

SECTOR PLANNING DOCUMENT

BOSNIA AND HERZEGOVINA Justice and Fundamental Rights

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PART ONE - SECTOR PROFILE

1. SECTOR CONTEXT

1.1. Description and problem analysis

Rule of Law and Fundamental Rights

The **rule of law** is principle 'that law should govern a nation (persons, institutions and entities, public and private, including the State itself) to which they are accountable. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

² The rule of law is intrinsically linked to the human rights. It is the most essential ingredient of both a functioning market economy and a fair society based on equal rights, responsibilities and opportunities for all.

Thematically, the sector encapsulates strengthening the judicial system, organisation, independence and efficiency of the judiciary, including qualitative prison system that underpins the judiciary. The sector also focuses on effectiveness of the legislation in protecting fundamental human rights, while special attention is given to vulnerable and marginalised groups. Key policies of the justice sector entail fight against organised crime and corruption through enhanced cooperation between law enforcement agencies and prosecution.

Since the post-conflict period, significant improvements have been made in Bosnia and Herzegovina (BiH) in relation to the judicial system (Annex, Table 1a and 1b). The European Commission (EC) in its Report from 2016 reiterated recommendations from 2014 and 2015 reports indicating that further efforts are still needed as far as the independence, efficiency and effectiveness are concerned, as well as the importance of strengthening the integrity of the judiciary. While recognising the progress made over the past years, the 2016 Report underlines the urgent need for follow up on Justice Sector Reform Strategy and establishing a clear monitoring system. Further efforts are required particularly in the relation to introducing more qualitative criteria for appointment and appraisal of judges and prosecutors; continued developing of training programs, notably for the initial level and managerial positions, including on ethical and disciplinary matters; as well as the reform of execution procedure laws to effectively reduce the utility-cases backlog in courts and introduce court-annexed mediation in selected pilot courts. Given the extensive number of bodies operating within the justice sector in BiH stabile and well-coordinated mechanism is essential.

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)³ and by Subcommittee on justice, freedom and security (hereinafter: the Subcommittee). The Structured Dialogue is focused on the judicial reform, on issues related to processing war crimes cases as well as harmonisation of the national legislation with the EU *acquis*⁴. Due to the inter-links and sequencing of the process, the Structured Dialogue (in 2014) expanded the activities to additional rule of law (RoL) matters such as: anti-corruption, anti-discrimination, prevention of conflict of interest and measures to strengthen the integrity, accountability and efficiency of police forces within the existing legal framework⁵.

Work of the Subcommittee includes a large number of questions, which cover a wide range of topics, in order to identify the interconnection between different segments within the system of the rule of law. In this way it is possible to identify certain systemic weaknesses, as well as their solutions, in order to strengthen the entire system in the future, within the system of the rule of law. Regarding the relationship between the Subcommittee and Structured Dialogue on Justice, the Subcommittee has an opportunity to address issues at the institutional forum that is in the framework of the Stabilization and Association Agreement (SAA), while at the same time Structured Dialogue on Justice further helps to promote these

¹ Communication from the Commission of 11 March 2014, A new EU Framework to strengthen the Rule of Law - COM(2014) 158 (Web source: http://ec.europa.eu/justice/effective-justice/rule-of-law/index_en.htm Accessed on September 14, 2017)

² Web source: <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> Accessed on July 26, 2017

³ Web source: <http://europa.ba/Default.aspx?id=87&lang=EN> Accessed on July 7, 2017

⁴ The range of flexibility of the set operating framework of the Dialogue, in relation to the structure and content, partners involved, as well as the monitoring tools, are rather suitable for the complexity of the sector in question as well as the specificity of the BiH political and administrative structure

⁵ EC Progress Report 2014

issues within its ministerial composition, which will also help in terms of political leadership when it is needed, based on the discussions and talks at the level of the Subcommittee.

In addition to this, the process of Peer Assessment to Bosnia and Herzegovina High Judicial and Prosecutorial Council initiated by the European Commission conducted during 2017 resulted in a number of recommendations which will likely inform the reform path of the BiH judiciary. The areas addressed by the Peer Assessment Missions include: Financial Declarations and their verification in the Judiciary, Procedures and Criteria for the Appraisal of Judges and Prosecutors and the Appraisal impact on career Advancement and Disciplinary, as well the Initial and Continuing Legal Education for Judges and Prosecutors.

The court system in BiH

The court system in BiH is multi-layered⁶ with diversity of functioning of court system(s)⁷ at the state and entity levels: the State level of BiH, the Federation of Bosnia and Herzegovina (FBiH), Republika Srpska (RS) and Brčko District (BD) (see Annex, Table 2 and 3). This diversity often leads to inefficiency due to frequent conflicts over jurisdiction, and a variety of practices related to investigations and trials⁸. Therefore, efforts have been focused on formulating draft laws aiming at a more coordinated legal framework (draft Law on the Courts of BiH, providing for establishment of separate State-level Appeal Court, draft Law on the Prosecutor's Office of BiH). In this respect, the largest possible political consensus is a matter of priority⁹.

Sources of financing of judicial institutions and prosecution services¹⁰ are highly fragmented too. The distribution and development of the particular levels of the judicial system is uneven (due to the disharmonised funding priorities irrespective of horizontal or vertical actors' needs) and opens room for influence by the executive power¹¹. The budget allocated to courts and prosecutors' offices throughout the country and the HJPC in 2016 was EUR 119.35 million (slightly higher in absolute terms than in 2015), i.e. 0.81 % of the country's GDP, which is, however, slightly less than in 2015 when the allocation corresponded to 0.85 % of the GDP¹².

Due to general economic situation in the country, although planned, 13, 9% of the regular/reserve positions of judges and prosecutors remained empty and some of the investments, including prison facilities were postponed due to financial constraints¹³.

The prison system in BiH

The prison system in BiH is organised on entity levels. State level is in the process of establishment of its own prison, whilst BD has no facilities but under agreement utilise those of entity levels.

Most penal institutions in the country are struggling for resources, and are inadequate and unable to provide European and international standards and requirements. In the prison system in BiH there still exists at present a range of systemic organisational problems that erode the development of effective and efficient prison management. Prime amongst these are the introduction of effective performance management and devolved financial management systems, the development of coherent human resource management policies capable of giving effect to EU employment, health and safety norms and the development of a prisons estate that is fit for purpose.¹⁴ Moreover, legislation on the prison system is not sufficiently harmonised throughout the country. Execution of criminal sentences was hampered by the lack of coordination and harmonisation of procedures across the country. The backlog in the execution of criminal penalties in the Federation entity was considerably reduced, with 196 cases awaiting execution¹⁵. Current prison management is inadequate due to lacks in coherence of data which derives of weak statistics ability and management skills.

6 'Fragmentation of the judicial and prosecutorial systems' (Source: Opinion on legal certainty in BiH adopted by Venice Commission, June 2012)

7 Freedom House <https://freedomhouse.org/report/nations-transit/2014/bosnia-and-herzegovina> Structured dialogue

8 This is closely related to the issue of case backlog and especially in the case of war crime cases. Source HJPC. Additional source: Freedom House <https://freedomhouse.org/report/nations-transit/2014/bosnia-and-herzegovina>; Structured dialogue

9 EC Progress Report 2014; additionally, the draft law on HJPC was reviewed by the Council of Europe's Venice Commission with the strong recommendation related to the (de)politicisation of the appointment procedures for the HJPC's members and that of the Chief Prosecutors at all levels (Structured Dialogue, Thematic Plenary Session of April 2014) <http://europa.ba/News.aspx?newsid=6868&lang=EN>

¹⁰ Judiciary in BiH is financed by ten cantonal budgets, two entity budgets, the state budget and by the BD budget

¹¹ EC Progress Report 2014

¹² 2016 EC Report on BiH

¹³ Source: HJPC

¹⁴ Report of the Functional WGs on implementation of the Action plan of justice Sector Reform Strategy in BiH for period 2009 – 2013, p 14

¹⁵ 2016 EC Report on BiH

The application of international standards is being monitored as far as the prisoners with special needs are concerned¹⁶ and a Framework plan of activities for improving the health care of the prison population has been developed. Additionally, as part of the monitoring system, a prison inspection at all levels of government has been established but the implementation is progressing slowly¹⁷. The international obligation of establishing National Preventive Mechanism according to the Convention against torture is still to be fulfilled.¹⁸

The legal possibilities of applying alternative (non-sanction) sanctions exists but are not in regular use¹⁹.

Generally, some progress has been made as far as the prison system is concerned²⁰ including a newly established prison administration in BiH²¹, re-categorisation of prisons and classification within prisons in BiH²².

Functioning of the justice system in BiH

As far as the efficiency of the courts is concerned, a package of measures and technical reforms were introduced by HJPC tackling the reduction of the backlog of pending cases²³. However, it still needs more work on structural solutions. The backlog of pending non-utility court cases during 2016 was reduced by 10% compared with 2015 with a total of 339.125 pending cases. As a result of the implementation of their backlog reduction plans, courts completed 101.758 old cases out of the 164.532 cases that were planned in 2017, achieving 62% of the plans' targets in the first six months of 2017²⁴. Since the start of backlog reduction plans' implementation in 2011, overall of 759.659 oldest cases were resolved by courts by mid-2017. However, length of non-utility cases in courts still remains high, requiring introduction of measures for more effective processing of cases and reducing their length. In addition to this, the quality of the court decisions needs to be improved alongside with the level of harmonisation of the court practice. On the other hand, the bulk of the case backlog is consisted of over 1.7 million of unpaid utility bills cases as of December 31, 2016²⁵. Overall, the number of these cases remains high at all levels due to limitations of the legal framework, as well as human and financial resources. Monitoring of the day-to-day activities of courts and prosecutors' offices takes place through the 'Case Management System' used by all courts and prosecutors' offices in BiH, as well as through Business Intelligence System. In addition to semi-annual and annual statistical reports submitted to the High Judicial and Prosecutorial Council (HJPC), all courts and prosecutors' offices produce an annual activity report, which is submitted to respective Ministries of Justice (MoJs) and the HJPC²⁶. Court settlement continues to be used more frequently than out-of-court mediation. Only two cases went to mediation, compared with 6.280 cases adjudicated using court settlement from October 2015 to September 2016, meaning that barely 1% of cases were solved through alternative dispute resolution methods.

