



EN

THIS ACTION IS FUNDED BY THE EUROPEAN UNION

ANNEX I

**of the Commission Implementing Decision on the financing of the annual action plan in favour of
Bosnia and Herzegovina for 2022**

Action Document for EU Support to Justice

ANNUAL ACTION PLAN

This document constitutes the annual work programme in the sense of Article 110(2) of the Financial Regulation, and annual and multiannual action plans and measures in the sense of Article 9 of IPA III Regulation and Article 23 of NDICI - Global Europe Regulation.

1. SYNOPSIS

1.1. Action Summary Table

| | |
|--|---|
| Title | Annual Action Plan in favour of Bosnia and Herzegovina for 2022 Action Document - EU Support to Justice |
| OPSYS | ACT-61466; JAD.1045709 |
| Basic Act | Financed under the Instrument for Pre-accession Assistance (IPA III) |
| Team Europe Initiative | No |
| Zone benefiting from the action | This action shall be carried out in Bosnia and Herzegovina |
| Programming document | IPA III Programming Framework |
| PRIORITY AREAS AND SECTOR INFORMATION | |
| Window and thematic priority | Window 1- Rule of law, fundamental rights and democracy Thematic Priority 1: Judiciary Thematic priority 5: Fundamental rights |
| Sustainable Development Goals (SDGs) | Main SDG: Goal 16 Peace, Justice and Strong Institutions Other significant SDGs: Goal 5. Achieve gender equality and empower all women and girls |

| | | | | |
|--|---|--------------------------|------------------------------|----------------------------|
| DAC code(s) ¹ | Main DAC code: 15130 Legal and judicial development Sub-code 1 – 15131 Justice, law and order policy, planning and administration Sub-code 2 – 15134 Judicial affairs | | | |
| Main Delivery Channel @ | Bilateral | | | |
| Markers ² (from DAC form) | General policy objective @ | Not targeted | Significant objective | Principal objective |
| | Participation development/good governance | <input type="checkbox"/> | <input type="checkbox"/> | X |
| | Aid to environment | X | <input type="checkbox"/> | <input type="checkbox"/> |
| | Gender equality and women's and girl's empowerment | <input type="checkbox"/> | X | <input type="checkbox"/> |
| | Trade development | X | <input type="checkbox"/> | <input type="checkbox"/> |
| | Reproductive, maternal, new-born and child health | X | <input type="checkbox"/> | <input type="checkbox"/> |
| | Disaster Risk Reduction | X | <input type="checkbox"/> | <input type="checkbox"/> |
| | Inclusion of persons with Disabilities | X | <input type="checkbox"/> | <input type="checkbox"/> |
| | Nutrition ³ | X | <input type="checkbox"/> | <input type="checkbox"/> |
| | RIO Convention markers @ | Not targeted | Significant objective | Principal objective |
| | Biological diversity | X | <input type="checkbox"/> | <input type="checkbox"/> |
| | Combat desertification | X | <input type="checkbox"/> | <input type="checkbox"/> |
| | Climate change mitigation | X | <input type="checkbox"/> | <input type="checkbox"/> |
| | Climate change adaptation | X | <input type="checkbox"/> | <input type="checkbox"/> |
| Internal markers ⁴ | Policy objectives | Not targeted | Significant objective | Principal objective |
| | Connectivity | X | <input type="checkbox"/> | <input type="checkbox"/> |

¹ DAC sectors (codes and descriptions) are indicated in the first and fourth columns of the tab 'purpose codes' in the following document: <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/dac-anders-codelists.htm>

² For guidance, see <https://www.oecd.org/development/financing-sustainable-development/development-finance-standards/> Go to "Data collection and resources for reporters", select Addendum 2, annexes 18 (policy) and 19 (Rio) of the reporting directive. If an action is marked in the DAC form as contributing to one of the general policy objectives or to RIO principles as a principal objective or a significant objective, then this should be reflected in the logframe matrix (in the results chain and/or indicators).

³ Please check the [Handbook on the OECD-DAC Nutrition Policy Marker](#)

⁴ These markers have a different scope/rationale than the DAC codes. They are drawn from the level of budget allocation and emphasis given to the action in terms main objective(s) selected. The definition of objectives, results, activities in description of the action should be in line with this section.

| | | | | |
|---|--|----------------------------|--------------------------|--------------------------|
| | Digitalisation | <input type="checkbox"/> | X | <input type="checkbox"/> |
| | Migration ⁵ | <input type="checkbox"/> X | <input type="checkbox"/> | <input type="checkbox"/> |
| | COVID-19 | X | <input type="checkbox"/> | <input type="checkbox"/> |
| BUDGET INFORMATION | | | | |
| Amounts concerned | Budget line: 15.020101.01 Total estimated cost: EUR 3 500 000 Total amount of EU budget contribution EUR: 3 500 000 | | | |
| MANAGEMENT AND IMPLEMENTATION | | | | |
| Implementation modalities (type of financing and management mode) | Project Modality Direct management through: - Grants | | | |
| Relevant priorities and flagships from Economic and Investment Plan for the Western Balkans [only for the Western Balkans] | Priorities: “Digital Transition”, “Governance, Rule of Law, PAR” | | | |
| Final Date for conclusion of Financing Agreement | At the latest by 31 December 2023 | | | |
| Final date for concluding contribution / delegation agreements, procurement and grant contracts | 3 years following the date of conclusion of the Financing Agreement, with the exception of cases listed under Article 114(2) of the Financial Regulation | | | |
| Indicative [operational implementation] [eligibility] period | 72 months following the conclusion of the Financing Agreement | | | |
| Final date for implementing the Financing Agreement | 12 years following the conclusion of the Financing Agreement | | | |

1.2. Summary of the Action

The specific objective of the Action is fully consistent with the IPA III programming framework focus to enhance efficiency, integrity, quality, accountability, independence and access to the justice system in Bosnia

⁵ For detailed information on programming migration and forced displacement, please have a look at the [thematic guidance note](#) on migration and forced displacement; for information on the migration marker please look at annex 2 of the thematic guidance note.

and Herzegovina. The Action “EU support to Justice” aims to contribute to aligning the justice system of Bosnia and Herzegovina with the European standards and the EU *acquis*. This will be achieved by building skills and capacities of officers concerned in the administration of justice, which in turn shall ensure better performance, improved quality of court decisions and professionalism of the justice system in coherence with the IPA III objectives.

Enhancing the professionalism, competence and integrity of the judicial office holders will contribute to improving the trust of citizens in the justice system. The Action will also provide assistance in monitoring the implementation of the Revised National War Crime Strategy, resolving the backlog in prosecution of war crime cases and enhancing forensic capacities of the state level Agency for Forensics.

The proposed Action will contribute to the SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Particular focus of the intervention is linked to the SDG target 16.3: *Promote the rule of law at the national and international levels and ensure equal access to justice for all*.

2. RATIONALE

2.1. Context

The rule of law is at the heart of the enlargement process. Assessed by the 2021 Commission report on Bosnia and Herzegovina is at an early stage / has reached some level of preparation in the area of judiciary. Shortcomings in the areas of quality, independence, efficiency and integrity of judiciary persist and represent a threat to the rule of law in Bosnia and Herzegovina. As stipulated in the **Stabilisation and Association Agreement (SAA)**, Bosnia and Herzegovina will pay importance to the consolidation of the Rule of Law and the reinforcement of the institutions at all levels, particularly in the administration of justice. Cooperation will aim to strengthen the independence of the judiciary, improving its efficiency and institutional capacity, enhancing access to justice.

