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THE REFERENCE BOOK ON THE MAIN FINDINGS AND RECOMMENDATIONS OF THE TWINNING PROJECT

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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 and freedoms (Apparatus)

Beneficiary Country: Ukraine

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Ludwig Boltzmann Institute
Human Rights

This document was drafted as an instrument designed to be a reference to the activities and the results of the Twinning Project “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)” which was implemented by a consortium of Lithuanian and Austrian institutions during the period of 2017-2018.

All reports and main documents mentioned in this document can be found on the Twinning Project website: <http://www.twinning-ombudsman.org>.



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Basic information about the Twinning Project

Project purpose	strengthening the effectiveness of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights 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 Ombudsman office and its internal procedures in compliance with the international and European best practices
Key areas	protection of personal data, access to public information and prevention of all forms of discrimination.
Duration	24 months (2017 –2018)
Budget	EUR 1.5 million. The Project is financed by the EU ENI Programme
Consortium	<p>Twinning Project was implemented jointly by a consortium of Lithuanian and Austrian institutions:</p> <ul style="list-style-type: none"> • Law Institute of Lithuania • Ludwig Boltzmann Institute of Human Rights (Austria) • Seimas Ombudsmen’s Office of the Republic of Lithuania • Office of the Equal Opportunities Ombudsperson (Republic of Lithuania) • State Data Protection Inspectorate (Republic of Lithuania) • Vilnius University (Republic of Lithuania) • Central Project Management Agency (Republic of Lithuania)
Beneficiary of the Project	Secretariat of the Ukrainian Parliament Commissioner for Human Rights
Project Leader	Augustinas Normantas, Seimas Ombudsman (Lithuania)
Junior Project Leader	Hannes Tretter (Austria)
Resident Twinning Adviser (RTA)	Aušra Rauličkytė
Project website	http://www.twinning-ombudsman.org

Main results achieved

Situation analysis and identification of key areas for improvement	<ul style="list-style-type: none"> (1) Report on the existing regulatory and legal framework governing the activities of the Commissioner (2) Recommendations aimed at bringing the national regulatory and legal framework with the best EU practices in the human rights area (3) Report on existing methodologies and procedures to carry out a monitoring of the respect of human rights (4) Analysis and assessment of the efficiency of activities of the Ombudsperson (5) Assessment of the system of education and advanced training of the Secretariat's personnel and the training needs analysis
Comparative reports	<ul style="list-style-type: none"> (1) Comparative analysis of national and European legislation concerning the activities of the Ombudsperson (2) Comparative analysis of the methodologies and procedures to carry out a monitoring of the observance of human rights (3) Comparative analysis of existing instruments for human rights restoration in Ukraine and EU countries
Recommendations on legislative changes (prepared draft laws and suggestions for amendments)	<ul style="list-style-type: none"> (1) Draft law on the Ukrainian Parliament Commissioner for Human Rights (2) Draft Law on Personal Data Protection (3) Suggested areas of improvement for the Law on Access to Public Information and its implementation (4) Recommendations regarding the amendments to the Law on Access to Public Information related with the amendments to the Law on Personal Data Protection (5) Suggestions for improvement of anti-discrimination laws
Methodologies and procedures for the monitoring of respect for human rights and freedoms	<ul style="list-style-type: none"> (1) General instrument: framework for the implementation of monitoring functions (2) Methodology for the evaluation of draft legal acts from the perspective of personal data protection (3) Guidelines on the procedure of giving methodological advises/consultations on personal data protection (4) Guidelines and checklist on video surveillance for data controllers in the public and private sector (5) Info sheet for employers: how to avoid discrimination in job advertisements (6) Methodology on the assessment (review) of draft legal acts for compliance with the anti-discrimination laws (7) Guidelines on preparation of expert anti-discrimination opinions (amicus curiae) for courts (8) Checklist for implementing field monitoring visits on discrimination

	(9) Guidelines for the civil servants on balancing privacy and access to public information
Recommendations on the improvement of the effectiveness of the activities of the Ombudsperson	<p>(1) Human rights based approach for the national human rights institutions</p> <p>(2) Recommendations on the drafting of recommendations, based on individual complaints</p> <p>(3) Making recommendations effective</p> <p>(4) Recommendations on the drafting of effective annual reports of an Ombudsperson</p> <p>(5) General instrument: framework for the adoption and facilitation of implementation of systemic recommendations</p> <p>(6) Data management as a tool for increasing the effectiveness of recommendations of the Commissioner</p> <p>(7) Recommendations on Communication strategy</p>
Recommendations on improving the existing or employing new instruments for restoring human rights	<p>(1) Code of Good Administrative Behaviour</p> <p>(2) Recommendations for the improvement existing and employment of new instruments for restoration of human rights <i>vis-à-vis</i> the judiciary</p> <p>(3) Recommendations based on the best EU practices regarding State liability for damage caused by public administration</p> <p>(4) Mediation, conciliation and peace agreement as the instruments to restore violated rights</p> <p>(5) Recommendations on the application of the instrument of positive actions in the areas of antidiscrimination, data protection and access to public information</p> <p>(6) Recommendations on the amendment of the Law on Personal Data Protection and recommendations on the amendment of the Law on Access to Public Information</p>
Guidelines for effective monitoring of compliance by relevant stakeholders with the legislation in the field of access to public information	<p>(1) Guidelines for the public authorities of Ukraine on the provision of information to the public and media</p> <p>(2) Recommendations regarding the problematic issues in the area of access to public information in public procurement</p> <p>3) Training materials for the public servants training in the area of access to public information: “Violations by information processors (providers) of the requirements of the Law of Ukraine on Access to Public Information”</p>
Development of the training system and conducting trainings	<p>26 training programs were developed</p> <p>15 trainers were trained</p> <p>4 pilot trainings were organized.</p>

