

IPA National Programme 2010 - Bosnia and Herzegovina

Fiche 6 “State Prison (Phase II)”

1. Basic information

1.1 CRIS Number: 2010 / 022-259

1.2 Title: Construction of a High Security State Prison in Bosnia and Herzegovina - Phase II

1.3 ELARG Statistical code: 01.23 Political criteria / Judiciary and Fundamental rights

1.4 Location: Bosnia and Herzegovina

Implementing arrangements:

1.5 Contracting Authority: The European Union represented by the European Commission for and on behalf of the beneficiary country in joint management with the Council of Europe Development Bank

1.6 Implementing Agency: Council of Europe Development Bank in joint management with the European Commission

1.7 Beneficiary Institution: Ministry of Justice of Bosnia and Herzegovina

Project manager

Mr. Milanko J. Renovica Senior Programming Officer (SPO)

Address: Trg Bosnia and Herzegovina 1, Sarajevo, Bosnia and Herzegovina

Phone: + 387 33 281 603

Faks: + 387 33 201 747

Email: milanko.renovica@mpr.gov.ba

Secondary beneficiaries: State Court of Bosnia and Herzegovina; Bosnia and Herzegovina High Judicial and Prosecutorial Council (HJPC); Entities Ministry of Justice; Entities Prisons

Financing:

1.8 Overall cost (VAT excluded): EUR 5 150 000

1.9 EU contribution: EUR 5 150 000

1.10 Final date for contracting: Two years following the date of the conclusion of the Financing Agreement

1.11 Final date for execution of contracts: Two years following the end date of contracting

1.12 Final date for disbursements: One year following the end date for the execution of contracts

2. Overall Objective and Project Purpose

2.1 Overall Objective

To strengthen the rule of law in Bosnia and Herzegovina by providing the appropriate facility, capacity building and training for the execution of criminal sanctions at state level.

2.2 Project purpose

To establish a permanent facility for the detention and imprisonment of individuals requiring high security.

2.3 Link with AP/NPAA / EP/ SAA

The European Partnership (EP 2008), 3.1.Short-term priorities, Key priorities

- Fully cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY), including by playing a proactive role in apprehending all ICTY indictees at large;
- Take measures to achieve more functional and sustainable institutional structures and better respect for human rights and fundamental freedoms, including by agreeing and adopting changes to the constitution of Bosnia and Herzegovina, as necessary.

Judicial system

- Adopt and start implementing a strategy for development of the judicial sector.

Human rights and protection of minorities

- Agree on a comprehensive penitentiary reform and ensure construction of a State level prison.

2.4 Link with MIPD

The Multi Annual Indicative Programme's (MIPD) 2009-2011 “Address the Political Criteria”, sub section 2.3.1.1. Democracy and the Rule of Law - *Judicial Reform*: The justice sector institutions at all levels of Bosnia and Herzegovina's institutional system are effectively organised and functioning and co-operation between police, prosecution, courts and the penitentiary system is improved

Section 2.3.1.3. Regional Issues and International Obligations

2.3.1.3.3 Fight against organised crime, corruption, terrorism, trafficking and smuggling

“...Enhance regional, European and international law enforcement and judicial cooperation in the IPA beneficiaries in order to fight organised crime, terrorism,...”

2.5 Link with National Development Plan

BiH has completed drafting of the National Development Strategy (NDS) 2008 - 2013 and Social Inclusion Strategy (SIS) that will serve as basis for the National Development Plan (NDP). The NDS and SIS is expected to be adopted by the beginning of 2010.

One of the five priorities in the draft NDS is the complete and timely realisation of pre-accession responsibilities and agreements (European Partnership), which include Bosnia and Herzegovina institutions' compliance with EU standards.

National War Crimes Strategy - Building and strengthening capacities of the State Court and Prosecutor's Office capacities are requirements of the National War Crimes Strategy adopted by the Council of Ministers of Bosnia and Herzegovina on 28th December 2008.

Council of Ministers also adopted a *Strategy of Bosnia and Herzegovina for the Fight against Organised Crime* on 24th September 2009.