The Prosecutor's offices in BiH had a total of 14.469 pending cases at the end of 2016, representing overall 7% decrease in backlog compared to the end of 2015²⁷. The overall number of filed indictments in 2016 was 13.623, whereas 70% of indictments are related to general crimes, war crimes and economic crimes²⁸.

¹⁶ A special department for high-risk prisoners was built in Zenica Prison, department with special regime in Foča Prison, medical department in Zenica Prison, additional pavilion in Banja Luka Prison, separate building for accommodation of women and juveniles in East Sarajevo Prison and facility for accommodation of juvenile perpetrators in Orašje Prison - Report of the Functional WGs on implementation of the Action plan of justice Sector Reform Strategy in BiH for period 2009 – 2013, p. 15

¹⁷ Report of the Functional WGs on implementation of the Action plan of justice Sector Reform Strategy in BiH for period 2009 – 2013, p. 16

¹⁸ Council of Ministry of BiH in 2012 made a conclusion that NPM should be established within The Human Right Ombudsmen of BiH according Paris principal

¹⁹ Report of the Functional WGs on implementation of the Action plan of justice Sector Reform Strategy in BiH for period 2009 – 2013

²⁰ Report of the Functional WGs on implementation of the Action plan of justice Sector Reform Strategy in BiH for period 2009 – 2013, p. 12 It is also important to note that the laws regulating the execution of criminal sanctions applied in BiH are not fully in line with existing international standards and Council of Europe Recommendations, as well as the standards stemming from court practice of the European Court for Human Rights in Strasbourg and other regulations related to execution of criminal sanctions. While the RS Law on the Execution of Criminal Sanctions is partially harmonized with the international standards and regulations of the European Union, the BiH Law and FBiH Law still need to undergo the procedure of aligning these laws with the above mentioned, and other relevant European regulations in this area.

²¹ Report of the Functional WGs on implementation of the Action plan of justice Sector Reform Strategy in BiH for period 2009 – 2013, p. 12 - 13

²² Laws on Execution of Criminal Sanctions, Detention and other Measures in BiH regulated categorisation of correctional-penal institutes in BiH and by-laws of the entities regulated classification and manner of re-classification of the prisoners.

²³ EC Progress Report 2014

²⁴ HJPC BiH web suite, accessed 28 July 2017

²⁵ HJPC BiH statistical data gathered from courts' annual reports for 2016

²⁶ 2015 EC BiH Report

²⁷ Out of 22.909, 16.920 filled complaints (out of which 10.649 in last two years) and 5.989 investigations (out of which 3.787 in last two years). Out of the total number, 3.941 cases were older than three years (complaints 2.624, investigations 1.317), Source: Structured Dialogue 2016 HJPC Annual report, Plenary Session, 2014p. 101)

²⁸ 2016 HJPC Annual report, p. 101-103

Due to the complex structure of BiH, the harmonisation process of the legislation is rather complex and requires planning, human and financial resources, additional time and greater efforts. A positive development in this regard has been the May 2015 Council of Minister's (CoM) adoption of amendments and changes to the BiH Criminal Act²⁹. Notwithstanding, the legal framework should be followed by uniformity of implementation, harmonisation with EU and international standards and capacity development of the courts and prosecutors' offices (POs). The implementation of the National War Crimes Strategy (NWCS) of BiH needs to be hastened without delay, particularly regarding complex cases, where the foreseen 8-year timeframe has lapsed in December 2015. Following up on this issue in early 2017, the BiH CoM established the working group tasked with preparing amendments to the NWCS. These amendments will focus on establishing new deadlines for processing war crime cases, revision of the existing criteria concerning case complexity with the purpose of referral of a greater number of cases to the entity and Brcko District judicial institutions. Consequently, the larger influx of war crime cases to the entity judicial institutions is expected, requiring significant strengthening of human and material resources of these institutions. When it comes to processing of cases transferred from the International Criminal Tribunal for the former Yugoslavia (ICTY), the so called "Category II" cases were completed during 2015³⁰. However, as a large number of war crime cases still remain unsolved, support to the BiH judiciary in terms of necessary capacities still remains a priority. The track record in effective investigation, prosecution and conviction of perpetrators of corruption and war crimes cases needs to be further improved and existent communications, coordination and cooperation among judicial institutions and law enforcement agencies need to improve.³¹

The regional co-operation³² among courts and prosecutors' offices of BiH, Serbia and Croatia is rather supportive as far as the fight against impunity, war crimes, crimes against humanity and genocide is concerned. On the other hand, there is an evident need for improving the status of victims of rape, sexual violence, victims of war crimes (sexual violence especially)³³, gender based violence and discrimination and witness protection measures in general³⁴. Legislation on rights of victims of torture remains to be adopted³⁵ including the implementation of UN resolutions (like UNSCR 1325) and recommendations provided under the Committee on Elimination of Discrimination against Women (CEDAW)³⁶, the Committee against torture (CAT) and others.

Overall, due to the complex structure of the justice sector – the implementation and harmonisation of the legal framework in BiH is difficult and leads to inefficiencies and ineffectiveness. Still, the existent technology (CMS, TCMS) allows rather accurate data collection and subsequent analysis in order to respond to the address and improve the implementation of various policies relevant to the EU acquis³⁷. The CMS/TCMS system is a part of a complex information system which provides everyday support to the work of courts and POs. Further investments are needed to strengthen the security of the system, maintain the existing services and provide the required services supporting the reform and capacity building of the judiciary.

The Court Police agencies in BiH, in particular those at the entity level, continually lack the resources necessary for fulfilling their key role of supporting the judiciary, thus directly hampering its effectiveness and security and affecting the public trust.

Further reform of the criminal justice system is a prerequisite for the development of a democratic society based on the rule of law. Challenges such as budget constraints, increased workload, increased public expectations and the complexity of criminal cases require that the process and the dynamics of reforms to be more comprehensive. A special challenge is the seizure and management of illegally acquired property in criminal proceedings before the courts of BiH due to the need

²⁹ Team for monitoring and evaluation of Criminal acts application has worked throughout 2014 which has made possible development of analysis of criminal and misdemeanour acts considering improvements in advancing efficiency of investigations, demarcating competencies for certain criminal acts, resolving conflict of competencies between Law Enforcement and Judicial institutions, and harmonising legislation with international law, following to recommendations of GRECO, MONEYVAL and FATF. Work on improvement of Criminal legislation was part of MoJ BiH programme for 2014.

³⁰ BiH Prosecutor's Office Annual Report for 2015

³¹ Structured Dialogue, May 2014

³² EC Progress Report 2014, p. 22

³³ EC Progress Report 2014, 14,

³⁴ EC Progress Report 2014, p. 14, including adequate funding for Witness Protection Programme, ensuring adequate facilities at courts and POs for implementation of Laws on Protections of Witnesses under Threat and Vulnerable Witnesses as well as more proactive use of these tools in coordination with witness support mechanisms established at courts and prosecutors' offices.

³⁵ EC Progress Report, 2014, p. 22,

³⁶ Committee on Elimination of Discrimination against Women; web source: <http://www.wilpfinternational.org/cedaw-and-womens-rights-in-bosnia/>

³⁷ E.g. Directive 29/2012/EU, etc.

for efficiency and effectiveness. Weakness of the system is lack of capacities in the prosecution phase, as well as low resourced and with lack of capacities the competent authorities for the management of confiscated property.

Further to the functioning of the justice sector, the new JSRS recognises the need for further investment of efforts in the area of strategic planning, cost control, quantitative performance, and inter-institutional cooperation in order to harmonise the policy and strategy framework with the budgetary planning and the resulting services.³⁸

Access to justice

The legal framework on free legal aid (FLA) is still incomplete throughout the country. The country adopted a state level legislation on FLA³⁹. The provision of FLA is weak and inconsistent throughout the country resulting in insufficient access to justice by the citizens.⁴⁰ Consequently, an extensive free legal assistance system at all levels in BiH should be established in order to ensure that the economic status of an individual does not prevent her/him from exercising his/her rights before the law.⁴¹ A significant part of FLA is provided by Civil Society Organisations (CSOs) whose functioning depends on donor financing. Some CSOs are specialised in providing services of FLA, i.e. in the area of protection of woman victim of violence, antidiscrimination and similar. As of 2010 in BiH is operational network of CSOs called "Justice Network" which operates in the area of rule of law and which protects human rights. Yet in 2012 Memorandum of Understanding was signed between 11 CSOs with support of UNDP establishing FLA network. This network serves as point of departure where one can find information on FLA. Although improvements have been noted, additional efforts are needed in relation to equality of rights, criteria for receiving FLA as well as the procedures in place in order to guarantee an equal level of access. Therefore, legislation and funding for an effective system of FLA still needs to be developed, especially in terms of improvement of implementation and monitoring capacities of the legal aid providers (e.g. cooperation with CSOs). Alternative modalities of dispute resolution as a concept within FLA should be considered. The status of the CSOs in the FLA system and their funding modality require changes, due to the importance of the role of CSOs when it comes to the categories such as asylum seekers, refugees, victims of trafficking and victims of discrimination.

Human resources

As a general remark related to justice, the bar exams require changes in order to adapt to the requirements of challenging and modern society and also considering the legal framework.

Competent authorities at all levels have to secure the financial and human resources necessary to properly investigate and process cases in a timely manner. In this regard, the systematised vacant posts throughout the judicial and prosecutorial network should be filled as a matter of priority⁴². In addition, there is the need for an improved mechanism for performance assessment of the judicial (and prosecutorial) staff. Also, the lack of motivation among judges, and other court employees needs to be addressed⁴³.

