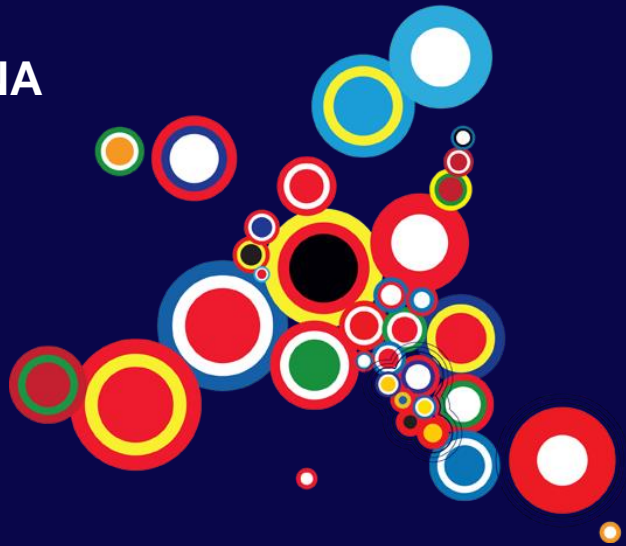




INSTRUMENT FOR PRE-ACCESSION ASSISTANCE (IPA II) 2014-2020

BOSNIA AND HERZEGOVINA

EU4Justice in Bosnia and Herzegovina (phase 2)



Action summary

The action is aimed at strengthening the independence, transparency, efficiency, accountability and ultimately public trust in the justice system of Bosnia and Herzegovina (BiH) in line with European standards and the EU acquis. Promoting effective prosecution by enhancing cooperation between law enforcement and prosecution services is another important aspect of the action.

The action will also provide assistance in monitoring implementation of the EU financial assistance to BiH in war crimes cases processing, with the Organisation for Security and Co-operation in Europe (OSCE) having an advisory, capacity building and coordination role.

Action Identification	
Action Programme Title	Annual Action Programme for Bosnia and Herzegovina for the year 2018
Action Title	EU4Justice in Bosnia and Herzegovina (phase 2)
Action ID	IPA 2018/decision number.sequence number/country/EU4Justice
Sector Information	
IPA II Sector	Rule of Law and Fundamental Rights
DAC Sector	15130 - Legal and judicial development
Budget	
Total cost	EUR 5 000 000
EU contribution	EUR 5 000 000
Budget line(s)	22.020101
Management and Implementation	
Management mode	Direct management
<i>Direct management:</i> EU Delegation	EU Delegation to Bosnia and Herzegovina
Implementation responsibilities	EU Delegation to Bosnia and Herzegovina
Location	
Zone benefiting from the action	Bosnia and Herzegovina
Specific implementation area(s)	Bosnia and Herzegovina
Timeline	
Final date for concluding Financing Agreement(s) with IPA II beneficiary	At the latest by 31 December 2019
Final date for concluding 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
Final date for operational implementation	6 years following the conclusion of the Financing Agreement
Final date for implementing the Financing Agreement (date by which this programme should be de-committed and closed)	12 years following the conclusion of the Financing Agreement

Policy objectives / Markers (DAC form)			
General policy objective	Not targeted	Significant objective	Main objective
Participation development/good governance	<input type="checkbox"/>	<input type="checkbox"/>	X
Aid to environment	X	<input type="checkbox"/>	<input type="checkbox"/>
Gender equality (including Women In Development)	<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"/>
RIO Convention markers	Not targeted	Significant objective	Main 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"/>

1. RATIONALE

PROBLEM AND STAKEHOLDER ANALYSIS

The European Commission (EC) in its Report from 2018 noted that some progress was made in addressing some of the 2016 report's recommendations, namely through the adoption of the action plan on the implementation of the 2014-2018 Justice Sector Reform Strategy (JSRS) and the establishment of the monitoring and reporting structures. The High Judicial and Prosecutorial Council (HJPC) adopted a detailed action plan to implement the European Commission's recommendations on issues within the HJPC remit, including the reinforcement of disciplinary procedures. However, most measures are to be addressed by the legislator. Reduction of the utility-cases backlog in the courts and reforming enforcement procedures are still a challenge. Politically motivated threats on the judiciary continued. Judicial independence, including from political influence, remains to be strengthened.

At the Ministerial Conference (MC) of Justice Ministers in Bosnia and Herzegovina, the President of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina and the Judicial Commission of Brcko District of Bosnia and Herzegovina held on March 2, 2018, one of the conclusions adopted was the extension of the existing framework of the JSRS in BiH by 2020 and revision of its Action Plan (AP) during 2018 for the period 2019-2020. Such a conclusion was made in view of the fact that the strategic framework of the JSRS in BiH expires in 2018, and that according to the current circumstances and capacities of the justice sector institutions in Bosnia and Herzegovina, as well as the fact that 2018 is an election year, full revision and adoption of a new strategic framework would not be realistic.

Taking into account the general weakness and inadequacy of capacities of justice sector institutions directly involved in the development, implementation, monitoring and evaluation of the JSRS in BiH, support to the implementation of the strategic framework for the period 2021-2025¹ is required through good EU practices on implementing long-term justice reform frameworks including their accompanying action plans. One of the main drawbacks of the previously valid strategic framework at its expiry is that no evaluation has been done before developing and adopting a new strategic framework.

The strategic framework of the justice sector is additionally supported by the Structured Dialogue on Justice (Structured Dialogue) undertaken since 2011 between BiH and the European Union (EU) and furthermore by the Subcommittee on Justice, Freedom and Security (hereinafter: The Subcommittee) within the institutional framework of the Stabilisation and Association Agreement (SAA). The Structured Dialogue is focused on justice reform and on issues related to processing war crimes cases as well as the harmonisation of the domestic legislation with the EU *acquis*.

