

## Sector fiche – IPA National programmes / Component I

### 1. IDENTIFICATION

<b>Title</b>	Justice Sub sector
<b>MIPD Sector Code</b>	1. Justice and Home Affairs
<b>ELARG Statistical code</b>	Measure 1- 01.23 Political criteria/Judiciary and fundamental rights Measure 2- 01.23 Political criteria/Judiciary and fundamental rights Measure 3- 01.23 Political criteria/Judiciary and fundamental rights Measure 4 -01.24 Political criteria/Justice, freedom and security
<b>DAC Sector code</b>	15130 Legal and judicial development
<b>Total cost</b> (VAT excluded)	(IPA 2012: 26 003 000 EUR) IPA 2013: 11 353 000 EUR
<b>EU contribution</b>	(IPA 2012: 23 003 000 EUR) IPA 2013: 9 753 000 EUR
<b>Management mode</b>	Centralised
<b>EU Delegation in charge</b>	Delegation of the EU to Bosnia and Herzegovina
<b>Implementation management</b>	Delegation of the EU to Bosnia and Herzegovina
<b>Implementing modality</b>	Sector support
<b>Zone benefiting from the action(s)</b>	Bosnia and Herzegovina

## 2. RATIONALE

### 2.1 LINKS WITH NATIONAL SECTOR OBJECTIVE(S) AND MIPD SECTOR OBJECTIVE(S)

#### *Justice Sub-Sector/Justice and Home Affairs*

The Justice sub-sector has a comprehensive strategy – Justice Sector Reform Strategy (hereinafter: JSRS) covering the period 2009-2013. Other strategies relevant for the justice sub-sector exist, such as the National War Crimes Strategy<sup>1</sup>. Both of these strategies are reflected in the Structured Dialogue on Justice (hereinafter: SD), and combined provide a sector wide framework of priorities and actions that need to be taken. The needs identified through these strategies and the SD directly link into the measures proposed in this sector fiche.

The JSRS aims ‘to create a framework of reform for justice sector institutions throughout BiH that sets out agreed priorities for the future development of the sector as a whole, as well as realistic actions for the reform’. The JSRS strategic programmes are structured in five pillars that address: the judiciary, execution of criminal sanctions, access to justice, support to economic growth and a well-managed and coordinated sector. In the first pillar, the judiciary, the JSRS envisages the continued strengthening and maintaining of independence, accountability, efficiency, professionalism and harmonisation of the judiciary which should ensure the rule of law in BiH. An efficient and effective judiciary is foreseen to be achieved, among other things, through tackling the case backlog, improving the state of judicial facilities and full computerisation of the judiciary. In the area of execution of criminal sanctions, a set of measures are envisioned to deal with management of the system of execution of criminal sanctions, prison overcrowding and application of different international standards relevant for this area. The third pillar of the JSRS, access to justice, deals in particular with issues related to care of court users and increased transparency through easy access to information for court users and the general public. The strategic goal of the fifth pillar of the JSRS is to: ‘coordinate and make roles and responsibilities of key justice sector institutions more efficient, with the aim of achieving a more effective, transparent and accessible justice system in BiH’.

The National War Crimes Strategy aims to establish all of the preconditions necessary to process the most complex war crimes cases within 7 years and the less complex and other war crimes cases within 15 years from the time of adoption of the Strategy. An important element of this strategy is the establishment of a data-base for war crime cases which is now in place. The National War Crimes Strategy assumes that, to meet the deadlines set in the strategy, an increased number of war crimes investigations be transferred upon request of the BiH Prosecutor Office and pursuant to the decision of the Court of BiH to lower level jurisdictions. Such transfers will be carried out in accordance with objective criteria that will be further developed by the BiH Prosecutors Office and the Court of BiH.

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<sup>1</sup> Other relevant national strategic documents are described in Annex 3 to the SF (Political, legal and institutional framework)

The MIPD 2011-2013 is based on the priorities set out in the European Partnership (hereinafter: EP), the Stabilisation and Accession Agreement (hereinafter: SAA) and the recent Progress Reports<sup>2</sup>.

The MIPD objectives were carefully designed together with national stakeholders to meet the needs of Bosnia and Herzegovina and to achieve tangible results on the road to European Integration. Regarding the Justice and Home Affairs Sector, the MIPD emphasises that “in the coming years, significant efforts are needed to ensure implementation of, in particular, the Justice Sector Reform Strategy and the National War Crime Strategy”.

The MIPD 2011-2013 Justice Sub-Sector objectives are, among others, “to strengthen the independence of the judiciary, enhance its efficiency and effectiveness and improve the accountability of the judiciary”<sup>3</sup>. The following indicators are defined: reduced length of court proceedings and backlog of cases, improved training systems for all staff in the judiciary.

The Structural Dialogue between EC and BiH on Justice was launched in June 2011. Six meetings have been held and six sets of recommendations have been issued. The first set of preliminary recommendations included recommendations related to the implementation of the JSRS and the National War Crimes Strategy, coordination of competences, and issue of equal access to justice. The second set of recommendations, among others, also focused on backlog of cases burdening the judiciary, prison management, overall implementation of the War Crimes Strategy, the transfer of war crimes cases, witness protection and support mechanisms, support to the Prosecutors Office of BiH in carrying out exhumations, coordination between Court of BiH and other courts in BiH.<sup>4</sup> Subsequent recommendations issued reinforced and further elaborated on the aforementioned foci, as well as introduced new areas.

## **2.2 SECTOR ASSESSMENT – POLICIES AND CHALLENGES**

The organization and governance of the BiH justice sector is complex as it is divided into 4 more or less autonomous justice sectors (State, RS, FBiH and Brcko) that to a significant extent are also interlinked with each other. However, in the EU accession perspective, the functionality of the justice sector in BiH as a whole and the ability of the country to meet the required European standards is addressed. It is also a fact that even if the country is indeed divided into four justice sectors, these four sectors are for the most parts struggling with the same challenges.

Reform of the wider justice sector of BiH, in particular the judiciary, has been going on for more than a decade, starting with the thorough assessment of the situation in the judiciary made by the UN back in 1998. During the period from 2001 to 2005 the reform process was driven by the international community but since then national authorities have been in the driving seat, sometimes assisted by international advisors and with significant international financial support.

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<sup>2</sup> Significant excerpts from these documents are comprised in Annex 3 to the SF

<sup>3</sup> MIPD 2011-2013 Chapter 3.1.3. Sector Objectives for EU support over the 2011-2013 period

<sup>4</sup> Relevant excerpts from both sets of recommendations are included in Annex 3 to the SF (Political, legal and institutional framework)

During the first and most intense reform period (2001-2005) the focus was on establishing an **independent and accountable** judiciary and the restructuring of the judiciary. The rewriting of key legislation, the re-appointment process, and the establishment of the HJPC were important milestones in this regard. During the same period there was also much focus on establishing a framework for processing war crime cases which led to the establishment of the Court and Prosecutors Office of BiH.

From 2005 the focus shifted to making the established legislative framework and institutional structures as **efficient and effective** as possible. Apart from the introduction of the Special Prosecutor Office and the commercial courts in the RS, no new structures were established in this period. The reformed justice sector legislation also by and large remained unchanged.

While a continuation of the efforts to ensure and improve judicial independence and accountability should still remain a priority, the challenges related to making all parts of the reformed justice sector more efficient and effective is likely to dominate the agenda of the justice sector policy makers over the coming years. Issues related to justice sector efficiency and effectiveness therefore also dominate this niche.

This lack of efficiency is reflected in the huge backlog of old cases that have been accumulated and the prolonged processing time for court cases, in particular civil cases and war crime cases. This is a major problem that has been highlighted for years, not least by the BiH Constitutional Court and the Ombudsman in BiH.

Inefficiency in the justice sector in BiH is caused by a very wide spectre of reasons, such as inadequate physical premises, a complicated and often non-harmonized legal framework, the absence of alternative mechanisms for conflict resolution and criminal sanctioning, misguided production measurement and evaluation systems, lack of cooperation and harmonization across the four internal justice sector jurisdictions, lack of management capacities among justice sector professionals, and a lack of training in long term programming and with linking budgets to strategies and policies. It is also obvious that the justice sector in BiH, as a whole, is facing specific challenges created by the recent war (around 1400 unsolved war crime cases) and the recent transition from communism to market economy resulting in a significant number of property related cases and labour cases in front of the courts. On top of all these problems comes the fact that BiH is a poor country which has not been able to prioritize infrastructure investments to the extent necessary to modernise the justice sector in accordance with European standards.

The efforts to make the justice sector in BiH more efficient and effective continue to be guided by two key national strategies, the Justice Sector Reform Strategy (JSRS) and the War Crime Strategy (WCS), both of 2008. The JSRS addresses the sector as a whole and is divided into 5 pillars: 1) Judiciary, 2) Execution of criminal sanctions, 3) Access to justice, 4) Support to economic growth and 5) A well managed sector. For each of these pillars detailed strategic programmes have been developed and the responsible institutions at all levels have been identified. Functional mechanisms for high level monitoring of the implementation of both strategies has been set up – the Ministerial Conference for the JSRS and the Supervisory Body for the WCS.

Donors and international organizations are actively involved in both the implementation and monitoring of the JSRS and the WCS by way of attending the Ministerial Conferences for

the JSRS and meetings of the Supervisory Body for the WCS. All donor funded activities in BiH are now aligned to the objectives in the JSRS and the WCS, regardless of the chosen implementation mechanism.

To ensure that the measures programmed in this fiche are properly embedded in the national justice sector strategic framework, this fiche addresses issues in pillar 1, and 5 of the JSRS and the WCS in general. All programmed measures are closely coordinated with other ongoing or planned activities in the respective areas to avoid duplication and overlap and to achieve collective synergies with other donors wherever possible. As explained in the relevant chapters below, this is particularly the case for measures programmed to achieve Result 1: Improved Judicial Efficiency and Accountability.

The priorities in the fiche are also directly linked to the most prominent issues discussed in the ongoing Structured Dialogue between the EU and BIH. Through this dialogue particularly important justice sector issues have been highlighted and specific objectives agreed. This fiche supports the realization of those objectives.

For Measure 2 – Budget support for the war crime cases, many of the main budget support eligibility criteria have been met: A defined sectoral policy in the form of the strategy for war crimes cases (WCS) is under implementation, macroeconomic stability is supported by a disbursing IMF Stand-By Arrangement and many reforms of the public financial management systems are underway, including programme budgeting at all levels and informatisation of the budgeting processes, upgrade of the treasury operations, strengthening debt management, internal controls and audit, public procurement.

### **3 DESCRIPTION**

#### **3.1 OVERALL OBJECTIVE OF THE IPA SECTOR SUPPORT**

The overall objective of the assistance required is to significantly increase the efficiency, professionalism and independence of the entire justice sector to secure the rule of law and thereby prepare the BiH for access to the European Union.

#### **3.2 SPECIFIC OBJECTIVE(S) OF THE IPA SECTOR SUPPORT**

The specific objectives of the IPA sector are based on the MIPD 2011-2013 objectives:

- a) “Strengthen the independence of the judiciary, enhance efficiency and effectiveness and improve the accountability of the judiciary”
  
- b) “Improve Sector capacity for coordination and implementation of sector programmes.”

#### **3.3 RESULTS**

Result 1: Improved Judicial Efficiency and Accountability

Result 2: High degree of coordination among all justice sector institutions to develop, implement and monitor sector programmes achieved

### **3.4 MEASURES/OPERATIONS TO ACHIEVE RESULTS**

#### **Measures to achieve Result 1 “Improved Judicial Efficiency and Accountability”**

##### **Measure 1: Conduct construction, renovation and reparation of courts and prosecutors offices**

Provision of adequate space and equipment to courts and prosecutors offices is crucial for judicial efficiency and has been recognised as a key measure in Pillar 1 of the JSRS. The importance of proper physical infrastructure for the judiciary is also highlighted in the MIPD.

A survey of court buildings was carried out several years ago and this was complemented recently by a survey of prosecutor’s offices. Even though some efforts have been made, in particular in the RS, to improve the situation, significant problems remain to be addressed. The main problem seems to be a general lack of available space, particularly in the larger and busier courts and prosecutor’s offices. As a consequence the number of court rooms is far too low in larger courts and archives are totally overcrowded and often dysfunctional in both courts and prosecutor’s offices. Proper facilities for witnesses, lawyers and court police are a major problem in almost all courts and the lack of proper facilities for witnesses and court police is also a problem in prosecutor’s offices. The problem of lack of space is often compounded with run down and outdated infrastructure (water, sanitation, electricity etc). From this needs assessment has resulted an agreement on the following breakdown of resources between entities and the state for the combined IPA annual programmes 2012 and 2013: State level -1,400,000 EUR, Federation BiH – 5,000,000 EUR and Republika Srpska – 3,850,000 EUR.

By investing in an upgrading of the existing judicial infrastructure in BiH it can be expected that the efficiency of judicial institutions will increase through having a better organized work flow in the courts and prosecutors’ offices. The level of security will also improve and by establishing a proper physical layout of the courts and prosecutors offices the level of user satisfaction will increase.

Based on the already implemented infrastructure projects (for example in East Sarajevo, Sarajevo and Modrica), as well as the ongoing IPA 2009 project for improving witness protection facilities in 10 cantonal courts, standards have been formulated and experience has been gained that should be utilized in reconstruction projects financed by IPA 2012/13.

To ensure that investments in judicial infrastructure actually have a positive impact on the efficiency of courts and prosecutors’ offices, it is necessary to complement such efforts with capacity building activities. Particularly important in this respect is the ongoing Judicial Efficiency Project financed by Norway and Sida and the Swiss funded Strengthening Prosecutors in the Criminal Justice System Project. Furthermore, it is necessary to focus on institutions where the existing infrastructure is likely to have a direct negative effect on the level of efficiency. This would typically be in the larger judicial institutions.