In relation to integrity of judiciary officials, the personal financial statements of judges and prosecutors are regularly collected by the HJPC on an annual basis. The data from the financial statements are available for Office of the Disciplinary Council's requests. Improvement of the system of recording and monitoring of the data from personal financial statements has commenced. As a preventive measure, annual integrity plans have been introduced, but monitoring thereof has yet to be performed. A functional system for submission and monitoring of assets' declaration of judges and prosecutors⁴⁴ should contribute to the accountability and integrity of the judicial sector. Any structural reform that reintroduces a strong role of the executive and legislative branches would determine a rollback, especially if specific safeguards are not introduced to prevent overexposure of appointments to influence of political parties for example in relation to the rules regulating both

³⁸ Financial Plan for JSRS 2012

³⁹ Official Gazette BiH nr 83/16.

⁴⁰ EC Progress Report 2014 - Structured Dialogue, Recommendations to the third meeting: i) welcomes the Draft Law on Free Legal Aid of BiH, thus providing the minimum standards required for the alignment with the ECHR, ii) urges the MoJ of BiH to ensure that the Draft Law has the largest possible support in the parliamentary procedure, including introducing subsequent amendments, if necessary, iii) reminds all relevant authorities of the importance to ensure that free legal aid is guaranteed for all citizens based on equal standards, provided through a professional, qualified and accountable system and calls those that have not adopted their own free legal aid legislation to do so. <http://europa.ba/News.aspx?newsid=5389&lang=EN>

⁴¹ 2016 EC Report on BiH

⁴² Structured Dialogue Third Meeting

⁴³ Strategic plan of the Court of BiH 2014 - 2016

⁴⁴ Structured Dialogue, May 2014

the appointments of the members of the judiciary by the HJPC and the procedure for the appointment of HJPC members itself⁴⁵.

The number of complaints submitted to the Office of the Disciplinary Counsel regarding judicial office holders, particularly prosecutors, has increased in the last two years (see Table 3). In 2016, the Office of the Disciplinary Prosecutor registered 919 complaints against holders of judicial and prosecutorial functions and issued 922 decisions on merits, including the last years' remaining cases. It initiated 32 disciplinary proceedings (against: 22 judges, 2 court presidents, 2 chief prosecutors, 4 prosecutors and 2 legal associates), which resulted in 28 sanctions being imposed, mainly written/public reprimands or salary reductions and only one dismissal/resignation⁴⁶.

The key to greater levels of accountability, as well as effective harmonization and coordination is establishing performance management system that enables decision-makers, as well as the public, to better assess progress achieved in reform initiatives and identify areas in which additional initiatives are needed⁴⁷.

Entity Judicial and Prosecutorial Training centres (JPTCs) are conducting induction and continuous training for judicial officials and candidates for judicial officials⁴⁸, extending the network of lectures and mentors, improving its curricula by evaluation of its trainings, technical equipping of its premises, strengthening of cooperation with national and foreign institutions and organizations (see Table 5). On-line trainings have been introduced, but require further development. Due to the decision of the minimum training days to be attended per judge and other judicial staff, the standards and methodologies of the centres needs to significantly improve. Furthermore, institutional reforms aimed to improve both the delivery and substance of trainings, as well as inefficiencies of the system have been identified as a shortcoming.⁴⁹ Also, adequate mechanisms for developing training of non-judicial staff⁵⁰ at courts and prosecutors' offices should be introduced.

As for the fundamental rights there is still no overarching policy document on promotion and enforcement of human rights. The Ombudsman still lacks adequate human and financial resources to perform its functions as national human rights institution. Training on the ECHR and ECtHR case-law continued for judges, prosecutors, legal associates and advisers of the Constitutional Court and the Court of Bosnia and Herzegovina.⁵¹

Fight against corruption

The fight against corruption has been a central element of the government's activities and a number of investigations have been launched, including high level corruption⁵² (see Table 4). Nevertheless, track record in correlating actions (investigations, prosecutions and convictions) against perpetrators of corruption is missing positive outcome and it produces a spill over effect in the society.

In 2009 the Anti-corruption strategy was introduced (2009-2014) and a new strategy for the period 2015 – 2019 has been adopted by CoM. A specialised Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APCCFAC) has been established; still little progress has been achieved in reducing corruption which continues to affect the entire public sector.⁵³ Further efforts are needed in raising the awareness of the negative lasting effects of corruptive behaviour in the society. Having a preventive role, the APCCFAC as well as other bodies involved in the prevention of corruption should further develop their strategic and operational capacities. The anti-corruption and conflict of interest measures within the public sector, with strong reference for the justice sector should be reinforced in a more systematic way⁵⁴ (procedures, preventive measures, monitoring and disciplinary measures).

Transparency

Although a number of improvements have been made as regards the transparency and openness of the judicial system towards citizens (judicial web portal encompassing a number of informative web services, Judicial Documentation Centre and in particular the number of user logins to the web service 'Online Access To Court Cases' has quadrupled in 2016

⁴⁵ Structured Dialogue April 2014

⁴⁶ 2016 HJPC Annual Report and 2016 ODC Annual Report

⁴⁷ Structured Dialogue April 2014, and JSRS

⁴⁸ In 2013 - 2375 training days have been conducted: 1907 for 361 judges and 468 for 92 prosecutors. Induction courses for new employees: 6 trainings

⁴⁹ Also the EC Progress Report supports initial and continuous capacity building for judicial and officials and candidates for judicial officials.

⁵⁰ In general, this specific target group is not covered by Judicial and Prosecutorial Training Centres but left asaid

⁵¹ 2016 EC Report on BiH

compared to 2015⁵⁵), due to the political influence, the public perception in BiH still does not reflect high trust in the competence and independence of the judiciary. Full implementation of the Law on Free Access to Information seeks for improvements.

Human rights and the protection of minorities

Bosnia and Herzegovina, in order to fulfil its international obligations in the implementation of international human rights conventions, faces many challenges regarding protection of human rights and the protection of marginalized and vulnerable groups.

The Commission's **BiH Report 2016**⁵⁶ points out that the fragmented, overall incomplete and un-harmonised legal and institutional framework does not ensure equitable procedural rights and maintains discrimination in access to justice. The lack of effective implementation of legislation on the prevention of and protection from gender-based violence, in particular domestic violence, remains a concern.

The lack of reliable data on discrimination cases still hampers effective policy-making. The number of registered discrimination complaints is not accurate. The existing unharmonised system of monitoring and reporting of MHRR does not reflect the real situation of human rights in BiH. The most affected social groups by aforementioned problems are: children, persons deprived of liberty, elderly people, persons with disabilities, women, and minorities in particular Roma, returnees, women and men victims of wartime sexual violence, women in rural areas, LGBTI etc.

There is no systematic, coherent and coordinated approach in comprehensively addressing the problem of discrimination among the main coordinating institutions MHRR, Ombudsman BiH and GEA. The cooperation between those 3 institutions should be further supported in order to enhance communication and ensure complementarity of future actions. For that reason there is a need for creating an action with aim to support the effective protection of human rights and anti-discrimination, in particular towards the most vulnerable and marginalized groups in BiH.

The Commission's **BiH Report 2016** explicitly states that in the following period BiH should: "...adopt a whole-country strategy in the field of human rights and the fight against discrimination". In that respect MHRR has developed a Strategy for the Promotion and Protection of Human Rights in Bosnia and Herzegovina⁵⁷ with several priority areas and rights in accordance with the recommendations.

In other reports on BiH, issued by other international bodies (such as...) it has been also emphasized the need to systematically address the issue of discrimination.⁵⁸ In that respect MHRR has developed the Anti-discrimination program in Bosnia and Herzegovina.⁵⁹ The social, economic and political status of the Roma community is still rather weak⁶⁰ and although significant financial and human efforts have been engaged, there is an increasing need for further support to this population...

The Commission's **BiH Report 2016 points out need for revising** Roma action plan on employment, housing and healthcare. In that respect MHRR has developed the Action plan of BiH for addressing Roma issues in the field of employment, housing and health care for the period 2017-2020⁶¹, stating four strategic goals for solving Roma issues. Despite the fact that the AP foresees that these goals will be financially supported by the state itself, full implementation will only be possible through the additional financial resources provided by donors.

⁵⁵ In general, this specific target group is not covered by Judicial and Prosecutorial Training Centres but left asaid

⁵⁵ 2016 EC Report on BiH

⁵⁶ Annual Report by Court of BiH (18 verdicts and 1 vindications)

⁵⁷ It remains most acute in the areas of service delivery and access to employment. 2013 Progress Report on the activities of the Agency for Prevention of Corruption shows that most of the corruption cases are related to the bodies having vested authorities in the business, health, education and sport sectors.

⁵⁸ The Gender dimension of anti-corruption should be treated

⁵⁹ 2015 and 2016 EC Reports on BiH

⁷⁰ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_bosnia_and_herzegovina.pdf

⁵⁸ In addition to the Universal Periodic Review⁵⁸ the ECRI of the Council of Europe in its new report on Bosnia and Herzegovina from February 2017, is noted the issue of discrimination in Bosnia and Herzegovina.

⁵⁹ This Anti-discrimination Program is still in form of a draft

⁶⁰ Information on grants dedicated to the realisation of the Action Plan on solving Roma problem in the areas of employment, housing and health (2013), source: Ministry of Human Rights and Refugees. Special Report on status of Roma in BiH (2014), <http://www.ombudsmen.gov.ba>

⁶¹ AP is forwarded to Council of Ministers for adoption

Gender Action Plan of Bosnia and Herzegovina⁶² (GAP BiH 2013-2017), among other goals also aims to establish and strengthen the system, mechanisms and instruments for implementation of gender equality, in particular to monitor and improve the application of international and domestic standards for gender equality. In July 2015 Council of Ministers of BiH adopted Framework Strategy for Implementation of the Council of Europe's Convention on the Prevention and Combating Violence against Women and Domestic Violence for the period 2015 – 2018 ("Strategy"). The Strategy is an exhaustive framework that defines the implementation of the Istanbul Convention in BiH and the steps necessary for harmonization of the legislative and institutional mechanisms with the Convention. Unfortunately, the Government of Republika Srpska (RS) withheld its support for this document, considering it a matter under Entity and not State jurisdiction, while at the same time, acknowledging the obligations stemming from the Convention and implementing the same. Fact that the Strategy is not recognized in the RS is hampering a consistent, harmonized and effective implementation of the Convention throughout BiH. There is also an initiative for support from the EU for a Gender Equality Facility (GEF) in BiH, which is planned to be implemented by UN Women.

