**Terms of Reference**

**for the pool of legal experts for capacity development of HACC judges**

**and Court personnel**

**Background**

Ukraine has embarked on the path towards combatting corruption following the Revolution of Dignity in 2014. This process included the introduction of the comprehensive anti-corruption reform measures and establishing new anti-corruption institutions.

Since 2017, Denmark and the EU in the framework of the programme “EU Anti-Corruption Initiative in Ukraine (EUACI)” in its Phase I (2017-2020) implemented by the Danish International Development Agency using the indirect implementation modality, worked extensively on assisting the Ukrainian Government in putting into life its anti-corruption agenda and with building the capacities of the new anti-corruption institutions to fight corruption in the country.

One of the main focuses of the EUACI during the Phase I was supporting the process of the establishment and putting into operation of the High Anti-Corruption Court of Ukraine (HACC), a specialized court of 38 judges mandated with adjudicating high-level corruption cases investigated by the National Anti-Corruption Bureau of Ukraine and prosecuted by the Specialized Anti-Corruption Prosecution Office. HACC completes the chain of specialized bodies in the criminal justice chain established for effective investigation, prosecution, and adjudication of high-level corruption cases in Ukraine.

One of the prominent achievements of the Phase was successful establishment of the Court. The Court started its operation on 5 September 2019. The overall process of the establishment of the Court, took less than 15 months.[[1]](#footnote-1) This period included the selection and appointment of judges, election of chairpersons of two chambers, adoption of regulatory framework, recruitment of personnel, preparation of 3 court-houses and setting up of all required infrastructure, IT network etc.

Based on the significant positive results attained during the Phase I, including the operational launch of HACC and functioning of its both chambers, Denmark and the EU made a decision to engage in a second phase of the programme aimed at sustaining existing results and further expanding the support to newly established anti-corruption institutions. As in Phase I, Denmark is implementing the programme on behalf of the EU and is using an indirect implementation modality based on Danish guidelines.

Phase II of the Programme, focuses on the number of directions including capacity development of judges and Court personnel.

Sustainability of the work of HACC, which is at the relatively early stage of its development, is directly connected to the specific outcomes such as the capacity of its judges and judicial staff to efficiently realize their functions and address significant challenges, stemming out of both the application of substantive and procedural law as well as effectively managing court proceedings and its participants. Ability of the Court to address these difficulties will significantly contribute to increasing public confidence in the work of HACC.

One of the characteristics of HACC is that almost 41% of judges and 40% of staff are newcomers to the judicial system. Therefore, judicial training and continuous development of knowledge and skills are particularly significant for HACC as it contributes to making system efficient and assists ensuring the competency of the judiciary.

Against this background, in order to have a clear understanding of the training needs of the Court, based on which concrete capacity development activities will be designed and implemented, as foreseen by the Workplan of the Programme two Training Needs Assessment (TNA) of HACC judges and Court personnel were implemented.

TNAs, provide an overview of the needs and gaps in skills and capacities of judges and Court personnel as well as a set of recommendations, identifying the most relevant and salient issues and areas of training that are necessary for judges and Court personnel to successfully carry out their judicial functions.

Based on the TNAs, EUACI has developed a training programme.

**1.Objective**

The goal of this activity is to support sustainability of independent and effective functioning of HACC by strengthening and refining judicial capacity of HACC judges and Court personnel through a number of capacity development activities identified as immediate/mid-term urgency by the TNA reports. To achieve this objective the services of experts (both local and/or international) are sought to cover four identified areas.

**2.Scope of work**

Develop training materials and conduct trainings for HACC judges and Court personnel on salient issues identified by the TNA reports in the fields of:

* Criminal law
* Criminal procedural law
* International human rights standards relating to anti-corruption activities
* International law related issues.

NABU detectives and SAPO prosecutors may attend relevant trainings provided under this contract.

**3.Expected Outputs**

3.1. **Training in the field of criminal procedural law:**

* Consideration of motions, including relating to covert investigative activities and especially focusing on standard of proof (for investigative judges)
* Admissibility/evaluation of evidence obtained as a result of various investigative actions including, the use of recordings made by non-investigative bodies
* In absentia trials including problematic issues arising out of declaring a fugitive wanted *(this training can be merged with international regulation and best practices on same issues*)
* Synchronizing approaches on employing of plea-bargaining agreements
* Synchronizing approaches regarding seizure of property and other safeguard/security measures
* Issues relating to joining and severing criminal proceedings
* Legal framework and practical problems of protection of whistleblowers
* Specificities of financial investigations
* Problems related to the use of the mechanism of economic expertise and in particular, how damage is determined and assessed
* Application of coercive measures of medical nature
* Specificities of Judicial use of financial monitoring data

3.2. **Training in the field of criminal law:**

Trainings shall focus on judicial review of corruption-related crimes (question of elements of crimes and qualification) of those articles of CC that are most commonly featured in cases before HACC. Based on the TNA these are:

* Art. 191 (appropriation, misappropriation of property or taking it by abuse of office)
* Art. 364 (abuse of power or official position). This will include: drawing a distinction between Articles 364 (abuse of power or official position), 191 (appropriation, misappropriation of property or taking it by abuse of office) and 190 (fraud) of the Criminal Code
* Art. 368 (acceptance of an offer, promise or receipt of an improper benefit by an official)
* Art. 369 (proposal, promise or illegal benefit to an official)
* Art. 209 (legalization (laundering) of property obtained by criminal means) 368-5 (illegal enrichment)
* Art. 369-2 (trading in influence)
* Problematic aspects and peculiarities of sentencing under the articles of CC falling under HACC jurisdiction.