Bosnia and Herzegovina Justice Sector Reform Strategy 2008-2012

3. Description of project

3.1 Background and justification

Existing prison and detention capacities in Bosnia and Herzegovina are insufficient to reach international or European Prison standards in terms of, for example, quality of the infrastructure and equipment, space per inmate, health and social facilities as well additional services.

The Ministry of Justice of Bosnia and Herzegovina as the lead institution responsible for the execution of criminal sanctions at state level stressed the importance of having a special War Crime and Organised Crimes Departments at the Court of Bosnia and Herzegovina, but also urged for support in establishing a state level prison as the existing facilities are unsuitable for accommodation of accused persons to be judged and sentenced at the Court of Bosnia and Herzegovina, and which require a high security level. Consequently, the joint steering group for penitentiary reforms in Bosnia and Herzegovina, in its Action Plan of Penitentiary Reforms, initiated the construction of the State prison in the framework of a project of creating (Special dome for war crimes in the Court of Bosnia and Herzegovina).

Since trials and convictions at state level commenced over four years ago, more than 85 people convicted of war and other crimes by the State Court of Bosnia and Herzegovina serve their sentence in the inadequate penitentiary facilities of the entities of Bosnia and Herzegovina. Such an option has brought into question issues of security and escapism, prison standards, efficiency of prison management as well as the financial burden to the state in having to avail of and pay for entity prison facilities. This is evidenced by the most recent (publicly accessible) 2007 report of the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which stated that prisons in the country are filled to double capacity and that many only just meet the minimum standards required by the CPT.

Furthermore, in light of the growing number of cases brought before the state court, appropriate detention facilities are required for the pre-trial period. At present, 21 cells are available at the State Ministry of Justice for the detainees who await trial, whilst the number of convicted prisoners exceeds 50 and is expected to continually increase.

The original cost estimate of 2005 for constructing and equipping a high security prison was approximately EUR 16 000 000. Since that time, circumstances have changed as in global and national scales. The current cost estimate is expected to be more comprehensive and encompass a greater span of the life of activities of the prison in terms of security and surveillance, various types of equipment, furnishings, health, sanitary, and social and educational facilities, waste treatment and staff training. Despite the delays in finalising the draft design of the facilities, 2009 has proven to be a fruitful year. The EU funded multi-beneficiary Infrastructure Preparation Facility (IPF) contracted an engineering company to work with the Project Implementation Unit (PIU) of the Ministry of Justice Bosnia and Herzegovina in preparing the draft designs, detailed cost estimates, planning permissions and procurement plans, amongst many other project activities. Most donors have stood by their initial financial commitments, and the State of Bosnia and Herzegovina has secured further funding. The Ministry of Finance of Bosnia and Herzegovina formerly submitted its request for a loan for the state prison from the Council of Europe's Development Bank in November 2009, subsequent to which a positive response was received from the bank. Furthermore, national funds have been used in 2008 to build a surrounding wall of the Prison which is located in East Ilidza, Sarajevo. The site ground has been cleared, infrastructure joints have been built. In short, 'partially encompassed ground' best describes the investment made so far.

The EU has committed 4 000 000 EUR under the Instrument for Pre-Accession's 2008 national programme. This project is therefore a second tranche to further support the construction, equipping, furnishing and staff capacity building of the state prison. It also contributes to the Action plan of prison reform and has been conciliated as a priority for the establishment of functional judiciary by the Common administrative group for the prison reform in Bosnia and Herzegovina. The Ministries of Justice Bosnia and Herzegovina, Republika Srpska and the Federation of Bosnia and Herzegovina has developed the required organisational structure for the management of the planned prison units and have a lead role in the project. Other than serving as backstop office for the administrative and technical operations they should provide human resources for the future management of the high security state prison potentially through technical assistance or in some other form of assistance. In terms of sustainability, the Ministry foresee budgetary allocations for maintenance of the facility once operational.

As with the previous EU support to this project, the current project will be contracted through a contribution agreement with the Council of Europe's Development Bank. Other donors listed here below expect to provide their funds directly to the Ministry of Justice.