Effective prevention of vulnerable and marginalised groups needs to be tackled further especially with regard to cases of hate speech, violence and discrimination.⁶³ Additional attention is needed with regard to children's right to education, protection of vulnerable groups (especially women victims of sexual assaults), including defenders of human rights. Also, the need for promotion of human rights and prevention of torture and ill-treatment reaffirms the need for better coordination and performance of the relevant institutions.

In the implementation of the Revised Strategy for the implementation of Annex VII of the Dayton Peace Agreement, the MHRR identified main problems to sustainable return: uneven regulations in BiH that regulate social protection and pension and disability protection; inability to exercise the right to social protection on the same basis especially for displaced persons and returnees; high rate of returnees and displaced persons without healthcare, uncompleted process of harmonization of state, entity and cantonal laws and by-laws in the field of education, re-qualification of the returnees, additional qualification for returnee population and discrimination in the area of work and labour.

People with disabilities are still one of the more fragile groups in society and are definitely among the most discriminated. For this reason, need for a comprehensive analysis of the harmonization of BiH legislation with the UN Convention on the Rights of Persons with Disabilities is noted as a strong support for resolving the implementation and execution of specific targeted recommendations and advisory opinions of the CoE supervisory bodies and recommendation proposed by the Committee on the Rights of Persons with Disabilities. (CRPD/C/BiH/CO/1)

Although an Act on Personal Data protection⁶⁴ is in place and a specialised agency exists, the need for further enhancement is essential, especially by the law enforcement bodies at the entity levels. Preparations for personal data protection are still at an early stage⁶⁵.

The authorities need to pay special attention to freedom of expression since political and financial pressure on the media is high and there are cases of intimidation and threats against journalists and/or editors and media ownership.

As a result of intensified promotion of human rights and awareness raising among citizens in 2013 the work⁶⁶ of Human Rights Ombudsman (HRO) has been intensified⁶⁷. The majority (59, 30%) of the complaints were related to the civil and political rights followed by economic and social rights (22, 01%). More precisely, in 2014 the majority of the complaints related to civil and political rights were related to the judiciary (579), the administration (517), and free access to information (218). The majority of complaints concerning economic, social and culture rights were related to labour rights, right to pension, social protection⁶⁸. The least number of complaints are in the area of national, religious and other minorities rights which however does not seem to really reflect the actual situation. In the area of discrimination complaints have also been

⁶² GAP has been adopted for the period 2013-2017

⁶³ LGBTI persons, EC Progress report

⁶⁴ Official Gazette BH nr. 49/06

⁶⁵ EC Progress report 2014. More precisely, this should be taken into relation public interest – transparency vs. data protection.

⁶⁶ Platform for the cooperation of the Ombudsman and CSA has been passed in October 2010, as well as guide and criteria for cooperation with Ombudsman – these two documents define methods of communications and cooperation of Ombudsman and CSOs

⁶⁷ In relation to 2012 it has been registered a 12,23 % increase of citizens addressing the OHR

⁶⁸ Web source: http://www.ombudsmen.gov.ba/documents/obmudsmen_doc2015051514434319eng.pdf

filed⁶⁹. In 2014 the number of complains related to discrimination increased by 16, 16 % comparing with 2013, especially in the area of mobbing⁷⁰.

Overall, the implementation of the existing legal and strategic framework related to rule of law (justice sector and fundamental rights) needs to be further enhanced. Besides the needs for further strengthening the policy development and implementation, the capacities of the MHRR remain to be further strengthened as well as those of the HRO⁷¹ and the Agency for Gender Equality *of BiH*.

1.2. SWOT analysis

The sector overall description has been summarised through a SWOT analysis.

The aim is to highlight key internal strengths and weaknesses of the sector and to correlate them with external (positive and negative factors). According to the specificity of the sector, the analysis has been divided into four most significant, inter-linked areas, such as: human resources, institutional framework, processes and infrastructure.

Strengths	Weaknesses
Human resources <ul style="list-style-type: none"> ✓ Increased capacities for fight against corruption and Integrity plans introduced ✓ Well established system of capacity building for judicial and prosecutorial officials, incoming staff, civil servants, other staff ✓ Specialised training bodies (institutions) for the judicial sector ✓ Introduced quotas on mandatory training days for judicial office holders ✓ Mandatory training for civil servants ✓ Benefits of public sector employment security versus private uncertainty 	Human resources <ul style="list-style-type: none"> ✓ Limited human resources in institutions at all level of governance throughout the country in justice and fundamental rights ✓ Lack of strategic approach to human resources management, change management and strategic planning ✓ The Bar exams do not reflect current/contemporary needs in justice ✓ Inadequate selection/systematic criteria for selection process related to recruitment process (judicial and non-judicial staff) ✓ Lack of systematic training for non-judicial staff ✓ Lack of specialised, peer-to-peer trainings ✓ Certain level of risk in assuring adequate investigation due to the discretion of Chief prosecutor to delegate investigations to prosecutors
Institutional framework <ul style="list-style-type: none"> ✓ Satisfactory level of participatory model of drafting JSRS (2008 – 2012; 2014-2018) and partial satisfactory level of implemented activities under JSRS and its Action Plan (2009 - 2013) ✓ Legal and institutional framework for the observance of human rights is in place ✓ The existence of the independent judicial body – HJPC BiH ✓ The existence of Human Rights Ombudsman of BiH and network of field offices throughout BiH ✓ Institutional framework for gender equality established (established and functioning GEA, entity gender-centres, parliamentary committees etc) 	Institutional framework <ul style="list-style-type: none"> ✓ JSRS monitoring and evaluation framework not in place mandated by not having JSRS Action Plan redrafted in 2016 and adopted in first quarter of 2017 ✓ Inadequate organisational structure and competencies of the stakeholders involved in judiciary and fundamental rights ✓ Inadequate co-operation between police and prosecution services ✓ Lack of efficiency in implementation of legal and various strategy framework on human rights on different levels of government ✓ Complexity of multi-layered court system and diversity of functioning of court system(s) ✓ Unclear division of powers and competencies among different bodies established for combating corruption ✓ Low level of coordination and communication amongst numerous stakeholders in the Rule of law and Fundamental Rights sector ✓ Highly fragmented system of budgeting in judiciary ✓ Inadequate coordination and cooperation system in the area of fundamental rights ✓ Lack of support to HJPC BiH, political interference in judiciary
Processes	Processes

⁶⁹ 3,95 % decrease of complaints in the area of exercise of rights on the basis of disability; 2,56 % increase of the complaints on the basis of HR violation, 5.137 opened cases on violation of human rights (2,56 % increase) out of which only 3.158 registered in 2013, 2.531 cases competed (69,73% out of the total number of processed cases in 2013). Source: Annual Report of the HR Ombudsman for 2013

⁷⁰ Web source: http://www.ombudsmen.gov.ba/documents/obudsmen_doc2015051514434319eng.pdf

⁷¹ Difficulty in functioning of these institutions is also due to the reduction of budget funds. In accordance with the Conclusion of the BiH Council of Ministers ???, the Institution of Ombudsman is entrusted with the establishment of national preventive mechanism pursuant to the Optional Protocol (NPM) to the UN Convention against Torture and Inhuman or Degrading Treatment or Punishment. Source: UPR 2014 on HR

<ul style="list-style-type: none"> ✓ New set of draft laws related to central State-level (on HJPC, Courts of BiH, Prosecutor's Office of BiH) ✓ Openness of judicial sector in data sharing with the public (judicial web portal) ✓ Duration of criminal proceeding is reduced ✓ Legal framework for execution of criminal sanctions at all levels of BiH introduced ✓ Functional Case Management System in judicial system (courts and prosecutors' offices) ✓ Harmonised acts related to fight against corruption ✓ Drafting annual action plans on resolving cases in courts and prosecutor offices ✓ Framework for out-of-court mediation is in place ✓ Established Working group on harmonisation of Anti-discrimination Law in BiH with the EU ✓ National Preventive Mechanism designated to the Human Rights Ombudsman of BiH ✓ Act on FLA in State, FBiH, RS, BD and 8 cantons ✓ Established VWS mechanism and free legal Aid in certain courts (50% of jurisdiction/70% of territory)⁷². ✓ Referral mechanisms for addressing gender based violence established in most communities 	<ul style="list-style-type: none"> ✓ Different evolution of jurisprudence and incompatibility of the entity levels (and BD) legislation with the HJPC's prerogatives ✓ Slow and weak process of adoption of the new set of draft laws to central State-level ✓ Weak access to justice, Insufficient good practice on Free Legal Aid and use of mediation and other alternative dispute resolution measures in courts ✓ Lack of implementation of Constitutional court decisions and Ombudsman recommendations ✓ Lack of implementation of Structured Dialogue recommendations and delayed adoption and monitoring of implementation of JSRS ✓ Overall case backlog ✓ The length of unresolved cases is high ✓ Quality of court decisions is low ✓ Not fully functional Document management system for the monitoring implementation of the JSRS ✓ Lack of financial resources for implementation of Antidiscrimination law of BiH and antidiscrimination policies ✓ Delays in serving sentences of convicted persons ✓ Lack/inconsistency of systematic planning documents, identified policies supporting planning financial resources ✓ Weak track record related to war crime cases, anti-corruption and anti-discrimination processing in courts and prosecutors' offices ✓ Inadequate methodology and cooperation in data collection, processing and results related to fundamental and other human rights including preventive measures and awareness raising ✓ Process of establishing and putting into full functioning of referral mechanisms for addressing gender-based violence not completed yet
Infrastructure <ul style="list-style-type: none"> ✓ Videoconferencing system in judicial premises for distant testimony available ✓ Judicial Information System and CMS/TCMS are in place ✓ Mostly material and technical preconditions for prison system existent 	Infrastructure <ul style="list-style-type: none"> ✓ Inadequate infrastructure of the court, prosecution and prison system ✓ Lack of technical capacity in court police agencies for effective support to the judiciary (especially at the entity level) ✓ Lack of technical capacity in Agencies for the management of confiscated property (especially at the entity level) ✓ Low IT infrastructure in prison facilities ✓ Inadequate material and technical conditions for operative Human Rights Ombudsman of BiH
Opportunities	Threats
Human resources <ul style="list-style-type: none"> ✓ Strengthening the efficiency of judicial institutions through professionalism of the judicial staff ✓ Availability of technical assistance from EU Member states and bilateral assistance ✓ Strengthening the efficiency of implementation of antidiscrimination policies through capacity building of the Human Rights Ombudsman, MHRR and institutional gender-mechanisms. 	Human resources <ul style="list-style-type: none"> ✓ Politicisation of appointment procedures at the various levels for judicial system ✓ Public trust in judiciary is low ✓ High index on corruption in rule of law with increase trend ✓ Slowdown in EU integration and approximation process ✓ Lack of impetus for reform due to insufficient reform results undertaken during previous programming period ✓ Budgetary cutbacks
Institutional framework <ul style="list-style-type: none"> ✓ The web portal may stimulate further development of Judicial Documentation Centre ✓ Positioning a number of institutions dealing with justice sector and/or fundamental rights in the process of European integration ✓ Strengthening the role of HJPC might accelerate the judicial reform process 	Institutional framework <ul style="list-style-type: none"> ✓ Political or media pressure on further development of institutional framework in the justice and fundamental rights ✓ Weak institutions, unclear competencies and functions might lead to slowdown of the process of justice and fundamental rights reform and fulfilment of the obligations towards international obligations