In its Opinion (*Avis*) on Bosnia and Herzegovina’s application for membership of the European Union,⁶ the Commission highlights many remaining shortcomings in the area of rule of law and concludes, that, for the accession negotiations to be opened, Bosnia and Herzegovina will have to achieve “the necessary degree of compliance with the membership criteria and in particular the Copenhagen political criteria requiring the stability of institutions guaranteeing notably democracy and the rule of law”. Bosnia and Herzegovina “will need to fundamentally improve its legislative and institutional framework to ensure it meets a set of priorities with regard to democracy, rule of law, fundamental rights and public administration reform”, a considerable number of which intend to improve the overall rule of law situation in the country.

The proposed Action is designed to support the rule of law, democracy, the respect of human rights and international law in Bosnia and Herzegovina and contribute to achieving the IPA III Window 1 objectives focused on independence, accountability, quality and efficiency of the judicial system in Bosnia and Herzegovina. The specific objective of the proposed Action is to enhance efficiency, integrity, quality, accountability, independence and access to the justice system in Bosnia and Herzegovina and is fully coherent with existing policies in this area. The preparation of the **new Justice Reform Strategy for the 2021-2027** period and accompanying Action plan has started. Until the new Strategy is developed, the objectives of the Action are coherent with the previous **Justice Sector Reform Strategy in Bosnia and Herzegovina (2014-2018) and Action plan (2014-2018, ext. 2019 and 2020)**.

⁶ COM (2019) 261 and SWD (2019) 222

The HJPC **Reform programme and its implementation plan**⁷, adopted on 19 May 2021, sets out the strategic and reform commitments of HJPC and takes into consideration the European Commission requirements related to the judiciary in Bosnia and Herzegovina.

Furthermore, the Action will fully utilise the IPA assistance in order to contribute to focusing on further improvement of the transitional justice, including the resolution of conflict-related missing persons cases, access to justice for all citizens and improvement of the professionalization of judges and prosecutors and of the justice system as a whole, including the skills and capacities of officers concerned in the administration of justice.

Independence, effectiveness, accountability, and efficiency of judiciary

Action priorities are coherent with the overall objectives of the EU's assistance under Thematic priority 1, to support independent bodies such as High Judicial and Prosecutorial Council (HJPC) and improving justice system as a whole, helping them to completely assume their institutional and managerial role and strengthen the independence of the judiciary from the executive, and ensuring that judges and prosecutors can perform their work free from undue political pressure.

Even though normative and strategic preconditions are put in place, criminal justice systems in Bosnia and Herzegovina are still facing challenges in prosecution of war crime cases due to lack of professional and technical capacity. By adopting Revised National War Crimes Strategy (NWCS) as one of key requirements outlined in the Commission Opinion Bosnia and Herzegovina – key priority 5, Bosnia and Herzegovina expressed its strong commitment to complete ongoing transitional justice processes and deliver justice to all victims and end impunity.

Support through this Action will be provided to further implementation of the **Revised National War Crimes strategy** which stands as a specific transitional justice strategic framework, exclusively addressing processing of war crimes, locating and identifying the remains of victims of these crimes, in the majority of cases also missing persons and continuation of implementation of forensic activities in war crimes investigations.

Further fostering process of Transitional Justice

Bosnia and Herzegovina is the signatory of the **Western Balkans Berlin Process 2018 Joint Declaration on Missing Persons**⁸ signed by the heads of governments of all Berlin Process participating countries. The signatories pledged to “...ensure impartial and effective investigations into missing persons cases in accordance with international human rights standards...” and to “...commit to develop further domestic forensic institutions...”

Addressing conflict-related missing persons cases, of which there remain around 7,500 in Bosnia and Herzegovina, not only protects human rights of the families of the missing and promotes peaceful and inclusive societies, but also significantly contributes to the establishment of the rule of law by enabling judiciary to process war crimes cases. Therefore, it is important to strengthen the efficiency and raise professional standards in institutions leading the process and thus provide expert support to the judiciary in the process of accounting for persons missing from the conflict.

Bosnia and Herzegovina commitment to resolving the issue of conflict-related missing persons cases is most recently demonstrated by the signing of a Technical Agreement by the International Commission on Missing Persons and the Missing Persons Institute of Bosnia and Herzegovina in June 2021. The agreement

⁷ The HJPC also adopted the Implementation Plan of the Reform programme. The implementation of respective measures will be monitored through reports that will be prepared on quarterly basis, whereby the European Integration and Strategic Planning Department will be tasked with the preparing of those reports. The results of the Reform programme implementation will be expressed with the development and/or adoption of regulations (bylaws, policies, strategies etc.), by exercising organizational measures, with IT solutions (software, databases, online platforms etc.), the development and/or adoption of internal documents (plans, reports, analyses, etc.), through the preparation and/or organization and/or holding of trainings and by applying various methods (implementation of regulations, introducing new working methods, inter-institutional cooperation etc.).

⁸ <https://www.icmp.int/wp-content/uploads/2018/09/Deklaracije.pdf>

strengthens cooperation with the aim to account for as many missing persons as possible in line with rule of law, in order to uphold the rights of all families of the missing to truth and justice. Under the agreement, International Commission on Missing Persons will continue to provide technical assistance to the Prosecutor's offices at all levels and the Missing Persons Institute at the exhumation of clandestine gravesites and in mortuary operations, as well as ensure the provision of DNA testing and matching for the purpose of identifying conflict-related missing persons cases. International Commission on Missing Persons will assist Bosnia and Herzegovina to further develop its forensic capacities and bring them closer to EU standards. Bosnia and Herzegovina, assisted by International Commission on Missing Persons, has so far accounted for 75 percent of the 30,000 persons reported missing as a consequence of the 1990s conflict which is unprecedented result at a global level.

Consequently, the Action will address the recommendations of the **Expert Report on Rule of Law issues in Bosnia and Herzegovina (2019)**⁹ which emphasises that HJPC's initiatives to improve the quality of justice must be consolidated and expanded.

2.2. Problem Analysis

Short problem analysis

Prompt delivery of justice, including in commercial cases, it is of the utmost importance for maintaining and promoting economic growth through a better business environment, as clearly stated in the Expert Report on the Rule of Law Issues in Bosnia and Herzegovina. Given that Bosnia and Herzegovina is one of the countries with a relatively large number of judges per capita, the Bosnia and Herzegovina judicial system should base its efficiency and quality on the full utilisation of existing court capacities and the **reorganization of business processes**. The results achieved by the HJPC BiH through the activities related to the reorganization of business processes represent ground for actions needed to be undertaken in this field. The analysis of the case processing so far has shown that phase from the submitting of the claim to the court until the assigned judge takes the case into work is too lengthy. Quality and efficient managing of commercial courts / commercial departments enables fast and consistent dispute resolution, thus creating legal certainty that will contribute to creating an attractive environment for business and investment.

Besides this, prosecutors' offices struggle with lack of specialized expertise and insufficient capacities for effective investigating of economic crimes. In this aim, financial experts were providing support to prosecutors' offices in most complex cases of economic and organized crime cases, corruption and financial investigations, and gave results in better quality of investigations and indictments, faster processing of backlogs, and so on. Financial fraud endangers economic stability and economic development, rising unemployment, increasing social tensions, political conflicts, and instability in general. **Strengthening prosecutors' offices capacities for economic crime investigation** will ultimately help to target threats to the integrity of the financial system. Besides economic prosperity, fight against corruption is of a high priority for Bosnia and Herzegovina in the process of alignment to the EU acquis.