According to the most recent assessment, the cost of building a high-security prison with capacity of 350 beds (for approximately 50 detainees and 300 inmates) is described in the form of table which includes national, donor and CEB loan funds:

Financial construction of funds required for building of the State Prison of Bosnia and Herzegovina in amount of EUR million		Amount EUR
1. Domestic budget funds		7 943 426
1.1. Budget	Participatory	2 743 426
	Operational 2008-2010	3 100 000
	Stipulated 2011-2012	2 100 000
2. Donors' funds		12 100 000
2.1. USA Government (1.4 million USD)		950 000
2.2. Swedish International Development Cooperation Agency (18.6 million SEK)		2 000 000
2.3. EC Funds IPA 2008		4 000 000
2.4. EC Funds IPA 2010		5 150 000
3. EU funded IPF Technical Assistance (TA)		1 350 000
4. Loan funds (up to 50%)		18 206 574
4.1. Development Bank of the Council of Europe		18 206 574
TOTAL:		39 600 000

3.2 Assessment of project impact, catalytic effect, sustainability and cross border impact

The project will be critical for further reforms in the Justice Sector. It is expected that the finalisation of this Project will result in a serious and detailed analysis of prisons in Bosnia and Herzegovina, and the establishment of the system of classification of prisoners will create a new mechanism by means of which the safety of citizens will reach the highest level and assist in promotion of reconciliation. From efficient policy-making capacities and safe environment will also improve the country's ability to become an effective partner in the European integration process.

The sustainability is ensured by the development of administrative capacities within the current civil service in accordance with the, albeit limited, possibilities offered by State', Entities' and Brcko District's budgets.

3.3 Results and measurable indicators

Result:

1. Bosnia and Herzegovina High Security State Prison facility built

Measurable indicators:

- Implementation unit is set to have prepared and published international tender with the framing contractor.
- Bosnia and Herzegovina government along with the European Commission have signed the co-financing agreement.
- Contract between framing contractor and Bosnia and Herzegovina government (Ministry of Justice Bosnia and Herzegovina) signed.
- On sight inspection of construction works being conducted.

Monitoring of the phases of the construction works will be done and full inspection conducted along with an auditing inspection that has to ensure full financial control.

3.4 Activities

Activity 1

The activities foreseen in this project will include the finalisation of construction, procurement of equipment, and training of staff. They will therefore include but not be excluded to the following:

1. Preparation of additional tender documentation for further construction, supplies etc which were not realised in the phase I of EU assistance.
2. Signing of the second contribution agreement with the CEB
3. Tendering, selection procedure and closing of contracts
4. Finalisation of ongoing Construction Works
5. Technical turnkey of object.

The precise nature of the activities foreseen in the grant will be refined at a later stage, pending the successful developments in the 2010 and 2011 period.

The project will be implemented by joint management with the Council of Europe Development Bank through a Contribution Agreement of EUR 5 150 000 in line with Article 53(d) of the Financial Regulation as this project provides additional funding for an already existing contribution agreement with the CEB. Since the CEB will provide loans to BiH it is reasonable that CEB implements the entire project. In terms of Institution Building and Investment, the support covers both as the project will be implemented in joint management. The amount contracted with the CEB will include a portion for Institution Building that will be contracted directly by the CEB, and this share is not yet precisely known.

3.5 Conditionality and sequencing

Political consensus by the national authorities to successfully implement National War Crimes Strategy, and Organised Crime Strategy, amongst others will be required. Formulating

legislation and implementing it successfully needs political will and should be understood as an essential component of sustainable development.

The project proposal shall include a feasibility study financed from the IPF-TA. This feasibility study should demonstrate the financial viability of the project and the sustainability of the investment. The proposal will also detail:

- the financing plan
- the implementation and disbursement schedule until completion of the project.

The timing of the signing of this second contribution agreement with the CEB will also be determined in view of the utilisation of national and other donor funds.

The grant foreseen to the CEB under this project will be the continuation of financing provided to the CEB under the IPA2008 National programme. Along with national funds, the EU's IPF support, other donors and the CEB's loan, the first phase comprises the design and part construction of the prison. However, the financing in this fiche is required due to the shortfall of finances of the total required as the CEB could only provide a loan of up to 50 percent of the total cost of the prison. EU funds foreseen in this fiche therefore, will complement all other financing committed during the life of the project.