The scope of the Subcommittee covers a wide range of topics with a view to identify the interconnections and gaps between different segments within the Rule of Law system. It allows identifying systemic shortcomings, as well as their solutions, in order to strengthen the functioning of the system in the future.

Regarding their relationship, the Subcommittee provides for addressing relevant issues within the institutional framework of the SAA, whereas the Structured Dialogue helps to bring selected issues whose solution require political leadership to the appropriate political level; this in turn can have a positive impact on the discussions and exchanges at the level of the Subcommittee.

Both Structured Dialogue and the Subcommittee repeatedly stressed the importance of having a valid and realistic strategic framework as well as institutions fully committed to its implementation.

Among the unaddressed recommendations of the Subcommittee remains the finalisation of the draft of the Law on the HJPC and its harmonisation with the European Commission recommendations. The importance of HJPC's continuous focus on implementing the existing European Commission recommendations, as well as following up on new peer review findings, were stressed at the second Subcommittee meeting in December 2017 in Brussels, alongside the requirement for regular reporting on the implementation progress to the European Commission.

¹ It is possible that the sector will align the strategic framework with EU's MFF.

The effective reduction of the utility-cases backlog in the courts and reforming enforcement procedures are a particular important challenge repeatedly mentioned in the country reports which requires a coordinated approach of the HJPC and the relevant line ministries to achieve a comprehensive review of the enforcement procedure laws.

The European Commission recommendations stemming from the peer reviews aim at providing guidance for the reform of the BiH judiciary and are published on the webpage of the High Judicial and Prosecutorial Council.

Since 2016, with a view to the preparation of the European Commission Opinion on BiH's application for EU membership, seven peer reviews have been conducted in the justice sector:

- 1) HJPC Rules of Procedures, July 2016
- 2) Procedure and Criteria for Appointment of Judges and Prosecutors, September 2016
- 3) Disciplinary Procedures in BiH Judiciary, September 2016
- 4) Financial Declaration and their Verifications in the Judiciary, April 2017
- 5) Performance Appraisal of Judges and Prosecutors, April 2017
- 6) Initial and Continuing Legal Education for Judges and Prosecutors, May 2017
- 7) Criminal procedure and Organised Crime, October 2017

For the purpose of the implementation of the EC Peer review recommendations (1-6 from the above list), the HJPC has adopted a comprehensive Action Plan for the implementation of the recommendations.....

Based on the recommendation of the Subcommittee, the HJPC should take all the necessary actions to proactively implement its Action Plan to follow up on the EC recommendations in order to strengthen independence, impartiality, efficiency and accountability of the judiciary. More precisely, the HJPC should focus on appointment procedures, legal education, asset declaration, performance appraisal, and disciplinary procedures.

Furthermore, the monitoring mechanism within the HJPC on the functioning of the case management system needs to be reinforced to improve random allocation of cases within courts and to provide more accurate statistical data in line with the European Commission for the Efficiency of Justice (CEPEJ) methodology.

The processing of war crime cases remains a focal issue. Following the expiry of deadlines of the National War Crime Cases Strategy (NWCS), the strategy was revised and is expected to be adopted by BiH Council of Ministries in the coming period. The revised Strategy foresees revision of criteria for case complexity categorisation that will allow for the transfer of a larger number of war crime cases from the Court and Prosecutors' Office of BiH to the entities and Brčko District. Thus, prosecutors' offices and a number of courts require further support related to human and material capacities as well as expert and training support in the implementation of procedural and material law. All relevant BiH judicial institutions need further expert assistance and training in the qualitative, timely and effective implementation of the IPA 2017 grant 'Enhancing War Crimes Case Processing in BiH' aimed at reducing the backlog of war crimes cases.

The BiH judicial system currently operates with 1017 judges and 377 prosecutors working in 80 courts and only 20 prosecutors' offices. In the entity of Federation BiH there are 32 municipal courts, 10 cantonal courts, the Supreme Court of FBiH, 10 cantonal prosecutors' offices and the Federal Prosecutor's Office. In the entity of RS there are 20 basic courts, 6 district courts, 6 district commercial courts, the Supreme Court of RS, the High Commercial Court, 6 district public prosecutors' offices and the Republic Public Prosecutor's Office. In Brčko District of BiH, there are the Basic Court, Appellate Court and the Prosecutor's Office. The executive branch is composed of the Ministry of Justice (MoJ) at the State level, MoJs' at the level of entities (in Federation Bosnia and Herzegovina (FBiH) and Republika Srpska (RS)), Judicial Commission of Brčko District (JC BD) and the 10 Cantonal MoJs. The institutional framework of the judicial system at the State level consists of following institutions: HJPC, the Constitutional Court, the Court of BiH, the Prosecutor's Office (PO) and Office of the Attorney General of BiH.

The **HJPC** is an independent and autonomous institution (established by a special law in 2004 at State level) and, as such, acts as a coordinating body of judicial authorities at all levels. In the reform of the justice

sector, the HJPC is mandated to play a key role as the central coordinator of reform processes in matters of judicial policy, donor aid coordination and project management. The HJPC currently has a sufficient number of professional and trained personnel, in part ensured with donor support, and thus complements the role of the MoJ BiH as the managing institution in the process of communication and coordination with key institutions of the justice (sub) sector.

