

TERMS OF REFERENCE

Senior Legal Expert on Intellectual Property Law to the Reform Support Team for Legal Approximation of Ukrainian Legislation to the EU acquis.

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1. Background

Post-war recovery and reconstruction will continue to be a key focus of the Ukrainian administration and the country's international partners in the years to come. This presents a historic chance for Ukraine to transform its socio-economic fundamentals and lay the groundwork for a stable, green and digital transition to a modern and thriving economy. After receiving the EU candidate status earlier this year, Ukraine's recovery efforts are expected to be anchored to the process of EU accession. This will require a significant increase in internal capacity as the EU integration agenda will need to be embedded into the core business of government.

Timely adoption of critical reforms will to a large extent, depend on the Parliament's (hereafter -Verkhovna Rada of Ukraine/VRU/Rada) capacity to deliver in the area of EU acquis and specific sectoral expertise in areas covered by the EU negotiating chapters.

To address the existing capacity gaps in the area of EU acquis transposition and provide support to accelerate critical reforms by the Parliament of Ukraine, a Reform Support Team for Legal Approximation of Ukrainian Legislation to the EU acquis (hereafter - RST) under the umbrella of the Ukraine Reforms Architecture programme is established. The RST will be integrated into existing coordination mechanisms between the Parliament and the Government while maintaining close collaboration and coordination with other reform teams of the Ukraine Reforms Architecture (located in line ministries/agencies and the Secretariat of the Cabinet of Ministers), therefore contributing to increasing the effectiveness of national institutional framework for managing the EU integration process.

The Ukraine Reforms Architecture (URA) is a comprehensive technical assistance programme deployed by the EBRD, in partnership with the European Union, to support critical reform processes in Ukraine. It is financed from the Ukraine Stabilisation and Sustainable Growth Multi-Donor Account (MDA) managed by the EBRD.

URA was designed as a holistic mechanism for stimulating systemic change in Ukraine's public institutions and improving the business climate in the country. URA fills the critical capacity gaps by supplying reform talent at all levels of the government. Since 2016, more than 200 Ukrainian reformers have worked in the project's various components and contributed to dozens of reform outcomes, strategies and policies.

Currently URA is composed of two mutually reinforcing components:

- The Reforms Delivery Office (RDO) placed in the Cabinet of Ministers of Ukraine, coordinating and overseeing the reform processes across the Ukrainian administration
- Reform Support Teams (RSTs) currently embedded in eight Ministries and Agencies to manage the implementation of sectoral reforms. RSTs are a group of Ukrainian experts, hired from outside the public administration, with the overall objective of facilitating implementation of key reforms and establishing a new generation of reform-oriented Ukrainian citizen. They provide targeted, temporary expert support to assist Ministries and agencies in the design and implementation of priority sectoral reforms and restructuring of the Ministries themselves. RSTs are active at the Ministries of Finance, Economy, Communities and Territories Development, Infrastructure, Environmental Protection and Natural Resources, Education and Science, Energy and the State Customs Service.

The RST in the Parliament will become a third component of the URA programme, reinforcing its EU-

integration pillar.

The Ukraine Reforms Architecture (URA) is financed from the Ukraine Stabilisation and Sustainable Growth Multi- Donor Account (MDA) managed by the EBRD. Contributors to the MDA are Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Norway, Poland, Sweden, Switzerland, the United Kingdom, the United States and the European Union.

2. Objectives and Scope of the Services

The EU candidate status is a historic breakthrough for Ukraine and presents a unique opportunity for deepening political and economic ties between Ukraine and the EU and implement necessary legal, policy and institutional reforms on the way to the EU accession.

The RST will be an advisory body to the Secretariat of the VRU and will provide:

- analytical and legal support to the adaptation of the Ukrainian legislation to EU norms;
- support to Parliamentary committees and their subcommittees, secretariats of Parliamentary committees, the Chairman of the Parliament, together with his First Deputy, Deputy and their Offices (where necessary), and Members of the Parliament (where necessary);
- assistance with filling the existing capacity gaps in the area of EU acquis transposition and much needed expert support to accelerate critical reforms by the Parliament;
- support to the VRU in the process of facilitating and accelerating the transposition of EU legislation into Ukraine's legal framework;
- any other assistance and support related to the implementation of EU legal approximation policy (where necessary).

The Senior Legal Expert will also work in close cooperation with other reform teams of the URA programme – the Reform Support Teams (RSTs) and the Reforms Delivery Office (RDO).

2.1. Required expertise

The RST will provide assistance within the framework of 6 thematic clusters covering all negotiating chapters of EU acquis. A total of nine Senior Legal Experts will be recruited during the pilot phase.