3.6 Linked activities

Due to the enormous scale of the project and lack of capacities for the implementation, the project depends on the technical assistance provided through the EU funded Infrastructure Project Facility (IPF) project worth EUR 1 350 000 which is fully engaged in providing assistance Ministry of Justice Bosnia and Herzegovina with adequate documentation such as: Feasibility Study on constructing the high security State prison (completed on October 2009). Technical specifications and cost price schedule + section on investment criteria and other investment documentation are to be prepared in assistance with IPF.

This project will also provide a follow up to the conducted activities of the "Assistance to the Reform of the Prison System" and "Professionalisation and Harmonisation of Prison Systems in Bosnia and Herzegovina" projects implemented by the Council of Europe and financed by the Canadian International Development Agency (CIDA).

The Council of Europe (CoE) has assisted BiH before and after its accession to the CoE in its constitutional and legal system reform, through programmes for assistance and co-operation, and through Joint Programmes with the European Commission. The overall objectives of the programmes have been to promote the rule of law and strengthen the protection of human rights. As part of the accession process, the Government undertook a series of commitments to strengthen the rule of law and bring the prisons sector into line with European standards. Projects that are complementing to this one are "Efficient Prison Management in Bosnia and Herzegovina".

IPA 2008 contributed EUR 4 000 000 to the first phase of this project.

A complex project such as this is not without risks. Challenges in fully constructing and equipping the facility are dependent on an array of factors; the EU funded Infrastructure Preparation Facility (IPF) which as mentioned provides additional support to the MoJ. Without timely input of the IPF and hands on management, additional delays will occur. Equally, the PIU must be committed and responsive to requests. The European Commission as the largest donor must ensure that all operations it funds communicate and strive for progress. Risks can

be diffused with strong management and regular communication particularly between the CEB, MoJ and the EC, and IPF contractor.

3.7 Lessons learned

Lessons learned from previous years can be found in the project for Establishment of the War Crimes Council implemented in 2005 where a Detention Unit was built consisting of 21 cells which is a good temporary solution for emerging War Crime cases.

The 'Analysis of examination of the effectiveness and efficiency of the execution of criminal sanctions project' financed by DFID recognises that prisons in Bosnia and Herzegovina demands significant initial capital costs and high annual running costs and it is considered essential for the long term development of an effective and efficient prison system to ensure sufficient funds.

Success in the implementation of different initiatives within this project has provided firm ground for continuing the momentum:

- The legal framework has been developed so to confront the challenges in the area of management of prisoners and in reorganising the administration in order to enable more thorough reform.
- Development of modern systems of appeals, investigation and inspection that can withstand critical scrutiny helped to meet the challenge of managing a prison population that accepts authority more easily.

A multi-donor project of this kind requires regular and transparent reporting and coordination with the quarterly steering or management committee of the project which is expected to meet quarterly throughout the entire project life cycle, i.e. covering all phases. It will closely monitor results and accountability of all stakeholders in meeting the technical and operational targets of the action. The CEB must be seen to taking a leadership role in the management of the whole scheme.

As a highly political and visible project progress is key to success. Visibility of EU funding will be assured in conjunction with the CEB and MoJ through press events and briefs are various points in the implementation of the action and in accordance with the general conditions of the agreement.

Also, a recent audit by the European Court of Auditors on EU support for the judicial sector noted shortcomings on the side of the beneficiaries in ensuring the maintenance of buildings, infrastructure and equipment financed by the European Union. Future EU investments will be conditional on increased efforts by Bosnia and Herzegovina to ensure follow-up maintenance.

