development of National Preventive Mechanism (since 4 November 2012 functions of National Preventive Mechanism were assigned to the Ombudsman of Ukraine).

In 2009-2013 the Apparatus actively participated in the realization of the project «Cooperation between Ombudsmen from Eastern Partnership (EP) Countries».

### **3.3. Results**

The results to be achieved during the implementation of this Twinning Project are listed below:

- 1. The legal framework concerning the activities of the Ombudsman and the Apparatus on the protection, restoration and prevention of violations of HR and freedoms is brought in compliance with the best European practices.**
- 2. The institutional capacity of the Apparatus is strengthened.**
- 3. Advanced training system for the personnel of the Apparatus is introduced based on the best European practices.**

As pointed out in the Strategic Plan of the Activities of the Ukrainian Parliament Commissioner for Human Rights for 2013-2017 one of the weaknesses of the Apparatus is the lack of continuous training for the personnel of the Apparatus on the best European practices in the field of HR in particular. With a view to addressing this problem, an on-going professional training system needs to be worked out for the personnel of the Apparatus.

### **3.4. Activities**

The below lists of core activities are not inclusive and are indicative.



- **Component A. The improvement of the legal framework concerning the activities of the Ombudsman and the Apparatus on the protection, restoration and prevention of violations of HR and freedoms on the basis of the best European practices**

The table below presents the sequence of activities under Component A:

No.	Activities	Result
A.1.	Reviewing the existing regulatory and legal framework governing the activities of the Ombudsman	Analytical Report is drafted
A.2.	Conducting a comparative analysis of national and European legislation concerning the activities of the Ombudsman	Comparative Report is drafted
A.3.	Drafting recommendations aimed at bringing the national regulatory and legal framework in accordance with the best international and European practices in the human rights area	Relevant recommendations are drafted
A.4.	Carrying out a round table to discuss recommendations regarding changes to the legal framework governing the activities of the Ombudsman for Ukrainian MPs, representatives of relevant parliament committees, Government officials responsible for HR issues are invited.	Recommendations are presented at the round table and discussed
A.5.	Drafting amendments to the organisational legal acts regulating activities of the Apparatus	Relevant draft legal acts are drafted

- **Component B. The strengthening of institutional capacity of the Apparatus by:**

- development of the methodologies and procedures of the monitoring of HR and freedoms observance, ensuring activities of the Ombudsman aimed at prevention of human rights violations;
- improvement of the effectiveness of the Ombudsman's activity to eliminate violations of HR, as well as control procedures over the implementation of the Ombudsman's recommendations;
- improvement of the instruments to restore violated rights, including protection of personal data and prevention of all forms of discrimination.

The table below presents the sequence of activities under Component B:

No.	Activities	Result

Development of the methodologies and procedures of monitoring of respect for HR and freedoms, ensuring of activity of the Ombudsman aimed at prevention HR violations		
B.1.1	Analysing existing methodologies and procedures to carry out a monitoring of the observance of human rights, ensuring activities of the Ombudsman in preventing such violations	Analytical Report is drafted
B.1.2.	A study visit with a view to exchanging experience as regards application of methodologies and procedures to carry out a monitoring of the observance of human rights, ensuring activities of the Ombudsman in preventing such violations	Reports of participants of the study visit to the EU country with specific proposals are provided
B.1.3	A comparative analysis of existing methodologies and procedures in Ukraine and EU countries.	Comparative Report is drafted
B.1.4.	Developing new or improving the existing methodologies and procedures to carry out a monitoring of the observance of human rights, ensuring activities of the Ombudsman in preventing such violations	Relevant documents and recommendations are drafted
B.1.5.	Presentation and discussion of the drafted documents and recommendations on methodologies and procedures to carry out a monitoring of the observance of human rights, ensuring activities of the Ombudsman in preventing such violations	A seminar is held where recommendations are presented and discussed
Improvement of the effectiveness of the activity of the Ombudsman to eliminate violations of HR, as well as control over the implementation of the recommendations of the Ombudsman		
B.2.1.	Analysis and assessment of the efficiency of activities of the Ombudsman on elimination of detected human rights violations, control procedures over fulfilment of Ombudsman's recommendations, response to the Ombudsman's acts of submission to the state and local self-government bodies, their officials, on elimination of detected human rights violations	An analytical report is drafted
B.2.2.	A study visit with a view to exchanging experience as regards activities of the Ombudsman on elimination of detected human rights violations, control procedures over fulfilment of Ombudsman's recommendations, response to the Ombudsman's acts of submission on elimination of detected human rights violations	Reports with specific proposals of the study visit's participants are drafted
B.2.3.	Drafting recommendations as regards increasing the efficiency of the activities of the Ombudsman on elimination of detected human rights violations, control procedures over fulfilment of Ombudsman's recommendations, response to the Ombudsman's acts of submission on elimination of detected human rights violations	Relevant recommendations are developed

