

Senior National Legal Consultant supporting the EUACI in providing technical assistance for the establishment of the High Anti-Corruption Court

Terms of Reference

1. Background

Support to anti-corruption efforts in Ukraine is a high political priority for the European Union. By combatting corruption, the EU contributes to the consolidation of democracy and economic growth of Ukraine, as well successful approximation of Ukraine with the EU.

The programme "EU Anti-Corruption Initiative in Ukraine (EUACI)" 2017-2019 is a three-year programme implemented by the Danish International Development Agency using the indirect implementation modality.

The overall objective of the programme is to improve the implementation of anti-corruption policy in Ukraine, thereby ultimately contributing to a reduction in corruption. In pursuing this objective, the programme supports all key institutions mandated to fight high level corruption in Ukraine, from prevention to investigation, prosecution, adjudication of corruption cases and recovery of illegally obtained assets in line with international norms and the best European practices to the parliamentary and civilian oversight of the execution of the anti-corruption policy.

The Parliament of Ukraine adopted the Law on the High Anti-Corruption Court (HACC) on 7 June 2018. HACC is a specialized court mandated with adjudicating high-level corruption cases investigated by the National Anti-Corruption Bureau of Ukraine (NABU) and prosecuted by the Specialised Anti-Corruption Prosecution Office of Ukraine (SAPO). HACC completes the chain of specialized bodies in the criminal justice sector established for effective investigation, prosecution and adjudication of high level corruption cases in Ukraine.

The legislative process that led to the adoption of the Law on the High Anti-Corruption Court (LHACC) included negotiations between the Ukrainian authorities and international stakeholders (International Monetary Fund in close cooperation with the European Commission for Democracy through Law – Venice Commission) which, alongside Ukrainian civil society, suggested the involvement of international experts in the selection process for the judges of the court. The Venice Commission, in its opinion issued in October 2017, recommended giving international participants a crucial role in the selection process. The LHACC takes this recommendation into account by allowing international experts the opportunity to get involved through the Public Council of International Experts (PCIE) for a total period of 6 years. The PCIE

is composed of 6 experts selected by the High Qualification Commission of Judges of Ukraine (HQCJ) for one term period of two years from a list of candidates nominated by international organizations. The Ukrainian authorities envisage to have the HACC operational by March 2019; the PCIE members are expected to be selected by the end of September and the PCIE to be fully operational subsequently thereafter.

The EUACI is committed to provide technical assistance to the establishment of the HACC by supporting the following key national stakeholders: the State Judicial Administration of Ukraine (SJA), responsible for organizational, administrative and financial matters of the court; the High Qualification Commission of Judges of Ukraine (HQCJ), responsible for administering the selection process for judicial candidate to the court; the Public Council of International Experts (PCIE), an auxiliary body to HQCJ that is responsible for assisting the HQCJ in the preparation of decisions on the appointment of HACC judges; the High Council of Justice (HCJ), responsible for reviewing candidates selected by HQCJ and their recommendation for appointment to the President of Ukraine.

The selection of judges, regulated in the Law of Ukraine on the Judiciary and Status of Judges (LJSJ), is under the responsibility of the HQCJ, a state body of judicial self-government composed of 16 commissioners. The procedure foreseen by the law for the selection of HACC judges is essentially the same as the procedure for the selection of ordinary judges, except for the involvement of international experts through the PCIE. The involvement of the PCIE replaces the participation of civil society representatives (Public Council of Integrity (PIC)) in the selection process for the HACC judges.

International donors agreed to provide the PCIE members with a secretariat for a full-fledged back-office support as well as expert assistance for the assessment of judicial candidates. An International Assistance Committee, consisting of major donors, will coordinate these efforts.

2. Objective

While the EU is playing the leading role in coordinating the nomination process of international experts to the PCIE by eligible international organizations, the EUACI aims to provide technical support to the selection process of the HACC judges as well as the operational establishment of the HACC.

The main objective of the overall technical support to be provided is to assist the responsible state bodies as well as the PCIE in effective functioning and fulfilling their mandate in order to ensure that the HACC is established timely and effectively and the selection process of HACC judges is implemented fair and transparent as well as in line with the LHACC and recommendations provided by the Venice Commission.

3. Scope of work

The Senior National Legal Consultant will be responsible for assisting the EUACI in providing technical assistance during the process of establishment of the HACC. The consultant shall ensure that the Ukrainian legal context and specifics as well as lessons learned from the judicial selection processes already conducted are adequately reflected and addressed in EUACI's work:

- Conducting legal research;
- Drafting of legal documents and legal opinions as well providing ad-hoc legal advise related to the set-up and work of the PCIE and the establishment of the HACC;
- Assisting the EUACI/EU Delegation on legal matters related to the nomination process of PCIE candidates;
- Attending working meetings with relevant national and international stakeholders, as required;
- Monitoring developments related to the establishment of the HACC and alerting EUACI management accordingly;
- Assisting the EUACI on other legal matters related to its work regarding the establishment of the HACC.

4. Outputs

Outputs include the following:

- Legal framework for efficient and transparent work of the PCIE developed;
- Legal analysis and legal memoranda on issues pertaining to the HACC selection process as well as work of the PCIE prepared;
- Coordination of the nomination process of PCIE candidates by the EU Delegation is supported effectively.

5. Professional Requirements

Education and Experience:

- Graduate degree in Law;
- At least 7 years of proven professional experience in the judiciary and/or anti-corruption sector, preferably in the area of complex legislative drafting and legal analysis;
- Experience with reform processes in the justice and/or anti-corruption sectors, very good knowledge and understanding of judicial and anti-corruption reform processes in Ukraine;
- At least 5 years of professional experience working as legal consultant with

international technical assistance projects or international organizations in the area of anti-corruption and/or judicial reform;

- Fluency in written and oral English and Ukrainian is essential.

6. Monitoring and evaluation

Definition of indicators

The performance of the Contractor will be judged upon reaching the purpose of this contract as well as obtaining its results, as indicated in the section "Objective" and "Outputs" herein respectively. Moreover, the performance of the Contractor will be judged upon successful implementation of all the specific activities indicated in Section "Scope of work" of the present document.

Special requirements

By signing the contract, the Contractor agrees to hold in trust and confidence any information or documents ("confidential information"), disclosed to the Contractor or discovered by the Contractor or prepared by the Contractor in the course of or as a result of the implementation of the contract, and agrees that it shall be used only for the purposes of the contract implementation and shall not be disclosed to any third party.

7. Cross-cutting issues (integration of the youth, equal opportunities)

The project will be implemented ensuring equal opportunities for men and women and integration of the youth.

8. Financial proposal

The Tenderer's financial proposal shall include all costs for fee and project related reimbursable expenses. The Tenderer's proposal shall include a writing example of recent legislative drafting work and/or legal analysis conducted by the applicant.

9. Timeframe

The intended commencement date is the date of signature of the contract by both parties (preferably early September 2018) and the period of implementation of the contract will be nine month, with a maximum of 50 working days.

10. Deadline for proposals submission is 10 September 2018, 17:00 Kyiv time.

How to apply

The proposals shall be submitted within the above deadlines to Elena Konceviciute, elekon@ukraine-aci.com .

Clarification questions

Questions for the Request for Bid should be addressed to Clemens Mueller, clemens.mueller@euam-ukraine.eu, no later than 5 September 2018, 18:00 Kyiv time.