As it is clear that the infrastructure needs in the judiciary will exceed the available funds, the ministries of justice should take the lead on identifying the judicial buildings that will be prioritized for reconstruction, taking into account the need of limiting the number of contracts, limiting the number of geographical locations as well as a reasonably fair geographical distribution of funds. With respect to fair distribution of funds one should also

take into account any other planned internationally funded infrastructure projects, such as the Norwegian funded reconstruction project for Mostar Municipal Court.

The available funds for judicial infrastructure should generally be divided between the four jurisdictions in accordance with the number of judicial institutions in each jurisdiction, but this should be adjusted for the need of allocating 1,4 million Euro for infrastructure at the State level.

Measure 1 contains only one operation: “Construction, renovation and reparation”, which also includes the supervision of works.

## **Measure 2: Establish adequate system for efficient processing of war crime cases in all relevant judicial institutions in BiH**

In light of the high number of unresolved war crime cases, the demanding timelines set in the National War Crimes Strategy and having in mind the transfer of cases to entity jurisdiction and continuation of international assistance in the area of war crime prosecution remains imperative.

According to the information available, a significant number of war crime cases have already been transferred from the State to the Entity level but some further transfers are expected.

The high number of war crime cases to be processed within a limited time frame as set in the War Crimes Strategy is a specific challenge for BiH. No other country in the region has a comparable backlog of such cases.

To meet the objectives set in the National War Crimes Strategy to process all war crimes cases within 15 years and the most complex cases within 7 years, it is necessary to implement a range of measures to enhance the capacities of the prosecutors' offices and the courts to speed up the processing of war crime cases. Most importantly, it will be necessary to provide prosecutors' offices with the financial means to engage additional staff to support prosecutors in handling investigations and in representing the indictments before the courts. This could be both administrative as well as professional staff. As an increased number of cases are coming to courts, hence it will also be important to provide the courts with additional administrative and professional staff to assist the judges.

Operations included in this measure are the following:

2.1 Strengthen capacities for efficient processing and monitoring of war crimes at all levels of jurisdiction in BiH

2.2 Improve technical working conditions of court police

Operation 2.1 requires engagement of staff on a temporary basis. This would include various profiles of staff, such as judicial associates, investigators, assistants, psychologists, translators etc. Translators would be engaged to provide necessary support for translation of relevant ICTY documentation to be used in processing of the of war crime cases in all judicial institutions in BiH.

In addition to the existing Witness Support Departments at the State Court and Prosecutor's Office, witness support departments have been established only in three courts and two prosecutors' offices in BiH, namely in Banja Luka and Sarajevo district/cantonal courts and prosecutors' offices and in East Sarajevo District Court. It is of importance that other courts and prosecutors' offices throughout the country also establish such capacities.

In addition, adequate support to judicial institutions is to be provided in terms of hiring technicians to manage and operate audio/visual equipment for recording of court hearings and witness protection procedures. Such equipment is being procured through the IPA 2009 project “Support to BiH judiciary”. Witness protection related activities encompassed by this

measure will be complemented by activities in measure 1 (reconstruction). In addition to this, IT based measures aimed at the protection of data will assure another layer of security necessary for effective processing of war crimes.

All staff whether permanent or temporarily engaged must be educated in the fields directly related to their work. Consequently, with the aim to improve professional knowledge and capacities of all staff working on war crimes cases, and to ensure high standards in case processing, specialised education will be necessary. In consultation with an ongoing EU financed technical assistance project entitled 'Capacity Building for Judicial Institutions in BiH' which supports both entity Judicial and Prosecutorial Training Centres (JPTCs), as well as the multi-donor financed OSCE-led 'War Crimes Processing project' outstanding basic and advanced training needs will be explored and delivered. Such training should cover all jurisdictions and all instances, and be targeted to the specific needs of the recipients, be they for example, experienced war crimes case processing judges, or newly recruited temporary legal officers.

Investigation of war crime cases, in particular field work, consumes significant resources and it has been recognised that lack of financial resources is a major reason for the significant backlog of war crime cases. A particularly expensive activity is exhumations, but also examination of witnesses and other relevant investigative actions in the field are financially demanding. Therefore, it is essential to provide all prosecutors' offices in BiH that are prosecuting war crime cases with financial support to directly enhance their capacities to investigate war crime cases and present the cases before the courts, as well as to provide necessary supply, including equipment necessary for field work and conducting exhumations, as well as for witness protection.

The court police in BiH, especially at the entity level, currently lack the equipment necessary for fulfilling their key role of providing security for the judiciary. This is particularly critical with the respect to processing of war crime cases and other sensitive cases that require a high level of security, such as organized crime and corruption cases. It is to be expected that judges and prosecutors as well as others involved in such cases (for example protected witnesses) would be more willing to participate constructively and move the cases forward if an adequate level of security is established.

Therefore, to ensure efficient processing of war crime (and other sensitive) cases, the court police should be supported to enable them to provide necessary security for those involved in the processing of such cases.

To that end, support to the court police will be based on improvement of technical working conditions of court police.

In order to objectivise the allocation of funds per level of jurisdiction in BiH, there has been a requirement for a needs assessment in terms of technical, material and human resources (including witness protection and support mechanisms and the necessary investigative capacities) of courts and prosecutors' offices throughout BiH necessary to deal with the increased number of war crimes investigations. Results of the initial phase of this needs assessment were presented at the Structural Dialogue meeting held in Mostar on July 05, 2012 have served as a basis for the preparation of the Memorandum of Understanding regarding the implementation of measure 2 and led to the following breakdown of funds between state and entities: State level – 5,514,021 EUR, Federation BiH – 4,686,907 EUR, Republika Srpska – 5,341,491 EUR, Brčko District – 333,581 EUR.



### **Measure 3: Consolidation and further development of the Judicial Communication and Information System**

Based on an information and Communication technology (ICT) strategy from 2004 the judiciary in BiH has, over a rather short period of time, moved from a purely manual case processing system to an advanced computerized Case Management System (CMS) which now forms the most important part of existing Judicial Information and Communication System.

All of the previously implemented ICT activities have fundamentally changed the way courts and prosecutors' offices conduct business and have streamlined burdensome work procedures within the courts. The efforts in the field of ICT in the judiciary have been praised in several Progress Reports and the CMS has become the most important tool for further improving judicial efficiency, transparency and accountability in BiH. The importance of ICT and in particular the CMS for making the judiciary more efficient and for reducing backlogs has recently also been recognised within the Structured Dialogue.

It is particularly important to note that the HJPC is now able to monitor the resolution of backlogs in all case types directly and instantly through the CMS. This capacity has been established and is being refined through the Judicial Efficiency Project financed by Norway, Sida and IPA 2009/2010. The Judicial Efficiency Project depends fully on the availability of data from the CMS and through close cooperation with the ICT Department at the HJPC the projects provides input for further development of the monitoring functionalities of the CMS. The Judicial Efficiency Project will run with funding from Sweden and Norway until mid 2016 and will be closely linked with IPA 2012/13.

In the years covered by IPA 2012 and 2013 the judiciary will face four main challenges with respect to the functioning of the established Judicial Information and Communication System. The first and most serious challenge is that the currently used technology will be outdated and needs a major upgrading or will have to be replaced. The second challenge, which is already being felt, is the increased demand, from both within and outside the judiciary, for new functionalities that can satisfy the users of the system and make their daily working environment ever more efficient and satisfactory. An example of this is that managers in the judiciary want to have access to more advanced reports that make them able to easily monitor the processing of cases in their institutions. Another example is that institutions outside the judiciary continuously require more advanced and purpose made reports related to the situation in the judiciary and they expect the HJPC to provide this instantly. The third challenge is related to the quality of the data in the CMS. As the data output from the CMS become increasingly important for decisions made related to the administration of the judiciary as well as for justice sector policy decisions, it is obvious that the quality of the data input becomes critical. Audits have revealed that significant efforts must be made to ensure higher data quality in the Case Management System, in particular at the prosecutors offices. Finally, the fourth challenge is to further improve the data security measures in the CMS. As more detailed information is entered into the CMS, it is increasingly important to ensure that all necessary mechanisms for securing the data are put in place. Any misuse of information through unauthorized access or break-ins could potentially have very serious consequences for the reputation of the judiciary as well as directly affecting the processing of specific cases in the system.

Keeping this in mind, Measure 3 includes the following operations:

3.1 Renew the Case Management System (CMS) through a comprehensive audit and develop new functionalities within the CMS that will satisfy reasonable user needs

3.2 Improve the quality of data stored in CMS

3.3 Introduce a business intelligence system (BI) in the judiciary

3.4 Ensure access to case statistics based on data stored in CMS for ministries of justice

3.5 Improve the security of the judicial information system

The current Case Management System (CMS) cannot be considered as a finished product. CMS was developed on the Oracle Forms and Reports technology that was one of the cutting-edge technologies at the time of development (2004-2006). Having in mind that the IT technology keeps rapidly changing, Oracle Forms technology has reached its limits and needs to be changed or upgraded. Therefore, a comprehensive analysis and re-design of the judicial information system will be conducted to upgrade the application technology and further simplify and rationalise users' daily work. The analysis will also clarify the respective roles and responsibilities of the CMS users in charge with collecting, interpreting and using the data. Finally, the analysis and subsequent revision and reprogramming will also focus on how to improve the CMS from the point of view of the court users which access information on their cases through the internet.

In order to prevent delays and reduce processing time in the judiciary, courts should collect information that would enable them to understand where and why delays occur. Taking into account the interests and rights of the users of the justice system, the European Commission for the Efficiency of Justice (CEPEJ) has produced the so-called Time Management Check List. Based on this concept, an IT tool for the use of court presidents will be developed, with the purpose to collect appropriate information and analyse relevant aspects of the duration of judicial proceedings. The intention is to reduce undue delays and provide necessary transparency and foresee-ability for the users of the judiciary. To successfully implement this operation it is necessary to conduct an assessment of the overall length of proceedings. It requires not only the ability to assess the duration of individual stages of proceedings, but also the total duration of proceedings from their start to the final determination and, if applicable, the enforcement of the judicial decision.

For the users of the courts it is important to be able to estimate the expected costs of the proceedings and an IT-tool will be developed to facilitate this. Information on enforcement expenses and lawyers' fees should be easily accessible to the users. Lawyers' fees often represent a large part of total cost of court proceedings. Parties in court proceedings very often are not familiar with court proceedings and they are not aware of how long the process is going to last and how much it will cost. In cases when it is possible to resolve dispute with mediation, which represents a faster and cheaper way of solving disputes, it is especially important to be aware of the costs of the proceedings. Availability of this information to parties will allow them to make informed decisions on entering and pursuing law-suits, which could in return decrease the amount of incoming cases to courts.

In order to enable judicial institutions to function properly and to assure the production of new, advanced reports comprising more detailed information to be used by managers in the judiciary, it is necessary to enhance the level of quality and accuracy of data being entered in the CMS. Existing staff members from courts and prosecutors' offices will be trained and made responsible for accuracy and quality of data stored in the CMS.

All courts and prosecutors' offices in BiH collect a large amount of data from case proceedings and their business operations. To keep track of the data, courts and prosecutors' offices need to use a wide range of software programs, such as MS Excel, Access and different database applications like Case Management System (CMS). Using multiple software programs makes it difficult to perform analysis of the data. Processing of large amount of data from the Case Management System puts additional load on database servers, thus creating interruptions and delays in accessing the system. For that purpose an ICT tool -

Business Intelligence Software needs to be introduced in the BiH Judicial Information and Communication System. The term Business Intelligence (BI) represents the tools and systems that play a key role in the strategic planning process. Introduction of the BI will give court presidents, chief prosecutors, ministries of justice and the HJPC a possibility to easily create reports customized to their needs. Reports will be enriched by providing analysis of trends. Introduction of such system will unload the main database servers because the processing of the data for the reports will be done on separate servers that will be installed for the purpose of the BI system. The BI system will significantly aid the decision-making process because all stakeholders will have adequate reports accessible in real time in order to monitor the process of resolving of all cases (including war crime cases) and steer strategic and operational decisions towards achieving the sector result on improved judicial efficiency.

To execute their authorities and to fulfil obligations prescribed by the relevant legal framework, ministries of justice at all levels in Bosnia and Herzegovina send requests by fax or regular mail to the HJPC and/or to courts and prosecutors' offices requiring different types of information/statistical reports on cases. Most of the information requested is related to the number of specific criminal cases (money laundering, corruption, human trafficking, terrorism, violations of children's rights etc.) and performance of courts in those segments. It usually takes minimum of 15 days for the HJPC or courts/prosecutors' offices to collect necessary information, to create reports and submit them to relevant ministries. In order to meet these needs of ministries' of justice, assessment will be conducted to identify the scope of required data and statistical reports. Following that, the CMS will be adjusted to provide necessary information. This measure may also require entry of data that is identified as necessary for ministries, but which is not currently available in CMS at present. This will significantly shorten current practice of providing necessary information to the Ministries of Justice from 15 days to just a few minutes. In this way, the implementation of this activity will contribute to attaining the result of this sector support described as 'High Degree of Coordination among All Justice Sector Institutions to Develop, Implement and Monitor Sector Programmes Achieved'.

According to the statistics provided by leading information system security analysts in the world, 21% of data is lost as a result of malicious attacks from outside of the information system. However, 79% of such data is lost as a result of intentional or unintentional leakage or misuse of information from inside (printing, sending via e-mail, copying to removable storage devices of confidential and other classified information). Therefore, it is of utmost importance to implement IT solution that will prevent occurrences of the situation mentioned above. Thus, a Data Loss Prevention (DLP) system should be introduced. It is a computer security system that identifies, monitors, and protects data in use (e.g. endpoint actions), data in motion (e.g. network actions), and data at rest (e.g. data storage) through deep content inspection, contextual security analysis of transaction (attributes of originator, data object, medium, timing, recipient/destination and so on). DLP systems are designed to detect and prevent unauthorized use and transmission of confidential information. Having in mind that courts and prosecutors' offices deal with huge amount of sensitive information regarding parties, it is important to implement a DLP solution in the judicial information system. National War Crimes Strategy foresees prevention of unauthorized disclosure of protected data on identity of witnesses and other information as one of the strategic measures in the domain of witness protection. DLP system is the ICT tool that will certainly contribute to implementation of this NWCS strategic measure. It is also complementary with activities that will be performed within the Measure 2 (War Crimes).