The roles of the MoJ BiH and the HJPC are interlinked and complementary. Therefore, the HJPC and the MoJ BiH share the responsibility for reforming the Law on HJPC, while the HJPC holds the responsibility for implementing the European Commission recommendations related to its competences (the above listed peer reviews 1 to 6).

For the initial and continuous judicial education for judges and prosecutors, the HJPC shares the competence with Judicial and Prosecutorial Training Centres at the entities' level and coordinates all training activities related to Judicial Office Holders (JOH's) with both centres.

The implementation of the European Commission recommendations on criminal procedure and organised crime will require the commitment of institutions in both justice and the law enforcement sectors to take an active role in implementing these recommendations.

Within the **MoJ BiH**, strategic planning and coordination of donor assistance is provided by the sector for strategic planning, donor aid coordination and European integration, while there are no specially regulated units in the **MoJ RS** and cantonal ministries for these operations, but are rather distributed within other units that often lack the necessary expertise. **FBiH MoJ** has set up a strategic planning unit, but it is also not properly capacitated.

The **Office of the Disciplinary Counsel (ODC)** is the body responsible for disciplinary prosecution of judicial office holders in the BiH judiciary. This body is a part of the HJPC and while it is autonomous in terms of its investigative and prosecution role in disciplinary proceedings, it relies on the HJPC Secretariat for provision of support services.

The **Centre for Judicial and Prosecutorial Training of RS** and the **Centre for Judicial and Prosecutorial Training of the FBiH (JPTCs)** enjoy a harmonious working relationship with the HJPC at State level. Both JPTCs are responsible for providing initial training courses to candidates considering a career as a judge or prosecutor (e.g. courts' and prosecutors' assistants and interns) and continuous training for JOH's with the aim to ensure professional growth and advancing professionalism within the judiciary. JPTCs award certificates if minimum training requirements are fulfilled and report to the HJPC. The overarching goal and the mission of JPTC's is to provide training for judicial and support staff at entities' level with a view to coping successfully with challenges stemming, for instance, from application of the EU *acquis* as well as changes of domestic legislation in the context of the European Court of Human Rights case law.

Mandatory judicial training is generally too short, not based on a proper needs assessment, decoupled from appraisal as well as promotion and JPTCs struggle to budget permanent training curricula. Furthermore, there is a lack of functioning initial training in particular as regards basic competencies (for instance judge-craft, managing caseload, preparation of hearings, ethics, code of procedure), of training methodologies, of a functioning control system linked to the selection of participants, of evaluation and of donor coordination in the system.

OUTLINE OF IPA II ASSISTANCE

This action is designed to improve the capacity of the BiH justice system by the recognised coordinating bodies: MoJ BiH for the strategic matters as a whole, and judiciary by the HJPC, and pertaining actors in the justice sector, with a view to strengthening the independence, impartiality, efficiency, accountability as well as public trust in BiH's justice system in line with EU standards and the EU *acquis*.

RELEVANCE WITH THE IPA II STRATEGY PAPER AND OTHER KEY REFERENCES

The Indicative Strategy Paper for BiH 2014-2020 (ISP) recalls that the Rule of Law is at the centre of the enlargement process and IPA II assistance will consequently support BiH in advancing towards an independent, impartial, efficient and accountable judiciary. Also law enforcement agencies (LEAs) are in the focus with the aim of increasing their capacities in fighting organised crime and corruption, in particular by

addressing deficiencies in the cooperation with the prosecution service as well as regards international cooperation. In addition, the ISP envisaged continued EU assistance to strengthen the capacities and conditions for efficient investigation, prosecution and processing of war crimes in BiH.

The Western Balkans Strategy recalls that addressing necessary reforms in the area of Rule of Law, fundamental rights and good governance remain most pressing issues and that the European Commission's efforts to guide reforms in these areas should be intensified.

Under the flagship initiative to strengthen Rule of Law, the Commission shall undertake more detailed sector assessments and extend advisory missions to all Western Balkan countries building on best practices.

The South East Europe (SEE) 2020 strategy of the Regional Cooperation Council (RCC) outlines socioeconomic growth as an overarching goal necessary to improve the prosperity of all citizens in BiH and to facilitate eventual integration with the EU. Strengthening the Rule of Law and more effort to fight against corruption fall under the strategy's dimension "governance for growth".

The Justice Sector Reform Strategy (JSRS) in BiH for the period 2014–2018 (2020) has been prepared by the MoJ BiH in the course of 2014 in consultation with main stakeholders and has been adopted in 2015. The adoption of the related Action Plan followed only in 2017. One of the five pillars of the current JSRS is devoted to support the establishment of a well-managed and accountable justice sector.

The current strategy is a continuation of the previous one that covered the period 2008–2012 (the Action Plan covered the period 2009–2013). The main priorities for justice reform under the JSRS are: fight against corruption, access to justice for citizens and their equality before the law, ensuring budgetary responsibility, support to economic growth and incentives for EU integration.

The Fight against corruption Strategy 2015-2018 and its Action plan is a cross-cutting strategy with other national strategies in particular with public administration and justice reforms. When it comes to the Rule of Law area, the Strategy concentrates at establishing and strengthening administrative capacities, making necessary legislative advancements and improving the efficiency of judicial institutions and LEAs.

LESSONS LEARNED AND LINK TO PREVIOUS FINANCIAL ASSISTANCE

The EU has provided substantial support to BiH authorities in the areas of Justice Reform, Fight against Corruption, War Crime Cases processing and other topics affecting these areas. Previous IPA assistance focused on key institutional reforms and capacity building of the various actors of the justice sector, primarily through assistance to the modernisation and digitalisation of the justice system.