Other activities

4 study visits	<p>(1) Lithuania/Latvia (April 2017)</p> <p>(2) Austria (November 2017)</p> <p>(3) Croatia (February 2018)</p> <p>(4) Lithuania (July 2018)</p>
Round tables/ seminars	<p>(1) Twinning Opening Ceremony (3 February, 2017)</p> <p>(2) Discussion “Presentation of the recommendations regarding changes to the legal framework governing the activities of the Ombudsperson” (27 September, 2017)</p> <p>(3) Round table “Strengthening the Ukrainian Ombudsperson institution: recommendations regarding changes to the legal framework governing the activities of the Ombudsperson” (28 September, 2017)</p> <p>(4) Workshop “Development of the amendments to the legal acts governing the activities of the Ombudsperson” (20-21 January 2018)</p> <p>(5) Seminar “Strengthening the Ukrainian Ombudsperson institution: Recommendations regarding methodologies and procedures to carry out a monitoring of the observance of human rights” (24 January 2018)</p> <p>(6) Seminar “Strengthening the Ukrainian Ombudsperson institution: Recommendations regarding elimination of detected human rights violations, procedures of control over fulfilment of Ombudsperson’s recommendations, response to the Ombudsperson’s acts of submission on elimination of detected human rights violations” (18 April 2018)</p> <p>(7) Training “The application of a human rights based approach by national human rights institutions” (5, 7 June 2018)</p> <p>(8) Training on practical aspects of developing high quality recommendations, annual and special reports (9-10 June 2018)</p> <p>(9) Round table “Strengthening the Ukrainian Ombudsperson institution: Recommendations regarding approximation of the Law on Personal Data Protection to the new EU General Data Protection Regulation” (25 October, 2018)</p> <p>(10) Round table to discuss the draft Law on Personal Data Protection with representatives of business community (26 October, 2018)</p> <p>(11) Round table “Strengthening the Ukrainian Ombudsperson institution: Recommendations regarding improving the existing or employing new instruments for restoration of violated rights” (6 November, 2018)</p> <p>(12) Round table “The Ombudsperson in protection of the dignity and freedom: Presentation of the new draft Law on the Ukrainian Parliament Commissioner for Human Rights” (21 November, 2018)</p> <p>(13) Closing conference (7 December 2018).</p>

1. Situation analysis and identification of key areas for improvement

1.1. Report on the existing regulatory and legal framework governing the activities of the Commissioner

One of the first activities of the experts of the Twinning Project was to review and assess the existing regulatory and legal framework governing the activities of the Ukrainian Parliament Commissioner for Human Rights (hereinafter – the Commissioner, the Ombudsperson). For this purpose, the experts had intensive meetings with the Secretariat of the Commissioner during which types of activities and main duties of the Commissioner were discussed and the main legal acts regulating the mandate and work of the Commissioner were identified. In addition, Commissioner's activities in the three main areas of its competence (protection against discrimination, personal data protection and access to public information) were scrutinised to fully understand the specifics of the Ukrainian model of the Ombudsman institution.

The experts were positively impressed by the work of the Commissioner and institution's devotion to human rights. However, they noted several legislative and administrative hurdles that burdens the effectiveness of the work of the Commissioner.

The experts have identified certain shortcoming in the legal regulation and practice. In particular, several areas where the Law on the Ukrainian Parliament Commissioner for Human Rights could be improved were noted (related to appointment procedure, grounds for termination and dismissal, re-election procedure, regional set-up of the Office, etc). Improvement of instruments of the Commissioner to address the systemic human rights problems and to generate new legislative initiatives in this field were also suggested. Furthermore, the experts listed issues in the fields of personal data protection, access to public information and equal treatment where improvements would be beneficial (involvement in law-making process, monitoring the existing legal regulation and its implementation in practice, handling individual complaints, etc.).

For further information and recommendations please see the [Report](#) of the Activity 1.1.

1.2. Recommendations aimed at bringing the national regulatory and legal framework with the best EU practices in the human rights area

Having performed the situation analysis (see 1.1 above) and comparative research into various ombudsman models (see 2.1. below), the experts drafted recommendations aimed at bringing the national regulatory and legal framework with the best EU practices in the human rights area. This responded to the general aim of strengthening the institutional capacity of the Secretariat of the Commissioner to protect human rights and freedoms and set guidance to further Twinning Project activities.

Ten key proposals were developed:

1. *Promotion of the right to good administration*: to establish in the Law on the Ukrainian Parliament Commissioner for Human Rights that the promotion of the right to good administration is one of the fundamental functions of the Commissioner. This

proposal included incorporating the right to good administration into national legislation and adopting a Code of Good Administrative Behaviour.

2. *Strengthening the independence*: it was recommended to establish several measures, which could prevent interference in the activities of the Commissioner and strengthen the legal status of the Institution.
3. *Enhancing efficiency of complaint handling procedure*: In order to simplify and harmonise legal rules for investigation of individual complaints, it was suggested to revise the Law on the Ukrainian Parliament Commissioner for Human Rights and to clarify its relationship with other laws (several legislative amendments were foreseen).
4. *Promoting sound public administration via mediation*: it was recommended to amend the Law on the Ukrainian Parliament Commissioner for Human Rights by expressly introducing the right of the Commissioner to act as a mediator.
5. *Strengthening the relationship with the legislator*: the experts suggested to confer on the Commissioner the right of legislative initiative and the right to participate in parliamentary sessions and other meetings of public institutions and bodies.
6. *Access to justice*: certain changes as to normative control before the Constitutional Court and administrative courts were proposed. In addition, experts suggested to consider possibility of interference of the Commissioner when defending public interest.
7. *Limitations to the Commissioner's role in legal representation*: it was recommended to remove the overlapping between Ukrainian legal aid system and Commissioner's mandate.
8. *Limited Intervention into judicial proceedings*: experts suggested that it would be preferable for the Commissioner to retain the power to make general recommendations about the functioning of the courts, but to exclude or to limit the power to interfere into individual proceedings.
9. *Harmonisation of anti-discrimination laws*: legislative changes in this area were proposed.
10. *Data protection and access to public information*: it was recommended to remove the tasks of a data protection supervisory authority from the tasks of the Commissioner and establish a new independent data protection authority. Also, changes in the respective laws were suggested to bring them in line with international and EU standards.

All those recommendations in more detail could be found in the [Report](#) of the Activity 1.3.

See also the [Report](#) of the Activity 1.4 where the materials of the roundtable are presented.