Having in mind all the above, the implementation of this measure through its operations, complemented with the implementation of measure 1 (judicial infrastructure) and measure 2 (war crimes) will greatly contribute to achieving result 1 of this sector support.

## **Measures to achieve Result 2 “High degree of coordination among all Justice Sector institutions to develop, implement and monitor institutional strategic plans and policies achieved”**

### **Measure 4: Improve capacities of justice sector institutions for developing institutional strategic plans and policies**

In the context of sector policy development and sector programming of EU assistance it is fundamental that two important sector strategies have already been adopted and are under implementation at all levels in BiH, the JSRS and the National War Crimes Strategy. As explained above, these two strategies address most of the issues and problems facing the judiciary as well as the system for enforcement of criminal sanctions in BiH.

The two key strategies also include a detailed system for monitoring progress, and, with respect to the JSRS, make necessary adjustments at the Ministerial Conferences. This ensures necessary cooperation and coordination during the implementation.

It is also noteworthy that both strategies include mechanisms for keeping the international community informed of the progress of implementation.

Experience so far has indicated a need for further strengthening of the existing institutional capacities with respect to coordination and cooperation within the justice sector as well as for justice sector policy development through strengthening existing institutional capacities and mutual coordination. This is particularly important for the future planning of justice sector support from the EU aimed at developing the sector to meet European standards.

A number of initiatives have already been taken to improve this area, but it still remains a challenge. Lack of capacities for the preparation and implementation of institutional strategic plans and insufficient experience in the area of program budgeting and linking the budget process to the process of developing strategies and policies have been recognised in the JSRS as a major problem.

Operation 4.1 provides support in developing institutional capacities to prepare strategic plans and establish adequate links between strategic plans and the budget planning process. The needs for various types of assistance expressed by justice sector institutions, in particular the relevant Ministries of Justice will be taken into account when developing the ToR for the assistance. This operation will include engagement of experts to assist the relevant justice sector institutions to develop or revise their institutional strategic plans taking into account their links to the JSRS or just technical assistance to relevant sector institutions that would be reflected in training of institution employees in strategic plan development. Furthermore, this operation will address establishing of the process of monitoring of strategic plans' implementation, as well as developing links between strategic plans and the process of budget planning. The engaged experts will also provide training in the area of developing, implementing and monitoring of strategic plans, as well as in the area of program budgeting.

#### **Operation 4.2 Improve mechanisms of coordination between justice sector institutions**

This operation will address the improvement of coordination mechanisms in the justice sector. According to the proposal of the BiH MoJ, this operation would include the analysis of the existing legal framework regulating coordination, roles and responsibilities of different institutions in this exercise and current coordination mechanisms. This analysis should result in a set of recommendations, which would serve as a basis for the introduction of optimal formal and informal coordination mechanisms within the justice sector.

Coordination mechanisms should include the processes of preparation and implementation of IPA and other donor-funded projects and implementation of JSRS strategic programmes. This activity will also address the process of determining the types of information which are needed within the JSRS process and the methods of collecting this information from all sector institutions. The operation would also secure the access to relevant information through the system of collecting, analyzing and sharing information which will be established among the justice sector institutions, and possibly with the CSOs.

This operation will significantly aid the achievement of the Result 2 of the sector support relating to the achievement of a high degree of coordination among all justice sector institutions to develop, implement and monitor sector programmes and the implementation of the Stabilisation and Association Agreement.

Technical assistance under this measure will provide necessary support to justice sector institutions to build specific capacities which will enable them to successfully coordinate and implement this sector fiche and other sector programmes, and to successfully prepare proposals and absorb the donor assistance that will be available in future (in particular IPA funds).

### **3.5. OVERVIEW OF PAST OR ONGOING ASSISTANCE, LESSONS LEARNED, MECHANISMS FOR DONOR COORDINATION/SECTOR WORKING GROUP AND/OR POLICY DIALOGUE**

In the post-conflict period in BiH, the justice sector has been a priority area for IC support and financial assistance. In the framework of the judicial reform from 2001 onwards which sought greater independence and efficiency from the judiciary, a great amount of donor support was provided, particularly to newly established judicial institutions. Donor Coordination in the Justice Sector in BiH is particularly strong, and has been further enhanced by the Structured Dialogue on Justice (see overleaf).

With regards to the processing of war crimes and organised crimes, the newly founded Court and Prosecutor's office of BIH benefitted from a significant amount of support for human and operational costs as channelled through the International Registry. Amongst the most generous donors are the EU, the UK, the Netherlands, Sida, Norway and the USA. With the subsequent adoption of the National War Crimes Strategy in 2008 and bearing in mind the transfer of war crime cases to entity jurisdictions and the phasing out of the Registry by the end of 2012, continuation of donor assistance in this area remains imperative. Several donors and organisations aim to continue support to war crimes processing including the Sida, UK, the Netherlands, Switzerland and Norway. Complementarity of such support will need to be addressed through bi-lateral dialogue and donor fora (see below). In terms of lessons learned, the need to ensure time-bound results of the judicial processes and efficient use of resources will also be a prerequisite for support. Equally, the need for national ownership, particularly for costly operational expenses such as exhumations will be sought.

With the unification of one HJPC in 2006 and considering its legal competences, several donors supported the introduction of modern information and communication technology to the judiciary across BIH. Whilst such assistance initially focused on simple hardware and software needs throughout all jurisdictions, developments since then have supported the overall aim of judicial efficiency including the introduction of a case management system for all levels of courts and prosecutors office in BIH, the introduction of court and individual targets for court case backlog reduction, a judicial portal, court and Prosecutor websites

amongst many other areas. The most generous donors in the area for ongoing support are the EU, Sida and Norway.

In terms of lessons-learned, although the previously implemented ICT activities have fundamentally changed the way courts and prosecutor offices in Bosnia and Herzegovina conduct business and have streamlined burdensome review procedures within the courts, many challenges remain. Irrespective of the fact that the e-judiciary of BiH is considered by many as the most advanced in the Western Balkans, if it is to remain so additional financial resources will be required not just for hardware, software and maintenance, but also for supporting additional services related to a growing system. Information system which is daily used by courts and prosecutors' offices needs to continue developing the external orientation taking into account the needs of citizens. Therefore, system needs to be further improved from the security point of view in order to prevent unauthorised access to data from outside and prevent data loss from inside.

Following the establishment of the Ministry of Justice of BiH, and the subsequent drafting, and adoption of the JSRS several donors also supported its follow-up thereafter, including the UK, USAID, the EU, Spain and Sida.

Since 2007, a number of projects aimed at improving physical capacities of courts were implemented in BiH with a significant support of donors, including the EU, Sida, Norway and the USA.<sup>5</sup> Based on lessons learned from previous infrastructural projects, the need for extensive analysis and professional assessments of infrastructural works has proven to be very demanding. It is essential that the relevant ministries of justice agree to propose only mature or 'ready to go' projects for which the issues of land ownership or construction permits present no challenges. Also, experience has shown that the provision of necessary equipment for reconstructed judicial premises is of great significance, as solving infrastructural issues is inextricably connected to needs for a wide range of equipment. In addition, considering the high demand for further capital investment throughout BiH, courts and prosecutor offices with the largest backlog of cases, commonly referred to as 'hotspots' should be given priority in the EU support. Equally, considering the specific human resources of the contracting authority, single buildings which include both a court and prosecutor office should be given priority and the fewest number of contracts will be required.

Measure 1 of this sector fiche for 'Judicial Infrastructure' will involve two significant donors to the Justice sector, Sida and Norway, both of which have complemented EU assistance in the past, particularly regarding the case management system, court case backlog reduction, and infrastructural support. Due to the shared strategic goals of all three donors, regarding improving judicial infrastructure in BiH, Sida and Norway will finance the preparation and design of technical documents required for the EUD tendering and contracting of infrastructural works contracts.

With regard to ensuring security of judicial buildings assessments have been undertaken, and an international project<sup>6</sup> has produced the assessment of needs of court police agencies, both indicating that special attention needs to be capital investments and capacity building.

As illustrated above, a group of key donors and international organisations tend to support several aspects of the justice sector. Regular and effective donor coordination and dialogue, is assured bilaterally, but also through three key fora. Within the framework of the JSRS and the

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<sup>5</sup> Information on past and ongoing infrastructural projects are comprised in Annex 6 to the SF

<sup>6</sup> Detailed information provided in Annex 6 to the SF

DAC Paris Declaration, the Ministry of Justice of BiH organises a semi-annual donor coordination meeting after each ministerial conference to relay progress in the implementation of the strategy. In addition, the EU Delegation organises a Justice Sector donor forum approximately 5 times per year which includes representatives from the Embassies of the UK, Germany, Norway, USA, Switzerland, and international organisations including UNDP, Council of Europe, ICTY, and OSCE. In addition, in following the implementation of the Structured Dialogue, a small group of international organisations are regularly consulted and informed. One of several results of such a SD group has been the more regular and intense sharing of information, as well as a significantly enhanced policy dialogue on the justice sector, not only between donors and international organisation, but also between the national judicial authorities throughout BiH. The intention, therefore, is for all three fora to continue during the implementation of the EU justice sector support.

### **3.6 SUSTAINABILITY**

In general, at times of a difficult economic situation in a post-conflict country, national and local authorities could not provide sufficient funds for fundamental infrastructural projects in the judiciary on their own. However, different financial situations in differently developed regions of BiH, have resulted in unequal judicial infrastructure across the country. Some judicial institutions operate in reasonably good conditions, while others do not have basic infrastructural needs met. Donor support in this area and involvement of relevant governments as main stakeholders will certainly raise awareness and responsibility of local authorities to provide sufficient funds for maintenance of reconstructed buildings in order to preserve sustainability and efficiency of judicial institutions.

The intention of engaging staff on a temporary basis is to ensure support to the permanent staff to deal with backlog of war crimes cases throughout project duration and to reduce the number of those cases to the level that will enable the permanent staff to solve the remaining number of cases with their own capacities and resources upon completion of the project. The permanent staff will, through the project, receive sufficient expertise and experience for sustainable project results in areas covered by the assistance.

The sustainability of a complex information system in the judiciary is ensured through a first level support available to the users in courts and prosecutor offices. Improved public perception, increased number of resolved cases, efficient and high quality services to the public will significantly contribute to the increase of judicial institutions' funding by the local authorities for maintenance of the established system.

The trainings and training materials developed and used under this assistance should be included in regular training programmes of relevant institutions, thereby ensuring sustainability of the education in relevant areas.

Building capacities for strategic and budgetary planning in justice sector institutions will increase their commitment to continuous cooperation and coordination in all areas of interest for justice sector institutions.

With specific regard to strategic guidelines, many of the EU requirements in the area of the justice will be met upon completion of the project, positively affecting the long term reform processes and subsequently bringing BiH closer to its accession to the EU.

### **3.7 ASSUMPTIONS AND PRECONDITIONS**

#### **Main assumptions and mitigation measures related to achievement of Result 1 “Improved Judicial Efficiency and Accountability”:**

- Relevant authorities fully cooperate and provide necessary support and assistance throughout the implementation. Infrastructural projects in many locations require obtaining of necessary building permits that are issued by relevant authorities and that are an obligatory precondition for the actual start of works in the judicial premises and buildings. Therefore, justice sector counterparts will promptly identify the relevant authorities, establish timely cooperation so it does not prevent or slow down the implementation of project activities.
- Sufficient and quality bidders bid to enable healthy competition and optimal selection. Based on experience, it is possible that no adequate bidders meet the requirements defined in the tender documentation. Therefore, special attention will be given to the preparation of tender documentation in such a way that will motivate potential bidders to apply for the contract.
- Relevant ministries provide the necessary support, including the adequate office space for temporarily engaged staff.
- Full involvement and commitment of relevant CSOs ensured. The project will promptly identify relevant CSOs, make necessary contacts and include them in various project activities from the very beginning in all relevant project activities to ensure their full involvement and commitment.
- Courts and prosecutor’s offices fully cooperate during the project implementation phase and comply with established rules and regulations. Mitigation measures in this case will be based on ensuring better start-up awareness of the courts and prosecutors’ offices and increasing their ability to accept changes. In addition, training teams will be focusing more on staff that have problems adapting to the new functionalities and carry out one-on-one trainings for this category of staff.
- Full support, cooperation and commitment of JPTCs, JCBD, ministries of justice and other relevant institutions. Ministries of justice need to be actively involved in the process of analysis on which type of information/statistical reports they will need from the CMS. HJPC will work closely with ministries of justice in the needs assessment for the various statistical reports in the ministries of justice.
- Ministries of justice have necessary equipment and network infrastructure to access the CMS module for case statistics for ministries of justice. The HJPC will work closely with responsible ICT professionals in the ministries in defining basic technical preconditions for accessing the CMS module.
- Court presidents and judges understand, support and use the CEPEJ time management checklist. To ensure the new checklist is fully used, it is necessary that court presidents and judges embrace its introduction in their daily work and to provide their full support. The HJPC will take all necessary steps to familiarise judges and court presidents with the benefits the checklist can provide to the judiciary and gain their full support by ensuring their involvement in the project.
- Relevant agencies fully cooperate and provide necessary information in the process of conducting the needs assessment. Relevant ministries of justice and JCBD provide necessary support and coordination in the process of preparation of tender documentation for supply contract.



**Main assumptions and mitigation measures related to achievement of Result 2  
“Achieved high degree of coordination among all Justice Sector institutions to develop, implement and monitor institutional strategic plans and policies”:**

- All relevant justice sector institutions are willing to receive support in developing strategic documents and capacity building in this area.
- All relevant justice sector institutions are keen to work on establishment and improvement of the coordination within the sector.