4. Indicative Budget (amounts in EUR)

			SOURCES OF FUNDING									
			TOTAL EXP.RE	IPA EU CONTRIBUTION		NATIONAL CONTRIBUTION					PRIVATE CONTRIBUTION	
ACTIVITIES	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 EUR (z)	EUR (d)	% (2)
Activity 1		X	5 150 000	5 150 000	100							
Contract 1.1 [Contribution Agreement]	-	-	5 150 000	5 150 000	100							
TOTAL INV			5 150 000	5 150 000	100							
TOTAL PROJECT			5 150 000	5 150 000	100							

IB and INV are mixed in the Activity 1 because this programme is implemented under joint management. The amount contracted with the IFIs will include share for Institution Building that will be contracted directly by the IFIs with the Consultants and this share is not yet precisely known.

This table does not include IPA2008 funds of 4 MEUR for the same project. Equally, it does not include the EU funded IPF support of 1350 000 EUR or any other contributions as per the table on page 5 since co-financing was already foreseen in the IPA 2008 fiche. Private Contribution comprises donor funds from Sweden and USA.

Amounts net of VAT

- (1) In the Activity row use "X" to identify whether IB or INV
- (2) Expressed in % of the **Total** Expenditure (column (a))

5. Indicative Implementation Schedule (periods broken down per quarter)

Contracts	Start of Tendering	Signature contract	of	Project Completion
Contract 1.1 (Contribution Agreement)	N/A	Q2/2011		Q1/2014

The contribution agreement will be signed in accordance with Article 53d of the Financial Regulation.

6. Cross cutting issues

6.1 Equal Opportunity

N/A

6.2 Environment

An Environment Impact Assessment will be part of the technical design documentation (i.e. the main design) by which the construction of the high-security State Prison has to take into consideration all activities that might have effect on the environment, so that the choice of the location in Istocna Ilidza, as well as the construction of the access roads to the State Prison building guarantees an optimal environmental protection. During the construction of the State prison, the Project Leader will insist that the project constructor has to comply with the law on provisions on protection of the environment, as well as with European standards.

6.3 Minorities

N/A

ANNEXES

- I Log frame in Standard Format
- II Amounts contracted and Disbursed per Quarter over the full duration of Programme
- III Description of Institutional Framework
- IV Reference to laws, regulations and strategic documents
- V Details per EU funded contract

ANNEX I: Logical framework matrix

LOGFRAME PLANNING MATRIX FOR Project Fiche		Programme name: IPA National Programme 2010 – Bosnia and Herzegovina, Project Fiche 6 “State Prison (Phase II)”		
		Contracting period expires: Two years following the date of the conclusion of the Financing Agreement		Disbursement period expires: One year following the end date for the execution of contracts
CRIS Number:		Total budget : EUR 5 150 000	IPA budget: EUR 5 150 000	
Overall objective	Objectively verifiable indicators	Sources of Verification		
To strengthen the rule of law in Bosnia and Herzegovina by providing the appropriate facility, capacity building and training for the execution of criminal sanctions at state level.	Reporting by European Commission, Council of Europe and EU relevant institutions; Revising strategy of the reform justice sector is in the area of execution of criminal sanction where it will be stated that all criminals are prosecuted and sentenced under Court BiH.	EC Progress report; Council of Europe report and other official and media reports; Justice sector strategy. Court BiH proceeding reports.		
Project purpose	Objectively verifiable indicators	Sources of Verification	Assumptions	
To establish a permanent facility for the detention and imprisonment of individuals requiring high security.	Reporting of Delegation of European Union; Council of Europe; OSCE; International community and media; B&H Court indictments and reports; Statistical reporting on prison population; Ministry of Justice B&H reporting; B&H Ministerial Conferences conclusions.	EC Progress Report; Council of Europe report on Human rights; Law; Local and regional Democracy etc.; OSCE report; Donor report; Publications and website information on indictments; Statistical reports; Ministry of Justice B&H reports; Justice sector strategy and Institutional documents.	War crime cases processing strategy adopted; Justice sector reform strategy to be adopted; Setting up Ministerial Conference; Prosecutorial offices are able to process in timely manner War Crime cases; B&H has signed SAA and following procedures of EU.	