These activities later led to preparation of the draft of the Law on the Ukrainian Parliament Commissioner for Human Rights. Please refer to Section 3.1 below.

1.3. Report on existing methodologies and procedures to carry out a monitoring of the respect of human rights

In addition to legislative framework, the experts also evaluated the internal methodologies and procedures used in the Secretariat of the Commissioner. The goal of this analysis was to scrutinise existing methodologies and procedures of monitoring of the observance of human rights and preventive measures, applied by the Commissioner, therefore the assessment focused on preventive monitoring activities, aimed to recognise and remedy risk factors for human rights infringements at an early stage.

The experts considered that the main strengths of the Commissioner in monitoring of the observance of human rights and preventing their violations is a broad mandate and “A” status as a NHRI, variety of operating activities, definite objective, a strong partnership, including joint planning and implementation of activities, with civil society, donors and other stakeholders, as well as developed monitoring methodologies. However, certain challenges exist.

It was highlighted that in order to improve the efficiency and effectiveness of carried out activities, there is a need to set priorities and periodicity of monitoring activities, strengthen and promote information exchanges with the stakeholders and expand the data collection to ensure access to vulnerable persons and groups, develop missing monitoring methods and tools and ensure implementation of all monitoring cycles, from information gathering to the impact of taken action. Finally, a lack of human rights awareness of authorities and people is also a big challenge requiring a strategic plan to address it.

After the analysis, the experts also listed problematic aspects in the area of protection of personal data, access to public information and non-discrimination. Then, recommendations were made identifying several areas where development of strategies and methodologies or existence of methodological guidance could be of particular use.

For extensive analysis, see [Report](#) of the Activity 2.1.1.

1.4. Analysis and assessment of the efficiency of activities of the Ombudsperson

The experts have also performed analysis and assessment of the efficiency of activities of the Ombudsperson in eliminating detected human rights violations, control procedures over fulfilment of Ombudsperson’s recommendations and response to the Ombudsperson’s acts on elimination of detected human rights violations.

As a result of this analysis they have drafted a report the aim of which was to support the Commissioner in further increasing his/her efficiency. The experts have presented extensive recommendations on the essential steps in developing high quality recommendations based on individual appeals and their content and follow up. They have as well as gave their insights on the need of systemic recommendations and on essential elements in ensuring the implementation of systemic recommendations. Annual and special reports were also given consideration and in the report one will find guidelines as to their contents, drafting and role in general. Moreover, Commissioner’s role in law making is discussed, and recommendations as to the Commissioner’s functions in conciliation (as a soft power tool remedying certain kinds of human rights violations) is given. The experts have also considered the use of data management system as a tool to support the development, implementation and monitoring of recommendations. Finally, the need to ensure the visibility of recommendations of the Commissioner was noted.

The detailed assessment and recommendations can be found in the [Report](#) of the Activity 2.2.1.

The suggested improvements were further elaborated by developing respective documents. Please refer to Section 5 below.

1.5. Assessment of the existing instruments for the restoration of violated rights

Another area to which particular attention was given by the experts of the Twinning Project was existing instruments for the restoration of violated rights. Research focused on assessing how instruments for the restoration of violated rights are applied by the Commissioner, in particular in the fields of personal data protection, prevention of all forms of discrimination and on the access to public information.

The experts repeated the earlier expressed idea that supervision of data protection and the accession of public information should be separated from the Ombudsman institution and that separate authority should be entrusted with such an area. They also presented suggestions as to Commissioner's role vis-à-vis the judiciary, giving a lot of attention to defence of public interest (*actio popularis*). The experts further noted that a common remedy in case of non-compliance with one of the Commissioner's decisions is drawing up a "protocol" which is then submitted to an administrative court for punishing the violator under the Code of administrative offences. Shortcomings of such model were pointed out and recommendations given. Additionally, material and procedural questions of compensational remedies in the context of restoration of violated rights were discussed, mediation, positive actions and awareness raising activities were advocated.

The full assessment and recommendations can be found in the [Report](#) of the Activity 2.3.1.

1.6. Assessment of the system of education and advanced training of the Secretariat's personnel and training needs analysis

As one of the components of the Twinning Project was development of the system of advanced trainings, training needs analysis was performed. The experts sought to assess the gap between the knowledge, skills and attitudes of the Secretariat's personnel in the area of common competences (communication, planning, mediation, conflict resolution, work under psychological pressure, etc.) and in the areas of data protection, equal rights and non-discrimination, access to public information which they currently possess and the knowledge, skills and attitudes that they require in order to meet the needs and objectives of the Ombudsperson office. In addition, the experts identified the strengths and weaknesses of the current training system at the Ombudsperson's office and suggested the directions for its improvement. The precise list of areas where trainings are needed was drafted.

The full assessment is presented in the [Report](#) of the Activity 3.1.

Please also refer to Section 7.

2. Comparative reports

In order to identify the models and options to be suggested to Ukraine and seeking to support the findings of the experts, several comparative reports were prepared in the course of the Twinning Project. They are briefly presented below.

2.1. Comparative analysis of national and European legislation concerning the activities of the Ombudsperson

This comparative analysis sought to compare national and European legislation concerning the activities of the ombudsperson. It focused on fundamental aspects of ombudsperson's activities such as independence, guarantees, efficiency, broadness of the mandate in the context of international developments and the best practices across Europe.

The analysis began with a brief discussion of the emergence and development of the functional models of the ombudspersons, with particular reference to the ombudsperson's functions in promoting the right to the good administration. This was followed by the analysis of the way in which the ombudspersons carry out their activities. Specific aspects of the appointment procedure, immunity, social guarantees, and dismissal were then covered.

Afterwards, the focus shifts to the mandate of the ombudspersons in the context of administrative procedures carried out in handling individual complaints. The report presents the institutional relationships vis-à-vis the parliament and courts. In particular, this also includes discussion of the mandate of the ombudspersons in the spheres of antidiscrimination, data protection, access to public information and mediation. The analysis is then concluded with some general remarks and comparative assessment.

For this comparative analysis please refer to the [Report](#) of the Activity 1.2.