⁷² in accordance with Directive 29/2012/EU

<ul style="list-style-type: none"> ✓ FLA legal framework with its services almost in place and provided support of UNDP and EU lead to more access to justice ✓ Achieving high standards in serving/executing criminal sanctions by NPM 	
Processes <ul style="list-style-type: none"> ✓ Improving the public confidence in judiciary ✓ Promotion of clear impacts of justice sector on economic development ✓ Promotion of clear impacts of antidiscrimination policies on security, democracy and economic development ✓ Availability of financing from EU and bilateral funds 	Processes <ul style="list-style-type: none"> ✓ Lack of impetus for reforms ✓ Politicisation, inefficiency and corruption in judiciary undermines citizens status in regard to rule of law ✓ Cancellation or delays in delivery of donor aid due to non-ratification of donor agreements
Infrastructure <ul style="list-style-type: none"> ✓ Use of EU assistance in accelerating the fulfilment of infrastructure plans 	Infrastructure <ul style="list-style-type: none"> ✓ General economic crisis might block or delay the planned investments

Source of information for the SWOT analysis:

- Bosnia and Herzegovina Progress Report, European Commission (2014-2016);
- Structured Dialogue on Justice and Additional Rule of Law Matters between the EU and BiH May 2014;
- Other Country Strategies and Reports.

2. SECTOR APPROACH ASSESSMENT

2.1. Assessment criteria

The rule of law is at the centre of the enlargement strategy. As a potential candidate, BiH has to ensure that its judiciary is independent, impartial, efficient and accountable, and that its law enforcement agencies have the capacity and support to fight corruption and organised crime.

While there have been improvements in the judicial efficiency, a large backlog of civil and criminal cases remain. Length of court cases is high and it exceeds legal and even reasonable timeframes which take in the account the resources of courts to process the cases. The fractured budgetary organisation and interferences by other branches of government undermine its independence. Similarly, there are concerns on the efficiency and independence of the law enforcement due to excessive political influence on operational policing, patronage and corruption.

Strategic orientation and vision for the development of this sector is described in sub-sector strategies. Although evidencing the practice of developing strategic documents, the existing strategies are somewhat overlapping. There is a need to improve training on strategic planning, especially in relation to integrating other sub-sector strategies under the main strategic framework. The justice sector coordination and donor coordination led by MoJ and HJPC is developing and functioning with perspective of further enhancing its role. Also, the financial applications follow the strategic documents. Monitoring and evaluation tools for strategy are to certain extent set with perspective for further development, especially in the area of performance assessment framework and automation of processes. The new JSRS 2014 – 2018 is reflecting these needs.

The weak cooperation between law enforcement agencies and prosecution services impairs their preparedness to fight corruption, economic and organised crime.

The protection of fundamental human rights needs to be further enhanced. Despite the legal framework being in place, its implementation and enforcement remains uneven throughout the country and remains a key priority for development. Special attentions needs to be given to the area of ensuring fundamental human rights including accessing the rights, access to information, free legal aid and similar. More notably, the national sector policies deployed among crucial strategies related to fundamental rights need for more coherent sector policy formulation. The mechanisms for sector coordination in planning and implementation of these policies need to be further reinforced. The monitoring and evaluation tools for the strategies need to be deployed evenly across the sector with clear focus on results, including a relevant performance assessment framework.

The focus of IPA II assistance is on enhancing the effectiveness, accountability, integrity and the efficiency of the judiciary, enhancing justice for citizens, enhancing capacity and quality of execution of criminal sanction, fighting against organised crime and corruption, prosecuting war crimes, and on the enforcement of fundamental rights.

Overall, the judicial efficiency should improve, in particular through the reduction of the backlog and decreasing the length of civil and criminal cases. The independence of the judiciary should be assured and accountability improved. Every citizen should have access to justice, and in particular the vulnerable groups should be able to exercise their fundamental rights.

2.1.1. National sector policy (ies) /strategy (ies)

The **rule of law** is at the heart of the enlargement process. Therefore, issues such as judicial reform, fight against organised crime and corruption need to be tackled early in the accession process to demonstrate a solid track record of sustainable results. On the other hand, the respect of fundamental and other human rights present the opposite side of the process which verifies the real existence, efficiency and effectiveness of the rule of law.

The justice sector contributes to the fulfilment of the obligations related to the harmonisation of the legislation with EU Acquis under political criteria set in the SAA, as well as meeting BiH's other international obligations, such as the UN core human rights treaties and the European Convention for protection of human rights and fundamental freedoms.

So far, the policy approach related to this sector in priority setting has not been properly followed up. In fact, more efforts should be addressed to meet the need for adequate monitoring and evaluation of the sector reform and advancing towards a major integration with European standards and more specifically the Copenhagen criteria.

Strategic framework - Justice

The new JSRS in BiH for the period 2014–2018⁷³ has been prepared by the MoJ BiH in the course of 2014 in wide consultation with main stakeholders. The JSRS in BiH has been adopted at the 22. Session of the CoM held on September 8, 2015. Council of Ministers by its conclusion instructed that relevant institutions of the justice sector are obliged to prepare updated draft of the Action plan (AP) for the implementation of JSRS in BiH. Draft AP has been prepared within requested deadline of 90 days and submitted to the CoM for the adoption. With a delay, the CoM reviewed and adopted updated with deadlines the AP document on its 94th session held on March 15 2017. In respect to the structure, content and actors involved, the new draft strategy is a continuation of the previous one that covered the period 2008–2012 (the Action Plan covered the period 2009–2013). The main aspects for judicial reform in the draft of new JSRS are: fight against corruption, access to justice for citizens and their equality before the law, ensuring budgetary responsibility, support to economic growth and incentive for EU integration.

National Strategy for Processing War Crimes, which was adopted in 2008, aims at finding a systematic approach to the problem of dealing with a large number of unresolved war crime cases. The strategy focuses primarily on the judicial aspects of solving war crime cases. In the beginning of 2017, the BiH Council of Ministers BiH has established the Working group for drafting the amendments of the National Strategy for Processing War Crimes.

BiH Anti-Corruption Strategy (2015–2019) aims at strengthening the legal framework for fighting against corruption and set-up models for prevention of corruption in public administration bodies. The strategy also targets capacity building to anti-corruption bodies at all governance levels.

The majority of objectives outlined in the Strategic Plan of the HJPC BiH 2014–2018 are directed towards strengthening the position of the judiciary, and improving its much-needed efficiency, independence, transparency, quality, effectiveness, accountability and access to information.

The HJPC has adopted the draft Mid-term Action Plan covering the period 2018-2020 while the adoption of final version is envisaged for the end of 2017. The Plan covers several priority areas: improving independence, efficiency, accountability and transparency of the judiciary in BiH.

Strategic framework – Fundamental rights

According to all parameters measuring and determining the status of any social group, the Roma are the most endangered national minority in BiH, and also the largest in number. This aspect is addressed within the framework of the Strategy of BiH for Addressing Roma Issues and the related Action Plans.

The Revised Strategy on implementation of Annex VII of Dayton Peace Agreement (adopted in 2002 and revised in 2010) has the overall objective to engage national authorities and civil society at all levels of government and across all sectors in a coordinated and prioritised plan to implement the commitments made in the Dayton Peace Agreement (DPA) Annex VII, so to identify and resolve the remaining obstacles to solutions for the most vulnerable displaced and returnee families.

Although there is no comprehensive strategy on anti-discrimination, still there are a number of strategies within the scope of the sector and several multi-sector strategies currently governing the related subjects such as: the Strategy for Protection of Children and Prevention of Violence (2008-2015) and the Strategy for implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in BiH (2014 – 2018) (sent to the CoM for adoption), the Action Plan for children (2015-2018), the Action plan of Bosnia and Herzegovina for Addressing Roma Issues in the Field of Employment, Housing and Healthcare 2017 – 2020, Gender Action Plan of BiH (2013 – 2017), **Framework Strategy for Implementation of the Council of Europe's Convention on the Prevention and Combating Violence against Women and Domestic Violence (2015 – 2018)**, Action Plan for Implementation of the UNSC Resolution 1325 (Women, Peace, Security) in BiH (2014 - 2017) etc. All these strategies have the primary objective of combating discrimination and thereby promoting better functioning of the judiciary system. It is worth mentioning that an Anti-discriminatory strategy is planned for adoption (in the programme of the Council of Ministers of BiH) for 2015, and is expected to be adopted for the year 2016. At its 8th session, held on July 21, 2015, the Joint Commission for Human Rights instructed the MHRR BiH to draft a Human Rights and Fundamental Rights Strategy Proposal that would set goals, activities, relevant institutions and deadlines in order to ensure a coordinated and focused approach to the achievement Human rights and fundamental freedoms of all groups and individuals in Bosnia and

⁷³ As the strategy and action plan expired, there is a need to prepare and develop a new strategy and action plan. The Ministry of Justice started the preparatory activities.