**Pre-conditions:**

Prior to the release of the three foreseen tranches of the budgetary support for war crimes cases processing financed under IPA 2013, a number of conditions will have to be met. They include the following:

**General conditions for the release of tranches - valid for all tranches**

<b>Area</b>	<b>Conditions</b>	<b>Verification source</b>
Public Policy	Satisfactory progress in the implementation of the Justice Sector Reform Strategy or its successor strategy, and the National War Crimes Strategy (NWCS).	Structured Dialogue reports 2015 EU Progress report on BiH 2015
Macroeconomic stability	Implementation of a credible stability-oriented macroeconomic policy, supported through a disbursing IMF Stand-By Agreement programme	IMF Review Reports
Public finance management	Satisfactory progress in the implementation of the Revised Action Plan 1 of the BiH Strategy for Public Administration Reform in the area of public finance Progress in implementation of work plans for addressing outstanding external audit recommendations	PAR Coordinator's Office annual progress reports SAI annual reports
Budget Transparency	Satisfactory progress with regard to the public availability of accessible, timely, comprehensive, and sound budgetary information, as measured inter alia by the Open Budget Transparency Index	OBI reports

**Specific conditions for the release of tranches**

<b>First tranche (amount: €1 487 600, indicative disbursement request: Dec 2015, indicative date for disbursement: March 2016)</b>	
<b>Conditions/criteria/ activities for disbursement</b>	<b>Verification source including timing or data availability (where applicable)</b>
(0) Pre-Condition:  Approximately 15% of the overall number of unprocessed war crime cases (as of 2013) has been processed by mid-2015 and a positive trend in the reduction of the backlog can be identified.	OSCE reports Structural Dialogue on Judiciary EU Progress report on

<p>(i) Specific condition 1</p> <p>Tangible results in the implementation of the Action Plan of the National War Crimes Strategy (NWCS) as measured by a significant increase in the number of relevant activities relating to the processing of war crime cases undertaken by relevant Prosecutors' offices and Courts.</p> <p>(ii) Specific condition 2</p> <p>An updated qualitative assessment of caseload of courts at state and entity levels</p> <p>(iii) Specific condition 3</p> <p>An updated qualitative assessment of caseload of Prosecutors' offices at state and entity levels</p> <p>(iv) Specific condition 4</p> <p>The update of credible individual action plans by Prosecutor offices to meet the targets outlined in the Action Plan on backlog reduction and in line with the overall objective of the support.</p> <p>(v) Specific condition 5</p> <p>An updated needs assessment of the human and material war crimes processing needs of courts and prosecutors at state and entity levels, as reviewed by the High Judicial and Prosecutorial Council (HJPC) and adopted by the Supervisory Body for Monitoring Implementation of the NWCS</p> <p>(vi) Specific condition 6:</p> <p>Adherence to the quota system for war crimes backlog reduction as applied in the relevant Rulebooks on Courts</p> <p>(vii) Specific condition 7:</p> <p>Adherence to the individual action plans developed in 2015 under the IPA 2012 National Programme</p>	<p>BiH 2015</p> <p>OSCE reports Structural Dialogue on Judiciary EU Progress report on BiH 2015 HJPC reports 2015</p> <p>HJPC reports 2015</p> <p>OSCE project reports</p> <p>NWCS reports for 2015</p> <p>NWCS reports for 2015</p> <p>NWCS reports for 2015</p>
<p><b>Second tranche (amount: € 2 9750 000, indicative disbursement request: Sept 2016, indicative date for disbursement: Dec 2016)</b></p>	
<p><b>Conditions/criteria/ activities for disbursement</b></p>	<p><b>Verification source including timing or data availability (where applicable)</b></p>
<p>(0) Pre-Condition:</p> <p>Approximately 25% of the overall number of unprocessed war crime cases (as of 2013) has been processed by mid-2016 and a positive trend in the reduction of the backlog can be identified.</p>	<p>NWCS reports for 2016</p>

<p>(i) Specific condition 1: Adherence to the quota system for war crimes backlog reduction as applied in the relevant Rulebooks on Courts</p> <p>(ii) Specific condition 2: Adherence to the individual action plans mentioned above</p> <p>(iii) Specific condition 3: A significant increase in the number of relevant activities relating to the processing of war crime cases undertaken by relevant Prosecutors' offices and Courts.</p>	<p>NWCS reports for 2016</p> <p>NWCS reports for 2016</p> <p>NWCS reports for 2016</p>
<p><b>Third (final) tranche (amount: € 2 9750 000, indicative disbursement request: Sept 2017, indicative date for disbursement: Dec 2017)</b></p>	
<p><b>Conditions/criteria/ activities for disbursement</b></p>	<p><b>Verification source including timing or data availability (where applicable)</b></p>
<p>(0) Pre-Condition: Approximately 35% of the overall number of unprocessed war crime cases (as of 2013) has been processed by mid-2017 and a positive trend in the reduction of the backlog can be identified.</p> <p>(i) Specific conditions 1 Adherence to the quota system for war crimes backlog reduction as applied in the relevant Rulebooks on Courts</p> <p>(ii) Specific conditions 2 Adherence to the individual action plans mentioned above</p> <p>(iii) Specific conditions 3 A significant increase in the number of relevant activities relating to the processing of war crime cases</p>	<p>NWCS reports for 2017</p> <p>NWCS reports for 2017</p> <p>NWCS reports for 2017</p> <p>NWCS reports for 2017</p>

#### 4 IMPLEMENTATION ISSUES

A Sector Steering Committee will be established to monitor implementation of the sector fiche and will be composed of the main beneficiaries: BiH Ministry of Justice, RS Ministry of Justice, FBiH Ministry of Justice, Brčko District Judicial Commission, High Judicial and Prosecutorial Council BiH, BiH Ministry of Treasury and Finance, RS Ministry of Finance, FBiH Ministry of Finance, the European Union and its experts.

The measure 1 and corresponding operations will be implemented through works contracts and through service/supervision contracts, both awarded by the EUD. The development of the works design documentation to be used for the preparation of tender documentation will be secured by relevant ministries of justice, who would, if necessary seek donor funds for its development. Selection of priority courts and prosecutors' offices is made by relevant

ministries of justice and the JCBD. Ministries of justice will ensure coordination of the work of contractors with the beneficiaries (courts and prosecutors' offices). Relevant stakeholders should secure co-financing of infrastructural projects in amount of at least 15% of the value of works.

The measure 2 will be implemented through sector budget support, in line with the provisions set in annex 6 of this sector fiche.

Consumption of funds may include financing of salaries for judges, prosecutors and other staff in accordance with the existing rules. Further details will be worked out in a MoU which will be signed by all relevant stakeholders.

Education of temporarily engaged staff will be organised in accordance with relevant legislation. Relevant institutions in each of the jurisdictions will organize and/or carry out the training of its non-judicial staff in accordance with their competences.

Education of temporarily engaged staff at the state level will be organised through Commission for Education of Court/PO BiH.

Specialised education and tailor made education will be organised through Judicial and Prosecutorial Training Centres.

A grant agreement will be signed between the EU and the OSCE for providing assistance in the monitoring of implementation, with the OSCE having an advisory and the coordinating role.

The measure 3 would be implemented by the HJPC. Main partners in implementing the envisioned operations are courts and prosecutors' offices throughout BiH. The supply will be procured through competitive tenders.

The mode of implementation for measure 4 (improving capacities of justice sector institutions) is a service (TA) contract. In the process of developing the ToR for technical assistance, the consensus of all four parties involved - BiH MoJ, RS MoJ, F BiH MoJ and JCBD - needs to be achieved.

#### 4.1 INDICATIVE BUDGET

##### Indicative budget 2012 to 2013 (amounts in EUR)<sup>7</sup>

SECTOR TITLE			TOTAL EXPENDITURE	SOURCES OF FUNDING								
				IPA CONTRIBUTION		NATIONAL CONTRIBUTION					PRIVATE CONTRIBUTION	
	IB (1)	IN V (1)	EUR (a)=(b)+(c)+(d)	EUR (b)	%(2)	Total EUR (c)=(x)+(y)+(z)	% (2)	Central EUR (x)	Regional/Local EUR (y)	IFIs/ Donors EUR (z)	EUR (d)	% (2)
Measure 1			11 650 000	10 250 000	88	1 400 000	12	1 400 000				
Operation 2012	1.1	X	11 650 000	10 250 000	88	1 400 000	12	1 400 000				
Measure 2			16 876 000									
Operation 2012	2.1	X		7 438 000	100							
Operation 2013	2.1	X		7 438 000	100							
Operation supply 2012	2.2	X		1 000 000	100							
Operation grant agreement 2012	2.3	X		500 000	100							
Operation grant agreement 2013	2.3	X		500 000	100							

<sup>7</sup> The envisaged support under IPA 2012 is not part of the Implementing Decision adopting a national programme for Bosnia and Herzegovina under the IPA Transition Assistance and Institution Building Component for the year 2013. A separate Implementation Decision for 2012 has been adopted.

Measure 3			7 330 000	4 130 000	56	3 200 000	44	3 000 000		200 000		
Operation 3.a (grant contract) 2012	X		3 415 000	1 815 000	53	1 600 000	47	1 500 000		100 000		
Operation 3.a (grant contract) 2013	X		3 415 000	1 815 000	53	1 600 000	47	1 500 000		100 000		
Operation 3.b (supply contract) 2012		X	500 000	500 000	100							
Measure 4			1 500 000									
Operation 4.1 2012	X			1 500 000								
TOTAL IB			24 206 000	21 006 000	87	3 200 000	13					
TOTAL INV			13 150 000	11 750 000	89	1 400 000	11					
<b>TOTAL SECTOR SUPPORT</b>			<b>37 356 000</b>	<b>32 756 000</b>	<b>88</b>	<b>4 600 000</b>	<b>12</b>					

Amounts net of VAT

**Indicative budget 2012 (amounts in EUR)<sup>8</sup>** Amounts net of VAT

SECTOR TITLE			SOURCES OF FUNDING									
			TOTAL EXPENDITURE	IPA CONTRIBUTION		NATIONAL CONTRIBUTION					PRIVATE CONTRIBUTION	
	IB (1)	INV (1)	EUR (a)=(b)+(c)+(d)	EUR (b)	%(2)	Total EUR (c)=(x)+(y)+(z)	% (2)	Central EUR (x)	Regional/Local EUR (y)	IFIs / Donors EUR (z)	EUR (d)	%(2)
Measure 1			11 650 000	10 250 000	88	1 400 000	12	1 400 000				
Operation 1.1 2012		X	11 650 000	10 250 000	88	1 400 000	12	1 400 000				
Measure 2			8 938 000	8 938 000	100							
Operation 2.1 2012	X			7 438 000	100							
Operation 2.2 supply 2012		X		1 000 000	100							
Operation 2.3 grant agreement 2012	X			500 000	100							
Measure 3			3 915 000	2 315 000	59	1 600 000	41	1 500 000		100 000		
Operation 3.a (grant contract) 2012	X		3 415 000	1 815 000	53	1 600 000	47	1 500 000		100 000		
Operation 3.b (supply contract) 2012		X	500 000	500 000	100							
Measure 4			1 500 000	1 500 000	100							
Operation 4.1 2012	X			1 500 000	100							

<sup>8</sup> In countries where IPA is managed in centralised mode by the EUD co-financing is implemented as parallel co-financing. The envisaged support under IPA 2012 is not part of the Implementing Decision adopting a national programme for Bosnia and Herzegovina under the IPA Transition Assistance and Institution Building Component for the year 2013. A separate Implementation Decision for 2012 has been adopted.

TOTAL IB	12 853 000	11 253 000	88	1 600 000	12					
TOTAL INV	13 150 000	11 750 000	89	1 400 000	11					
<b>TOTAL SECTOR SUPPORT</b>	<b>26 003 000</b>	<b>23 003 000</b>	<b>88.5</b>	<b>3 000 000</b>	<b>11.5</b>					

**Indicative budget 2013 (amounts in EUR)<sup>9</sup>** Amounts net of VAT

SECTOR TITLE			SOURCES OF FUNDING								
			TOTAL EXPENDITURE	IPA CONTRIBUTION		NATIONAL CONTRIBUTION				PRIVATE CONTRIBUTION	
IB (1)	INV (1)	EUR (a)=(b)+(c)+(d)	EUR (b)	%(2)	Total EUR (c)=(x)+(y)+(z)	% (2)	Central EUR (x)	Regional/Local EUR (y)	IFIs / Donors EUR (z)	EUR (d)	% (2)
Measure 1		7 938 000	7 938 000	100							
Operation 1.1 2013	X		7 438 000	100							
Operation 1.2 grant agreement 2013	X		500 000	100							
Measure 2		3 415 000	1 815 000	53	1 600 000	47	1 500 000		100 000		
Operation 2.1 (grant contract) 2013	X	3 415 000	1 815 000	53	1 600 000	47	1500 000		100 000		
TOTAL IB		11 353 000	9 753 000	86	1 600 000	14					

<sup>9</sup> Under centralised mode of implementation of IPA assistance the co-financing is implemented as parallel co-financing.



<b>TOTAL SECTOR SUPPORT</b>	<b>11 353 000</b>	<b>9 753 000</b>	<b>86</b>	<b>1 600 000</b>	<b>14</b>					
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## 4.2 INDICATIVE IMPLEMENTATION SCHEDULE (PERIODS BROKEN DOWN PER QUARTER)

Operations	Start of Tendering Call(s) for proposals	Signature of contract(s)	Activity Completion
<b>IPA 2012</b>			
Operation 1.1 (Works contracts)	Q3 2013	Q4 2014	Q4 2016
Operation 1.1 (Supervision contracts)	Q3 2013	Q4 2014	Q4 2017
Operation 2.1 (Sector budget support)	Q4 2013	Q1 2014	Q1 2016
Operation 2.2 (Supply contracts)	Q4 2013	Q1 2014	Q3 2015
Operation 2.3 (Grant agreement OSCE)	Q3 2013	Q4 2013	Q4 2015
Operation 3.1 (Grant to HJPC)	Q3 2013	Q1 2014	Q3 2015
Operation 3.2 (Supply Contracts)	Q4 2013	Q1 2014	Q3 2015
Operations 4 (TA Contract)	Q4 2013	Q2 2014	Q4 2015
<b>IPA 2013</b>			
Operation 1.1 (Sector budget support)	Q4 2015	Q1 2016	Q1 2018
Operation 1.2 (Grant agreement OSCE)	Q2 2015	Q4 2015	Q4 2017
Operation 2.1 (Grant to HJPC)	Q2 2015	Q3 2015	Q2 2017

## 4.3 CROSS CUTTING ISSUES

### 4.3.1 *Equal Opportunities and non discrimination*

The justice sector institutions strictly apply the principle of non-discrimination stipulated in Article 6 of the Labour Law for Institutions of Bosnia and Herzegovina which stipulates that a person will not be discriminated against on the basis of race, colour, sex, language, religion, political or other opinion, ethnic or social background, sexual orientation, financial situation, birth or any other circumstance.