2.2. Comparative analysis of the methodologies and procedures to carry out a monitoring of the observance of human rights

The experts have performed a research and prepared a report dedicated to a comparative analysis of existing methodologies and procedures applied in Ukraine and other European countries in the areas covered by the Commissioner. By researching into the international practice, the experts sought to create a solid basis for further activities of the expert teams and to enable them to draft the so much needed instruments. Therefore, the leading idea behind this research was to seek guidance in the methodologies and procedures applied in European states and international organisations and to identify the best practice examples that could be followed by Ukraine.

The report is structured into three main parts, following the main work trenches of the Commissioner: data protection, access to public information and antidiscrimination. In all of those constituent parts, substantial attention is given to the question of monitoring and prevention. As to data protection, the experts suggested that a more detailed methodology on how to assess compliance of provisions on personal data processing foreseen in draft laws with personal data protection principles would be of practical value. They also noted that changes should be made as to notification mechanism in data protection area, and guidelines on data protection designated for different sectors, as well as awareness raising instruments would be particularly useful. As to access to public information, monitoring deficiencies and

problematic situation with complain analysis were noted. In the area of antidiscrimination, improvements as to analysis of draft laws, monitoring and awareness raising were suggested. Please refer to the [Report](#) of the Activity 2.1.3.

The suggested improvements were further elaborated by developing respective documents. Please refer to the Section 4 below.

2.3. Comparative analysis of existing instruments for human rights restoration in Ukraine and EU countries

After conducting situation analysis on existing instruments for the restoration of violated rights in Ukraine (see Section 1.5 above), the experts discussed existing instruments for human rights restoration in Ukraine and EU countries through the comparative perspective. Naturally, the experts did not intend to cover all the possible instruments and practices, but focused on those areas that were identified as the most important for the Ukrainian Ombudsman institution.

The following areas were covered: (i) the best EU practices regarding State liability for damage caused by public administration; (ii) amicus curiae and defence of public interests; (iii) recommendations on the application of the instrument of positive actions; (iv) mediation, conflict settlement and peace agreement as the instruments to restore violated rights.

As an important issue identified by the Commissioner, this activity also included a comparative analysis of the Law on Personal Data Protection and the General Data Protection Regulation (which later resulted in the preparation of the new draft law, see Section 3.2 below). In addition, upon the request of the Commissioner, the work of this activity also covered comparative analysis on the best practices of drafting a Code of Good Administrative Behaviour.

The full assessment and recommendations can be found in the [Report](#) of the Activity 2.3.3.

3. Recommendations on legislative changes

3.1. Draft Law on the Ukrainian Parliament Commissioner for Human Rights

The work on the new draft of the Law on the Ukrainian Parliament Commissioner for Human Rights required intensive work. Several meetings, workshops and roundtables were organised (see [Report](#) of the Activity 1.5). As a result, the draft of the Law was prepared (see [Annex 3](#) of the Activity 1.5) and the explanatory note (see [Annex 4](#) of the Activity 1.5).

This Draft responds to the general aim of strengthening the institutional capacity of the Secretariat of the Commissioner to protect human rights and freedoms. It seeks to introduce legislative changes meant to reinforce the Commissioner with effective tools and legal mechanisms for identifying major systematic issues in human rights area and moving to more proactive focus in relation to systematic changes. It is also based on the requirements for the Commissioner to perform his mandate protecting the human rights with independence, flexibility and efficiency. The need for adoption of the Draft is also driven by the goal of bringing the national regulatory and legal framework of Ukraine regulating the Commissioner's activities in accordance with the international and European standards and best practices in the human rights area.

In particular, the Draft suggests to introduce legal changes in following areas:

1. *Amendments aimed at facilitating the good administrative behaviour of public sector*
 - The proposed amendments introduce the additional role of the Commissioner in facilitating and promoting the good administrative behaviour of the bodies of State power, local self-government and other persons authorized to perform State functions.
 - The amendments also foresee the adoption of the Code of Good Administrative Behaviour, which provides guidance on practical steps towards greater effectiveness, transparency and accountability of the State authorities.
2. *Amendments aimed at substantial improvement of the administrative procedure for handling individual complaints*
 - The new detailed chapter is set out in the Draft on the administrative procedures and measures.
 - The Draft enhances the efficiency of the administrative procedure establishing clear provisions concerning the formal steps on submission of complaints and requirements of complaints.
 - The Draft sets out a special obligation for the institution following the issue of a final submission by the Commissioner. It foresees the duty of the entity or official to whom the submission of the Commissioner is addressed to investigate the submission of the Commissioner and to inform in written form not later than 30 days after the receiving of submission about the results of the investigation of the submission.
 - The Draft introduces the new type of legal instrument of the Commissioner - the compliance notice (*postanova*) of the Commissioner, which is a motivated demand for exercise of measures set by the Commissioner or his/her representative aimed at the elimination of revealed acts of violation of human and citizens' rights and freedoms in the sphere of the rights to access to public information and personal data protection. The body or official who receives the compliance notice is obliged to perform these activities within the set period, and

inform the Commissioner in writing about it not later than 5 days after expiry of the set period for the performance.

3. *Amendments aimed at substantial improvement of the legal status of the Commissioner*

- Several amendments are suggested with regard to the more effective appointment procedure, stronger legal underpinning of independence in terms of dismissal procedure and guarantees after expiry of the term of office, as well as enhancing the public confidence in the institution itself.
- As to appointment, additional qualification and ethical standards are envisaged, inclusion of the civil society foreseen, the number of votes required in the Parliament for a decision on appointment are revised.
- The Draft introduces amendments making the procedure of dismissal of the Commissioner more difficult, establishing the qualified majority of 2/3 of votes to dismiss the Commissioner as provided for under international standards. In addition, grounds of dismissal are revised. The Draft also foresees that after expiration of the term, the Commissioner shall exercise the powers before a newly elected Commissioner is sworn in.
- Several changes as to budget of the Commissioner and right to establish regional units are set.