The EU has supported the HJPC in advancing the informatisation of the judiciary since its establishment in 2004, allowing the establishment of a modern information and communication (ICT) system used daily by more than 6.000 employees at 100 judicial institutions in the country. The development of the Judicial Information System (JIS) paired with introducing measures targeting the backlog of cases in the judiciary, fostered increase in transparency and effectiveness of the judiciary. However, the local institutions are still far away from meeting the EU standards, and the EU assistance to the BiH judiciary remains essential.

In addition, numerous infrastructure projects have considerably increased the capacity of the judicial and penitentiary system in terms of resources and their compliance with international standards.

As part of IPA 2010, technical assistance was also provided to the judiciary and the JTCs resulting in a number of recommendations for improving the education and training of judicial office holders and the status of non-judicial and non-prosecutorial staff.

The legislative and policy reform process in the justice sector fails to follow the capacity developments and to ensure compliance with recommendations from technical assistance projects. Policy and legislative development needs to be evidence-based, costed and subject to appropriate internal and external stakeholder consultations at the right time of the legislative and policy-making process.

With this in mind, the Action shall build upon the expected results of the phase 1 of the EU4Justice grant project for BiH funded from IPA 2015.

Justice reforms are also supported by other international partners who are important stakeholders to this action. This results in a complex donor landscape (USAID, SIDA, Norway, Switzerland, UN and pertaining agencies); donor coordination needs to be enhanced.

2. INTERVENTION LOGIC

LOGICAL FRAMEWORK MATRIX

OVERALL OBJECTIVE	OBJECTIVELY VERIFIABLE INDICATORS (*)	SOURCES OF VERIFICATION	
To align the justice system of Bosnia and Herzegovina with European standards and the EU acquis.	Composite indicator (combines the average of Access to Justice (World Justice Project) and Judicial Independence (World Economic Forum))	World Justice Project for Access to Justice and World Economic Forum for Judicial Independence	
SPECIFIC OBJECTIVE	OBJECTIVELY VERIFIABLE INDICATORS (*)	SOURCES OF VERIFICATION	ASSUMPTIONS
To enhance independence, effectiveness, accountability and efficiency in the BiH justice sector.	Composite Judicial Effectiveness Index (JEI BiH)	USAID MEASURE Project	Sector institution share common vision and pursue reform goals
RESULTS	OBJECTIVELY VERIFIABLE INDICATORS (*)	SOURCES OF VERIFICATION	ASSUMPTIONS
<p>Result 1: Key European Commission recommendations stemming from the justice sector peer reviews and the Stabilisation and Association Agreement Subcommittee on Justice, Freedom and Security implemented</p> <p>Result 2: Selected objectives of the Justice Sector Reform Strategy (JSRS) 2021-2025 (2027) and activities of the related Action Plan implemented and a justice donor mapping mechanism established</p> <p>Result 3: Structured cooperation between law enforcement agencies and prosecution services in criminal prosecution matters enhanced</p> <p>Result 4: The backlog of war crimes cases in Bosnia and Herzegovina further reduced</p>	<p>1.1 Percentage of European Commission recommendations for the BiH justice sector implemented; 2.1 Percentage of measures under the JSRS 2021-2015 (2027) and the related Action Plan implemented;</p> <p>3.1 Number of meetings of the inter-institutional taskforce for coordination of law enforcement agencies and prosecution services;</p> <p>3.2 Number of structured data and document exchanges on organised crime and corruption cases;</p> <p>4.1 Number of monitoring reports on implementation of operational targets on war crimes cases by the beneficiary institutions;</p> <p>4.2 Number of capacity building activities undertaken to strengthen the capacity of professionals working on war crimes cases.</p>	<p>Monitoring reports on implementation of the Peer Review recommendations</p> <p>Peer Review experts' periodic status reports on the implementation of the Peer Review Recommendations</p> <p>JSRS Progress Reports</p> <p>Reports of the Chief Prosecutors and the Supervisory Body</p> <p>OSCE reports and statistics</p> <p>EC reports</p>	<p>Relevant authorities fully cooperate and provide necessary support and assistance throughout the implementation.</p> <p>Beneficiary institutions remain engaged in the justice reform process.</p> <p>The monitoring and evaluation mechanism of the JSRS is strengthened.</p>

DESCRIPTION OF ACTIVITIES

Outputs linked to the first three expected result areas include a combination of activities ranging from strategic advice to institutional capacity building, supporting legal drafting, training, coaching and mentoring activities, seminars, workshops and study visits to EU Member States. In some cases, the project may provide the necessary input for improvement of the existing IT solutions supporting the reforms processes.

Result 1: Key European Commission Recommendations stemming from the justice peer reviews and the Stabilisation and Association Agreement (SAA) Subcommittee on Justice, Freedom and Security implemented

Activities encompassed under the result 1 will include provision of the necessary support to all relevant justice sector institutions in implementing the European Commission's recommendations.

As for the Peer reviews performed during 2016 and 2017, and in line with its competence, the HJPC has adopted the Action Plan to implement the peer reviews on HJPC Rules of Procedures, Procedure and Criteria for Appointment of Judges and Prosecutors, Disciplinary Procedures in BiH Judiciary, Financial Declaration and their Verifications in the Judiciary, Performance Appraisal of Judges and Prosecutors and the Initial and Continuing Legal Education for Judges and Prosecutors. For the latter, the HJPC shares the competence with the entity Judicial and Prosecutorial Training Centres and coordinates all activities related to JOH's legal education with both these centres. Unlike the mentioned Peer Reviews, the one on Criminal Procedure and Organised Crime will require a broad range of institutions in both justice and the law enforcement sectors to take an active role in implementing the recommendations.