### 4.3.2 *Environment and climate change*

The assistance is not anticipated to have negative effects on the environment and climate change.

### 4.3.3 *Minorities and vulnerable groups*

One entire area of the assistance relates to the improvement of treatment of specific and vulnerable groups of prison population such as minors and women through reconstruction and adaptation of penal institutions.

### 4.3.4 *Civil Society/Stakeholders involvement*

Civil Society Organisations' representatives signed the memorandum on active monitoring of implementation of JSRS with the Chairman of the Ministerial Conference and presidents of the High Judicial and Prosecutorial Council and Judicial Commission of BD. Five civil society organisations, the signatories of the memorandum systematically monitor, evaluate and report on the implementation of the reform measures thereby contributing to the more

effective establishment of the justice system in BiH, in line with EU standards, guaranteeing the rule of law in BiH. Involvement of CSOs in monitoring, evaluating and reporting on JSRS implementation has without doubt indicated positive changes and openness of justice sector towards civil society in general. One of the areas of the proposed assistance relates to the improvement of cooperation with non-government sector in order to meet the needs of witnesses/victims and in particular victims of sexual violence.

## ANNEX 1: Logical framework matrix for sector support in standard format

LOG FRAME PLANNING MATRIX FOR Sector Fiche		Sector support name and number:		4 Justice Sub Sector	
		Contracting period expires 3 years following the date of conclusion of the Financing Agreement		Execution period expires 2 years following the end date for contracting.	
		Total budget	(IPA 2012: 26 003 000 EUR) IPA 2013: 11 353 000EUR		
		IPA budget:	(IPA 2012: 23 003 000EUR) IPA 2013: 9 753 000EUR		
<b>National sector or sub sector objective</b>	<b>Objectively verifiable indicators (OVI)</b>	<b>Sources of verification</b>		What is the percentage proportion or expected quantitative or qualitative contribution of the sector support funded by IPA to this OVI?	
The overall objective of the assistance required is to significantly increase the efficiency, professionalism and independence of the entire justice sector to secure the rule of law and thereby prepare the BiH for access to the European Union.	- Rule of Law throughout country significantly improved in accordance with EU requirements relevant for justice sector	- Annual EC reports on Bosnia and Herzegovina progress towards EU integration		Approximately 50%	
<b>Sector support objective within the MIPD sector</b>	<b>Objectively verifiable indicators (OVI)</b>	<b>Sources of Verification</b>		<b>Assumptions</b>	
- Strengthen the independence, efficiency, effectiveness and the accountability of the judiciary. - Improve Sector capacity for coordination and implementation of sector programmes	- Improved judicial facilities - Reduced length of court proceedings and backlog of cases - Improved intra-sectoral approach to implementation of witness protection measures; - Human and resource capacity of judicial institutions, court polices, Ministries of Justice and other sector institutions increased; - Justice sector institutions have sufficient capacity to develop, coordinate, implement and monitor sector programmes (including assistance);	- Annual EC reports on Bosnia and Herzegovina progress towards EU integration - Reports of justice sector institutions - Relevant international organizations' reports		- Continuation of commitment of the relevant authorities in BiH to take a harmonized and coordinated approach to implementing the reforms in the justice sector. - Relevant institutions, such as ministries of finance, assist and support the sustained use of technology, infrastructure and human resources, by providing proper funding through annual budgets.	
<b>Results of the sector support</b>	<b>Objectively verifiable indicators (OVI)</b>	<b>Sources of Verification</b>		<b>Assumptions</b>	

<p>1. Improved Judicial Efficiency and Accountability</p>	<ul style="list-style-type: none"> <li>- Achievement of relevant infrastructural standards (including witness protection and security standards) in 100% judicial institutions selected for construction, renovation or reparation</li> <li>- Backlog of KTRZ cases reduced in all judicial institutions in BiH by at least 50%</li> <li>- At least 10 adjusted and 6 unmarked vehicles purchased for the transport of witnesses and persons handled by all (4) court polices</li> <li>- All non-utility cases older than 5 years are fully eliminated (cases that are older than 5 years constituted 10% of all cases in judiciary as of December 31, 2011)</li> <li>- Average age of unresolved civil cases in the first-instance courts decreased by 5% (the average age of cases was 832 days as of December 31, 2011)</li> <li>- Courts, POs, HJPC and ministries of justice have real-time access through CMS to registered data for making informed decisions</li> <li>- Data Loss Prevention and security system implemented in all (93 judicial institutions) courts and prosecutors' offices.</li> </ul>	<ul style="list-style-type: none"> <li>- Annual EC reports on Bosnia and Herzegovina progress towards EU integration</li> <li>- MoJs' reports</li> <li>- Courts and Prosecutor Offices' reports</li> <li>- Provisional Acceptance Certificates (PAC) for works and equipment</li> <li>- War Crimes Steering Board Reports</li> <li>- HJPC reports which include statistical data</li> <li>- CMS reports on implementation of plans for solving old cases in courts throughout BiH</li> <li>- Statistical reports prepared by courts and prosecutor offices</li> <li>- Training attendance sheets</li> <li>- Initial and final user tests/surveys</li> <li>- Reports produced by court police.</li> <li>- Provisional Acceptance Certificates (PAC) for delivered vehicles and equipment</li> <li>- Vehicle log reports.</li> </ul>	<ul style="list-style-type: none"> <li>- Improved infrastructure in judicial institutions is used in optimal way for organisation of work flow</li> <li>- Relevant authorities ensure financing for maintenance of the achieved level of infrastructural standards</li> <li>- Adequate technical documentation for selected projects developed</li> <li>- Additional number of prosecutors appointed to entity prosecutors' offices</li> <li>- Continuous and up to date processing of war crime cases</li> <li>- Commitment of stakeholders to the further implementation of National War Crime Strategy</li> <li>- Orientation measurements for the work of judges, judicial associates and other employees of the courts in Bosnia and Herzegovina are applied in all courts throughout BiH</li> <li>- Human resources available at courts and prosecutor offices are sufficient and optimally assigned</li> <li>- Judges, prosecutors and other staff make optimum use of their newly acquired equipment, skills and resources</li> <li>- Improved quality of policy-level decisions positively affects the work of individual judicial institutions and judiciary as a whole</li> <li>- Ministries of justice, HJPC, courts and prosecutors' offices make informed decisions based on available reports</li> <li>- Relevant authorities ensure financing for maintenance of the newly introduced functionalities</li> <li>- Court police managers and court police officers make optimum use of their newly acquired equipment and resources.</li> </ul>
<p>2. High degree of coordination among all Justice Sector institutions to develop, implement and monitor sector programmes achieved</p>	<ul style="list-style-type: none"> <li>- Strategic plans of all justice sector institutions (Total – 109: Ministries of Justice – 13, JCBD, HJPC, courts – 73, POs – 20) are developed, and linked to</li> </ul>	<ul style="list-style-type: none"> <li>- Strategic plans of justice sector institutions</li> <li>- Budget proposals of relevant justice sectoral institutions</li> <li>- Relevant documents which regulate</li> </ul>	<ul style="list-style-type: none"> <li>- Justice sector institutions use strategic plans and corresponding budget proposals as their main managerial tool for meeting EU requirements</li> </ul>

	institutions' mid-term budget frameworks, and are aligned with the JSRS - The set of coordination mechanisms among justice sector institutions is established.	coordination mechanisms among justice sector institutions	
<b>Measures to achieve results</b>	<b>Means / operations</b>	<b>Costs</b>	<b>Assumptions</b>
Measures to achieve Result 1 "Improved Judicial Efficiency and Accountability"  Measure 1 Conduct construction, renovation and reparation of courts and prosecutors' offices  Measure 2 Establish adequate system for efficient processing of war crime cases in all relevant judicial institutions in BiH  Measure 3 Consolidation and further development of the Judicial Communication and Information System	Operation 1.1. Construction, renovation and reparation – IPA 2012 and IPA 2013  Operation 2.1 Strengthen capacities for efficient processing and monitoring of war crimes – IPA 2012/2013  Operation 2.2 Improve technical working conditions of court police – IPA 2012  Operation 2.3 Grant agreement  Operation 3.1 Renew the Case Management System (CMS) through a comprehensive audit and develop new functionalities within the CMS that will satisfy reasonable user needs – IPA 2012/2013  Operation 3.2 Improve the quality of data stored in CMS – IPA 2012  Operation 3.3 Introduce a business intelligence system (BI) in the judiciary	Works contract, service/ supervision contract IPA assistance in amount of 10 250 000 million EUR (10.25 MEUR IPA 2012 ).  Sector budget support 14 876 000 EUR 14 876 000 from IPA (7 438 000 EUR 2012 and and 7 438 000 EUR IPA 2013)  1 000 000 EUR under IPA 2012 (supply)  1 000 000 from IPA 2012 and IPA 2013 (0.5 MEUR each)  Grant Contract with the HJPC in amount of 3 630 000 EUR: 1 815 000 EUR under IPA 2012 and 1 815 000 EUR under IPA 2013  Supply contract 3b in amount of 0.5 million EUR under IPA 2012	Assumptions relevant to the achievement of Result 1 "Improved Judicial Efficiency and Accountability"  - Relevant national and local authorities fully cooperate and provide necessary support and assistance throughout the implementation  - Sufficient and quality contractor(s) bid to enable healthy competition and optimal selection  - Full involvement and commitment of relevant CSOs ensured  - Relevant agencies fully cooperate and provide necessary information in the process of preparation of tender documentation.  - Managers and other staff of courts and prosecutor offices fully cooperate with the HJPC during the project implementation phase and comply with established rules and regulations  - Full support, cooperation and commitment of JTCs, JCBD, ministries of justice and other relevant institutions  - Ministries of justice have necessary equipment and network infrastructure to access CMS module for case

<p>Measures to achieve Result 2 “High degree of coordination among all Justice Sector institutions to develop, implement and monitor institutional strategic plans and policies achieved”</p> <p>Measure 5. Improve capacities of justice sector institutions for developing institutional strategic plans and policies</p>	<p>Operation 3.4 Ensure access to case statistics based on data stored in CMS for ministries of justice</p> <p>Operation 3.5 Improve the security of the judicial information system</p> <p>Operation 4.1 Provide support in developing institutional capacities to prepare strategic plans and establish adequate links between strategic plans and budget planning process – IPA 2012</p> <p>Operation 4.2 Improve mechanisms of coordination between justice sector institutions – IPA 2012</p>	<p>1 TA Contract in amount of 1 500 000 EUR in IPA 2012</p>	<p>statistics for ministries of justice</p> <ul style="list-style-type: none"> <li>- Judges and court presidents understand, support and use the checklist (CEPEJ)</li> </ul> <p>Assumptions relevant to the achievement of Result 3 “High degree of coordination among all Justice Sector institutions to develop, implement and monitor institutional strategic plans and policies achieved”</p> <ul style="list-style-type: none"> <li>- Willingness of justice sector institutions to work on developing their capacity and on maintaining coordination</li> </ul>
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## **Annex 2 - Description of Institutional Framework**

BiH has 13 Ministries of Justice – 10 Cantonal ministries in the Federation of BiH, 2 ministries at the entity level and 1 Ministry at the state level. In Brcko District BiH, functions of ministries of justice are shared between the Judicial Commission and the Government of Brcko District BiH. The judiciary consists of 73 courts and 20 prosecutors' offices at all levels – state, entity and cantonal/district level. As prescribed by the Law, the HJPC is an independent and autonomous body, with the task of ensuring the maintenance of an independent, impartial and professional judiciary. Three constitutional courts are established: Constitutional Court of BiH, Constitutional Court of Republika Srpska and Constitutional Court of Federation BiH.

There are four court police organisations (CP) that exist in Bosnia and Herzegovina (CP at the state level, CP of Federation of BiH, CP of Republika Srpska and CP of Brcko District BiH), and their legal competencies are notably different.

The system for execution of criminal sanctions in BiH is organised in a way that the entities (Republika Srpska and the Federation of BiH) have their correctional facilities which fall under the jurisdiction of the respective Ministries of Justice of the entities.

In terms of financing the justice sector, there are 14 different sources of financing (state, 2 entities, 10 cantons and 1 district). Medium term budgetary planning is regulated by the law, which foresees preparation and updating of the Document of Budgetary Framework defined for a three-year period. This process is conducted by most ministries of finances (with exception of several cantons), and it produces pre-drafts for annual budgets for all institutions financed at a certain level.

Although the justice sub-sector of Bosnia and Herzegovina is consisted of a large number of institutions that functionally are interconnected with other sectors, it has established the sector strategy which came into force in 2009. Justice Sector Reform Strategy (JSRS) encompasses all relevant institutions in the sector through its implementation, and monitoring mechanisms at both operational and managerial levels.

Objectives set in the JSRS and its Action Plan are coherent with EU justice-related policies, including the SAA, the EU Partnership with BiH, EC Progress Reports and the MIPD 2011-2013. The JSRS was signed by 13 Ministers of Justice, the Brcko District Judicial Commissioner and the HJPC President. Five Civil Society Organisations actively participate in monitoring of JSRS implementation.