4. *Amendments aimed at substantial improvement of the functions of the Commissioners, focusing on the strategic issues and balanced relationships with the legislative and judicial powers*

- The function that allowed the Commissioner to initiate the legal disputes on citizens' behalf and not to channel them to the legal aid institution is removed.
- The right of the Commissioner to apply to the administrative court with a request to investigate the legality of an administrative regulatory enactment (or its part) concerning the protection of human and civil rights and freedoms is established.
- The Commissioner's functions are expanded expressly by introducing his/her rights to carry out mediation according the Law on Mediation of Ukraine.
- The Draft foresees that the Commissioner has the right to make to the Parliament proposals for improvement in the sphere of protection of human and citizen's rights and freedoms and to take part and present the position in all related meetings with a right of deliberative vote. When fulfilling this right, the Commissioner has the right to participate in parliamentary sessions and meetings, to attend the meetings at the Government and other State institutions where matters of human rights are discussed with the right to speak.

For more details, please refer to the explanatory note ([Annex 4](#) of the Activity 1.5).

3.2. Draft Law on Personal Data Protection

The Commissioner was committed with the task to review the existing Law of Ukraine on Personal Data Protection and to suggest changes in order to bring it closer to the EU General Data Protection Regulation (GDPR) which came into force on the 25 May 2018 in the Member States of European Union.

In this background, the experts of the Twinning Project offered their assistance and made a comparative analysis of the requirements of the GDPR and the Law of Ukraine on Personal Data Protection. Following intensive discussions and consultations with the Secretariat of Commissioner, the draft law was prepared.

This activity was followed with two round tables (Round table “Strengthening the Ukrainian Ombudsperson institution: Recommendations regarding approximation of the Law on Personal Data Protection to the new EU General Data Protection Regulation” (25 October, 2018); and Round table to discuss the draft Law on Personal Data Protection with representatives of business community (26 October, 2018). Taking into account the received input, the final draft was prepared.

Please find the [Draft Law and its Explanations](#) between the documents of the Activity 2.3.4.

3.3. Suggested areas of improvement for the Law of Ukraine on Access to Public Information and its implementation

During project expert missions, dedicated to improvement of the legal framework of the activities of the Commissioner and the Secretariat, the experts have identified a number of areas in the Ukrainian Law on Access to Public Information that would benefit from improvement. The existing shortcomings not only prevent the citizens from enjoyment of their right to access public information, but also overburdens the Secretariat with the load of cases and duties (such as drawing up administrative protocols for violations of the access to public information), which do not fall under the mandate of an Ombudsman.

Among the issues discussed, is the clarification of the mandate of the Ombudsperson in the area of the access to public information, Commissioner’s function of issuing administrative protocols, structure of the Ukrainian Law on Access to Public Information, principles of proportionality and transparency in the area of access to public information, re-use of public information, means of providing access to information and time-limits. In addition, a considerable amount of attention was given to preventing and responding to abuse of the right to access public information.

For more extensive information, please refer to [Annex 1](#) of the Report of the Activity 2.3.5.

3.4. Recommendations regarding the amendments to the Law on Access to Public Information related to the amendments to the Law on Personal Data Protection

In addition to suggested areas of improvement for the Law of Ukraine on Access to Public Information (see Section 3.3 above), the experts noted the need to ensure consistency between this law and the (draft) Law on Personal Data Protection (see Section 3.2 above).

Therefore, they identified minimum amendments to the Law of Ukraine on Access to Public Information, that would be necessary for the purpose of harmonization with the (draft) Law on Personal Data Protection. These suggested amendments can be found in [Annex 2](#) of the Report of the Activity 2.3.5.

3.5. Suggestions for the improvement of anti-discrimination laws

During the expert missions, several suggestions as to improvement of the Law on Anti-Discrimination were made.

The experts noted that the mandate of the Commissioner in the field of gender equality is differently stipulated in two laws, namely the Law on Ensuring Equal Rights and Opportunities of Women and Men and the Law on Principles of Prevention and Combating Discrimination. The experts suggested either to merge the laws (and in this way to provide a single set of rules on the mandate of the Commissioner) or to continue with the practice of application of double legislation with an attempt to reconcile the texts and competence provisions of both laws. Having regard to the special character of the covered relationship and political and social-legal importance, the experts considered that the general mandate of the Ombudsperson in the equality area should be stipulated in the Law of the Commissioner and the equality-specific competences should be regulated in the above-mentioned laws. In addition, other recommendations as to improvement of the law were given.

All those recommendations in more detail could be found in the [Report](#) of the Activity 1.3.

The experts have also prepared the draft Law on the Implementation of the Principle of Equal Treatment. The text as well as short comments to it were given. The suggested amendments are presented in the [Annex 2](#) of the Report of the Activity 1.5.

4. Methodologies and procedures of monitoring of respect for human rights and freedoms

Methodologies and procedures of monitoring of respect for human rights and freedoms were developed under the Activity 2.1.4. Please see the [Report](#) and its [Annexes](#).

4.1. General instrument: framework for the implementation of monitoring functions

The General Instrument offers a step-by-step scheme, supported with explanatory examples and insights and tips, to carry out human rights monitoring activities in a planned and systematic way. It aims to assist in understanding the concepts and components needed to implement monitoring functions effectively and to structure human rights monitoring exercise in accordance with guiding principles. To access the document, please refer to [Annex 1 of the Report of the Activity 2.1.4](#).

4.2. Methodology for the evaluation of draft legal acts from the perspective of personal data protection

This Methodology suggests the requirements for the content of the conclusions on draft legal acts that are prepared by the Personal Data Protection Department.

It offers for employees of the Department useful guidelines when drafting such conclusions and provides practical advice on aspects that should be considered when evaluating draft legal acts. In addition, some examples of good practice are included. To access the document, please refer to [Annex 2 of the Report of the Activity 2.1.4](#).

4.3. Guidelines on the procedure of giving methodological advises/consultations on personal data protection

These Guidelines offer the order for the provision of consultations on the protection of personal data in the Secretariat of the Commissioner. They are designed to apply when providing consultations to data subjects, data controllers and processors (other than representatives of mass media) by phone, by e-mail or in person within the Secretariat.

These Guidelines could be a basis and a model for an internal document to be approved by the Commissioner. Seeking transparency, it is recommended to make the Guidelines available on the website of the Commissioner. To access the document, please refer to [Annex 3 of the Report of the Activity 2.1.4](#).