In line with the already ongoing activities, it should be noted that a number of non-legislative measures following up on the recommendations stemming from the peer reviews are currently being addressed by the HJPC. Therefore, by the time the Action becomes operational, the focus of activities is likely to be on the actual implementation of the measures planned to be introduced by the changes to the legal framework. On the other hand, the implementation of the recommendations that require amendments to the Law on HJPC will depend on the timing of the adoption of the new Law on HJPC, which will depend on a number of external factors. This project may therefore, support the finalisation of the draft law, if the adoption process is further delayed, or the implementation of the new law in line with EU standards. A similar scenario could be expected in reforming the Criminal Procedure Codes across the jurisdictions in BiH, as well as other laws which may require reforming following up on the upcoming Peer Reviews in the justice sector. With this in mind, the exact composition of the activities entailed to achieve this result cannot be given at this time but will be further outlined in the grant guidelines.

Guidelines and recommendations of the European Commission for the efficiency of justice (CEPEJ) within the Council of Europe shall be seen as complementary source of information and guidance when working on the implementation on the European Commission recommendations.

Result 2: Selected objectives of the JSRS 2021-2025 (2027) and activities of the related Action Plan are supported and a justice donor mapping mechanism is established

Technical support will be required to contribute to the objectives and activities under the future strategic framework for the justice sector 2021-2025 (2027). While the focus will be on the implementation of concrete measures under the future JSRS, limited support might be made available – if applicable – already during the design phase (completeness and feasibility checks, etc.).

In order to ensure oversight on donor assistance activities a functioning mapping mechanism needs to be established in a sustainable manner.

Result 3: Structured cooperation between law enforcement agencies and prosecution services in criminal prosecution matters enhanced

- Initiate and support a permanent inter-institutional taskforce consisted of LEAs and prosecutors
- Improve the existing electronic data exchange mechanism between the LEAs and prosecutors' offices, including traceability (building up on the recommendations of "EU4Justice" Phase 1 action)

The purpose of the above activities is to assist the domestic law enforcement and prosecution services to better address most common forms of crime up to high-level corruption and organised crime in BiH. With the establishment of a standing inter-institutional taskforce, the effective link between law enforcement agencies and the prosecution services at all levels will be established and operationalised. Such a mechanism will provide for a faster and a more effective responsiveness and enhanced coordination in investigating and prosecuting high-level organised crime and corruption.

Whereas the data exchange between the law enforcement and the prosecution services exists, the data exchanged via this channel cannot be used as evidence before courts due to legal and other shortcomings. Therefore, the existing data exchange needs to be recognised by the relevant criminal process codes, and data exchange ought to be secured and verified by digital signatures.

Result 4: The backlog of war crimes cases in BiH further reduced

- Monitoring, training and expert support to complement the implementation of the IPA 2017 grant 'Enhancing War Crimes Case Processing in BiH'

All relevant BiH judicial institutions will be provided with expert assistance, training and advice in the qualitative, timely and effective implementation of the EU-financed grant 'Enhancing War Crimes Case Processing in BiH' with the BiH Ministry of Finance and Treasury.

The OSCE will provide support and advice to the EU Delegation in monitoring war crimes case processing, and in tracking and verifying overall progress to ensure that the results of the IPA 2017 grant 'Enhancing War Crimes Case Processing in BiH' are accomplished. The OSCE will provide feedback and advice to the final beneficiaries of the IPA 2017 grant on how further progress can be delivered and war crimes case processing strengthened through effective utilisation of the IPA 2017 grant. The OSCE will provide training to judges, prosecutors and legal support staff, defence attorneys, war crimes investigators, and Witness Support Officers to strengthen their technical and operational capacities for efficient processing of war crimes cases throughout BiH. Target groups for expert trainings will also include law enforcement investigators, in order to improve capacities of law enforcement agencies for war crime cases processing. Joint trainings of prosecutors, prosecution investigators, law enforcement investigators and police officers will be conducted to improve coordination and planning of complex investigation in war crime cases.

RISKS

Risks are exposed in the table below and differentiated according to the likelihood of their occurrence (high, medium or low probability of occurrence).

EXTERNAL CONDITIONS	LOW RISK	MEDIUM RISK	HIGH RISK
Strategy and legislation framework in place		✓	
Delay of relevant institutions in the timely implementation of activities			✓
Updated EU legislation harmonisation action plan		✓	
Political commitment towards the EU integration		✓	
Willingness of the institutions to participate		✓	
Absence of donor coordination leading to same/similar project activities		✓	

One should also take into consideration the frequent scarcities of financial resources or low political prioritisation of resources to the reforms due to other pressing issues, and even if at the end beneficiary is proceeding with its own resources, sustainability remains questionable. Management capacities for planning and needs analysis should be strengthened while at the same time ensuring that any project intervention includes the issue of sustainability as one of the preconditions.

Before the start of the Action in the inception phase a thorough risk analysis should be conducted with risk mitigation plan namely reflecting the identified risks above. Underlying processes of public administration reform that concern improvements in the area of policy development and coordination might introduce

relevant changes in the way the action would take its course; that should be first looked into once it becomes operational.

Assumptions

- Sector institutions share a common vision and pursue reform goals.
- Relevant authorities fully cooperate and provide necessary support and assistance throughout the implementation.
- Beneficiary institutions remain engaged in the justice reform process.
- The monitoring and evaluation mechanism of the JSRS is strengthened.