B.2.4.	Holding a seminar to present and discuss the drafted recommendations as regards increasing the efficiency of the activities of the Ombudsman on elimination of detected human rights violations, procedures of control over fulfilment of Ombudsman's recommendations, response to the Ombudsman's acts of submission on elimination of detected human rights violations	A seminar is held where recommendations are presented and discussed
B.2.5.	Holding a training for the staff of the Apparatus on recommendations as regards increasing the efficiency of the activities of the Ombudsman on elimination of detected human rights violations, procedures of control over fulfilment of Ombudsman's recommendations, response to the Ombudsman's acts of submission on elimination of detected human rights violations	A training is held where recommendations are presented and clarified to the staff of the Apparatus that will apply them in practice
Improvement of the instruments to restore violated rights, including protection of personal data, access to public information and prevention of all forms of discrimination		
B.3.1.	Analysing the existing instruments for the restoration of violated rights in the fields of personal data protection, access to public information and prevention of all forms of discrimination in particular	An analytical report is drafted
B.3.2.	A study visit with a view to exchanging experience as regards use of instruments for human rights restoration, in the spheres of personal data protection, access to public information and prevention of all forms of discrimination in particular, by the EU member states' ombudsmen	Reports of participants of the study visit with specific proposals are drafted

B.3.3.	Making a comparative Analysis of existing instruments for human rights restoration in Ukraine and EU countries.	Recommendations are drafted
B.3.4.	Developing recommendations as regards improving the existing or employing new instruments for restoring human rights, in the spheres of personal data protection, access to public information and prevention of all forms of discrimination in particular	Recommendations are developed
B.3.5	Developing guidelines for effective monitoring by the Office of the Ombudsman of the state of compliance by relevant stakeholders with the legislation in the field of access to public information	Recommendations are developed
B.3.6	Carrying out of the Round Table to present the recommendations as regards improving the existing or employing new instruments for restoration of violated rights, including such spheres as personal data protection, access to public information and prevention of all forms of discrimination	A Round Table is held where recommendations are presented and discussed

**Component C. Development of the system of advanced training for the personnel of the Apparatus based on the best European practices**

The table below presents the sequence of activities under Component C:

<b>No.</b>	<b>Activities</b>	<b>Result</b>
C.1	Analysis of the situation with education and advanced training of the Apparatus's personnel, as well as assessment of needs in this area; identifying directions and requirements of the training process	Report with proposals is drafted
C.2	A study visit with a view to exchanging experience as regards training of personnel of the Ombudsmen institutions	Reports of the study visit's participants with specific proposals are drafted
C.3	Developing a curriculum and training	

	programmes, preparing teaching aids and training guides	Curriculum and training programmes, teaching aids and training guides are developed and approved by the Ombudsman
C.4	Carrying out the training of trainers	Approving of the trainers; training of trainers is carried out
C.5	Conducting pilot training courses (workshops) for the personnel of the Apparatus with trained trainers.	Pilot trainings are carried out; Assessment of these trainings and elimination of detected shortcomings are made
C.6	Evaluation of the pilot training courses (workshops) by survey of participants	The survey and summarized results are conducted
C.7	Elimination of shortcomings and improvement of training programmes	Training programmes are revised

### **3.5. Means/ Input from the MS Partner Administration:**

#### 3.5.1. Profile and tasks of the Project Leader:

The Project Leader (PL) will supervise the work of the team in the EU Member State and will cooperate with the National Team Leader in the Beneficiary Country (BC). The PL will be in charge of the overall coordination between the MS and BC teams.