Results	Objectively verifiable indicators	Sources of Verification	Assumptions
<p>Co-financing agreement signed</p> <p>Prepared, published and international tendering contract signed</p> <p>On sight inspection of construction works</p> <p>Bosnia and Herzegovina State Prison facility built</p> <p>Monitoring and Auditing inspection</p>	<p>Official B&H Government and EU reporting ;</p> <p>Council of Minister sessions and conclusions;</p> <p>Technical inspecting of construction sight;</p> <p>Monitoring and auditing team reporting on periodical basis.</p>	<p>Publications and portal websites in official domestic and European media;</p> <p>Government decision;</p> <p>Progress report;</p> <p>On sight inspection report;</p> <p>Financial report;</p> <p>Architectural report on building construction of 11 200 m² .</p>	<p>Timely signing contract following construction.</p>
Activities	Means	Costs	Assumptions
<p>1.Preparing of tendering documentation</p> <p>2. Signing agreement on co-financing</p> <p>3. Tendering, selection procedure and closing off contract</p> <p>4. Construction Works</p> <p>5. Technical turnkey of object</p>	<p>Contribution Agreement with Council of Europe Development Bank</p> <p>Implementation unit for tendering and Evaluation;</p> <p>Contract with frame constructor;</p> <p>Construction project teams;</p> <p>Monitoring and audit team.</p>	<p>Contract 1.1 : EUR 5 150 000</p>	<p>Sufficient and timely funding of the project from international and domestic sources</p>

ANNEX II: Amounts (in EUR) Contracted and disbursed by quarter for the project

Contracted	Q4 2010	Q1 2011	Q2 2011	Q3 2011	Q4 2011	Q1 2012	Q1 2014
Contract 1.1 Contribution Agreement			5 150 000				
Cumulated			5 150 000				
Disbursed ¹							
Contract 1.1 Contribution Agreement			3 400 000			1 235 000	515 000
Cumulated			3 400 000			4 635 000	5 150 000

¹ The disbursement table is indicative and the disbursement schedule shall be determined in the Contribution Agreement to be signed between EC and CoEDB.

ANNEX III: Description of Institutional Framework

Relevant institutions in the beneficiaries in charge of the justice reform and home affairs:

- Bosnia and Herzegovina: Ministry of Justice
- Bosnia and Herzegovina: High Judicial and Prosecutorial Council (Secretariat)
- Bosnia and Herzegovina: Court of Bosnia and Herzegovina
- Bosnia and Herzegovina: Ministry of Security

Implementing agency for the project:

- Bosnia and Herzegovina: Ministry of Justice
- France: Council of Europe Development Bank

ANNEX IV: Reference list of relevant laws and regulations

COUNCIL OF EUROPE COMMITTEE OF MINISTERS Recommendation on the European Prison Rule	Rec (2006)2
Decision on exemption of the location „Streliste -Vojkovici Naklo“	Number: 01/05 Official Gazette RS
Decision on allowance of the subject construction land to the Ministry of Justice of Bosnia and Herzegovina	Number: 02-023-414/05 Official Gazette RS
Decision on adopting of the plan of parcelling and urban-technical conditions for building of the State Prison in Vojkovici, Municipality Istocna Ilidza, locality Naklo	Number: 02-073-460/06 Official Gazette RS
Urban zoning permission is given to the Ministry of Justice of Bosnia and Herzegovina for construction of the complex of the state Prison of the closed type and Environment Impact Assessment	Number: 05-364-203/06 Official Gazette RS
Law on the foundation of the Institute for execution of criminal sanction, detainment and other measures at state level	Official Gazette BiH 24/08
Operational plan	WYG International Ltd Consortium, November 2009

ANNEX V Details per EU funded contract

The European Commission and the CoE Development Bank will conclude a Contribution Agreement for the implementation of this project under Joint Management in accordance with Article 53(d) of the Financial Regulation.

This project will be the continuation of the project signed under IPA 2008 (CRIS/ 2008/20-111).

The Infrastructure Preparation Facility (IPF) project is fully engaged in providing assistance Ministry of Justice Bosnia and Herzegovina with adequate documentation such as:

Feasibility Study on constructing the high security State prison (completed on October 2009)

Technical specifications and cost price schedule + section on investment criteria and other investment documentation are to be prepared in assistance with IPF.