Functioning mechanisms related to JSRS implementation, coordination and monitoring assure the coordination within the justice sector. The highest bodies participating in these mechanisms are 13 Ministries of justice, the Judicial Commission of Brcko District and the HJPC. Highest officials of these institutions meet semi-annually at the JSRS implementation Ministerial Conference. The operational coordination of five pillars of the JSRS is dealt by 5 functional working groups comprising representatives of many implementation bodies, which meet and are required to report quarterly on their activities. Information on progress and implementation of strategic programmes are entered by all institutions in the sector



responsible for implementation of strategic programmes to a single database, where all information on progress of JSRS Action Plan implementation are kept.

The overall coordination, reporting and ministerial conference organisation lays with the Ministry of Justice of BiH, in particular the Sector for Strategic Planning, Aid Coordination and European Integration (SSPACEI). SSPACEI is continuously working on further developing adequate mechanisms to ensure proper coordination within the sector.

Like in many other sectors, the harmonisation of donor assistance has been a challenge. The SSPACEI is working on developing donor coordination mechanisms in the field of justice. In addition to donors being invited to the ministerial conferences, certain coordination groups have both donors and/or implementing partners, such as UN agencies. Also, there are regular donor update coordination meetings that have played an important role in the exchange of information, though this has proven to be insufficient in terms of actual harmonisation of donor initiatives.

## **Annex 3 – Political, legal and institutional framework**

### **- Significant excerpts and summaries from relevant sector strategy documents -**

#### **Annual Progress Report 2013**

In Chapter 2.1. Democracy and Rule of Law, Judicial System: “Overall, there has been limited progress in reform of the judicial system reform. The Structured Dialogue on Justice has led to a number of concrete positive outcomes. However, some political initiatives to reform judicial institutions outside this framework, such as a proposal for the politicisation of appointments, have caused concern. There has been an agreement to revise the Justice Sector Reform Strategy to strengthen its implementation.

Measures to reduce the backlog of cases are now being implemented with success, but the backlog still remains very high. The positive trend in solving the backlog of war crime cases is hampered by the lack of human and financial resources at all levels. Harmonisation of different criminal law jurisprudence and reduction of budgetary fragmentation are still at an early stage. Independence and accountability of the judiciary remain vulnerable due to political parties attempting to exercise influence. The fragmentation of the legal and institutional framework in the area of access to justice needs to be addressed.”

#### **Stabilisation and Association Agreement between the European Union and BiH (SAA)**

In Title VII of the SAA: Justice, Freedom and Security, Article 78: Reinforcement of institutions and rule of law: “In their cooperation on justice and home affairs the Parties shall attach particular importance to the consolidation of the rule of law, and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation shall notably aim at strengthening the independence of the judiciary and improving its efficiency and institutional capacity, enhancing access to justice, developing adequate structures for the police, customs and other law enforcement bodies, providing adequate training and fighting corruption and organised crime.”

Article 113:

“ ... Financial assistance may cover any sectors of cooperation, paying particular attention to Justice and Home Affairs, approximation of legislation and economic development.”

#### **Structural dialogue on judiciary between EU and BiH – Recommendations**

**The first set of preliminary recommendations** included recommendations related to the implementation of the JSRS and the National War Crimes Strategy, coordination of competences, issue of equal access to justice, and budgetary issues for the judiciary.

In particular, the European Commission:

“Recommends that relevant authorities assess the state of their current coordination and cooperation in the implementation of the JSRS. They shall in particular focus on the identification of shortcomings, address them in a timely manner and allow reviving the implementation of the strategy.”

“In this regard, encourages all competent authorities to guarantee active, effective and constructive participation in the Working Groups and the Technical Secretariat for the JSRS implementation.”

“Encourages all relevant authorities and institutions to engage in a constructive debate for the identification of measures that can further improve independence, professionalism and accountability throughout the sector”

“Encourages Prosecutors' offices and Courts at all levels to process war crimes cases by dedicating all necessary professional commitment to this endeavour.”

“Encourages all competent authorities and institutions to handle the process of referrals of war crimes cases in an expeditious, objective and transparent way.”

“Encourages all relevant authorities to strengthen their efforts in coordinating practices of the use of applicable law in war crimes cases. A consistent and coherent practice, in full respect of relevant principles in the European Convention on Human rights shall be guaranteed.”

“Recalls that effective cooperation between judicial authorities and institutions is a necessary precondition for the entrenchment of the Rule of Law.”

**The second set of recommendations**, among others, is focused on backlog of cases burdening the judiciary, prison management, overall implementation of the War Crimes Strategy, the transfer of war crimes cases, witness protection and support mechanisms, support to the Prosecutors Office of BiH in carrying out exhumations, coordination between Court of BiH and other court instances, judicial professionalism, international staff in judicial institutions and funding for the justice sector.

In particular, the European Commission:

“Encourages continuation of initiatives to increase efficiency through proposals for legislative changes, monitoring of backlog reduction through the available IT management tools, management training, changes of the internal working procedures at courts, as well as renovation and modernisation of buildings.”

“Expresses concerns about the lack of proper implementation of most strategic objectives of the NWCS.”

“Urges that coordination between prison administrations is guaranteed, especially with a view to develop a systematic and coherent approach to training of prison staff throughout the country, in line with the relevant EU standards.”

”Strongly reiterates that an overview of all measures envisaged to strengthen the training programmes for prison guards and other prison staff, including a dedicated curriculum on integrity and anti-corruption, be agreed and provided.”

“Reiterates that effective processing of war crimes cases is fundamental for truth and national reconciliation. Delays and inefficiencies cannot be accepted, since they represent negation of justice for victims and victims' families, as well as for the citizens of BiH in general.”

“Calls on all competent institutions to coordinate and communicate their needs for the improvement of witness protection and support, with the aim of ensuring sustainable integrated mechanisms in all relevant institutions, including the police, the judiciary and the social assistance.”

“Underlines that a number of improvements are necessary, especially to increase accountability, efficiency and effectiveness throughout the sector.”

“Amongst others, priority shall be assigned to the following steps: ... reform of the procedures to access judicial careers, related reform of the Bar exam.”

“Reiterates that an independent, efficient, impartial, accountable and professional judiciary cannot be fully achieved unless adequate financial means are at the disposal of judicial institutions.”

## **National strategic documents**

The proposed assistance follows the objectives and priorities of the Justice Sector Reform Strategy (JSRS), the National War Crimes Strategy (NSWC) and other institutional and thematic strategic documents. Here-below are described the most relevant documents supporting the proposed measures.

The JSRS strategic programs are structured in five pillars that address: the judiciary, execution of criminal sanctions, access to justice, support to economic growth and well-managed and coordinated sector.

In the first pillar - the judiciary, JSRS envisages the continued strengthening and maintaining of independence, accountability, efficiency and professionalism and harmonisation of the judicial system which ensures the rule of law. Efficiency and effectiveness of the judiciary will be achieved through tackling case backlog, improving the state of judicial facilities, full computerisation of the judiciary, and with the improvement of courts and prosecutors offices' administration. Access to justice is addressed by the third pillar of JSRS, and it includes programs of provision of care for users of court services and deals with the transparency of judiciary through the program which foresees increasing the level of information accessible on organisation and work of the courts and prosecutors' offices throughout BiH to wider public in BiH. In accordance with the JSRS, the justice sector is to provide support to economic growth through research, developing and making available mediation and other forms of alternative dispute resolution through training for judicial staff and ensuring a system for the provision of mediation services throughout BiH. The fifth pillar of the JSRS is integrated through the strategic goal which aims to: 'coordinate and make roles and responsibilities of key justice sector institutions more efficient...'

The National War Crimes Strategy aims to establish all of the preconditions in order to process the most complex war crimes cases of the highest priority within 7 years and other war crimes cases within 15 years from the time of adoption of the Strategy. In addition to ensuring a functional mechanism for the management of war crimes cases which assumes the transfer of cases, the Strategy also pays particular attention to witness and victim support and protection. The assistance proposed is fully in line with the objectives set in this strategy.

Strategy of the High Judicial and Prosecutorial Council 2010-2013 is fully in line with the JSRS and National War Crime Strategy. The majority of the strategic objectives are directed towards strengthening the position of the judiciary, and improving its much-needed efficiency, independence, effectiveness and accountability.

Care of Court Users Strategy aims 'to gain and maintain citizens' trust and confidence in courts in a way that acknowledges the principles of impartiality, independence, transparency, fairness and equity, in conditions that provide citizens safety and security, thus contributing to the rule of law'.

The Strategy of the BiH Ministry of Justice 2009-2011, states a mission ‘to ensure an equal and timely access to justice and efficient, ethical, legal and accountable public administration in accordance with European standards’.

Medium-Term Institutional Development Plan for the Court and Prosecutors Office of BiH (MTIDP), is intended to provide means to further strengthen the institutional capacities of the Court of BiH (Court) and the Prosecutors Office of BiH (PO) to process sensitive and serious war crimes and organized crime cases at the State level efficiently and effectively and to ensure long term sustainability of this capacity. MTIDP is to ensure sustainability of substantial international investment into the Court and the PO BiH since 2004 and to support full transition of international staff – it is imperative that the same capacities be maintained after the withdrawal of international staff and the shutdown of the Registry in 2012.

Maintaining the same capacities following the shutdown of the Registry in 2012 may only be limited with the existing plans and available financial resources.

The Draft Midterm Strategic Plan of the Federal Ministry of Justice for 2012-2015 is finalised and is fully in line with the strategic objectives of the JSRS, EC recommendations from the structured dialogue on Justice between EU and BiH, and other relevant strategies.

## **Annex 4 - Possible visibility activities**

The visibility activities will be incorporated in the detailed action plan for the implementation of the measures foreseen by the sector fiche.

For Measures where the infrastructural works will be undertaken, following visibility activities are foreseen:

- announcement / kick-off visibility events (announcement of planned works with presentation of beneficiaries list)
- works-opening events
- works-completion events, official opening of reconstructed/renovated premises
- institutions' open-doors days
- press releases, stories published on institutions' web sites

For Measures where the supply activities are planned, following visibility activities are foreseen:

- press conferences
- press releases, stories published on institutions' web sites
- official handover event (depending on the type of the equipment, e.g. applicable for vehicles)

For Measures where training is envisaged, following visibility activities are foreseen:

- thematic conferences
- visibility ensured through training materials and training events
- press conferences
- press releases, stories published on institutions' web sites
- success stories (e.g. for students' internships)

For Measures where complex and composite operations are implemented (e.g. under Results 2, 3, 7), following visibility activities are foreseen:

- thematic conferences
- press conferences presenting commencement/completion of specific operations (e.g. information systems)
- press releases, stories published on institutions' web sites
- user manuals
- promotion materials

All equipment procured through measures encompassed by this sector fiche will be appropriately branded in accordance with EU External Actions Visibility Guidelines. All physical interventions on buildings will be noted by placing appropriate plaques on buildings/inside institutions' premises, and additionally, all digital and printed materials produced within the measures encompassed by this SF will feature EU symbols and clearly specify EU in donor's capacity.

## **Annex 5 – Information about donor past and ongoing assistance**

### **Infrastructural projects**

The Norwegian Government and the Government of Republika Srpska jointly financed the project of renovation East Sarajevo District Court, Department of the Sokolac Basic Court and renovation of the building of the Modrica Basic Court. The Norwegian Government has also funded project of the construction of an additional floor on the building of BiH judicial institutions complex „Ramiz Salcin“, aimed at providing adequate office space for the HJPC staff and a new conference room for the Council sessions. In addition Norwegian government has also funded the project of Renovation of the Building of the Ilidza Branch of Sarajevo Municipal Court, the development of design documentation for Reconstruction of building IV - Primary School that will accommodate the Municipal Court in Mostar and “Additional floor construction and reconstruction of premises within the Judicial Institutions Compound of Bosnia and Herzegovina aimed at providing adequate office space for the Court of BiH”. Sarajevo Canton, EU, Norway and SIDA jointly financed the project of Reconstruction of Sarajevo Cantonal and Municipal Courts building.

### **Building capacities for processing of war crime cases**

In the period 2010 – 2012, the European Union funded a project “Support to the BH Judiciary – IPA 2009” aimed at increasing capacities of entity level judiciary to process war crime cases. Within the Project, a reconstruction of courtrooms and rooms for protected witnesses was foreseen in 11 courts authorised to process war crime cases. These courts are also to be provided with sophisticated equipment used in implementation of witness protection measures. In parallel with this project, the UNDP was implementing project Support to the witness/victims in war crime cases with a goal to establish Witness Support Departments in two courts and two prosecutor offices. At the end of the project, Witness Support Departments are established in courts and prosecutor offices in Banja Luka and Sarajevo and District Court in East Sarajevo. During years 2011 and 2012, the United Kingdom Embassy funded three short term projects aimed at improving the system of implementation of witness protection measures and supporting judicial institutions in entities to deal with war crime cases in more efficient way. Within UK funded projects a Book of Rules for implementation of witness protection measures and Operational guidelines were developed and also Educational Module for implementation of witness protection measures as well. Also, support staff to deal with war crime cases was provided to five prosecutor offices and judicial training centres. Within these projects a specialised training on implementation of witness protection measures was organized for judges and prosecutors, but also for other institutions and agencies which have a role in implementation of witness protection measures in processing war crimes. During past years, the OSCE mission in BiH has implemented a series of activities in field of processing war crime cases. The main result of these projects are educational modules in the area, support to the judicial institutions in order to deal with war crime cases in more efficient manners and contribution provided in transferring and preserving ICTY legacy. The establishment of the Database of Open War Crime Cases in prosecutors’ offices in BiH is also one of the projects that contributed to better understanding of the actual number and complexity of war crime cases. The Project has been initiated by the OSCE and financially supported by the Norwegian Government for four years. The successful implementation of the project has accomplished an activity foreseen under the National War Crimes Strategy (strategic measures 1 and 2). Besides, the implementation of the project has allowed for the creation of conditions for case complexity assessment, thus enabling a facilitated distribution of cases between the Court of BiH and Prosecutor’s Office of BiH and other courts and prosecutor’s offices.