The PL is expected to dedicate a minimum of 3 days per month to the Project from his/her desk to coordinate project activities from a strategic point of view. He/she shall co-chair the Project Steering Committee (PSC) meetings in Ukraine on a quarterly basis.

The PL's tasks are the following:

- Overall management and coordination of the project;
- Ensuring support and financial management of the project in an EU member state;
- Work with the RTA, RTA counterpart and EU Delegation project manager

## Profile:

### *Qualifications*

- University degree or equivalent

### *General professional experience*

- At least 5 years of professional experience in human rights protection

### *Specific professional experience*

- Work experience at a human rights institution of the EU Member State or a human rights organization will be an advantage;
- Proficiency in the English language;
- Experience in donor assistance projects;
- Managerial skills

## **3.5.2. Profile and tasks of the RTA**

The Resident Twinning Advisor (RTA) shall coordinate the Twinning Project's implementation, provide for achievement of the planned objectives, timeliness and quality of the Project activities. The RTA shall exercise oversight of the activities carried out by short-term experts. He/she will be seconded from his/her Member State administration to Ukraine for the entire duration of the Twinning project.

The following requirements are given in order to provide an indication of the type of skills, qualification and experience that are necessary for taking up this position. Meeting these requirements is, however, not compulsory and the Member Country institution may suggest RTAs with other qualifications, provided that they will have a vast experience and knowledge in addressing similar tasks and respond to the eligibility criteria set in the Twinning Manual.

### *Qualifications*

- University degree or equivalent

### *General professional experience*

- At least 5 years of professional experience in human rights protection

### *Specific professional experience*

- Work experience at a human rights institution of the EU Member State or a human rights organization will be an advantage;
- Proficiency in the English language;
- Experience in donor assistance projects;
- Managerial skills

## **3.5.3. Profile and tasks of the short-term experts**

The RTA will provide assistance to short-term experts in carrying out project tasks under the Twinning Project. They must have professional experience and skills in realization of similar projects and shall closely cooperate with the RTA and the twinning partners. Their task will be to provide assistance by organizing training courses, seminars, working meetings, reviewing and elaborating draft laws, organizational legal documents and guides. The experts must be able to ensure the achievement of the listed above expected results at a high level.

The experts table below is indicative:

	Specific education/ knowledge/experience requirements
Short-term experts in developing draft laws (legislative proposals)	Education: Law or International Law  Long-term experience in legislative drafting activities (legislation of the EU Member States, EU legislation in the sphere of human rights or Ukrainian legislation). Profound knowledge of international law and human rights instruments.
Short-term experts in policy-making	Education: Law, Public Administration or other  Long-term experience in strategic planning and development of relevant documents, preferably in institutions dealing with protection of human rights. Comprehensive knowledge of specific activities of National Human Rights Institutions.
Short-term experts in institutional development	Education: Law, Public Administration or other  Long-term experience in institutional development of state bodies (preferably state bodies with independent status), good governance. Comprehensive knowledge of specific activities of National Human Rights Institutions.
Short-term experts in organization of training courses on education and skills improvement in the area of human rights.	Education: Law, International Law or otherwise  Long-term experience in developing and launching effective training and skills improvement programmes in the area of human rights protection and activities of national human rights institutions

English will be the working language of the Project.

#### **4. Institutional framework**

The Apparatus is ensuring the activities of the Ombudsman. The Apparatus is the legal entity. The organizational structure of the Ombudsman institution at <http://www.ombudsman.gov.ua> Besides as of now the Ombudsman has three permanent Regional Offices (in Dnipropetrovsk, Zhytomyr and Lviv). Due to occupation of the Crimea the Commissioner for Human Rights was forced to stop the functioning of her regional office in Crimea.