To date, High Judicial Prosecutors Council's (HJPC) activities in publishing court decisions have been conducted in co-operation with the Court of Bosnia and Herzegovina, the Supreme Court of the *Republika Srpska*, the Supreme Court of the Federation of Bosnia and Herzegovina, and the Court of Appeals of the Brčko District of Bosnia and Herzegovina. As these courts are the highest courts in Bosnia and Herzegovina, their decisions, and legal stances affect the harmonization of case-law within their jurisdictions. Decisions of lower courts are published in the central system only if they relate to cases rendered by highest courts in Bosnia and Herzegovina. In this regard it is necessary to improve **the transparency of the work of second-instance courts and harmonization of case law at this level** by publishing decisions of cantonal/district courts through the central database. Furthermore, the HJPC is aware that there is public interest to have access

⁹ <http://europa.ba/wp-content/uploads/2019/12/ExpertReportonRuleofLawissuesinBosniaandHerzegovina.pdf>

to the decisions of lower courts, especially in cases that are media-monitored. Also, decisions of lower courts are important for judicial practice, especially given that in certain cases supreme courts cannot decide upon appeal due to legal restrictions, for example: non-litigation cases, executive, misdemeanour cases and criminal cases for crimes for which the law stipulates a maximum penalty or a prison sentence of up to 10 years, if the special law does not set the jurisdiction of another court. Also, decision-making in administrative disputes ends at the cantonal/district level, since these disputes do not prescribe the possibility of appeal. Supreme courts in these cases can only act on extraordinary legal remedies whose reach is limited.

The 2020 Commission Report on Bosnia and Herzegovina noted that “The authorities have taken limited action to address the findings of the Expert Report on Rule of Law issues (‘Priebe report’). **Integrity** amendments are due to enter in parliamentary procedure; their adoption is key to establish a credible and rigorous system of verification of financial statements of judicial office holders. Persistent and evident signs of deterioration continue to require urgent measures to strengthen the integrity of and regain citizens’ trust in the judiciary. In May 2021, the HJPC adopted a 2021-2023 HJPC Reform Program, including measures to strengthen the quality, integrity, efficiency of the judiciary and fight against organised crime and corruption. The HJPC must ensure its swift implementation and urgently enable reforms in the areas under its direct competence, notably those that do not require legislative changes”.

The 2022 Commission report on Bosnia and Herzegovina stresses that the **Revised National War Crimes Strategy**, adopted on 24 September 2020, **must be implemented effectively**.¹⁰ As previously noted, Revised National War Crimes Strategy puts in place comprehensive strategic approach and strategic framework for judiciary to deal with war crime cases in courts and prosecutor’s offices and stipulates obligation to end impunity by resolving priority and complex cases before State level judiciary, while less complex cases are to be resolved before entity and Brčko District levels of judiciary by the end of 2023.

The revised National War Crime Strategy is being implemented, despite the failure of the Council of Ministers to appoint a new supervisory body. Within the scope of its mandate, the HJPC has proactively overseen the work of the prosecutors and courts in implementing the strategy. A supervisory body remains needed to ensure comprehensive oversight, endorse decisions required to improve the processing of war crimes, validate the implementation of the strategy and secure continuous funding. The Council of Ministers should swiftly establish the new supervisory body.

Regional judicial cooperation in processing war crime cases requires further improvements. The bilateral protocols on cooperation related to war crimes, crimes against humanity and genocide between the Prosecutor’s Office of Bosnia and Herzegovina and its counterparts of Serbia, Croatia and Montenegro have helped to reduce judicial impunity but have not been used systematically. With the assistance of the Prosecutor of the Mechanism, cooperation with Serbia has led to more transfers of proceedings and indictments being issued in cases transferred from Bosnia and Herzegovina, but this has only resulted in one conviction so far. Cooperation with Croatia continues to face a number of impediments on judicial assistance, with some investigations ongoing that have not yet led to indictments. The protocol with Montenegro has led to investigations after the transfer of evidence from the Mechanism.

Out of 238 cases by the end of 2021, 94 proceedings (against 100 individuals) are pending due to the unavailability of the indicted persons. Holding multiple citizenships, these individuals are often residing in neighbouring countries. This enables them to escape justice by taking advantage of prohibitions against extradition of own nationals for the criminal offences of genocide, crimes against humanity and war crimes. They also benefit from the lack of progress of neighbouring jurisdictions in addressing the crimes in question. Serbia still fails to enforce the final sentence handed down in Bosnia and Herzegovina in 2014 against Novak Djukić, despite the availability of the basic international judicial cooperation tools. A number of international arrest warrants (Interpol Red Notice) filed by Bosnia and Herzegovina for indicted war criminals remain unimplemented. Similarly, Duško Kornjača indicted for crimes against humanity in 2015 and Tomislav Kovač

¹⁰ https://neighbourhood-enlargement.ec.europa.eu/bosnia-and-herzegovina-report-2022_en, p.18

indicted for genocide in 2018 are freely residing in Serbia.

The ongoing reduction the backlog in *war crime cases* still suffers delays, casting doubts on completing the processing of war crimes by the end of 2023. From an estimated 1 210 cases in July 2013, the unresolved war crime cases have been reduced to 492 (-59.5%) by end 2021; around 311 of these are complex cases (63.5%). An estimated 174 cases against 393 individuals (35.5% of the backlog) are pending due to the unavailability of the suspects. Without reinforced regional cooperation, by end 2023 the backlog of war crimes cases will be primarily composed of suspects unavailable to the judiciary of Bosnia and Herzegovina. In 2021, the number of confirmed indictments (13) and the conviction rates (85%) remained stable in the entities and the Brčko District. While progress were noticeable at state level with 15 indictments confirmed and an 86% conviction rate, there is still room for improvement. The Prosecutor's Office should strengthen efforts to process the most complex cases (it transferred 25 less complex cases to the entities and Brčko District in 2021) and continue to improve the quality of investigations and indictments.

The 2021 Commission report on Bosnia and Herzegovina noted "The unresolved fate of missing persons is a matter of concern. 7,532 people are still missing as a result of the conflict. [...] The lack of local forensic capacity [...] hampers identification. Further efforts are needed [...] to solve the issue of persons who disappeared in relation to the conflicts of the 1990s." Since 1996, the International Commission on Missing Persons (ICMP), has directed the effort to assist Bosnia and Herzegovina to locate and identify its missing. ICMP has assisted Bosnia and Herzegovina judiciary at all levels and the MPI Bosnia and Herzegovina in the recovery of several thousands of mass and individual graves in Bosnia and Herzegovina; ICMP has collected almost 74 000 reference samples from missing persons relatives, processed over 53 000 DNA samples from skeletal remains and produced DNA reports representing over 15 000 individuals and almost 18 000 reports on re-associations of individual body parts. However, around 7,500 persons are still missing, and the continued forensic expertise and support is necessary to resolve this open issue that is still affecting a large portion of the population and is one of the most contentious political issues. Ensuring continuation in provision of forensic services and their sustainability is also vital for resolving cases of missing migrants, trafficking victims and other types of criminal cases involving victims' identification.

The unresolved fate of **missing persons** who disappeared during the conflicts of the 1990s remains a key issue to be solved in the Western Balkans. Despite steady progress in identification (70 persons in 2021 and 127 in the first half of 2022), 7 590 persons are still missing as a result of the conflict. Further efforts are needed at the regional level through the missing persons group established in 2018 under the Berlin Process to strengthen cooperation".