Herzegovina. The strategy against juvenile delinquency in BiH is no longer active but the Guidelines for data collection in the field of juvenile delinquency (jointly undertaken by MHRR and UNICEF) are one of the results of the Strategy.

At the level of entities there are the following strategies:

FBiH	Strategy for equal opportunities for disabled persons (2011 – 2015) ⁷⁴ Strategy for prevention and fight against domestic violence (2013-2017)
RS	Strategy for combating domestic violence 2014 – 2019 Action Plan for children Strategy for improving the social status of disabled persons (2010 – 2015)

However, despite their number, all these sector strategies do not provide a comprehensive coverage of all issues the sector faces, especially in the area of fundamental human and minority rights. Also, some strategies are overlapping (judicial reform includes the development of free legal aid; penal reform incorporates the reduction of prison overcrowding; there is a cross-over in the environment for domestic violence that affects both women and children, etc.). Furthermore, there is no comprehensive Human Rights Action Plan on the state level that could synchronise existing strategies and set priorities in human rights.

National priorities in the area of judiciary and fundamental rights are deriving from the new draft JSRS:⁷⁵

- ✓ Judicial system
Further strengthening and maintaining independence, accountability, efficiency, professionalism and harmonisation of the judicial system which ensures the rule of law in BiH,
- ✓ Execution of criminal sanctions
Develop more harmonised system of criminal sanctions in BiH which, by respecting European standards, ensures humane and legal treatment and effective re-socialisation in BiH prisons,
- ✓ Access to justice
Advance the system of international legal assistance and establish, strengthen and maintain systems and processes that guarantee equal access to justice in BiH,
- ✓ Support to economic growth
Define and implement measures through which the justice sector will contribute to the creation of a more favourable environment for sustainable economic development in BiH,
- ✓ Coordinated, well managed and accountable sector
Coordinate and make roles and responsibilities of key justice sector institutions more efficient, with the aim of achieving more effective, accountable and transparent justice system in BiH.

2.1.2. Institutional setting and capacity

Justice

The BiH judicial system currently operates with 983 judges and 368 prosecutors. The executive branch is consisted from the MoJ at the state level, MoJs' at the level of entities (in FBiH and RS) and Judicial Commission of BD, including 10 Cantonal MoJs.

More precisely, the institutional framework for the judiciary at the state level consists of following institutions: MoJ, HJPC, the Constitutional Court, the Court of BiH, the Prosecutor's Office and Office of Attorney General of Bosnia and Herzegovina.

The executive power of the justice system consists of 13 ministries of justice (state, two entity and ten cantonal) and a judicial commission of Brcko District having the role of both executive and judicial authorities. Within the MoJ BiH, strategic planning and coordination of donor assistance is provided by the sector for strategic planning, 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 have minimal necessary expertise. On the other hand, FMoJ has set up a strategic planning unit, but it is also not filled and capacitated. The findings of the current implementation of sectoral reforms indicates the weakness in the lack of human capacities and points out the need for establishment of an

⁷⁴ Source: NIPAC Office (Overview prepared based on the list of strategies sent by FBiH to the NIPAC Office)

⁷⁵ New JSRS 2014 - 2018

efficient and effective system of coordination and communication, which should also be reflected in the context of aid projects. So far, no thorough analysis of the capacity and the need to carry out the role of coordination and communication has been carried out, as well as the workload within the coordination to identify the necessary parameters of an efficient and effective system, and make recommendations for improvement. The number of projects, their amounts and their absorption in the justice (sub) sector indicate that institutions lack certain expert knowledge, skills and capabilities to manage reforms, but also the ability to clearly recognise and address needs.

HJPC is an independent and autonomous institution (established by a special law in 2004) and, as such, acts as a coordinating body of judicial authority, and in the reform of the justice sector plays the role of a partner institution of executive power in matters of judicial policy, 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 as the coordinating institution in the process of communication and coordination with key institutions of the justice (sub) sector. The roles of the MoJ and the HJPC are interlinked and complementary.

Anti-corruption

The institutional framework in the field of fight against corruption consists of the APCCFC⁷⁶, which is an autonomous public authority set at the state level with preventive competences in the following fields: conflicts of interest and asset declarations of public officials, controlling the funding of, political parties and electoral campaigns, corruption prevention, whistle-blowers protection, monitoring the implementation of the BiH Anti-Corruption Strategy/action plan, monitoring compliance with international obligations, providing guidelines on integrity plans and establishing cooperation with all public and non-governmental organizations in BiH. The Agency is submitting an annual report and the Report on the implementation of the National Strategy and related Action plan to the Parliamentary Assembly.

The FBIH has adopted, in May 2014, a set of anti-corruption laws, which aim is to establish specific law-enforcement bodies tasked with pursuing perpetrators of organised crime⁷⁷. Similarly, RS has a separate president and legislative body. It has a Special Prosecutor's Office against Organised and Economic Crime.

Fundamental rights

Besides the Constitution of BiH, the primacy of protection of human rights is also provided in the Constitutions and institutions of the Entities, the Statute of the BD, and the Constitutions of 10 cantons in the FBIH.

The most relevant institutions involved in the protection and promotion of human rights are:

- ✓ the Human Rights Ombudsman of BiH,
- ✓ Ministry of Human Rights and Refugees (MHRR),
- ✓ Agency for Gender Equality of BiH(AGE)
- ✓ all commissions and committees that deal with human rights issues and are established within the BiH Parliamentary Assembly and
- ✓ the Assemblies of the entities and the BD⁷⁸

The Institution of Human Rights Ombudsman of BiH⁷⁹ (HRO) handles complaints related to poor functioning and to human rights violations committed by any organ of BiH, its entities and BD. Additionally, according to Anti-discrimination Law it is the central institution for fighting discrimination and according to the Law on Free Access to Information it is in charge for the monitoring of implementation of this Law. The cases are opened upon individual complaints filed by natural persons or legal entities, or ex officio. In accordance with the Anti-discrimination Law this mandate is even broader and it additionally tackles private sector. The Seat of the HRO coordinates functioning of the Ombudsmen Institution across the entire territory of BiH, cooperates with the bodies of legislative, executive and judicial powers and international organizations, institutions and bodies, provides professional aid and ensures coordinated actions between regional (Sarajevo, Brčko, Mostar) and field offices (Livno), submits annual reports on human rights and freedoms situation and separately an Annual report on

⁷⁶ Agency for Prevention of Corruption and Coordination of the Fight against Corruption - Official Gazette" No. 103 / 09 <https://www.acauthorities.org/country/ba>

⁷⁷ The new bodies would be similar to Croatia's Bureau for Combating Corruption and Organized Crime (USKOK), a state attorney-linked body that focuses on corruption and organized crime.

⁷⁸ the councils of national minorities in BiH Parliamentary Assembly and the parliaments/ assemblies of entities, BiH Council for Children, the Inter-religious Council and the independent Commission for monitoring of prisons and residential institutions, the Committee for Roma, youth associations, and activities on formation of the Council for people with disabilities in also ahead in BiH. National report submitted in accordance with Para. 15 (A) of the Annex to Human Rights Council Resolution 5/1, 2010

⁷⁹ <http://www.ombudsmen.gov.ba/Default.aspx?id=10&lang=EN>

discrimination. Seat also, as any other office, receives and registers citizen's complaints alleging human rights and freedoms violations protected by the Ombudsman.

The Ministry of Human Rights and Refugees of BiH (MHRR) was established in April 2000. The Law on the Council of Ministers states that the MHRR shall undertake actions and protection of human rights, emigration and refugees, in accordance with the Constitution of BiH and the General Framework Agreement for Peace in BiH, international conventions and laws and other acts of the competent institutions of BiH. The Ministry cooperates with entities.

MHRR is responsible for: monitoring and implementation of international conventions and other documents on human rights and fundamental freedoms; promoting and protection of individual and collective human rights and freedoms, designing and implementing activities related to application of the European Convention on Human Rights and its Protocols; monitoring, drafting and disseminating information on standards, achievements and activities in the area of human rights; co-operation with different institutions responsible for asylum issues and the rights of refugees coming to BiH, implementing Annex VII to the General Framework Agreement for Peace, data protection standards, immigration policy, reconstruction projects and ensuring other conditions for sustainable return.

The Ministry has an indirect role in the protection against discrimination. It is obliged to monitor the implementation of the Law on Prohibition of Discrimination by establishing a system which would collect and process information on discrimination cases, which all authorities in BiH are obliged to submit. In addition, the MHRR is obliged to regularly report to the Parliamentary Assembly of BiH on discrimination cases and to propose measures for suppression of discrimination. In accordance with the Article 8 of the ADL, the MHRR is obliged to establish and maintain a central database of cases of discrimination in BiH. According to the Law on Gender Equality, GEAL BiH has the main coordination role in the area of gender equality. Some of the tasks performed are: to determine methodology for developing report on gender equality, to initiate and coordinate development of the Gender Action Plan in cooperation with entities' gender centres as well as its implementation, to cooperate with institutional mechanisms for gender equality in institutions at the state level.

2.1.3. Sector and donor coordination

Sector coordination

In the context of the Justice Sector reforms, as well as for the purpose of IPA II implementation in the (sub) sector Justice and fundamental rights, Ministry of Justice of Bosnia and Herzegovina plays the role as the main sector coordinating institution.

The Law on Ministries and other bodies of administration has set the MoJ BiH as a central coordinating body for the policies in the justice sector for developing policies, drafting laws and by-laws, providing international legal assistance and realisation of international cooperation within its jurisdiction, providing services to other BiH institutions in the processes of reform and negotiations of BiH with the European Union (EU) and NATO. In addition, the HJPC has a prominent role in the coordination of Justice System institutions through proactive planning, identification, attraction and use of financial resources to meet the needs of the judicial institutions and its reform processes.