4.4. Guidelines and checklist on video surveillance for data controllers in the public and private sector

The Guidelines offer recommendations and suggest best practice on video surveillance. They are aimed at ensuring compliance with the provisions of the Law on Personal Data Protection

while at the same time enhancing the effectiveness and security of the systems and increasing of trust within society.

The Guidelines are addressed in particular to those who decide whether to install video-surveillance system and are responsible for proper operation (the data controllers) and, in addition, to suppliers and other contractors (usually acting as data processors) involved in the installation and operation of them. To access the document, please refer to [Annex 4 of the Report of the Activity 2.1.4](#).

4.5. Info sheet for employers: how to avoid discrimination in job advertisements

The info sheet developed for employers presents general recommendations and gives some examples so as to explain in short how to avoid discrimination in job advertisements. To access the document, please refer to [Annex 5 of the Report of the Activity 2.1.4](#).

4.6. Methodology on the assessment (review) of draft legal acts for compliance with the anti-discrimination laws

The Methodology on assessment (review) of draft legal acts for compliance with the anti-discrimination laws aims to provide practical guidelines in order to assist the exercise of Commissioner's function in this area. Section 1 of the Methodology outlines the key legal questions that the expert undertaking the review should answer during the assessment process (material scope of the law, applicable ground of discrimination, the form of discrimination, justification for discrimination), and provides a framework for the review of draft legal provisions. Section 2 outlines general recommendations for the review.

The main body of the Methodology is followed by three annexes: Annex I lists international treaties ratified by the Republic of Ukraine, while Annex II and III summarize decisions in the landmark discrimination cases of the ECtHR and the CJEU respectively. To access the document, please refer to [Annex 6 of the Report of the Activity 2.1.4](#).

4.7. Guidelines on the preparation of expert anti-discrimination opinions (*amicus curiae*) for courts

The Guidelines on preparation of *amicus curiae* for courts aim to remedy the lack of a methodological approach to the Commissioner's role as an independent intervener in the judicial proceedings, and to increase the impact of such interventions.

For this purpose, Section 1 of the Guidelines provides an overview of the intervention principles, including the purpose of and the procedure for the intervention, and the recommendations for the internal knowledge management to raise the quality of the interventions. Section 2 of the Guidelines explains the key considerations behind the legal analysis of discrimination instances, whereas Section 3 provides practical pointers for drafting the *amicus curia* interventions, including the rules on clear legal writing and legal reasoning and suggests a detailed outline of the interventions. To access the document, please refer to [Annex 7 of the Report of the Activity 2.1.4](#).

4.8. Checklist for implementing field monitoring visits on discrimination

The Checklist for implementing field monitoring visits on discrimination aims to help to identify cases of discrimination and shall give support when dealing with concrete situations of discrimination. The Ombudsman has the task of helping victims of many kinds of discrimination by ensuring State authorities realise their rights. As such, anti-discrimination is one of the main objectives of each ombudsman institution.

For this purpose, Section 1 of this document provides a checklist for the preparation of a visit. Section 2 provides a checklist for the conduct of a visit as well as a description of four different grounds of discrimination including examples of discrimination. Section 3 explains the SMART-recommendation model, an international best practice model of how to deal with recommendations. To access the document, please refer to [Annex 8 of the Report of the Activity 2.1.4.](#)

4.9. Guidelines for the civil servants on balancing privacy and access to public information

These Guidelines aim to provide guidance primarily to the civil servants who are dealing with requests by individuals to provide access to public information where providing such information may infringe on other individuals' privacy by disclosing their personal data.

The overall aim of these Guidelines is to propose a way of how the rationale of the right to access public information and the rationale of the right to personal data protection should be combined without sacrificing one to another. The Guidelines therefore focus on the balancing method. To access the document, please refer to [Annex 9 of the Report of the Activity 2.1.4.](#)

5. Recommendations on the improvement of the effectiveness of the activities of the Ombudsperson

After the situation analysis in the Ombudsman institution (please see Section 1.4 above), the Twinning Project experts have set as one of their tasks to draft recommendations for increasing the efficiency of the activities of the Ombudsperson in the areas of elimination of detected human rights violations, control procedures over fulfilment of Ombudsperson's recommendations, and response to the Ombudsperson's acts of submission on elimination of detected human rights violations. Several documents were drafted in this regard. Please see the [Report](#) and [Annexes](#) of the Activity 2.2.3.

To present and discuss the drafted recommendations a seminar was organised. For materials see [Report](#) of the Activity 2.2.5 and related [presentations](#).

5.1. Human rights based approach for the national human rights institutions

The document prepared by the experts presents the concept of 'human rights based approach', elaborates on its importance and discusses two meta principles and five working principles of human rights based approach. The experts suggest to establish the Secretariat of the Commissioner as the primary source of expertise on the human rights based approach in Ukraine. Moreover, they call for internal application of the human rights based approach in the Secretariat. To access the document, please refer to [Annex 1](#) of the Report of the Activity 2.2.3.

5.2. Recommendations on the drafting of recommendations based on individual complaints

The recommendations provide guidance on how to draft the recommendations based on individual complaints. One group of recommendations concerns the procedural guarantees for individuals whose rights have been violated. The second group relies on the finding of a proper solution and reasoning of the solution and recommendation of the Ombudsperson. To access the document, please refer to [Annex 2](#) of the Report of the Activity 2.2.3.

5.3. Making recommendations effective

The experts drafted suggestions on how to make the recommendations provided by the Commissioner more effective in order to increase the efficiency of their implementation. Having in mind that ombudspersons across Europe primarily use reflexive control in ensuring the application of recommendations, these recommendations provide a set of resources inspired by the model of reflexive control that may be applied to increase the efficiency of recommendations. To access the document, please refer to [Annex 3](#) of the Report of the Activity 2.2.3.

5.4. Recommendations on the drafting effective annual reports of the Ombudsperson

As part of their expertise, the experts prepared recommendations on the drafting effective annual reports. In particular, the areas that should be covered in the annual report and issues that should be highlighted there were extensively discussed. To access the document, please refer to [Annex 4](#) of the Report of the Activity 2.2.3.