Description of main stakeholders

Main stakeholders of the Action are: HJPC of Bosnia and Herzegovina, courts, prosecutors' offices, Ministry of Finance and Treasury of Bosnia and Herzegovina, Ministry of Justice of Bosnia and Herzegovina (MoJ), Ministry of Justice of Republika Srpska (MoJ RS), Federal Ministry of Justice (FMoJ), ten cantonal MoJs, Ministry of Security of Bosnia and Herzegovina, Bosnia and Herzegovina Missing Persons Institute, professional associations, academia, NGO's and other executive authorities.

3. DESCRIPTION OF THE ACTION

3.1. Intervention Logic

The Overall Objective (Impact) of this action is to align the justice system of Bosnia and Herzegovina with European standards and the EU *acquis*.

The Specific(s) Objective(s) (Outcomes) of this action are to:

1. Enhance efficiency, integrity, quality, accountability, independence and access to the justice system in Bosnia and Herzegovina.

The Outputs to be delivered by this action contributing to the corresponding Specific Objectives (Outcomes) are:

Contributing to Outcome 1 (or Specific Objective 1)

- 1.1 To increase competence of courts and prosecutor offices
- 1.2 To strengthen integrity of Judicial Office Holder's
- 1.3 To further improve efficiency of war crime cases processing in Bosnia and Herzegovina judiciary system
- 1.4 To ensure provision of forensic assistance in war crimes investigations

If efficiency, competence of courts and prosecutor offices is increased (**Output 1.1**), and HJPC, PO's, judicial and other relevant authorities remain committed and engaged in judicial reform processes, then the efficiency, integrity, quality, accountability, independence and access to the justice system in Bosnia and Herzegovina will be enhanced (**Outcome 1**).

If the integrity of Judicial Office Holders is strengthened (**Output 1.2**) and beneficiary institutions remain engaged in the justice reform process then the efficiency, integrity, quality, accountability, independence and access to the justice system in Bosnia and Herzegovina will be enhanced (**Outcome 1**).

If provision of assistance in war crimes investigations is provided (**Output 1.3**) this shall ensure that the backlog of war crimes cases in Bosnia and Herzegovina is further reduced (**Outcome 1**).

If provision of forensic assistance in war crimes investigations is ensured (**Output 1.4**) and clandestine gravesites are located, exhumed as well as biological samples are submitted to International Commission on Missing Persons for DNA testing and beneficiary institution remains committed to further development of its DNA capabilities, then efficiency, integrity, quality, accountability, independence and access to the justice system in Bosnia will be enhanced (**Outcome 1**).

If efficiency, integrity, quality, accountability, independence and access to the justice system in Bosnia and Herzegovina is enhanced (**Outcome 1**) and relevant authorities in Bosnia and Herzegovina are committed to take a harmonised and coordinated approach to implement the reforms in the justice sector, then justice system of Bosnia and Herzegovina will be aligned with European standards and the EU *acquis* (**Impact**).

3.2. Indicative Activities

Activities related to Output 1.1: Performance and competence of courts and prosecutor offices as well High Judiciary Prosecutor's Council (HJPC) increased

Activity 1.1.1: Establishment of a triage system in commercial departments / commercial courts through the organization of business processes

This activity aims at more efficient use of existing human resources and shorter time required to act on the case. These activities will enable judges to focus on making meritorious decisions, which will ultimately lead to higher productivity, improved quality of court decisions and legal certainty. The establishment of a triage system in commercial courts / commercial departments of pilot courts would be carried out in two phases. The first phase would include the development of a triage system by adopting a set of documents and tools through the work and activities of the working / expert group, while the second phase would include piloting the established form of triage system in a selected number of commercial courts / commercial departments of pilot courts. The newly established triage system will enable faster processing of commercial cases through immediate review and analysis of nature of the case received by the court, better coordination of judges and other staff, reduction of the duration of proceedings, relieving judges of procedural tasks.

Activity 1.1.2: Engagement of financial experts to support financial investigations in economic and other related crime cases

Engagement of financial experts will support more inclusive investigations and proactive evidence-gathering in cases of economic crime, organized crime and corruption, including the release of targeted search warrants and the confiscation of items in the initial phases of the investigations. The Activity will provide support to prosecutor's offices in conduction of financial investigations and will contribute to improvement of the credibility of efforts to strengthen the integrity of the judiciary.

Activity 1.1.3: Establishment of case law departments in selected cantonal/district courts

Through proposed activity the HJPC will initiate the establishment of a case law departments in selected cantonal/district courts (pilot courts), using the same or similar principles as it was done within the highest courts. Pilot courts will be selected when implementation of the proposed activity starts and should cover two courts with a greater influx of cases and two courts with a smaller influx of cases, taking care of the geographical prevalence as well. Additional staff will work to strengthen the capacity of second-level courts, and in parallel will increase HJPC's capacity to publish second-instance court decisions through the central base. Greater transparency of the work of second-instance courts and the harmonization of case law and at this level would, in addition to the efforts currently being made with the highest courts, contribute to the legal security of citizens, and thus to the reputation of the judiciary as a whole.

Activity 1.1.4: Strengthening the capacities of HJPC to monitor the Reform Program and Strategy

In May 2021, the HJPC adopted a 2021-2023 HJPC Reform Program, including measures to strengthen the quality, integrity, efficiency of the judiciary and fight against organised crime and corruption. The HJPC must ensure its swift implementation and urgently enable reforms in the areas under its direct competence, notably those that do not require legislative changes. There is a need to develop and adopt a new 2021-2027 Justice Sector Reform Strategy and action plan to replace the ones expired in 2018, notably by establishing a credible implementation timeline and ensuring adequate monitoring and funding. The established working group meeting could only conclude that more work is needed before completing the process, notably developing financial and evaluation implementation plans, carrying public consultations on the draft, receiving the opinions of relevant institutions and authorities.

Through proposed activity the HJPC will be capacitated to monitor the Reform Program and Strategy and to establish a policy dialogue on reform and proposed corrective actions.

Activities related to Output 1.2 Integrity of Judicial Office Holders strengthened

Activity 1.2.1: Strengthening of the capacity of the HJPC for monitoring judicial office holders' financial statements and implementation of integrity plans

This activity will entail capacity building of the HJPC for effective monitoring and controlling of Judicial Office Holders' financial statements in line with the new legal framework regulating the content and submission of reports and their monitoring. This framework is based on relevant Peer Review recommendations, based on which the HJPC will perform control of financial flows, assessment of risk criteria, accuracy of submitted data and possible existence of conflict of interest. The activity will include support to the HJPC to develop and align with the legal framework procedures for verification of judicial office holders' financial statements, perform collection, verification of data submitted in judicial office holders' reports and publishing certain segments of judicial office holders' financial reports in line with relevant legal framework.

Activities related to Output 1.3:

Activity 1.3.1: Further strengthening rule of law by enhancing and facilitating transitional justice processes in Bosnia and Herzegovina and fully implementing the Revised National War Crime Strategy

Activity aims to enhance human and material capacities in selected courts and prosecutors' offices, capable to timely and efficiently implement Revised National War Crimes Strategy and resolute all pending war crime

cases. Furthermore, activity focuses on improvement of professional skills of judges and prosecutors working on these cases, ensuring quality and unhindered access to justice in regard to this area. Finally, activity will ensure adequate human capacities for the HJPC BiH to conduct regular oversight on war crimes processing dynamics in courts and prosecutor's offices and to provide strategic and operational expert and administrative support to the HJPC BiH and the Supervisory Body for Overseeing the Implementation of the Revised NWCS. Expected outputs aim at establishing capacities of judiciary fully capable to tackle war crime cases backlog and complete transitional justice processes within judiciary by implementing Revised NWCS.