3.3. **Training in the field of human rights law:**

Set of trainings on the practice and case-law of ECtHR, including:

* Established practice and standards of civil confiscation.
* Standards of protection of human rights in corruption-related cases.
* Prosecution v. persecution: dividing lines.
* Approach of the Court to the issue of delay of proceedings, with particular focus on actions of defence.
* Judicial ethics, integrity and conflict of interest.

3.4. **Training on various issues pertaining to the domain of international law:**

Set of trainings on the salient issues faced by HACC in the field of international law, including:

* Problematic aspects of resorting to international legal assistance
* Declaring a fugitive internationally wanted
* Best practices of trials in absentia
* Best practices on issues of return of assets
* Ukraine’s international obligations in the field of anti-corruption

**4.Professional Requirements**

4.1 **Expert on capacity development in the field of criminal procedural law**

The assignment requires the service of a local expert with the following minimum requirements:

* University degree in law at least up to Masters’ Degree
* At least 10 years of experience in the field of Ukrainian criminal procedural law, out of which at least 5 years of practical experience of working in criminal law field as a judge, prosecutor, investigator, public official.
* At least 5 years of experience as a trainer
* Experience in developing training modules/programmes and materials
* Strong communication/presentation skills.
* Knowledge of comparative criminal procedural law will be an advantage.
* Previous experience of working with Ukrainian judiciary or with governmental institutions as well as international organizations assisting anti-corruption efforts of Ukraine will be an advantage
* Knowledge and understanding of reform processes in Ukraine will be a strong asset.
	1. **Expert on capacity development in field of criminal law**

 The assignment requires the service of a local expert with the following minimum requirements:

* University degree in law at least up to Masters’ Degree.
* At least 10 years of experience in the field of Ukrainian criminal law, out of which at least 5 years of practical experience of working in criminal law field as a judge, prosecutor, investigator, public official.
* At least 5 years of experience as a trainer.
* Experience in developing training modules/programmes and materials.
* Strong communication/presentation skills.
* Knowledge of comparative criminal law will be an advantage.
* Previous experience of working with Ukrainian judiciary or with governmental institutions as well as international organizations assisting anti-corruption efforts of Ukraine will be an advantage.
* Knowledge and understanding of reform processes in Ukraine will be a strong asset.

4.3 **International human rights law expert**

The assignment requires the service of a local or international expert with the following minimum requirements:

* University degree in law at least up to Masters’ Degree / Academic level in Law or equivalent that demonstrates the ability to perform the duties and responsibilities as described
* At least 7 years of experience in the field of human rights with the focus on criminal and criminal procedural law.
* Comprehensive knowledge of the standards and the case-law of the European Court of Human Rights.
* At least 5 years of experience as a trainer.
* Experience in developing training modules/programmes and materials.
* Strong communication/presentation skills.
* Previous experience of working with Ukrainian judiciary or with governmental institutions as well as international organizations assisting anti-corruption efforts of Ukraine will be an advantage
* Knowledge and understanding of reform processes in Ukraine will be a strong asset.

4.4 **International Law expert**

The assignment requires the service of a local or international expert with the following minimum requirements:

* University degree in law (preferably international law) at least up to Masters’ Degree
* At least 7 years of experience in the field of international law with the focus on criminal and criminal procedural law.
* Minimum 5 years of professional experience in advising the senior management of state body, preferably in the justice sector in international law related matters.
* Comprehensive knowledge of the standards and the case-law on issues of mutual legal assistance, trials in absentia, UN Convention against Corruption and other international instruments etc.
* At least 5 years of experience as a trainer.
* Experience in developing training modules/programmes and materials.
* Strong communication/presentation skills.
* Previous experience of working with Ukrainian judiciary or with governmental institutions as well as international organizations assisting anti-corruption efforts of Ukraine will be an advantage
* Knowledge and understanding of reform processes in Ukraine will be a strong asset.

**The bidder can submit the proposal with any other reasonable number of experts. For instance, 1 expert can cover 2 (or more) areas and, vice versa, 2 (or more) experts can cover 1 area.**

# 5.Timing

The duration of this assignment is estimated to be until the 31 of December 2022.

The assignment will start following an administrative order issued by the contracting authority. A tentative start date: December 2021.

# 6.Estimated budget

Trainings will be requested on a running basis with the agreed rates up to a total budget of EUR 30,000.

**7.Monitoring and evaluation**

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.

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.

**8.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.

# 9.Bidding details

The bidder must submit the following information to be considered:

1. Methodology of implementation of assignment (up to 3 pages).
2. CVs of trainers and administrative team members (if applicable).
3. A list of assignments, similar to this project, executed in the last 7 years.
4. List of rates of trainers and administrative team members (if applicable).

# 10.How to apply

The deadline for submitting the proposals is 19 November 2021, 18:00 Kyiv time.

The proposals shall be submitted within the above deadline to vikkyl@um.dk, indicating the subject line “**Pool of experts for capacity development of HACC judges and Court personnel**”.

Bidding language: English.

Any clarification questions for the bid request should be addressed to vikkyl@um.dk, no later than 12 November 2021, 18:00 Kyiv time.

# 11.Evaluation criteria

Bids will be evaluated under the criteria provided below:

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| **#** | **Criteria** | **Weight** |
| 1 | Methodology of implementation of assignment | 20% |
| 2 | Portfolio of completed projects, quality, and relevance of past work | 20% |
| 3 | Relevant experience, skills and competencies of trainers and administrative team members (if applicable) | 40% |
| 4 | Proposed rates | 20% |

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1. Law on HACC entered into force on entered into force on 14 June 2018, while the Court started its operation in 5 September 2019. [↑](#footnote-ref-1)