The offices of regional coordinators of the Ombudsman for public relations have been established in 10 regions (they are not staff members of the Apparatus). The Ombudsman delegates to these coordinators a number of her authorities, to visit places of the confinement in particular.

There are Advisory Councils under the Commissioner for Human Rights and its Representatives which are composed of representatives of non-governmental HR organizations, international organizations, experts and scientists on relevant issues.

The number of personnel of the institution: about 180 persons.

The total number of personnel well-speaking foreign languages: around 25 persons.

The core legal acts setting the jurisdiction of the Commissioner:

- Constitution of Ukraine (art. 55, 85, 101, 150);
- Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights";
- Law of Ukraine "On the Petitions of Citizens";
- Law of Ukraine "On Personal Data Protection";
- Law of Ukraine "On Access to Public Information";
- Law of Ukraine "On the Basis of Prevention and Combating Discrimination in Ukraine";
- Law of Ukraine "On Democratic Civilian Control over the Military Organization and Law Enforcement Authorities of State" and others.

### **The mandate of the Ombudsman** (see more at Annex 2)

According to the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" (hereinafter referred to as "the Law on Ombudsman") the Ombudsman's general jurisdiction extends to state authorities, local governments as well as their officials and officers (without limitation). Under the Law of Ukraine 'On Personal Data Protection' (with amendments adopted in May 2014) the jurisdiction of the Ombudsman in the field of control over observance of legislation on personal data protection extends as well to enterprises, organizations and institutions of private ownership and natural persons.

Moreover, if the function of monitoring of the state of observance of HR and freedoms (analysis of the general situation, presentation of its results and making appropriate recommendations) applies to all state bodies and their officials and officers, the Ombudsman direct relationship with them and the ability to influence their activities in specific cases are regulated by a number of other legal acts and has its peculiarities.

Parliamentary control over the observance of HR and fundamental freedoms exercised by the Ombudsman covers the following main functions:



- monitoring of the observance and protection of HR and fundamental freedoms, carried out on a regular basis;
- protection of HR and freedoms when violations were found (in specific cases, as well as systemic, affecting the interests of many people), facilitation of restoring violated rights;
- prevention of HR violations (preventive function);
- facilitation of bringing legislation of Ukraine on HR and freedoms in accordance with the Constitution of Ukraine and the best international practices in this area (this right is realized by the Ombudsman's appeals to the subjects of legislative initiative with the relevant legislative proposals and by appeal to the Constitutional Court of Ukraine with a request to declare the relevant provisions of legal acts unconstitutional);
- increasing legal awareness of population, especially with regard to HR and fundamental freedoms (this function includes both provision of free legal aid during the application of a person to the Ombudsman and conduction of broad educational events and campaigns).

The Ombudsman is authorised to employ the following instruments in order to protect and restore HR and freedoms:

- submitting constitutional appeals to the Constitutional Court of Ukraine with regard to the issue of conformity of a law of Ukraine or any other legal act issued by the Parliament (Verkhovna Rada) of Ukraine, the President of Ukraine and the Cabinet of Ministers of Ukraine, a legal act of the Autonomous Republic of Crimea with the Constitution of Ukraine (constitutionality);
- applying to a court so as to protect human rights and freedoms of persons who cannot do this on their own due to reasons of health or any other appropriate reasons, and also attend judicial proceedings personally or through a representative pursuant to the legislation;
- sending acts of response to relevant state bodies, local self-government bodies, their officials on elimination of detected human rights violations;
- carrying out proceedings in the cases on human rights and freedoms violations;
- inspecting places of confinement without preliminary notice;
- carrying out inspections of personal data controllers and/or processors;
- submitting requests to personal data controllers and/or processors on elimination of violations of the legislation on data protection, these requests being obligatory for execution;
- draw up protocols on administrative violations for failure to comply with the legal requirements of the Ombudsman, violation of legislation on personal data protection (Article 188<sup>40</sup>, Article 188<sup>39</sup>, Article 255 of the Code of Ukraine on Administrative Offences) etc.

A number of laws of Ukraine provide for the special powers of the Ombudsman in the sphere of protection of HR and freedoms.