This particular activity should foresee allocation of direct grant to the Ministry of Finance and Treasury of Bosnia and Herzegovina (MoFT BiH). Namely, the Ministry will be assigned with funds to further allocate to relevant judiciary stakeholders for implementation of the Revised National War Crimes Strategy. Besides courts and prosecutor's offices, the HJPC BiH and Ministry of Justice of BiH will benefit of this support, as within the structure of the ongoing IPA 2019 "EU4 Transitional Justice".

Namely, leaning on current effective action structure within which IPA 2019 "EU4 Transitional Justice" is assigned in direct grant modality to the Ministry of Finance and Treasury Bosnia and Herzegovina, it is important to emphasize that IPA 2022 should be conducted in the same methodological manner. Separate grant agreement between EU and the Ministry of Finance and Treasury of Bosnia and Herzegovina and separately allocated funds have to be provided for uninterrupted continuation of the EU support. Taking into account that the ongoing IPA 2019 "Enhancing War Crime Case Processing in Bosnia and Herzegovina" ends with 2022, it is of utmost importance to start implementation of IPA 2022 no later than the 1st quarter 2023, by providing separate grant to the Ministry of Finance and Treasury Bosnia and Herzegovina in a timely manner, in order for unhindered completion of transitional justice processes.

Coordination and achievement of synergies with regional programmes in the area of transitional justice, implemented by IRMCT and UNDP will be activated.

Activities related to Output 1.4: Provision of forensic assistance in war crimes investigations ensured

Activity 1.4.1. Provision of expert assistance to the Bosnia and Herzegovina judiciary to excavate, examine and identify victims of enforced disappearances from clandestine graves as part of war crimes investigations;

ICMP will provide hands on assistance, in line with the highest international standards, for the excavation of clandestine gravesites in Bosnia and Herzegovina, where invited under the court order. For each gravesite, ICMP will take one or more of the following steps:

- Conduct preparatory desk research and analysis of available relevant documentation in advance of field operations
- Provide hands-on assistance in field exhumations, forensic anthropological analysis and examination of mortal remains recovered, review and identifications.
- Support mortuary operations, including workflow analysis, forensic anthropological examination and the review of previously exhumed cases of human remains.
- In cooperation with the Prosecutor's offices and the MPI, work on the implementation of recommendations for resolving cases in the mortuary facilities in the country.
- Analyse ante-mortem and post-mortem data through the use of dedicated database modules that are part of the ICMP's data management system.
- Deliver detailed excavation reports and photo documentation that document the results of ICMP's technical assistance to the Prosecutor's Office of Bosnia and Herzegovina.
- Provide training to Prosecutors responsible for war crimes cases in the application of forensic archaeology, forensic anthropology and DNA in war crimes investigations

Activity 1.4.2. Continued DNA testing and matching of biological samples for the purposes of human identification

ICMP will conduct DNA testing and matching of family reference (blood) samples that it collects from family members of missing persons, and post-mortem (tooth or bone) biological samples, which are submitted under prosecutorial order. Large databases of DNA profiles from the missing and the families are compared using ICMP's specialized database software. ICMP will provide DNA match reports to domestic authorities in order to facilitate the human identification of missing persons and, when needed, alert them regarding necessary follow-up actions. The human identification of missing persons cases, the majority of which are war crimes victims, substantially supports the investigation and prosecution of war crimes cases by the Bosnia and Herzegovina Prosecutors Office.

Activity 1.4.3. Strengthening domestic technical capacities in DNA analysis so as to provide long-term support to Prosecutors' Offices

On the basis of the Technical Agreement with the Bosnia and Herzegovina Ministry of Security and the Bosnia and Herzegovina Prosecutors Office, ICMP will provide technical assistance to the Bosnia and Herzegovina Agency on Forensic Examination and Expertise, including:

- Provision of advice and guidance aimed at ISO accreditation in the steps in the DNA analysis of post mortem sample processing
- Assistance with preparation of the Agency's internal SOPs and 5-year development plan
- Assistance with procurement of equipment and consumables, necessary for DNA analysis
- Assistance with the secondment of additional expert staff
- Training and mentoring of DNA lab staff

3.3. Mainstreaming

Environmental Protection, Climate Change and Biodiversity

The action and the activities deriving from the action will not have any major and negative impact on the environment nor jeopardise environment, health and security in the future. The activities deriving from this action will be delivered in the most environmentally friendly possible way. At the same time, one of the results of the overall digitalization of public administration will be policy coherence and the promotion of green administration with the aim of reducing the use of paper, which will contribute to the preservation of the environment and contribute to the Green Agenda.

Gender equality and empowerment of women and girls

The strategic and regulatory framework for the gender equality in Bosnia and Herzegovina is set up by the Gender Action Plan of Bosnia and Herzegovina 2018-2022¹¹ and the Law on Gender Equality¹². Assessed by the OECD DAC gender policy markers the proposed Action could be assessed with the score 1, because gender equality is an important and deliberate objective, but not the principal reason for undertaking the interventions. Continued support to processing war crime cases should encompass provision of support services to war crimes victims and witnesses particularly with regard to provision of safe environment for

¹¹ https://arsbih.gov.ba/wp-content/uploads/2019/02/GAP-BIH-2018-2022_ENG.pdf

¹² Official Gazette of BiH, No. 32/10

victims of war crimes (most often women). Whenever relevant, the particular needs of women and girls will especially be taken into consideration, through gender disaggregated statistics and indicators and/or gender responsible budgets in line with the requirements of the EU gender equality strategy 2020-2025¹³.

Furthermore, the impact of the proposed Action will contribute to the creating of the environment for pursuing the objectives of the EU Gender Equality Strategy 2020-2025 and the Gender Action Plan III¹⁴, particularly to the following Thematic areas: “Ensuring freedom from all forms of gender-based violence” and “Promoting equal participation and leadership”.

Human Rights

The interventions financed through this Action will aspire to promote non-discriminatory practices and procedures and to prohibit any form of gender-based violence, unlawful discrimination including race, colour, religion, national -origin, political affiliation, sex, age, marital status, or disability; economic and social rights and empowering girls and women; equal participation and leadership. Due attention will also be given to the respect of human rights and integration of human rights principles within the undertaken interventions.

Based on the fundamental principles of promoting equality and combating discrimination, participation in the action will be guaranteed on the basis of equal access regardless of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation as well as taking into account promotion and participation of people with disabilities.