3. IMPLEMENTATION ARRANGEMENTS

ROLES AND RESPONSIBILITIES

Institutions in charge for the design and implementation of JSRS, described in the above problem analysis, will be included in the implementation of the proposed activities whereas MoJ BiH will have the lead coordinating role in partnership with HJPC as the main implementing partner. In the Inception phase it will be determined that, if needed, other institutions relevant to the achievement of the planned activities will be included in the implementation. The role and responsibilities of the institutions that will be involved in the implementation will be in accordance with their mandate.

HJPC is an independent and autonomous institution and, as such, acts as a coordinating body of judicial authority, and plays in the reform of the justice sector the role of a partner institution with executive power in matters of judicial policy, donor aid coordination and project management.

HJPC currently has a sufficient number of professional and trained personnel, in part ensured with donor support, and thus complements the role of the MoJ BiH as the coordinating institution in the process of communication and coordination with key institutions of the justice (sub) sector. The roles of the MoJ BiH and the HJPC are interlinked and complementary.

For improving initial and continuous judicial education for judges and prosecutors, which will be addressed under result 1, JPTCs have shared responsibilities with the HJPC.

Ministries of Justice (MoJs) at state, at the entities (2) and in the FBiH Cantons (10), the HJPC and the Brčko District Judicial Commission (BDJC) are key justice sector institutions from the executive point of view.

The HJPC is in principle responsible for undertaking the actions in respect of results 1 while the MoJ BiH will be responsible for Result 2 together with the HJPC and other implementing partners. For the realisation of Result 3 an interinstitutional working group needs to be established. The Result 4 will be implemented by OSCE through a direct grant in close coordination with the HJPC.

Under this action, sector reform coordination will be ensured through the establishment of a Steering Committee composed of relevant justice sector institutions and - if indicated - also supported by the relevant law enforcement institutions.

IMPLEMENTATION METHOD(S) AND TYPE(S) OF FINANCING

The EU Delegation to Bosnia and Herzegovina will be responsible for the overall management and implementation of the Action under direct management.

Under results 1-3, support will be delivered through an EU fully-financed grant agreement with EU Member State(s) following a call for proposals. The project will allow for flexible engagement of long- and medium-term experts from EU Member States relevant to implementing the recommended models and solutions in the reform areas. Under result 4, a direct grant will be signed between the EU and the OSCE in accordance with article 190 (1)(f) RAP due to the OSCE's technical competence and high degree of specialisation with regard to war crime cases in BiH. The OSCE will provide assistance in the monitoring of implementation of

the IPA 2017 grant 'Enhancing War Crimes Case Processing in BiH', having an advisory, capacity building and coordinating role.

4. PERFORMANCE MEASUREMENT

METHODOLOGY FOR MONITORING (AND EVALUATION)

In line with the IPA II Implementing Regulation 447/2014, the EU Delegation who has been entrusted budget implementation tasks of IPA II assistance shall be responsible for conducting evaluations of the programmes it manages.

The European Commission may carry out a mid-term, a final or an ex-post evaluation for this Action or its components via independent consultants, through a joint mission or via an implementing partner. In case a mid-term or final evaluation is not foreseen, the European 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 evaluations will be carried out as prescribed by the DG NEAR guidelines for evaluations. In addition, the Action might be subject to external monitoring in line with the European Commission rules and procedures set in the Financing Agreement.

INDICATOR MEASUREMENT

Indicator	Baseline (value + year) (2)	Target 2020 (3)	Final Target (2023) (4)	Source of information
Composite indicator (combines the average of Access to Justice (World Justice Project) and Judicial Independence (World Economic Forum))	46,7 (2015)	49,1	50,5	World Justice Project for Access to Justice and World Economic Forum for Judicial Independence
Composite Judicial Effectiveness Index (JEI BiH)	56.78 points (JEI 2016)	60.1 points (JEI 2019)	62.78 points (JEI 2022)	MEASURE BiH Project (USAID)
1.1 Percentage of European Commission recommendations for the BiH justice sector implemented	0	60%	80%	Justice Sector institutions' reports
2.1 Percentage of measures under the JSRS 2021-2025 (2027) and the related Action Plan implemented	To be set before action start ²	0	20%	JSRS Report, CSO Report, BiH Progress Report, Project reports
3.1 Number of meetings of the inter-institutional taskforce for coordination of law enforcement agencies and prosecution services	0 (2017)	0	12	Project reports
3.2 Number of structured data and document exchanges on organised crime and corruption cases	0 (2017)	0	15	Project reports
4.1 Number of monitoring reports on implementation of operational targets on war crime cases by the beneficiary institutions	0	0	At least four (4) reports will be submitted to EUD	OSCE reports; written correspondences; minutes of meetings; annual reports of justice sector institutions
4.2 Number of capacity building activities undertaken to strengthen the capacity of professionals working on war crimes cases	0	0	No less than 6 capacity building activities on war crimes specific training for judges, prosecutors, support staff, defence attorneys, investigators, witness support officers	Training materials, list of participant, participants evaluation forms, event feedback forms, mission monitoring statistics, annual report of justice sector institutions

² The second assessment on implementation of JSRS strategy and related AP will be conducted by the MoJ in late 2018, according to which the baseline will be determined.

5. SECTOR APPROACH ASSESSMENT

The Justice sector in BiH is perceived as being mature enough for absorbing assistance through the sector approach. Although with significant weaknesses, the sector is able to cope with systematic use of external assistance through the sector approach. In the course of 2017 justice sector institutions developed a Sector Planning Document (SPD), including a sector assessment which is presented below. The SPD also contains a roadmap that should be utilised as plan for improving capacities and moving towards the sector approach.