Thus, in particular, since 1 January 2014, the Ombudsman of Ukraine is defined as the authorized body for the personal data protection in the sphere of exercising control over observance of legislation on personal data protection. This important function is new to the Ombudsman of

Ukraine and the effective management of its implementation requires the assistance of the EU, which has considerable experience with ensuring this right.

The Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" empowers the Ombudsman with a function of a competent authority (national institution) for prevention and combating discrimination.

More information on the Ombudsman's mandate see Annex 2.

## **5. Budget**

The total amount of funding allocated for the implementation of this Twinning project is **1,500,000 Euro**

## **6. Implementation Arrangements**

### **6.1. Implementing Agency**

The European Union Delegation to Ukraine will be responsible for tendering, contracting and accounting, and will work in close cooperation with the Beneficiary.

The person in charge of this project is:

**Mr Andriy Spivak**

Justice Sector Manager

Delegation of the European Union to Ukraine

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The Twinning Programme Administration Office (PAO) under the National Agency of Ukraine on Civil Service is an administration responsible for coordination of the preparation of twinning projects in Ukraine and support for their implementation, provision of advisory and methodological support to public authorities in preparing and implementation of twinning projects.

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## **6.3 Contracts**

Only one Twinning contract is foreseen for this project.

## **7. IMPLEMENTATION SCHEDULE (indicative)**

- 7.2 Launching of the call for proposals :** December 2015
- 7.2 Start of project activities:** September 2016
- 7.3 Project completion:** December 2018
- 7.4 Duration of execution period: 27 months**  
**Implementation period: 24 months**

## **8. Sustainability**

The sustainability of the project will be achieved through a suitable implementation of the project activities, advice provided, documents prepared and submitted, and availability of trained personnel in the concerned state body.

Towards the end of the project, a series of recommendations for improvement existing regulatory regarding the activities of the Ombudsman will have been developed within Component A.

After implementation of the Twinning project, the Apparatus of the Commissioner for Human Rights is using modern instruments to restore violated rights, in the sphere of personal data protection and anti-discrimination in particular.

The training programmes and materials produced within the project might also be used for the personnel of the Apparatus of the Commissioner for Human Rights training after the end of the project.

Effective mechanisms will be put in place by the BC to disseminate and consolidate the results of the project in order to ensure the benefits sustainability of the project after the completion date.

## **9. Cross-cutting issues**

During the implementation of the project, equal opportunities will be guaranteed both for men and women. All recommendations to be prepared under Components A and B will be based on strict compliance with requirements of international conventions and the best international and European practices of HR with respect for Ukrainian national cultural traditions.

This Twinning project will cover issues related to the engagement of women, youth and national minorities at all implementation stages, and will make sure that such issues are considered during activities pertaining to the creation of the regulatory legal framework in the area of HR protection in Ukraine.

## **10. Conditionality and sequencing**

### **10.1 Conditionality:**

The Beneficiary Administration (BA) is aware that several issues important for the smooth implementation of the Twinning Project and for the achievement of the mandatory results are partially or completely under its sole responsibility.

When the project starts, the BA has to:

- Ensure translation of all relevant documents into English
- Make offices available, equipped with means of communication for the RTA, the RTA Assistant, and the Interpreter/Translator within the Ombudsperson's premises;
- Assign experts as counterparts for the STEs to cooperate on the implementation of activities according to the working plan;
- Make available an office to be used during the Project implementation as a meeting/training room;

- Furthermore, BA ensures that staff trained under this project will be kept in post for a sufficient period of time and that an appropriate use of the training will be made;
- The State Budget shall also foresee for the Ombudsperson's sufficient budgetary and staff resources to ensure a consistent implementation of the project.

## **ABBREVIATIONS**

- The Ombudsman – The Ukrainian Parliament Commissioner for Human Rights
- The Office (Apparatus) - The Apparatus of the Ukrainian Parliament Commissioner for Human Rights
- STE – short term expert
- Verkhovna Rada of Ukraine – the Parliament

## **ANNEXES**

Annex 1 – Logical framework matrix