3.4. Risks and Lessons Learned

| Category | Risks | Likelihood (High/ Medium/ Low) | Impact (High/ Medium/ Low) | Mitigating measures |
|------------------------------------|--|---|-------------------------------------|---|
| 4- legality and regularity aspects | Risk 1: Delays due to late signing of IPA Financial agreement or late implementation of assistance linked to actions | M | M | Intensified communication amongst BiH institutions, in particular with the Ministry of Finance and Treasury of BiH; Close contact with line DGs and EU Office would be maintained, and all preparatory activities conducted in advance to facilitate as fast as possible actions implementation. |
| 1- external environment | Risk 2: Delays in decision making process | M | M | Before start of the Action it is necessary to analyse current situation and develop mitigation and communication plan with relevant stakeholders. |
| 4- legality and regularity aspects | Risk 3: Problems related to the timely acquisition of necessary permits and other legally | M | M | Capacity-building measures for all relevant institutions; improvements/modifications to permitting procedures; regular and frequent communication among key actors, with particular focus on |

¹³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0152>

¹⁴ https://international-partnerships.ec.europa.eu/system/files/2021-01/join-2020-17-final_en.pdf

| | | | | |
|--------------------------------|--|----------|----------|---|
| | regulated obligations | | | authorities responsible for issuing permits. |
| 3- people and the organisation | Risk 4: Limited number of staff in beneficiary institutions and heavy workload, due to additional activities caused by the pandemic. | M | M | Ensure that <u>a dedicated department (including staff)</u> is identified in all beneficiary and coordinating institutions during the process of ToR drafting, and that they are made aware of their roles in the implementation process. |

Lessons Learned:

The recently conducted assessment of the Justice Sector Reform Strategy 2014-2020 recognised that further support to enhancement of the legal and institutional framework, as well as administrative and executive capacities shall be continued in order to ensure alignment of the Bosnia and Herzegovina justice system with the EU standards. In addition, further support is necessary in regard to implementation of the Revised National War Crimes Strategy.

The legislative and policy reform process in the justice sector in particular of the issue that have lack of compromise and mutual understanding, various stakeholders often do not follow at the same pace the capacity developments and ensuring compliance with recommendations from technical assistance projects. Policy and legislative development need further to be developed in order to be more evidence-based, costed and subject to appropriate internal and external stakeholder consultations at the right time of the legislative and policy-making process.

3.5 Indicative Logical Framework Matrix

| Results | Results chain: Main expected results [maximum 10 @] | Indicators [at least one indicator per expected result @] | Baselines [values and years] | Target [values and years] | Sources of data | Assumptions |
|-------------------|--|---|--|---|---|---|
| Impact | To align the justice system of Bosnia and Herzegovina with European standards and the EU <i>acquis</i> . | 1. Progress made towards meeting accession criteria in the area of Rule of Law, Fundamental Rights and Democracy | Some progress (2019) | Moderate progress (2027) | Commission reports on BiH | <i>Not applicable</i> |
| Outcome 1 | 1 Efficiency, integrity, quality, accountability, independence and access to the justice system in Bosnia and Herzegovina enhanced | 1.1. State of preparation of the justice sector to implement the <i>acquis</i> and European standards in the justice sector | Some level of preparation (2019) | Moderate level of preparation (2027) | Commission reports on BiH | Relevant authorities in BiH committed to take a harmonized and coordinated approach to implement the reforms in the justice sector |
| Output 1.1 | 1.1 Performance and competence of courts and prosecutor offices as well HJPC increased | 1.1.1.1 At least 6 commercial courts established a triage 1.1.2.1 Financial experts' contribution to crime case processing 1.1.3.1 Recording and analysing all case law standpoints at courts | 1.1.1.1 0 (2021) 1.1.2.1 N/A (2021) 1.1.3.1 System is in the process of development at highest courts (2021) | 1.1.1.1 6 (2027) 1.1.2.1 500 (2027) 1.1.3.1 All standpoints recorded at the highest courts and pilot district/cantonal courts. (2027) | 1.1.1.1 Report prepared by the Project team and expert group 1.1.2.1 Monthly reports submitted by financial experts to HJPC 1.1.3.1 HJPC reports Project reports Performance evaluation reports | Commitment of prosecutor's offices to secure capacity to support financial investigations in economic and other related crime cases; Sector institutions share common vision and pursue reform goals |

| | | | | | | |
|-------------------|---|---|-------------------------------------|---|---|---|
| | | 1.1.4.1 Strengthening the capacities of HJPC to monitor the Reform Program and Strategy | 1.1.4.1 N/A | 1.1.4.1 On the basis of HJPC monitoring, a structured dialogue on reform is supported | 1.1.4.1 HJPC reports Project reports | |
| Output 1.2 | 1.2 Integrity of judicial office holders strengthened | 1.2.1.1 Number of judicial office holders' financial reports processed in accordance with the established procedure | 1.2.1.1 0% (2021) | 1.2.1.1 30% (2027) | 1.2.1.1 Reports on processing of judicial office holders' financial statements | Beneficiary institutions remain engaged in the justice reform process. |
| Output 1.3 | 1.3 The backlog of war crimes cases in Bosnia and Herzegovina further reduced | 1.3.1.1 Backlog of KTRZ cases in all POs in Bosnia and Herzegovina 1.3.1.2 Number of monitoring reports on implementation of operational targets on war crimes cases by the beneficiary institutions | 1.3.1.1 571 (2020) 1.3.1.2 0 | 1.3.1.1 315 (2025) 1.3.1.2 At least four (4) reports will be submitted to EUD | 1.3.1.1 Prosecutor Offices' reports, Reports generated from Case various management systems 1.3.2 OSCE reports and statistics; Commission reports on BiH | Relevant stakeholders for further implementation of NWCS remain committed; The Prosecutor's Office of Bosnia and Herzegovina remain committed to processing of war crime cases |

| | | | | | | |
|-------------------|---|---|---|---|---|--|
| Output 1.4 | 1.4 Provision of forensic assistance in war crimes investigations ensured | 1.4.2.1 Number of conflict-related missing persons cases DNA-matched by ICMP 1.4.3.1 DNA experts at the Agency for Forensic Examination and expertise capable of processing PM bio samples and conducting DNA analysis | 1.4.2.1 15 493 (2021) 1.4.3.1 no capability (2021) | 1.4.2.1 15 900 (2025) 1.4.3.1 PM testing capability (2025) | 1.4.2.1 ICMP online Western Balkans tracking chart 1.4.3.1 ICMP reports, MoS reports | Clandestine gravesites are located, exhumed and biological samples are submitted to ICMP for DNA testing Beneficiary institution remains committed to further development of its DNA capabilities |
|-------------------|---|---|---|---|---|--|

4. IMPLEMENTATION ARRANGEMENTS

4.1. Financing Agreement

In order to implement this action, it is envisaged to conclude a financing agreement with the IPA III beneficiary, Bosnia and Herzegovina.

4.2. Indicative Implementation Period

The indicative implementation period of this action, during which the activities described in section 3.1 will be carried out and the corresponding contracts and agreements implemented, is 72 months from the date of entry into force of the Financing Agreement. Extensions of the implementation period may be agreed by the Commission's responsible authorising officer by amending this Financing Decision and the relevant contracts and agreements.

4.3. Methods of implementation

The Commission will ensure that the EU appropriate rules and procedures for providing financing to third parties are respected, including review procedures, where appropriate, and compliance of the action with EU restrictive measures¹⁵.

4.3.1. Direct Management (Grants)

(a) Purpose of the grants

Three grants have been envisaged as implementing modality for this Action in relation to Outputs 1.1, 1.2, 1.3 and 1.4.

Choosing grants as an implementing method in the areas covered by Outputs 1.1, 1.2, 1.3 and 1.4 has already been done in previous actions implemented with IPA support.