The strategic framework is in line with the EU accession requirements and investment perspectives indicated in the Country Strategy Paper for BiH (2014 – 2017 and revised 2018-2020). Sector policies are mapped, supported by a strategic framework that is in line with the EU accession requirements. Some of the significant sector strategies at the state level are: Justice Sector Reform Strategy (2014 – 2018), National Strategy for Processing War Crimes (adopted in 2008), BiH Anti-Corruption Strategy (2015 – 2019). At the entities, cantonal and Brčko District levels a number of related strategies are currently in use. There are specific sector policies, which are in general supported by a suitable strategic framework in line with the EU accession requirements. In general, the process of developing sector policies tends to involve a number of different sector actors. Therefore, sector policies are endorsed by domestic actors (including Civil Society Organisations at a certain extent). Policy objectives are in line with the accession agenda and, to a certain extent, political support ensures necessary ownership and the sustainability of the overall reforms. Sector planning is partially linked to resources allocation; however financial resources adjustments due to unplanned activities are often made.

The institutional setting is quite complex and articulated due to the decentralisation characterising BiH, but sound institutional coherence is present at both the State and entities levels. Institutions that are coordinating the sector reforms are well identified and there are suitable institutional arrangements, allowing clear lines of communication and responsibilities. While both key sector organisations (HJPC and MoJ) in the justice sub-sector have accumulated significant capacities to undertake the reform process, workload and functional analyses are lacking in order to guide proper building of capacities in the whole sector. The coordinating institutions within the justice sector (MoJ BiH and HJPC) are suitably identified and institutional arrangements and capacities allow a satisfactory degree of communication and cooperation within relevant institutions. Cooperation with Civil Society Organisation is regular both in terms of policy engagement and monitoring of the implementation of policies.

Donor coordination is more proactive than in other sectors in BiH for two main reasons: under the JSRS a donor coordination mechanism is led by the MoJ of BiH, and aims to meet at least semi-annually; in addition, an EU led (EUD & EUSR) International Justice Sector coordination group gathers quarterly and invites all EU member states, international organisations and UN implementing agencies working in the justice sector to convene to discuss policy and technical issues, whilst also sharing an overview of their respective projects. In this sense donor coordination is to some extent satisfactory and allows necessary complementarity of assistance.

The performance assessment framework has been set up but is not operational - the monitoring system with indicators exists, but the assessment of impact of reforms is not yet developed. However, the whole sector is periodically monitored by International Organisations and meaningful indicators are available and rather reliable.

The sector budgets are easily traceable in the State, Entities, Cantonal and Brčko District budgets and there is a three-year strategic planning to clearly indicate the scope of the sector, which is not fully the case with how the financial allocations are made; however, it is possible to state that the budget reflects quite fairly what the sector policy is and its objectives. MTEF is still not in place although preparatory works are carried out. At the current stage, it is not possible to assess to which extent external assistance contributes to the sector reforms. Still, provided assistance reflects the sector policy and objectives by making contribution to implementation of sector strategy. There are PFM reforms implemented at all levels of government and DG Budget and PEFA assessment clearly identified areas where support can be considered.

6. CROSS-CUTTING ISSUES

GENDER MAINSTREAMING

The action will involve the integration of a gender perspective into the preparation, design, implementation, monitoring and evaluation of policies, regulatory measures and spending programmes, with a view to promoting equality between women and men, and combating discrimination wherever relevant.

EQUAL OPPORTUNITIES

Gender equality principles will be respected and will be granted as an integral part of implementation of all activities within this Action. It is expected that gender equality will be fully observed in training component, including designing training curricula and ensuring a gender balance, as well under implementation of strategies, policies, regulation etc. The Action will support provision of equal opportunities and non-discrimination principles for vulnerable groups, minorities and women and be mindful of their need specificities.

MINORITIES AND VULNERABLE GROUPS

The proposed Action will contribute to the responsiveness of stakeholders towards all citizens, especially to women and vulnerable groups. The Action, through its visibility and communication activities, shall spread the message that compliance with basic democratic standards that is more than a condition for the EU accession.

ENGAGEMENT WITH CIVIL SOCIETY (AND IF RELEVANT OTHER NON-STATE STAKEHOLDERS)

The 2007 Memorandum of Understanding (Memorandum) between the Government of BiH and civil society organisations (CSOs) set out the objectives, principles and forms of the cooperation between the government and civil society. Due to expiry of this Memorandum MoJ BiH with the assistance of EU project “Capacity building of government institutions for the dialogue with civil society” over the past period has conducted revision of it in the wide process of consultations. As a result, a new Memorandum has been approved by the Council of Ministers BIH in September 2017 and later on signed with representatives of the CSOs. Although the engagement of citizens in the decision-making processes at state level in BiH is regulated it is not fully implemented yet.

IPA II assistance is already providing continuous support to CSOs through the Multi-Country Civil Society Facility that encourages sector based networking and cooperation among civil society in various areas among which the improvement of capacities of CSOs to combat corruption, improve social dialogue, support social partners. Within this framework, IPA II assistance is also provided to Governments to capacitate them for more effective inclusion of civil society in the decision-making. In the specific case of BiH, the facility aims at influencing policy, decision-making processes and legislation enacting in the areas critical for EU integration. In BiH this proved to be insufficient as public stakeholders do not actively engage the CSOs in the very needs assessment and early stages of creation of programmes and action.