5.5. General instrument: framework for the adoption and facilitation of implementation of systemic recommendations

The General instrument offers guidelines on how to adopt special reports in a planned and systemic way by using uniform format. It aims at outlining the process and main components needed to adopt special reports in an efficient manner. It also seeks at presenting measures which help to facilitate the implementation of systemic recommendations. To access the document, please refer to [Annex 5](#) of the Report of the Activity 2.2.3.

5.6. Data management as a tool for increasing the effectiveness of recommendations of the Commissioner

Many activities of the Commissioner are key in achieving the elimination of human rights violations. The experts of the Twinning Project have prepared a report that analyzes which data is already collected and systematized and which data could be collected in the future with a view to which information helps to tailor recommendations to the respective contexts and to enable effective follow-up on recommendations (i.e. making recommendations more effective). To access the document, please refer to [Annex 6](#) of the Report of the Activity 2.2.3.

5.7. Recommendations for the communication strategy

The success of the activity of the Commissioner depends on different aspects of communication including internal and external communication mechanisms. The lack of harmony between vertical and horizontal communication may lead to miscommunication and trigger further negative developments. Therefore, the experts have noted that there should be a mechanism set to ensure smooth vertical and horizontal internal communication between different members of Secretariat of the Commissioner.

Guided by this idea, the recommendations for the communication strategy were drafted. The recommendations provide guidelines on how to make the activity of the Commissioner public and visible. The document discusses the challenges of real communication and offers techniques and means for effective communication. Furthermore, it elaborates on the message to be conveyed, identifies the audience and specifies the outreach tools for the effective communication with the different stakeholders.

To access the document, please refer to [Annex 8](#) of the Report of the Activity 2.2.3.

6. Recommendations on improving the existing or employing new instruments for restoring human rights

Based on the findings of the earlier research (see Sections 1.5 and 2.3 above), recommendations aiming at 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 were drafted.

Please see the [Report](#) and [Annexes](#) of the Activity 2.3.4.

6.1. Draft Code of Good Administrative Behaviour

The experts of the Twinning Project drafted the Code of Good Administrative Behaviour for the use of the Commissioner and public administration entities and officials.

Depending on the decision of the Twinning Project Beneficiary, the draft of the Code of Good Administrative Behaviour can be used as the model code or a framework for all State bodies if adopted by the legally binding order of the Government of Ukraine or it can be adopted as a “soft law” (recommendation) of the Ombudsperson.

The draft Code takes account of the principles set in the documents developed within the framework of the Council of Europe, the European Union, the Organization for Security and Co-operation in Europe (OSCE), a joint initiative of the Organisation for Economic Co-operation and Development (OECD) and the EU called Support for Improvement in Governance and Management (SIGMA). It also draws inspiration from national laws and good practices of other European states.

To access the document, please refer to [Annex 3](#) of the Report of the Activity 2.3.4.

6.2. Recommendations for the improvement existing and employment of new instruments for restoration of human rights vis-à-vis the judiciary

The Recommendations propose ways to optimise the results of the Ombudsperson’s participation in judicial litigation by focusing on two main questions – the selection of cases for the Ombudsperson to be involved in and the manner of participation. To access the document, please refer to [Annex 1](#) of the Report of the Activity 2.3.4.

6.3. Recommendations based on the best EU practices regarding State liability for damage caused by public administration

The Recommendations include questions of legal regulation and application of law. A proposal for amendment of law is presented with the intention to improve prerequisites to restore violated human rights. In addition to that, principles for a model of good practice are presented, as well as the guidelines for what should be avoided. To access the document, please refer to [Annex 2](#) of the Report of the Activity 2.3.4.

6.4. Mediation, conciliation and peace agreement as the instruments to restore violated rights

During the Twinning Project, recommendations in regard to employment of new powers on the Commissioner for restoration of violated rights, namely mediation, conciliation and peace agreement were drafted. They provide clear distinction between those instruments and present key principles and recommendations how to introduce them into national legal order. Several possibilities based on the best European practices were offered and guidelines for employees of the Secretariat on how to act as a mediator or conciliator were given. To access the document, please refer to [Annex 4](#) of the Report of the Activity 2.3.4.

6.5. Recommendations on the application of the instrument of positive actions in the areas of anti-discrimination, data protection and access to public information

Recommendations analyse advantages of the application of the instrument of positive actions by the Commissioner in the areas of anti-discrimination, data protection and access to public information. It is suggested that positive actions by the Commissioner could be (i) providing information, knowledge and training; (ii) formulating recommendations on how State organs and private persons (including companies) can take action and design specific measures advancing the rights of data protection and access to information, and monitoring their implementation; (iii) promoting and enabling the transfer of experience of positive actions in the public sector to the private sector and vice-versa; (iv) promoting and enabling the dialogue between the Commissioner and other State bodies. To access the document, please refer to [Annex 5](#) of the Report of the Activity 2.3.4.

7. Guidelines for the effective monitoring of compliance by relevant stakeholders with the legislation in the field of access to public information

7.1. Guidelines for the public authorities on the provision of information to the society and media

Guidelines for State and municipal institutions on the fundamental principles for the provision of information aims to encourage authorities to be open for the society and involve the public in decision-making processes. Furthermore, the elaborated principles overview the rules for weighing competing values to make the information as accessible as possible for the society. The guidelines explain how to consider competing values to strike a balance between core ideals protected by national and international human rights standards. To access the document, please refer to [Annex 3](#) of the Report of the Activity 2.3.5.

7.2. Recommendations regarding the problematic issues in the area of access to public information in public procurement

These recommendations were prepared upon the request of the employees of the Secretariat of the Commissioner to elaborate in more detail on the problematic issues in the area of access to public information in public procurement and Commissioner's role in this area. In particular, several issues were chosen for more detailed elaboration: (i) optimal Commissioner's role in the area of public procurement; (ii) need to improve monitoring of edata portal; (iii) data that should be open in public procurement. To access the document, please refer to [Annex 5](#) of the Report of the Activity 2.3.5.