Role and process of the sector coordination are predefined by the Justice Sector Reform Strategy. In order to further explain this further on is the description of the structure for coordination provided within the sector strategy.

The JSRS is organised in 5 pillars whose implementation is supported and guided by 5 working groups (WGs). These working groups meet quarterly and monitor progress and ongoing activities. The WGs consist of a variety of stakeholders. The Technical Secretariat coordinates the implementation of the strategy on a technical basis; it prepares and manages the Ministerial conferences and prepares quarterly, bi-annually and annual reports on the implementation. The annual reports are part of the CoMs agenda. Twice a year, there are regular Ministerial conferences for the sector strategy. It is a political forum consisting of 13 Ministers of justice along with presidents of HJPC and BD Judicial Commissioner⁸⁰. Due to its political nature, the Ministerial conferences seek for a political agreement to being established and called to review the current strategy and draft the new one. Additional, the Policy Forum was established during past period 2008-2013 of strategy implementation consisting of the MoJ BiH and HJPC and possible to be expanded to other institutions in the future: it is a particular kind of body organised for the development of policies.

⁸⁰ Mapping of Sector Strategies, Final Report (BiH), European Commission

Also, important and highly supportive platform operative since 2011 is the Structured Dialogue on Justice between BiH and the EU. It is focused on the judiciary reform, issues related to processing war crimes as well as helping BiH to move further along its path towards the EU (harmonisation of the national legislation with the EU *acquis*)⁸¹.

Due to the inter-links and sequencing of the process, the Structured Dialogue has been broadened to additional rule of law matters such as: anti-corruption, anti-discrimination, prevention of conflict of interest and measures to strengthen the integrity, accountability and efficiency of police forces within the existing legal framework.⁸²

It is also important to note that in 2016 the authorities in BiH adopted the Decision⁸³ on the System of Coordination of the European Integration Process. This Decision establishes 33 inter-institutional working groups which have mandate to harmonize the EU *acquis* with the BiH legislation. The acts regulating the work of these bodies put the focus and identification of needs and priorities, thus complementing the work of sectoral coordination.

Donor coordination

Currently, the donor assistance is monitored by Ministry of Finance and Treasury (MoFT) and then adopted by the BiH Council of Ministers. Out of the 60-70 donors active in BiH, around 30 are present in the rule of law. Besides the EU, the main donors in the rule of law area include Sweden, Norway, USA, UN, OSCE, Council of Europe, Switzerland and the United Kingdom.⁸⁴ Donors' meetings are organised/coordinated by BiH institutions: MoJ, HJPC, MoFT and DEI. Donor coordination can be tracked on the MoFT website; also, annually donor-mapping reports showing the donors active in BiH and their contribution by sectors are published. The MoJ, in cooperation with sectoral institutions, gathers data on justice projects in BiH and publishes it on its own website. These projects, as well as additional information, gathered from donors and sectoral institutions are the basis for drafting the Report on Monitoring and Evaluation of Donor Aid Effectiveness in the Justice (sub) sector in BiH. These reports are produced annually, and after the consultations have been made, they are approved and published also on the ministry's website.

The international community frequently exchanges information and data on its activities through coordination fora dedicated to justice sector dialogue and anti-corruption. In addition, a coordination mechanism chaired by the MoJ of BiH follows the progress in the implementation of the JSRS. The HJPC maintains continued contact and coordination with donors involved and interested in providing support to the judiciary.⁸⁵ So far, this approach has effectively allowed the HJPC to ensure regular provision of assistance to the judiciary.

The aforementioned donor information meetings, due to the lack of political support for the sectoral coordination mechanism, are not regularly maintained, as opposed to communication with the donor community and participation in donor coordination forums as well as supervisory bodies for project implementation and support to donors to justice sector issues that are kept regular. In the context of the aforesaid, donor coordination plan was not developed for the justice (sub) sector.

Within the framework of the donor coordination mechanism for the past strategic framework on justice, the Finance Plan has been developed covering the scope of reforms where there is a need for additional donor funds. This plan is in the process of updating.

The EU support for the judiciary has deepened and broadened over the past years, gradually moving from criminal law, particularly war crimes case processing, to encompass aspects of civil law, not least on judicial efficiency and the reduction of the case backlog. With a significant amount of support from the EU, courts and prosecutor offices throughout BiH benefitted from information technology investments, in particular the Case Management System (CMS/TCMS) available to over 5000 users in the judiciary. The online judicial documentation database allows access to over 10.000 judicial acts for its users in the judiciary and beyond.

2.1.4. Mid-term budgetary perspectives

There is no mid-term, sector-based, budgetary planning process in BiH that could be used to develop mid-term expenditure framework across the whole sector.

⁸¹ The range of flexibility of the set operating framework of the Dialogue, in relation to the structure and content, partners involved, as well as the monitoring tools, are rather suitable for the complexity of the sector in question as well as the specificity of the BiH political and administrative structure

⁸² EC Progress Report 2014

⁸³ Official Gazette BiH, nr. 8/16. OVDJE NAVESTI PUNI NAZIV ODLUKE I ONDA BROJ SLUZBENOG GLASNIKA.

⁸⁴ Indicative Strategy Paper for BiH

⁸⁵ Law on HJPC, Article 17, item 21.

Currently, the mid-term budgetary perspective functions depending on the financial requests submitted by the budgetary users based on economic classification of expenses, in programme format including goals and expected impacts of mentioned programmes and in accordance with the programme budgeting methodology.

The funding position of the sector has to be set against the overall financial situation across the 14 governments. All levels of government in BiH will have to cover salary increases, increase in material costs and capital expenditure in the proportion that can be financed. There is high competition for the limited additional resources at all levels, with several other sectors also having very strong claims for priority funding growth.

Thorough assessment costing of the strategy has not been carried out in the past period, partly as a result of the fact that there is no expert knowledge to implement it, as well as the fact that intensive public finance reform is part of the public administration reform.

Budget Framework Paper (BFP) approved in July 2016 offers some clear indications on the overall budget prospects for the next three years.

The 14 governments with sector responsibilities have completed adoption of BFP's for the period 2017-2019. These BFP's take the form of preliminary budgets and set the framework for the annual budget determination by each government. These latest BFP's provide a guide for the implementation of JSRS as they set out the current expectations for spending in the sector across all 14 governments.

A brief analysis of the BFP's, from the justice sector perspective, shows that there are a number of factors underpinning the demand for extra resources in the sector:

- 1) The need to provide replacement funding for projects and activities initially funded by international donors;
- 2) The need and commitments to complete funding of the sector institutions according to the approved rulebooks on internal organization and systematization of working positions;
- 3) The need to fund new activities to fill gaps in the framework of services within the sector.

Table 7: Three-year strategic and budgetary planning by the BiH institutions (2017 – 2019) – indicative upper expenses limit

Institution	2017	2018	2019
Ministry of Justice	22.992.000	18.168.000	18.034.000
High Judicial and Prosecutorial Council	4.876.000	5.007.000	5.073.000
Constitutional Court BiH	5.443.000	5.548.000	5.625.000
Court of BiH	17.207.000	17.430.000	17.571.000
Prosecutor's Office	12.862.000	12.979.000	13.232.000
BiH Attorney	1.600.000	1.777.000	1.761.000
Ombudsman for HR	2.394.000	2.417.000	2.381.000
Ministry for Human Rights and Refugees	11.226.000	11.248.000	11.230.000
Units for implementation of the project on building the BiH Institute for Execution of Criminal Sanctions, Detention and other Measures	180.000	0	0
Ministry of Security	9.171.000	8.470.000	8.545.000
State agency for investigation and protection	31.955.000	30.587.000	31.142.000
Institute for Missing Persons	3.342.000	3.020.000	3.027.000
Personal Data Protection Agency	1.377.000	1.335.000	1.340.000
Agency for Prevention of Corruption and Coordination of Fight against Corruption	1.355.000	1.348.000	1.360.000
Total	125.980.000	119.334.000	120.321.000

2.1.5. Performance assessment framework

There is no adequate Sector Performance Assessment Framework (PAF) yet and for the time being it is based only on two key mechanisms:

- A. System of indicators for period 2014-17 (taken over from JSRS for Justice) and revision for period 2018-2020 and,
- B. Periodical review of the strategies, action plans and legal framework implementation.

The indicators for the period 2014-17 and 2018-20 are part of the IPA II Indicative Strategy Paper for BiH. They are split into three groups:

- ✓ Context indicators such as: public debt, real GDP growth rate, unemployment rate, GDP per capita prices, FDI per capita etc.
- ✓ Outcome and impact indicators such as: progress made in reaching the political criteria, progress made on implementation of *acquis*, meeting economic criteria, employment etc.
- ✓ Sector indicators: such as: progress made towards meeting accession criteria (in the areas of judicial reform, fight against corruption and organised crime and fundamental rights, refugees) baseline being 2010 data and access to justice and judicial independence, average of corruption perception and control of corruption, average of freedom of press and press freedom etc.

Given the complex legislative and governance arrangements, BiH has no comprehensive system of collecting, sharing and analysing performance management information for relevant justice and fundamental rights institutions.⁸⁶

Although there are shortcomings in indicators, still, in general terms, monitoring and evaluation of the current strategies, action plans and law implementation is possible however due to lack of political endorsement is in stall. Mechanism for the monitoring and evaluation is in the process of setting up, and first meeting where progress made so far is to be discussed is to be organised by the end of current (2017) year.

Civil society organisations, which were involved in the process of monitoring the past JSRS in BiH, need to be addressed in order for them to be potentially engaged to do the follow up on this strategy as well.

Informational documentation web system for the monitoring of the JSRS in BiH that was evolved during the process of the past JSRS implementation has had identified its weakness that need to be addressed prior its full use and its functionalities to be upgraded.