(b) Type of applicants targeted

4.3.1.1 Direct grant to High Judicial Prosecutor's Council (HJPC)

A Direct grant to HJPC will be awarded to increase competence of courts and prosecutor offices (Output 1.1), through establishment of a triage system in commercial departments / commercial courts through the organization of business processes (Activity 1.1.1), engagement of financial experts to support financial investigations in economic and other related crime cases (Activity 1.1.2), establishment of case law departments in selected cantonal/district courts (Activity 1.1.3) and strengthening the capacities of HJPC to monitor the Reform Program and Strategy (Activity 1.1.4). Furthermore, direct grant to HJPC will be used to strengthen the integrity of Judicial Office Holder's (Output 1.2) through strengthening of the capacity of the HJPC for monitoring judicial office holders' financial statements and implementation of integrity plans (Activity 1.2.1)

4.3.1.2 Direct grant to Ministry of Finance and Treasury Bosnia and Herzegovina (MoFT BiH).

A Direct grant to MoFT Bosnia and Herzegovina will be used to further strengthen the rule of law by enhancing and facilitating transitional justice processes in Bosnia and Herzegovina and fully implementing the Revised National War Crime Strategy (Activity 1.3.1) which will further improve efficiency of war crime

¹⁵ www.sanctionsmap.eu Please note that the sanctions map is an IT tool for identifying the sanctions regimes. The source of the sanctions stems from legal acts published in the Official Journal (OJ). In case of discrepancy between the published legal acts and the updates on the website it is the OJ version that prevails.

cases processing in Bosnia and Herzegovina judiciary (Output 1.3). The grant will accelerate the processing and monitoring of war crime cases and help to build human and institutional capacities within Bosnia and Herzegovina's judiciary to handle the most sensitive cases. To meet the objectives set in the Revised National War Crimes Strategy - processing the most complex war crimes cases and to deal with war crime cases in courts and prosecutor's offices, foreseeing completion of cases by the end of 2023 - it is necessary to continue the support and to enhance the capacities of the prosecutors' offices and the courts to speed up the processing of war crime cases. The Ministry will distribute funds to final beneficiaries, namely to courts, prosecutors' offices and other beneficiaries to enhance war crime cases processing.

4.3.1.3. Direct grant to International Commission on Missing Persons (ICMP)

A Direct grant to ICMP will be used to further strengthen the rule of law by ensuring forensic assistance in war crime investigations (Output 1.4). This result will be achieved by the means of assistance to Bosnia and Herzegovina judiciary to excavate, examine and identify victims of enforced disappearances from clandestine graves as part of war crimes investigations (Activity 1.4.1), continuation of the DNA testing and matching of biological samples for the purposes of human identification (Activity 1.4.2) and strengthening domestic technical capacities in DNA analysis, so as to provide long-term support to Prosecutors' Offices (Activity 1.4.3).

(c) Justification of a direct grant

4.3.1.1. Direct grant to High Judicial Prosecutor's Council (HJPC)

Under the responsibility of the Commission's authorising officer responsible, the grant may be awarded without a call for proposals to the High Judicial Prosecutor's Council (HJPC). Under the responsibility of the Commission's authorising officer responsible, the recourse to an award of a grant without a call for proposals is justified because the HJPC is the key institution in administering the judiciary throughout the country and given its institutional independence and capacity, this institution remains a unique partner of the European Union when it comes to judicial reform in Bosnia and Herzegovina. The direct grant to the HJPC represents the most efficient financial instrument to support a wide range of activities aiming to improve the operations of courts and prosecutors' offices throughout the country. The direct agreement with the HJPC will be concluded in accordance with Article 195 (c) of the Financial Regulation since the HJPC is an institution with a de jure monopoly. The use of the exemption will be further substantiated in the award decision.

4.3.1.2 Direct grant to the Ministry of Finance and Treasury of Bosnia and Herzegovina

Under the responsibility of the Commission's authorising officer responsible, the grant may be awarded without a call for proposals to the Ministry of Finance and Treasury of Bosnia and Herzegovina (MoFT). MoFT Bosnia and Herzegovina was selected on the basis of the conditions related to actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals - pursuant to Article 195 (f) of the Financial Regulation. The selection was made in view of the experience of MoFT Bosnia and Herzegovina developed within previous EU funded projects for processing and monitoring of war crimes, financed by IPA 2017 and IPA 2019. Both projects were implemented through direct grant to MoFT Bosnia and Herzegovina. Within the system, the required structure has already been established and needed skills developed to support this activity. MoFT will distribute EU financial support to the beneficiaries in dully fashion with no or minimum delay.

4.3.1.3 Direct grant to International Commission on Missing Persons (ICMP)

Under the responsibility of the Commission's authorising officer responsible, the grant may be awarded without a call for proposals to the International Commission on Missing Persons (ICMP). The direct grant agreement with the ICMP shall be concluded in accordance with Article 195 (f) of the Financial Regulation on account of ICMP's technical competence, its high degree of specialisation or its administrative power, in the sector covered. The ICMP is the only organisation with the necessary equipment and skills to carry out DNA identification of all victims in the country. With the ICMP being the key competence and also the only international organization working exclusively on the issue of missing persons, and given its institutional

independence and technical capacities, it represents a unique partner for the EU when it comes to search for missing persons and empowering domestic institutions to take over those activities.

The general rules for procurement and grant award procedures shall be defined in the Agreement between the Commission and the HJPC, MoFT Bosnia and Herzegovina and ICMP implementing the part of the programme.

4.3.2. Direct Management (Prize(s))

N/A

4.3.3. Direct Management (Procurement)

NA

4.3.4. Indirect Management with a [Member State Organisation] [third donor country] [EU specialised (traditional/regulatory) agency] [international organisation]

N/A

4.3.5. Indirect Management with an IPA III beneficiary

N/A

4.3.6. Contribution to <name of the relevant Regional Investment Platform>

N/A

4.3.7. EFSD+ operations covered by budgetary guarantees

N/A

4.3.8. Changes from indirect to direct management (and vice versa) mode due to exceptional circumstances (one alternative second option)

Implementation under Indirect management with entrusted entity may be used as an alternative modality for this action that is planned to be implemented in direct management. Entrusted entity(ies) will be selected by the Commission's services using the following criteria:

a) financial and operational capacity of the applicant.

b) technical capacity, such as experience in the preparation and implementation of joint capacity building and similar projects; experience in managing programmes or projects related to the results, extensive experience in the implementation of similar projects, in-depth expertise in the field of EU negotiations and documented capacity to mobilize relevant networks in the EU Member States, Bosnia and Herzegovina and the region, etc.

c) bodies with a similar degree of specialisation

4.4. Scope of geographical eligibility for procurement and grants

The geographical eligibility in terms of place of establishment for participating in procurement and grant award procedures and in terms of origin of supplies purchased as established in the basic act and set out in the relevant contractual documents shall apply, subject to the following provisions.

The Commission's authorising officer responsible may extend the geographical eligibility on the basis of urgency or of unavailability of services in the markets of the countries or territories concerned, or in other duly substantiated cases where application of the eligibility rules would make the realisation of this action impossible or exceedingly difficult (Article 28(10) NDICI-Global Europe Regulation).

4.5. Indicative Budget

| Indicative Budget components | EU contribution (amount in EUR) | Indicative third-party contribution, in currency identified |
|---|---|--|
| Methods of implementation , cf. section 4.3 | | |
| Outcome 1: Efficiency, integrity, quality, accountability, independence and access to the justice system in Bosnia and Herzegovina enhanced , composed of: | 3 500 000 | N.A |
| Grants (direct management) – cf. section 4.3.1 | 3 500 000 | N.A |
| Grants (direct management) – cf. section 4.3.1 | N.A | Grants (direct management) – cf. section 4.3.1 |
| Procurement – total envelope under section 4.3.2 ¹⁶ | 0 | N.A |
| Evaluation – cf. section 5.2 Audit – cf. section 5.3 | will be covered by another Decision ¹⁷ | N.A |
| Communication and visibility – cf. section 6 | will be covered by another Decision | N.A |
| Contingencies ¹⁸ | 0 | N.A |
| Totals | 3 500 000 | N.A |

4.6. Organisational Set-up and Responsibilities

The main stakeholders of the Action are: HJPC, courts, prosecutors' offices, Ministry of Finance and Treasury of Bosnia and Herzegovina, Ministry of Justice of Bosnia and Herzegovina (MoJ), Ministry of Justice of *Republika Srpska* (MoJ RS), Federal Ministry of Justice (FMoJ), ten cantonal MoJs, International Commission for Missing Persons, Ministry of Security of Bosnia and Herzegovina, Bosnia and Herzegovina Missing Persons Institute, professional associations, academia, NGOs and other executive authorities.