In terms of civil society organizations and their involvement in the process of Structured Dialogue on justice during 2014 formal cooperation was established. This cooperation reflects the fact that has enabled its representatives to attend the sessions of the Structured Dialogue since the seventh meeting. However, according to CSOs, the priorities that were indicated by representatives of civil society were included partly in the session agenda, and representatives of civil society remained unclear of their role, because most of the session was and is still closed to the public.

However, the intent of this cooperation is to increase and exercise democratic oversight from the public and civil society on the decision-makers to find solutions and assume responsibility when it comes to the independence of the judiciary and the effective protection of human rights in the justice sector. For this reason, it is necessary to support the role of CSOs to take a more active part in a structured dialogue, have a clearly defined role and responsibility that cannot be minimized by efforts of the public authorities that often do not engage sufficiently in the public debate.

Civil society plays a significant role in monitoring of the system of justice thus cluster of CSOs have formed ‘Justice Network in BiH’. Monitoring here serves as an instrument for strengthening the Rule of Law by

involving non state actors to push further for reforms through increase of participative democracy. Monitoring of the processing cases of corruption throughout the procedure of the phase of prosecution until sentencing is one of the segments which deserve special attention. By monitoring of these cases CSOs share responsibility for development of democracy by advocating right course of reforms and bringing on priority issues not recognised by the society. In particular, since 2010, Transparency International BiH has been involved in monitoring prosecution of criminal offences that are classified as corruption offences according to applicable legal framework, i.e. criminal offences against an official or other responsible person. The value of undertaken activities lies in the fact that after expiration of certain period of time the treatment of the perpetrators and their criminal offences is observed, and in very precise, balanced and objective way it is pointed out to some problems which the competent judicial authorities have to face in order to improve their effectiveness in combating corruption offences. Members of the Justice Network are also part of sub network of those which provide free legal aid as such being part provisional solution to ensuring access to justice and to those most vulnerable groups.

In the course of the Justice Sector reforms five organisations, also part of Justice Network, have signed a Memorandum of Understanding with government of Netherland in BiH in 2016 in order to facilitate process of the CSOs monitoring the implementation of the JSRS and thus to enable them to have participatory impact on policy making processes. As a result of this support by the end of 2017 jointly CSOs and justice sector institution draw up Memorandum of Understanding (MoU) enabling these CSO to take joint part in the process of monitoring and evaluation of JSRS in BiH and its action plan by engagement in the work of bodies (functional working groups, technical secretariat and ministerial conference) that perform oversight on the implementation of sector strategy. The MoU has been endorsed and signed on the third Ministerial Conference held on March 2, 2018. These organisations will be directly involved in the performing of this action.

When it comes to implement actions envisaged by the Sector Planning Document, the engagement of civil society will be ensured as a complementary activity and be carried out in line with the assistance already provided by IPA II.

In the specific sector of Justice, the attention given to engage civil society will be of utmost importance and will be addressed in supporting an overall environment that is conducive to civil society development as being an effective and accountable independent sphere of policy making. Engagement of CSOs will be crucial in order to suitably implement the action planned in this document: more precisely their contribution will be pivotal in ensuring a closer (although indirect) and more effective monitoring and control of the perception of justice among citizens as well as in the building up more cohesive and less discriminative communities.

As civil society does indeed play the crucial role of “watchdog” of the political authorities, CSOs can give valuable inputs to the national legislation and governmental regulation reforms. Therefore, the implementation of the actions funded by IPA II within the framework of document will explore methods for facilitating and optimising the contribution of civil society, enable and support CSOs to perform a well-organised lobby for better justice, higher level of democratisation and respect of human rights.

ENVIRONMENT AND CLIMATE CHANGE (AND IF RELEVANT DISASTER RESILIENCE)

The Action has indirect link to EU environmental acquis for it partially involves improvement of pertaining regulations that advances registration of businesses and improving land administration as part of overall justice sector reform. The Action has very low impact on the environment however whenever the case it is clear that all measures envisaged and supported by IPA II assistance will comply in full terms with the respect of environment, security and health.

Climate action relevant budget allocation in EUR: 0

7. SUSTAINABILITY

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, projects should start by providing support to the beneficiaries with 'options analysis',

regulatory impact assessments, concept papers, etc. prior to supporting them with drafting of legislation/amendments. New legislation/amendments shall be coordinated among the different administrative levels, thus promoting harmonisation and reducing fragmentation of the legal framework.

Any written procedural manuals or guidelines developed with the support of this action shall be simple enough to be regularly updated and changed by the staff of the respective organisations without additional external support. Any guidelines or procedures developed shall not contradict with any legal provision of the country. Guidelines shall be harmonised across the different levels to promote consistent country-wide approach

8. COMMUNICATION AND VISIBILITY

Communication and visibility will be given high importance during the implementation of the Action. The implementation of the communication activities shall be funded from the amounts allocated to the Action.

All necessary measures will be taken to publicise the fact that the Action has received funding from the EU in line with the EU communication and visibility requirements in force. All stakeholders and implementing partners shall ensure the visibility of EU financial assistance provided through IPA II throughout all phases of the programme cycle.

Visibility and communication actions shall demonstrate how the intervention contributes to the agreed programme objectives and the accession process. Actions shall be aimed at strengthening general public awareness and support of interventions financed and the objectives pursued. The actions shall aim at highlighting to the relevant target audiences the added value and impact of the EU's interventions and will promote transparency and accountability on the use of funds.

Visibility and communication aspects shall be complementary to the activities implemented by DG NEAR and the EU Delegations in the field. DG NEAR and the EU Delegations should be fully informed of the planning and implementation of the specific visibility and communication activities carried out by the beneficiaries and the implementing partners.