7.3. Training materials for the public servants training in the area of access to public information: “Violations by information processors (providers) of the requirements of the Law of Ukraine on Access to Public Information”

The experts have prepared comprehensive training materials for future training in the area of access to public information. The training materials are planned for the trainings of the length of 5 hours. Preferred training methodology: working in small groups, interactive approaches, such as peer group sessions, simulation games, case-solving tasks, etc. The training materials reflect the most relevant case law of the Court of Justice of the European Union and of the European Court for Human Rights in the area of access to public information and are based on the various kind of training methods and techniques (presentations, discussions, verbal questioning, case solving tasks, work in groups, etc.).

To access the document, please refer to [Annex 4](#) of the Report of the Activity 2.3.5.

8. Development of the training system and conducting trainings

Building on the training needs assessment (see Section 1.6 above) experts developed a set of specific curricula. Training programs were directed towards improvement of common competences and skills (communication, planning, mediation, conflict resolution, work under psychological pressure, etc.) and on increasing of competences and skills in the areas of data protection, equal rights and non-discrimination, access to public information. Each training programme includes the goals of the training, training methodology, working plan of the workshop, guidelines for the trainers, tasks for the trainees, PowerPoint presentations or practical examples and cases, and recommended literature. In order to ensure greater sustainability these materials are designed both to be useful for the trainers and also the trainers of future trainers.

The following training programme modules were developed:

1. Training programmes on training methodology for trainers		
<i>Nr.</i>	<i>Topic</i>	<i>Duration</i>
1.	Specifics of adult trainings. Promotion of collaboration and active learning among diverse trainees with different learning styles	4 hours (half working day).
2.	Effective tools and instruments for adult trainings	4 hours (half working day).
3.	Planning a training session and using various evaluative tools and procedures to assess learning progress and training behaviour.	8 hours (half working day).

2. Training programmes on common skills and competences		
2. 1. Training programmes on psychological skills and competencies		
4.	Stress and coping	4 hours (half working day).
5.	Control of the nonverbal behavior	4 hours (half working day).
6.	Interaction with applicants in conflict situations	4 hours (half working day).
7.	Management of time	4 hours (half working day).

		day).
2.2. Training programmes on public relations / awareness raising activities on Human Rights		
8.	Public relations/public accountability of the Ombudsperson	4 hours (half working day).
9.	Visibility and Awareness raising activities on Human Rights	4 hours (half working day).
2.3. Training programmes on competencies and skills related to the general mandate of Ombudsperson		
10.	Opportunities and challenges of applying the Human Rights based approach for national Human Rights institutions	8 hours (one working day).
11.	Human Rights in Testing Times. Possible Violations of Fundamental Rights and Conflicts between Different Levels of (individual or general) Provisions	4 hours (half working day).
12.	Rule of law and Ombudsperson: catalogue of Human Rights and basic principles	4 hours (half working day).
13.	Rule of law and Ombudsperson: networking between state institutions	8 hours (one working day).
14.	Right on good administration and mandate of Ombudsperson	8 hours (one working day).
3. Training programmes on competencies and skills in specific legal areas		
3. 1. Training programmes on data protection		
15.	European Union standards in personal data protection: Data Protection Reform, the Regulation (EU) 2016/679.	8 hours (1 working day).
16.	Processing of personal data in law enforcement sector: European Union standards, the Directive (EU) 2016/680.	4 hours (half working day).
17.	Processing of personal data in the employment context: European Union standards	4 hours (half working day).
18.	Processing of personal data by means of video surveillance: European Union standards	4 hours (half working day).
3.2. Training programmes on Equal rights and non-discrimination		
19.	Difference in salary for the same work or the work of the same value on the ground of person's gender	8 hours (1 working day).
10.	Equal treatment in employment and discriminatory job advertisements and Harassment based on person's age,	8 hours (half working

	gender, nationality and other traits	day).
21.	Unequal treatment in access to goods and services in providing public services	4 hours (half working day).
22.	Discriminatory advertising	4 hours (half working day).
23.	Perception of discrimination and importance to identify it - Awareness of different forms and shapes of the phenomenon	8 hours (1 working day).
24.	Monitoring of discrimination – supporting the work of the Parliament Commissioner for Human Rights	8 hours (1 working day).
3.3. Training programmes on Access to public information		
25.	Right of access to information. Right of access to information versus protection of privacy and leverage to other rights in the recent case law	8 hours (1 working day).
26.	Revelation of secret information: national security and secret evidence in legislation and before the courts	8 hours (1 working day).

The prepared training courses are constructed in self-contained modules, allowing appropriate selection and tailoring according to particular needs and objectives. Such design facilitates their flexible use, without imposing a single rigid focus or approach on the trainers. Courses are adaptable to the particular educational, regional and experiential needs and realities of a diverse range of potential audiences. Personnel of the Secretariat could create their own targeted presentations, based upon the content of prepared materials.

For more information please refer to [Report](#) of the Activity 3.3.

Using the prepared curricula and based on the sustainable ‘training of trainers’ approach, the experts conducted the practical “Train the Trainers” course for 15 potential trainers, selected by the Commissioner from the units of the Secretariat. See [Report](#) of the Activity 3.4 where the results of the pilot trainings are summarised.

After participating at the workshop “Train the Trainers”, the trained trainers, using the training programmes and materials prepared by the experts, delivered pilot trainings for the 60 members of the personnel of the Secretariat in their area of specialization.

The “Train the Trainers” and the pilot trainings as well as prepared trainings materials were evaluated by participants and the expert team. Then, the shortcomings in the trainings materials were eliminated and suggestions as to future organisation of trainings were given by the experts.

Experts were positive that the future trainers, that were trained by the experts, will successfully use the acquired skills and methods for future trainings. Ombudsperson office in Ukraine will therefore benefit greatly from these members of the personnel in different educational contexts. See the [Report](#) of the Activity 3.6 and the [Report](#) of the Activity 3.7.

In order for the training activities’ results to be sustainable over the long-term and to achieve the greater visibility, all prepared training materials (in English and Ukrainian languages) should be made available to all interested personnel using user-friendly solutions at the special place at the intra-net system of the office specifically dedicated to the trainings. The personnel should continue to fill in this system with the additional relevant materials from the

future trainings. This would allow the coordination of different training courses and materials, building courses on best-practices, reducing duplication. Such practice provides the long-term sustainability of project results and also ensures that the ownership of the know-how remains within the institution despite the changes of the structure of the personnel.