A Senior Legal Expert is expected to cover one of the nine priority areas of EU acquis, as defined below (which is a mandatory requirement) in combination with two additional ones (which is a supplementary requirement) **to be indicated by an applicant during the submission process.** The preferable combination is provided in brackets next to each priority area of EU acquis in section 2.2. Versatility in EU acquis expertise will be considered as an advantage.

2.2. Priority areas of EU acquis

- 1) Judiciary and Fundamental Rights (combined with Justice, Freedom and Security / Foreign, Security and Defence Policy and/or any extra/alternative);
- 2) Agriculture and Rural Development (combined with Food Safety, Veterinary and Phytosanitary Policy / Fisheries and/or any extra/alternative);
- 3) Consumer and Health Protection (combined with Social Policy and Employment / Education and Culture and/or any extra/alternative);
- 4) Financial Services (combined with Financial Control / Financial and Budgetary Provisions / Rights of Establishment and Freedom to Provide Services and/or any extra/alternative);

- 5) Economic and Monetary Policy (combined with Taxation / Customs Union / Public Procurement / Statistics and/or any extra/alternative);
- 6) Energy (combined with Social Policy and Employment / Education and Culture and/or any extra/alternative);
- 7) Environment (combined with Social Policy and Employment / Education and Culture and/or any extra/alternative);
- 8) Transport policy (combined with Competition Policy and/or any extra/alternative);
- 9) Intellectual Property Law (combined with Information Society and Media and/or any extra/alternative).

2.3 Priority tasks for the technical assistance will be:

- compliance check (comparative legal expertise) of draft laws against relevant EU acquis via preparing analytical conclusions on such compliance and drawing up tables of concordance (where applicable);
- providing analytical reports/legal opinions on EU Member States' best practices of implementation of EU horizontal/sectoral legislation and provisions thereof suggesting best possible legal models to follow during the approximation process with EU acquis;
- assessing compliance of Ukraine's legislation with relevant EU acquis in priority areas and preparing corresponding compliance reports, including tables of compliance (where appropriate);
- improving draft laws to ensure their conformance with EU acquis by preparing proposals to draft legislation during the compliance check (comparative legal expertise);
- ensuring coordination on legal approximation planning and processes at expert level with technical assistance projects supporting legal approximation process and URA support teams at the Secretariat of the Cabinet of Ministers and line ministries, where appropriate.

Priority tasks may be adjusted by the VRU depending on the current needs and situation according to requests of leadership of VRU and VRU Secretariat in consultation with the EU Delegation to Ukraine and the EBRD.

3. Main duties and responsibilities of the Senior Legal Expert:

- Ensure timely delivery of activities within the agreed timeframe and available resources as requested by the Team Lead, the leadership of VRU and VRU Secretariat.
- Ensure appropriate quality of deliverables, including reports, analyses and others.
- Flag obstacles and propose solutions to issues arising in the planning, implementation and monitoring of legal approximation policy to the Team Lead, the leadership of VRU and VRU Secretariat.
- Ensure effective communication and coordination at the expert level, when applicable, with the Secretariat of the Cabinet of Ministers (Government Office for European Integration), line ministries, technical assistance projects supporting the legal approximation process and URA support teams (Reform Delivery Office of the CMU and RSTs in line ministries and agencies).
- Ensure high-quality information and visibility of RST activities.
- Report on the implementation of legal approximation policy to the Team Lead, VRU leadership, the leadership of VRU Secretariat and the URA contributors.

4. Expected Deliverables

The Senior Legal Expert (Consultant) will be part of the RST team and will be reporting to the Team Lead. The consultant will conduct legal review and analysis, engage in legislative drafting and participate in relevant policy discussions in close collaboration with relevant VRU committees, departments, MPs, line ministries and other stakeholders.

The Senior Legal Expert will be expected to:

- Ensure timely delivery of analytical reports on compliance (tables of concordance with article-by-article analysis, where required) of draft legislation with EU acquis in line with the corresponding plan of legislative activities, relevant provisions of the Rules of Procedures of the VRU and taking into account current practices within the VRU as agreed upon with the VRU / VRU Secretariat leadership.
- Ensure timely delivery of analytical reports on compliance of Ukraine's legislation with EU acquis in Intellectual Property Law area, where applicable, with similar activities carried out by the Government and analytical support provided by other EU-funded projects in the area of legal approximation.
- Prepare reports and/or protocols regarding consultations held with stakeholders and other coordination meetings.
- Develop draft legislation in Intellectual Property Law area and draft legislative proposals, where appropriate.
- Produce analyses of current Ukraine's legislation in Intellectual Property Law on its compliance with EU acquis, including policy briefs and analytical notes.
- Produce analysis of draft laws submitted by the Government, MPs and the President on their compliance with European legislation and requirements of the EU-Ukraine Association Agreement.
- Prepare proposals for the harmonisation of national legislation with European legislation in case of identifying the gaps in current or drafted Ukrainian legislation.
- Arrange/participate in coordination and communication meetings with the Secretariat of the Chairman of the VRU, Committees of the VRU and their secretariats, VRU departments, MPs, line ministries and other stakeholders regarding the EU integration draft laws.
- Participate, upon invitation, in the sub-committees, VRU committees hearings when EU integration draft laws are considered.
- Participate in regular coordination meetings with RDO and respective RSTs and other EU-funded projects in the field.
- Provide support to the Team Lead with regular reporting to the host institution and the donors in line with specified requirements.
- Expected deliverables may be adjusted depending on the current needs and situation.

The specified lists of scope and specification of the services and expected deliverables are not exhaustive and can be modified and supplemented on request and agreement with EUD/EBRD or on request from the VRU. **The position is based on-site in Kyiv. This is not a remote work opportunity.**

5. Reporting Line

The Senior Legal Expert will be directly subordinated to the RST Team Lead.

6. Duration of the Assignment

The initial duration of the assignment is a 6-month contract, with the expected starting date in May 2023. Subject to funding availability and RST performance, this appointment may be extended.

7. Key Skills, Qualifications and Experience Required

Professional experience:

- Minimum 5 years, but preferably 7 years of general experience in legislative and policy-making/or legal advice and/or legal research in Ukraine (legal drafting, legal enforcement, regulatory analysis, compliance checks, policy implementation, policy evaluation, academic research etc.).
- At least 3 years of professional experience relevant to EU law and legal approximation of Ukrainian legislation to EU acquis.
- Deep knowledge and understating of VRU’s internal processes, legislative procedure and operational mechanisms will be considered as an advantage.
- Knowledge of laws of Ukraine “On the Protection of Rights to Trademarks and Service Marks”, “On the Protection of Rights to Industrial Designs”, “On the Protection of Rights to Inventions and Utility Models”, “On Copyright and Allied Rights”, “On Distribution of Copies of Audiovisual Works, Phonograms, Videograms, Computer Programs, Databases”, “On the Legal Protection of Geographical Indications”, “On the Protection of Rights to Layout of Semiconductor Devices”, “On the Protection of Rights to Plant Varieties”.
- Knowledge of the EU acquis in Intellectual Property Law area (patents and trademarks, designs, biotechnological inventions and pharmaceuticals, rules for the legal protection of copyright and related rights (books, films, computer programmes and broadcasting), including but not limited to: EU Directives 96/9/EC, 2001/29/EC, 93/83/EC, 2001/84/EC, 2009/24/EC, the European Patent Convention, the Paris Convention for the Protection of Industrial Property (1967) .
- Experience in drafting legal or procedural documents.

Other experience:

- Proven work experience in coordinating and supporting the formulation and development of policies, procedures and guidance, requiring effective facilitation and consensus-building skills.
- Good understanding of the reform agenda in Ukraine and policy formulation processes.

Qualifications and skills:

- Master’s degree in law. A master degree in other areas listed in section 2.2, together with: a) minimum 5 years of experience in legal advice or legal research and b) in addition to years required under professional experience, can be considered.
- Ukrainian – proficient, English – intermediate or higher.

8. Funding Source

The funding source of this assignment is the EBRD Ukraine Stabilisation and Sustainable Growth Multi-Donor Account (MDA). Contributors to the MDA are Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Norway, Poland, Sweden, Switzerland, the United Kingdom, the United States and the European Union, the largest donor.

9. Submissions

Submissions must be prepared in English and delivered electronically by 7 May to the following email address: **[recruitment.ura@gmail.com]**

All submissions must include:

- Completed, signed and scanned/photographed Application Form.
- Completed, signed and scanned/photographed Non-Disclosure Agreement Form.
- Applicant's CV and Motivation Letter.

- At least one reference letter from a recent supervisor/manager (in English or Ukrainian with English translation), signed by the referee and scanned/photographed.
- Contact details for two further referees who, if contacted, can attest to the professional and/or educational background of the candidate.

Only applications which have been submitted using the correct template and are fully completed will be considered.

10. Selection Procedure

Following the evaluation of all applications received, selected candidates will be invited for further testing. Only shortlisted candidates will be invited to the interview.