Due to the fact that this action has numerous beneficiaries active in the justice sector, it is important that they take on strategic, operational and structural responsibility and accountability for implementing the Action related activities from the very beginning. The key stakeholders are expected to be actively engaged in the whole process of the action implementation.

Ministries of Justice at state, entities (2) and in the cantons (10), the HJPC and the Judicial Commission of Brčko District are key justice sector institutions from the executive point of view. The HJPC is the key institution administrating the judiciary throughout the country. These institutions share a common vision and

¹⁶ In order to avoid details on budgets for individual contracts, it is sufficient to indicate the total envelop for procurement. If budgets for individual contracts are public, tenderers tend to orientate themselves on them and not on the terms of reference.

¹⁷ Where the action is not covered by a financing agreement (see section 4.1), put 'will be covered by another decision' as it is unlikely that evaluation and audit contracts on this action would be concluded within N+1. These contracts have to be authorised by another Financing Decision.

¹⁸ Consider that contracts where no financing agreement is concluded, contingencies have to be covered by individual and legal commitments by 31 December of N+1.

objectives set in the Justice Sector Reform Strategy (2014-2020) for which each institution alone is responsible for implementation in accordance with its constitutional competence. In accordance with strategic framework set and current constitutional arrangement, the MoJ Bosnia and Herzegovina is a key coordinating institution for the facilitation of the process of drafting, adopting, monitoring and evaluating of the sector strategy and its corresponding action plan. Each institution alone is responsible for development and implementation of its strategic and annual plan, midterm budgetary framework and annual budget.

In line with this, the HJPC is responsible for undertaking the actions in respect of Output 1.1, activities 1.1.1 and 1.1.2, 1.1.3 and 1.1.4, Output 1.2, Activity 1.2.1 and Output 1.3, Activity 1.3.1.

ICMP is responsible for undertaking the actions with regard to Output 1.4, activities 1.4.1, 1.4.2 and 1.4.3.

The Steering Committee, consisting of all relevant stakeholders involved in a specific action, will be established at the beginning of the action implementation. It will reflect equal participation of men and women in the decision-making processes related to the action implementation.

The role of the EU Delegation will be to ensure alignment of the provided assistance with the EU Agenda for BiH.

5. PERFORMANCE MEASUREMENT

5.1. Monitoring and Reporting

This Action will be regularly monitored by EU Delegation to Bosnia and Herzegovina. Internal monitoring will be implemented through Steering committee's meetings, EU Delegation quarterly Implementation reviews, on-the-spot checks, meetings with beneficiaries and consultant companies/contractors.

The day-to-day technical and financial monitoring of the implementation of this action will be a continuous process, and part of the implementing partner's responsibilities. To this aim, the implementing partner shall establish a permanent internal, technical and financial monitoring system for the action and elaborate regular progress reports (not less than annual) and final reports. Every report shall provide an accurate account of implementation of the action, difficulties encountered, changes introduced, as well as the degree of achievement of its results (Outputs and direct Outcomes) as measured by corresponding indicators, using as reference the logframe matrix (for project modality) and the partner's strategy, policy or reform action plan list (for budget support). The Commission may undertake additional project monitoring visits both through its own staff and through independent consultants recruited directly by the Commission for independent monitoring reviews (or recruited by the responsible agent contracted by the Commission for implementing such reviews).

Roles and responsibilities for data collection, analysis and monitoring:

A Sector Steering Committee will be established (or adhered to ongoing Steering Committee monitoring) to monitor implementation of the Action and will be composed of the main beneficiaries and relevant institutions in Bosnia and Herzegovina.

To ensure adequate monitoring of the implementation of the Action, two mid-term and one final assessment of the Action results will be carried out. Each of the mid-term analyses will be carried out following the first and the second year of Action's implementation, appraised against mid-term goals (milestones). The final assessment will be based upon the targets defined for the year 2027 presented in the log frame. Results of these appraisals will be presented to the EU Delegation and the Steering Committee upon the approval of the Programme Manager at the EU Delegation. Moreover, the Action might be subject to external monitoring in line with the European Commission rules and procedures set in the Financing Agreement.

5.2. Evaluation

Having regard to the nature of the action, a mid-term and/or final evaluation will not be carried out for this action or its components.

In case an evaluation is not foreseen for some action's components, the Commission may, during implementation, decide to undertake such an evaluation for duly justified reasons either on its own decision or on the initiative of the partner.

The financing of the evaluation shall be covered by another financing Decision.

5.3. Audit and Verifications

Without prejudice to the obligations applicable to contracts concluded for the implementation of this Action, the Commission may, on the basis of a risk assessment, contract independent audit or verification assignments for one or several contracts or agreements. Audits will be financed under another financing decision.

6. COMMUNICATION AND VISIBILITY

Visibility of EU funding and communication about objectives and impact of Actions are a legal obligation for all Actions funded by the EU, as set out in the EU communication and visibility requirements in force.

In particular, the recipients of EU funding shall acknowledge the origin of the EU funding and ensure its proper visibility by:

- providing a statement highlighting the support received from the EU in a visible manner on all documents and communication material relating to the implementation of the funds, including on an official website and social media accounts, where these exist; and
- promoting the actions and their results by providing coherent, effective and proportionate targeted information to multiple audiences, including the media.

Visibility and communication measures shall be implemented, as relevant, by the national administrations (for instance, concerning the reforms linked to EU budget support), entrusted entities, contractors and grant beneficiaries. Appropriate contractual obligations shall be included, respectively, in financing agreements, delegation agreements, and procurement and grant contracts.

The measures shall be based on a specific Communication and Visibility Plan, established and implemented in line with the EU communication and visibility requirements in force. The plan shall include, inter alia, a communication narrative and master messages for the Action, customised for the various target audiences (stakeholders, civil society, general public, etc.)

Visibility and communication measures specific to this Action shall be complementary to the broader communication activities implemented directly by the European Commission services and/or the EU Delegations and Offices. The European Commission and the EU Delegations and Offices should be fully informed of the planning and implementation of the specific visibility and communication activities, notably with respect to the communication narrative and master messages-

7. SUSTAINABILITY

The proposed Action will result in improving the institutional capacities of relevant stakeholders in Bosnia and Herzegovina active in the justice sector. Once the infrastructural projects are implemented, relevant ministries are expected to provide funds for regular annual maintenance of the infrastructure of judicial buildings.

Development of new legislation/amendments shall be carried out respecting all domestic procedures, especially those related to (fiscal/ regulatory) impact assessments, public consultations, inter-ministerial coordination. As a rule, interventions should start by providing support to the beneficiaries with 'options analysis', regulatory impact assessments, gender impact analysis, concept papers, etc. prior to supporting them with drafting of legislation/ amendments. New legislation/amendments shall be coordinated among the

different levels of government, thus promoting harmonisation and reducing fragmentation of the legal framework.