Witness protection area, in general, is one of the most sensitive issues currently dealt by judicial institutions and must be continuously improved. This is also important in terms of raising self-confidence of judges and prosecutors to use and implement witness protection measures in an optimal way, without resistance or fear. Also, education in witness protection area has been conducted mostly for institutions/organisations involved in processing war crime cases. As witness protection measures can be used in other areas, such as organised crime and juvenile justice, advantages of witness protection system should be aimed to everybody who could benefit from it to create a unique way of implementation of these measures in all judicial institutions for all types of crimes. Having in mind a great experience from the state court and PO in this area, involvement of these institutions is crucial and will contribute to their own improvement in this area as well.

### **Security of judicial buildings and support to the court police**

In 2010, the HJPC established a Working Group for judicial institutions buildings security assessment and other security aspects. This Working Group has developed a document entitled Guidelines, standards and measures of security of judicial institutions and judicial function holders in BiH. These Guidelines are adopted in 2011 by the HJPC after which the Working Group continued to monitor the implementation of the Guidelines, standards and measures of security of judicial institutions and judicial function holders in BiH. International Criminal Investigation Assistance Program (ICITAP), which operates within US Ministry of Justice, is active in area of court police. They have conducted educations, consultations and provided certain equipment to the court police. ICITAP has developed a needs assessment in this area and provided a set of recommendations. Based on this assessment, it is clear that there is a great need for continued improvement in court police area.

MTIDP of the Court and the PO BiH calls the Analysis of the work of the Court Police and assessment of security in these institutions. This activity was marked as a high priority of common interest to both the Court and the PO BiH. This activity is being implemented in cooperation with the International Criminal Investigative Training Assistance Program (ICITAP).

### **Judicial information system and efficiency**

Introduction of e-judiciary in Bosnia and Herzegovina, has been carried out with assistance of many donors and local authorities at all levels in Bosnia and Herzegovina through sectoral approach. Complementarities of different projects were ensured through coordination lead by HJPC in order to achieve the overall goal of the process. EU/EC has made significant contribution in setting up necessary IT infrastructure and basic application/services (e-mail, internet) at the courts and prosecutor offices in Bosnia and Herzegovina (CARDS 2004, 2005, 2006, and IPA 2008). Development and implementation of the Case Management System and judicial web portal has been achieved through ICT/Case Management System (CMS) project funded by the Joint Financing Agreement between HJPC, Swedish International Development Agency (SIDA) and the Netherlands. EU has also contributed to development and implementation of ICT/Case Management Systems (IPA 2007) and introduction of additional information system functionalities (IPA 2009). Norway provided funds for the development of System for automatic processing of utility cases (SOKOP). Establishment of the court decisions database was a project mainly funded by the Spanish Agency for International Development Cooperation. Bosnia and Herzegovina's authorities at all levels provided funds for human resources needed to successfully implement a computerised environment in the courts and prosecutors' offices and for the procurement of some of the necessary equipment.



Only by joint efforts of all project directed to further improvement of E-judiciary and efficiency it would be possible to fulfil European requirements regarding to e-judiciary and efficiency and to secure to the citizen access to justice and to realized their rights guaranteed in the Constitution of BiH, Constitution of FBiH and RS and international documents.

Donor support should also be noted in light of the Bosnia and Herzegovina's own initiatives in the area:

Bosnia and Herzegovina: In March 2004 a strategy was developed for the introduction of ICT into courts and prosecutor offices in Bosnia and Herzegovina. The strategy was later adopted and implemented as the CMS/ICT Project by the HJPC and supported by international donors and, in particular, through funds provided by the EU and the US Government.

Relevant authorities at all levels in BiH have provided funds for the human resources needed to successfully implement a computerised environment in the courts, prosecutor offices and at the HJPC and through the purchasing of some of the necessary equipment. In addition, as of 2008, the HJPC's Annual State Budget covers capital investments related to implementation-related activities of case management system in courts and prosecutor offices. It also covers maintenance of the hardware and software in the data centres and network equipment used for the uninterrupted work of the ICT in judiciary. It relies on the existing countrywide telecommunications system used by the police, security related institutions and the judiciary. Maintenance of this system is provided through the state budget of the Agency for Identification Documents, Registers and Data Exchange of Bosnia and Herzegovina (now IDDEEA formerly CIPS).

EU/EC: The HJPC has been implementing information technologies at the courts and prosecutor offices in Bosnia and Herzegovina since 2004, with the support of the EU (CARDS 2004, 2005, 2006, and IPA 2007, 2008, 2009 and 2011). Since 2008, the ICT/Case Management System (CMS) project has also been supported by the Joint Financing Agreement between HJPC and the donor group as outlined here-below. Furthermore, the EC through CARDS 2004 provided assistance for "Court Administration and Management Assistance", and through CARDS 2005 "Judicial Training Project".

Sweden and the Netherlands: In 2008 a phase II ICT/CMS Project was approved by the Swedish International Development Agency (SIDA) and the Netherlands. This project aimed at further developing and implementing IT at the courts and prosecutor offices. The Netherlands have also funded a project "Jump start to Management" that started in 2005 with an aim to enhance managerial capacities of judges and prosecutors.

Spain: Establishment of the court decisions database was a project mainly funded by the Spanish Agency for International Development Cooperation. It was implemented by the Documentation Centre of the HJPC and provides an overview of selected case law, as well as allowing access to all decisions taken in one case and enables holders of judicial functions to easily access the reliable legal information needed in their daily work. Information provided by the Judicial Documentation Centre also includes information relevant for processing war crime cases.

In addition to providing courts with an important tool for automated work processes, the CMS will make them more transparent. Other new tools, such as a common email system for the BH judiciary, allows for the quick exchange of information between all participants in the system.

Despite the fact that it has been used for more than five years in some institutions, CMS and TCMS can not be considered as finished products. System also pursues upgrade of application technology ,deeper analysis and activities, with due consideration to the needs of users and

adaptation to the changes of procedural and substantive laws. For the majority of staff in BiH judiciary, the CMS accounted for their first experience in dealing with and operating IT equipment. After intensively using the application for several years, they are now experienced enough to provide analysts with quality inputs. Special attention should also be paid to raising quality and accuracy of data stored in CMS/TCMS in order to provide quality reports to policy makers in judiciary.

CMS is used to not only provide data for reports to HJPC and Court presidents/Chief Prosecutors. CMS needs to be further adjusted to respond adequately to the requests for information about specific criminal cases (money laundering, corruption, human trafficking, terrorism, crimes against children rights etc.) from different ministries, especially ministries of justice. Its reporting function needs to be expanded by adding possibility for end users to create custom reports for different kinds of information of their interest.

### **Sector coordination**

A number of lessons emerged from the strategic planning process. There were clear benefits that stemmed from the realisation of a common vision, establishment of common priorities, identification of areas for common support and an improvement in harmonisation and coordination. Coordination and monitoring mechanisms are put in place, provided that further improvement is crucial for their proper functioning. However, lack of commitment, insufficient allocation of human and financial resources, slows and in some cases even unables smooth implementation of the JSRS.

The need for continual donor coordination remains pertinent to all completed, ongoing and programmed support to the sector as a whole. Equally, the need for beneficiaries to provide up-to-date and accurate information on not only progress made, but short and medium term aspirations for support is a must. In this regard, experience with the HJPC has been positive and duplication has been avoided. The quarterly donor meetings of the JSRS do somewhat serve to avoid duplication, but bilateral meetings remain a requirement.

Activities related to the coordination of justice sector institutions in implementing common policies are currently ongoing within the USAID JSDP II project. A joint policy forum has been established to implement common policies, but includes only state level institutions - BiH Ministry of justice and the HJPC. A number of projects aimed at improving the knowledge and skills in the area of strategic and budget planning have been carried out, but reports on JSRS continuously emphasise problems that still exist in this area. EU has funded a project aimed at strengthening capacities in the Ministries of Justice in Bosnia and Herzegovina for Strategic Planning, Aid Coordination and European Integration under IPA 2009, but the project was terminated.

## **Annex 6 - Implementation of the War Crimes component of the Justice Sub-Sector Fiche**

### **I. The need to address the war crimes backlog:**

The effective address of the past war crimes is of particular importance to Bosnia and Herzegovina for several reasons. First and foremost, the country faces a particular challenge in fulfilling the right to justice for the numerous victims of the war. While a number of the high profile war crime cases have been addressed through the International Criminal Tribunal for the Former Yugoslavia, the bulk of the war crimes remain to be addressed by domestic courts. The relative lack of progress over the past couple of years, due to structural issues, political sensitivity as well as a lack of resources, has created a sense of impunity and desperation amongst the victims. This does affect a great number of people, as altogether there are over 4,000 cases<sup>10</sup> to be addressed by the judiciary. This makes it the highest backlog in the region, and would constitute a great task for any country given the complexity of the crimes at hand.

Second, this is even more of a challenge in Bosnia and Herzegovina, where the processing of war crime cases remains highly sensitive and is politicized in day to day political life even 17 years after the war. While in other contexts, a broader reconciliation and transitional justice agenda could help mitigate the effects of the war and the crimes committed therein, there is no political will or appetite in Bosnia and Herzegovina to push in this direction.

Thirdly, this challenge ties into a broader agenda which the judiciary needs to address. Most noticeably, and as highlighted in the EU's progress report, it needs to become more effective and efficient (Courts face a broader backlog of 2,3 million cases - over 80% of those are unpaid utility cases; successful prosecution of organized crime and corruption remains insufficient), its independence needs to be further strengthened and the broader sectoral strategies better implemented. This is directly linked into the broader EU integration agenda and the prioritization of Chapter 23 and 24 in the accession process.

To conclude, the backlog of war crime cases is of direct significance to the rights of the victims of the war, the judiciary reform process, the political stability of the country and by extension, its EU accession perspective. The state of the sector and the broader momentum, underlining the current window of opportunity, is addressed under III.4 of this note.

### **II. Sectoral budget support to achieve further progress in this area:**

Between 2003 and 2011 more than 30 Million Euros have been programmed for the Judiciary. This has built the relevant institutions, mechanisms and infrastructure and strengthened the independence, effectiveness and efficiency of the judiciary. It has helped to put in place one of the most hi-tech judiciaries in the region, providing in the process access to data, benchmarks and results to track progress in the sector. It has also in many ways contributed

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<sup>10</sup> Of which there are several categories. The one being prioritized in the context of this sectoral budget support, are the so called KTRZ cases with known victim and identified alleged perpetrator (around 1300 cases).

already to help address the tip of the iceberg of the war crime cases, through the support provided to the Registry/state level judiciary (Court and Prosecutor's Office).

IPA 2012/13 has been programmed to build on these past engagements as well as the priorities identified in the sectoral strategies and the Structured Dialogue with Bosnia and Herzegovina. Through different measures, and altogether 45 million Euros it comprehensively supports judicial efficiency and effectiveness, strategic and sectoral planning and the execution of criminal sanctions.

Within the broader measure targeting judicial efficiency, 15 Million Euros are programmed to top up the national means<sup>11</sup> and contribute to the reduction of parts of the backlog (the so called KTRZ cases) by 50% over five years. This affects all level of the judiciary, yet the bulk of the less complex war crime cases has been referred to its lower levels (which includes around 16 prosecutors offices and as many courts) at the entity/cantonal levels. While clearly complementary measures can be (and are) provided for, it is very clear, that the most effective way to address the backlog of cases is to provide the judiciary with the additional human and financial resources to do so. Simply put, the current numbers of prosecutors, judges, investigators, witness support staff, analysts and administrative staff is insufficient to tackle the backlog.

The budgetary envelope of this component was the results of the needs assessment provided at the Structured Dialogue meeting in July 2012, by the President of the Supervisory Board for the National War Crimes Strategy identifying the human and financial resources required at different levels of government.

In line with the relevant draft DG ELAG guidelines, sectoral budget support was chosen as the financing modality in light of the following:

- It is clearly in line with the EU's general and specific policy objectives by supporting Bosnia and Herzegovina's judicial reform process and more concretely address key enlargement challenges related to the strengthening of the rule of law and the reconciliation agenda.
- It increases the impact and efficiency of EU assistance as going through an international organization/implementing partner would have implied inability to hire additional prosecutors and judges to tackle the backlog; lack of clarity on the status of the legal advisors and other staff being hired; higher transaction costs; the temporary and ultimately sensitive nature of intervening within the independent judiciary
- It provides for further incentives to implement needed reforms through the relevant and necessary general, specific and pre-conditions attached to the budget support.
- It allows for greater ownership, result orientation and accountability of the country.
- It is temporary in nature, and to be considered only as a top up to required domestic budgetary commitments.
- It is guided by clearly identifiable, verifiable and available benchmarks and targets, and is flexibly designed to adjust to needs and performance.
- The relevant eligibility criteria (see assessment below) have been met.

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<sup>11</sup> Split over five years, it constitutes around 3% of the combined annual budgets for the judiciary in BiH.

- The broader dialogue already in place (Structured Dialogue on Justice), establishes a clear link to the political and EU accession agenda within an integrated policy dialogue framework.

### **III. Meeting the eligibility criteria for sectoral budget support:**

At the time of programming of the sector budget support DEVCO guidelines on General Budget Support of January 2007 as well as the Guidelines on Support to Sector Programmes of July 2007 were in place. DEVCO published in September 2012, after the completion of the programming, revised guidelines which do explicitly not cover budget support to potential candidate countries. The ELARG budget support guidelines did at the time of our programming and submission of the programme to headquarter not exist.

While initial assessment have been provided on the key areas, the EU Delegation has further updated and expanded and attached them to this note.

#### *1. Stable macro-economic framework:*

Context: The macro-economic situation has further stabilized over the past couple of months. Following the recent recession, and while it remains vulnerable to domestic and external shocks, the economy is improving in the course of 2013 and moving towards a modest growth of 0,5% estimated for 2013, driven by an increase of exports. This growth is forecasted to continue and pick up in 2014-2015. General government expenditure – at all levels remained high as did the debt level (general government debt reached 40% of GDP and as part of that, external debt reached 27,4% in 2012). The current account deficit deteriorated in 2012, reaching 9,4% of GDP and was balanced through an increase of FDI as well as the IMF Stand-By Arrangement.

The latter has been contracted in September 2012, and 50% have been disbursed up to date. The next tranche is pending, following the findings of the fourth review which just took place. Additionally, EU disbursed the second tranche of 50 million EUR within Macro-Financial Assistance on September 26, 2013, as part of 100 Million EUR of MFA approved for BiH in 2009 to alleviate the impact of the economic crisis. The disbursement was conditional upon a satisfactory track record in the implementation of the Stand-By Arrangement with the IMF, as well as upon a positive evaluation by the European Commission of progress made with respect to a number of structural reforms and specific policy conditions related to public finance management issues, statistics and budgetary procedures.

Assessment and mitigation: The macro-economic situation has stabilized and improved thanks to the continuation of the disbursement of the current IMF Stand-By Arrangement, the related political dialogue and monitoring including in the context of the EU's macro-financial assistance and the improving economic outlook. The satisfactory progress in the maintenance of a credible and relevant stability-oriented macroeconomic policy supported by the IFIs, notably through a disbursing IMF programme remains as such a general condition throughout the sectoral budget support. It is possible that a renewed Stand By Arrangement will be required and provided in the mid-term (ie. prior to the implementation of IPA 13). Regarding debt management it should be noted that the EUD has just started a public debt management technical assistance, to strengthen the capacities with regards to debt planning and management at state and entities level.

Conclusion: The economic situation is improving: growth has returned and is forecasted to pick up further in 2014 and 2015. This will contribute, together with the ongoing IMF Stand By Arrangement to a further stabilization and improvement of the macro-economic situation as well as of the public finances. Some downside risks remain related to the gap between the governments' gross and net revenues, the budgeted and real revenues and some lack of clarity regarding the lower level governments.

## 2. Sound Public Financial Management (PFM):

Context: The PFM reform agenda is contained in the Public Administration Reform Action Plan (PAR), which is being taken forward over the past years. External consultants have been used to provide an up-to-date assessment of the second and third eligibility criteria, regarding sound public financial management and transparency of the budget(s). Amongst other this was based on the close to final, World Bank-led Public Expenditure and Financial Accountability (PEFA) assessment<sup>12</sup> which has been undertaken for the first time in BiH covering PFM systems at four levels. It has identified *inter alia* the following concerns:

- Budgets are not as comprehensive as possible and that much of the public expenditures are executed off-budget.
- The institutions have insufficient internal audit capacities.
- While there are no indications of particular irregularities in the management of funds, external audit recommendations are generally not followed upon in the country by the legislative.
- There is generally insufficient justification for the use of less competitive procurement procedures.
- Accounting standards used by different levels are not consistent.
- No payroll audits are being performed.

Assessment and mitigation: In order to ensure the appropriate use of funds, continued progress in the area and the ability to monitor it appropriately the following conditionalities will be added already under IPA12 sectoral budget support and are valid throughout the disbursement period:

- General condition of satisfactory progress in improving public financial management, to be assessed through ongoing projects as well PAR Action Plan.
- A special and dedicated treasury account will be opened by the Ministry of Finance and Treasury for the sole use of the Ministry of Justice to which the budget support funds will be directed.
- The ministries of justice at state and entities are required to establish their internal audit function so to be able to timely report and prevent any irregularities.
- The ministries of justice are also required to address and implement immediately 20% of the outstanding recommendations of the external audit and develop a work plan for implementation of the remaining 80%.
- The beneficiaries will also report on the use of the allocated resources and ensure that in line with the EU policy to this sector in BiH, the support is a top up and not a substitute to BiH own commitment.

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<sup>12</sup> It should be noted for the purpose of this note as well as references made in the assessments that the PEFA has not yet been shared with and adopted by the BiH side.

Under IPA 13 these will moreover be continued through conditions relating to:

- Satisfactory progress in the implementation of the Revised Action Plan 1 of the BiH Strategy for Public Administration Reform in the area of public finance
- Progress in implementation of work plans for addressing outstanding external audit recommendations

There is also a very strong focus in our ongoing and planned assistance to support further implementation of reforms in this area, providing us with ways to support efforts to address the main gaps and track progress:

- Internal audit function is being strengthened along the requirements of the EU PIFC (Public Internal Financial Control);
- Budget preparation process at state and entity levels is being supported to help ensure respect for the budget calendar and necessary procedural steps;
- Programme budgeting is in its inception phase in BiH. Technical assistance is provided to assist the budget authorities to define indicators of achievement of programme results by which to report on budget execution;
- With the assistance of SIGMA a new law on public procurement in BiH has been prepared that should ensure better alignment with the EU acquis;
- Treasury systems, rated high by PEFA and generally found reliable will be updated through ICT support and expansion of the system to local-level users;
- The streamlining and improvement of revenue collection is planned to be achieved in the Federation of BiH through technical assistance and equipment;
- Technical assistance is supporting the budget and statistical authorities to introduce streamlined financial reporting and accounting standards in line with ESA95 methodology across the country.

Conclusion: There is a PAR Action Plan which provides for a relevant strategy to address the underlying constraints and weaknesses. A substantial agenda of public finance management reforms outlined therein remains to be implemented. Linking PFM systems to policies and monitoring the level of success of these actions will be necessary. Strategic budgeting, budget preparation based on programme budgeting, resource management enabling the efficient implementation of public services and programmes, efficient internal controls and audit, well functioning accounting and reporting, and finally external audit and ensuring accountability are the key elements of the integrated PFM agenda. Certain progress has been already achieved and there are indications of a continued credible process in this regard. This will provide a sound basis for an integrated approach to the development of the PFM system as a whole and help maintain fiscal discipline and facilitate macroeconomic stability and predictability in the budget systems as well as to direct resources toward key policy and strategic priorities.

### *3. Transparency and oversight of the budget:*

Context: An Open Budget Index survey has concluded that BiH's budget preparation, publication and accessibility scored 6 points higher than two years ago, confirming a positive development. The survey assessed the central government efforts to make key budget documents available to the public, as well as whether the data contained in the documents is comprehensive, timely and useful. Bosnia and Herzegovina scored above the region. The PEFA also looked at public access to key fiscal information, which it assessed positively, with A score for State and RS and B for FBiH and BD level. Other PEFA indicators related to this

category are relatively low, but as far as budget information accessibility is concerned, all budgets and fiscal information, including forecasts and projections are publicly available.

Assessment and mitigation: Given that the main revenue allocation issue is related to the allocation of indirect taxation revenues which is based on the decision by the Fiscal Council, transparency as such is not an issue. However, due to political disagreements decisions were delayed on several occasions, thus delaying the annual budget adoption process. In the context of the IMF Stand-By Arrangement and its conditionalities for disbursement, these issues are mitigated through the ongoing political dialogue. An USAID-financed project will support all parliaments to increase legislature's scrutiny over the annual budget laws. The availability of budget information to the public is satisfactory and should remain at that level to fulfill the transparency criterion.

In addition, we will retain as a general condition for IPA 13, the satisfactory progress with regard to the public availability of accessible, timely, comprehensive, and sound budgetary information, as measured by the Open Budget Transparency Index

#### *4. Sectoral readiness and public policy eligibility:*

Context: As discussed in the introduction, Bosnia and Herzegovina faces the typical transition context challenges related to reforming its judicial system for eventual EU integration and to make it efficient, effective, accountable and independent, which are further compounded by the fractured structure of the sector: due to its constitutional set-up Bosnia and Herzegovina has four more or less autonomous judiciaries financed by 14 budgetary authorities. They struggle, especially in the context of processing war crimes to apply a harmonized legislative framework. Further risks exist with regards to the effective reduction of the backlog related amongst other to the human, financial capacities as well as know-how of the over 32 Court and Prosecutors Offices dealing with the war crimes referral. Case processing in this area is moreover complicated by an overreliance on witness testimonies, the need to cooperate with one or more of over twenty law enforcement agencies, municipal social services, overburdened prison and detention services. In addition, there remains weak legislative and financial backing of the executives and legislatures within a heavily politicized environment, which in some cases deters from concrete action.

At the same time there has been, as noted in the latest progress report, some positive momentum. For a start the EU's Structured Dialogue on Justice, held with Bosnia and Herzegovina since 2011, as well as the renewed importance of chapter 23 and 24 in the pre-accession process has put the efficiency, effectiveness and independence of the judiciary higher on the political agenda of BiH. At the sectoral policy level, while the implementation of the comprehensive Justice Sector Reform Strategy (JSRS) has been limited, there is an agreement and progress with regards to the development of a follow-up strategy and action plan for the period 2014-2018. The required reforms have been further contextualized and taken forward in the context of the Structured Dialogue on Justice, especially with regards to war crimes, leading to better regional cooperation and the improvement of judicial efficiency. Indeed the implementation of the National War Crimes Strategy (NWCS) has come to a turning point, through a continued referral of war crime cases to lower levels and with the latter starting to address the backlog.

Assessment and mitigation: Several mechanisms have been developed to mitigate some of the operational risks mentioned above under the budget support IPA 12 and IPA 13. These include:



- Several pre-conditions have been met before considering the disbursement of IPA 12 and will be of continued relevance under IPA 13. Their aims were/are to ensure respectively the perspective of a continued sectoral strategy, the commitment of the beneficiaries to the process, the identification of benchmarks and assessment of individual beneficiaries needs. They have been met:
  - 1) Regarding IPA 12, the preparation for a new generation of sectoral strategic documents is underway following up on the current Justice Sector Reform Strategy, to cover the period from 2014-18. They are expected to be finalized and adopted in the course of the first half of 2014. For IPA 13, the EU will want to see further progress in the implementation.
  - 2) An action plan for the implementation of the National War Crimes Strategy has been adopted in the spring of 2013, outlining concrete steps to be taken by Prosecutors Office and Courts to reduce the backlog of war crime cases. Continued progress on this will be needed for the implementation of IPA 13.
  - 3) This also led to the elaboration of individual action plans for Prosecutors' Offices, in which the individual/end beneficiaries set out how they intend to contribute to the reduction of the backlog by 50%. This, the quota system of the courts, and a qualitative tracking mechanisms developed by the OSCE will set the benchmarks against which they will be measured. Altogether this will contribute to meeting the specific conditions linked to each disbursement of funds under both IPA 12 and IPA 13. There will be need to update these plans and assessments regularly as well as for the implementation of IPA 13. IPA 13 will also specify that prior to the release of its first advance payment, approximately a 20% reduction will have to be met thanks to the implementation of IPA 12.
  - 4) Similarly clear data is available in terms of the qualitative nature of the cases (KTRZ/KTNRZ/KTARZ types), meeting a further pre-condition under IPA 12, to be updated regularly, including for IPA 13.
  - 3) An updated needs assessment and detailed needs assessment has been provided to guide the allocation of funds, will be updated regularly to help guide the allocation of disbursements/payments as well as for IPA 13.
- A strong monitoring system is put in place under IPA 12 and to be continued under IPA 13, which keeps track of clearly identified quantitative and qualitative targets developed by the beneficiaries, as part of the pre-conditions for the grant, and allows for performance and needs-based re-allocations over time. It ranges from reliance on domestic institutions and mechanisms with an emphasis on local/judiciary ownership to an external monitoring to be contracted with the OSCE, the project steering Committee, IPA Monitoring Committee and the higher level political dialogue in the context of the Structured Dialogue on Justice.

In addition, a comprehensive approach to supporting the sector is in place, both under IPA 12/13, earlier programming as well as effective donor coordination and includes *inter alia*:

- Capacity building provided assistance to the Judicial and Prosecutorial Training Centers which will seek to provide amongst other, for better strategic management of their work as well as more modern training techniques. The new recruits will be direct beneficiaries of this, as well as of an OSCE project which will in particular aim to provide introductory as well as in depth training specific to war crimes to the new recruits (through the JPTCs).
- Strategic planning: Under IPA 12, technical assistance is foreseen to help support the implementation of the new generation of strategic and sectoral documents following up on the JSRS and to strengthen the link between budgeting and strategic planning in the sector.

- Witness support will be funded under the budget support and complement a UNDP project. A grant under the Instrument for Stability will be used to provide for the medical and social support of victims in the judicial process (through specialized NGOs), which will further link up to an ongoing UNFPA/UK project.
- Witness protection will be supported both through a regional capacity building project (WINPRO) as well as through ongoing infrastructures upgrades in relevant locations.
- Broader infrastructures measures are currently being prepared to reconstruct and improve several key Courts and Prosecutors Offices. Amongst the main criteria for choosing them is the backlog of war crime cases and the impact of reconstruction on judicial efficiency.

Conclusion: The judiciary in Bosnia and Herzegovina has developed a positive momentum to allow for a significant reduction of the war crimes backlog even if political and structural difficulties persist. The foundations in terms of capacity and infrastructure in the judiciary have been laid with EU support over the past couple of years and further support measures help to mitigate risks. The JSRS, the work on its successor as well as the NWCS provide for a continued comprehensive strategic approach to the sector. The reduction of the war crimes backlog is already visible, and will be further accelerated through our assistance. The EU accession process in general and the Structured Dialogue on Justice in particular allow to monitor progress in the sector and bring concerns to a political level when necessary.

**Overall conclusion:**

Beyond the need to establish an effective rule of law in line with the Copenhagen Criteria, Bosnia and Herzegovina faces the particular post-conflict challenges. This implies the need to tackle several thousand of outstanding war crime cases to address concerns related to a sense of impunity, the right to truth and justice for the victims, contribute to transitional justice and by extension, reconciliation and the rule of law in the country. Seventeen years after the war, Bosnia and Herzegovina's judiciary reached a positive momentum and now has a window of opportunity to make significant progress in this regard. This will be best framed and supported through the EU's ongoing political dialogue (Structured Dialogue and Accession Agenda) paired with a budget support which will ensure maximum impact and national ownership of the issue while respecting the independence of the judiciary.

The findings of these assessments, do confirm that the four eligibility criteria as well as the further pre-conditions identified in the sub-sector fiche are met. Clearly the macro-economic situation remains far from perfect, the public financial management requires further reforms and the justice sector needs yet to speed up the deliveries on its reform commitments. Yet in each of the areas, there are positive trends, concrete progress can be identified and verified, and a strong risk-mitigating framework has been put in place.