⁸⁶ The key to greater levels of accountability, as well as effective harmonization and coordination is establishing performance management system that enables decision-makers, as well as the public, to better assess progress achieved in reform initiatives and identify areas in which additional initiatives are needed. Source: Structured Dialogue, April 2014 and new JSRS

Periodical reviews (twice a year) of the implementation of the measures, actions and/or activities, including obligations arriving from the legal framework have simplified methodology of assessing processes in question based on inputs received from individual institutions (responsible for the measure/action/law implementation) or via focus working groups. Additionally, this process is being supported by an IT application which enables institutions to monitor and evaluate strategy/action plans implementation as well as the implementation of the law.

2.1.6. Public finance management

The most relevant document assessing PFM in BiH is the PEFA Assessment (May 2014) developed by the World Bank, through the SAFE (Strengthening the Accountability and the Fiduciary Environment) funded by the EU.

In a nutshell, the Assessment describes PFM systems in BiH as being characterised by a lack of fully adequate internal controls (especially in public procurement); therefore the different PFM systems are considered vulnerable to inefficiency and waste. More precisely, in budget reporting, the fact that the charts of account of the four main government levels are not harmonized hampers access to consolidated data.

Moreover, within the Entities (primarily in FBiH), consolidation of data for all general government levels - government, cantons, local self-governance units, and EBFs - is also complex, and data are generally not used to inform policy decisions. In the context of budget scrutiny, better follow-up on external audit findings and recommendations is missing. Furthermore, the coverage/quality of internal audits and of performance audits performed by the SAs is not comprehensive.

Another important contribution to assess PFM in BiH is represented by the Report of the EC DG Budget fact – finding mission to BiH held in late 2014 on PIFC and External Audit.

The mission confirmed largely the findings of the PEFA assessment and in particular it highlighted that the development of PIFC is still at an early stage.

Recent activities have focused on the establishment of Internal Audit and the drafting of secondary legislation on FMC. However, the major concepts are not yet widely known, accepted and integrated in the internal control system. Currently, there is no functioning coordination mechanism among the four administrative levels within the country, although the legislation requires it, and so the results and speed of development significantly vary in the various levels.

Unlike other aspects of PFM in the BiH, the Public Procurement Law is unique in being enacted at the level of the BiH. All governments regulate their public procurement matters in compliance with this law; there is no separate procurement law at the level of the Entities or DB. The Law mostly aligned with the EU acquis and the authorities have committed to adopt new measures to strengthen governance, enhance transparency, and bring procurement practices in BiH more in line with those in the EU. However, concerns relate to the possibility of assessing performances of each individual government in conducting public procurement in line with the law and regulations, especially when it comes to the principles of competition and transparency.

2.1.7. Macro-economic framework

The overall macroeconomic framework assumes sustained fiscal consolidation through the implementation of the planned reforms.

There are external and internal risks to the macroeconomic outlook and the reform programme. External risks are related to possible delays in Europe's overall economic recovery. Since the EU countries continue to be BiH's largest trading partner, delays in Europe's recovery would affect BiH's economic outlook through their adverse impact on exports, remittances, and capital flows. External economic developments and the pace of economic recovery in the key export markets are both uncertain and beyond the control of the authorities.

However, internally, political risks are the largest cause for concern. BiH's challenging political environment presents clear risks for implementation of required reforms—including fiscal measures that are needed and that may even have to be further adjusted over time.

Although still below the legal limit for entities, the government debt (domestic and external) is constantly growing during the last few years and in 2013 it reached 46.2% of GDP, according to national data. This is mainly due to an increase in foreign loans, which reached 28.2% of GDP at the end of 2013, but with a favourable average interest rate of 1.44%. At the same time, in 2013 both entities and the Brčko District were issuing short-term treasury bills and long-term government bonds, which are secured relatively favourable conditions due to high demand. Issuance of government securities in the

first half of 2014 increased, due to a temporary stagnation of the program with the IMF and increased need for refinancing, which is estimated to increase in 2014 to 4.5% of GDP. In addition, the 2014 spring floods added pressure on public finances.

2.2. Overall assessment

The Justice and Fundamental Rights sector in BiH is perceived as being mature enough for absorbing assistance through sector approach. Although with significant weaknesses, the sector is able to cope with systematic use of external assistance through sector approach.

There are specific sub-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 sub-sector policies tends to involve a number of different sub-sector actors. Therefore, sub-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, at a certain extent, political support ensures necessary ownership and the sustainability of the overall reforms. Sector planning is theoretically linked to resources allocation; however financial resources adjustments are frequently 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 sub-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 enough capacities to undertake the reform process, MHRR and HRO are struggling: in all cases, no workload and functional analyses are guiding the building of capacities in the whole sector. The coordinating institutions within 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, especially in the fundamental rights sub-sector.

The sub-sector budgets are easily traceable in the State and Entities budgets and there is a three year strategic planning to clearly indicate the scope of the sub-sector, which is not the case with the financial allocations; however, it is possible to state that the budget reflects quite fairly the sector policy and objectives. MTEF is still not in place although preparatory works are carried out. At the current stage, it is not possible to assess at which extent external assistance contributes to the sub-sectors reforms. Still, the budget reflects the sector policy and objectives.

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 planning is theoretically linked to resources allocation but readjustments of financial allocations are frequent. Sub-sector policies are mapped, supported by a strategic framework that in general 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), Gender Action Plan of BiH 2013 – 2017, (the new Gender Action Plan is being developed). At the entity levels and Brcko District (BD) a number of related strategies are currently in use (see Annex 2, Sector Specific documents).

Donor coordination is stronger 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.

There is a PFM reform programme in place and implemented at all levels, DG Budget and PEFA assessment clearly identified areas where support can be considered.

3. RELEVANCE WITH OTHER POLICIES AND STRATEGIES

SAA is an international agreement on accession of BiH to the European Union, which is binding for all authorities in BiH. This document contains a number of reform actions, which have been introduced in the relevant strategic documents by

the relevant justice and fundamental rights institutions. Upon the entry into force of the SAA (2015), the political authorities in Bosnia and Herzegovina further committed to the implementation of the treaty by adoption of the Reform Agenda (2016). The Reform agenda is a set of priorities drawn from all valid strategic documents in BiH.

The European Commission, in order to monitor the progress of the state with regard to meeting the obligations arising from the SAA, annually compiles a report for the country, pointing out the shortcomings in the implementation of obligations and makes recommendations for the further reforms. Based on the findings, European Commission has initiated the Peer Assessment Missions to the HJPC. There thematic mission missions were organised in 2017 resulting in recommendations which are to inform the future reforms in the BiH judiciary.

Shortcomings in the judiciary continued to be discussed in the Structured Dialogue on Justice as well within newly started instrument Subcommittee on Justice, Freedom and Security both part of the arrangement for the implementation of the SAA.

Stabilisation and Association agreement (SAA)

The SAA stresses the importance of strengthening democracy and the rule of law with specific emphasis on the improvement of independence, impartiality, professionalism and efficiency of the judicial system, anti-corruption policy and human and minority rights⁸⁷. In particular in the area of the Justice, Freedom and Security cooperation should further consolidate the rule of law and reinforce the institutions and to that purposes financial assistance in the form of grants may be provided.⁸⁸

–Bosnia and Herzegovina 2016 Report -

Rule of Law

Bosnia and Herzegovina's justice system has **some level of preparation**. **Some progress** was made in addressing on accountability, independence, efficiency and integrity in the judiciary and institutional capacity to implement reform in the Justice sector. Judicial independence remains to be strengthened.

On **alternative dispute resolution methods**, the use of in-court and out-of-court mediation requires qualitative improvement.

The action plan accompanying the 2014-2018 countrywide justice sector reform strategy, with new adjusted timelines for implementation, has finally been adopted by the BiH Council of Ministers in March 2017. A ministerial conference, encompassing justice ministers at all levels and including representatives of the Brčko District Judicial Commission (BDJC) and the High Judicial and Prosecutorial Council (HJPC), responsible for supervising the implementation of the justice sector reform strategy was held in June 2017, and finally adopted its rules of procedure, which are a prerequisite for the establishment of the technical structures monitoring the implementation of the various areas of the strategy.

This conference enabled to the coordinating institutions (MoJ) officially to start with the process of monitoring the implementation of JSRS. One of the key points of this ministerial conference was the discussion on its Rules of Procedure

⁸⁷ The SAA (Title I, General principles, Article 2) specifies "Respect for the democratic principles and human rights as proclaimed in the Universal Declaration of HR and as defined in the Convention for the Protection of Human Rights and Fundamental Freedoms, in the Helsinki Final Act and the Charter of Paris for a New Europe". Also, SAA (Title VII, Justice, Freedom and Security, Article 80 – Reinforcement of institutions and rule of law) stipulates that "the Parties shall attach particular importance to the consolidation of the rule of law, and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation shall notably aim at strengthening the independence of the judiciary and improving its efficiency, improving the functioning of the police and other law enforcement bodies, providing adequate training and fighting corruption and organised crime".

⁸⁸ Title VII: Justice, Freedom and Security, Article 78, Reinforcement of institutions and rule of law stresses:

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

Article 113 also highlights that:

Financial assistance, in the form of grants, may be provided in accordance with the relevant Council Regulation within a multi-annual indicative framework based on annual action programmes, established by the Community following consultations with BiH. Financial assistance may cover any sector of cooperation, paying particular attention to Justice and Home affairs, approximation of legislation and economic development.

that enables the monitoring and evaluating mechanisms. Accordingly, the MoJ has started the process of establishing the mechanisms for monitoring the implementation of the JSRS.

Human rights and the protection of minorities

Some progress was achieved over the reporting period in addressing last year's recommendations on effectively addressing human rights and minorities' issues, in particular with the adoption of relevant amendments to the anti-discrimination law. The strategic, legal, institutional and policy frameworks for the observance of human rights are in need of substantial improvement. The provision on the death penalty in the constitution of the *Republika Srpska* entity still needs to be repealed.

No progress was made in implementing the Court's judgments on the *Sejdić-Finci* and *Zorić* cases.

There is still no overarching policy document on **promotion and enforcement of human rights**. The Ombudsman still lacks adequate human and financial resources to perform its functions as national human rights institution. Legislation on the **prison system** is not sufficiently harmonised throughout the country. While religious tolerance was symbolically promoted on some well-publicised occasions, cases of discrimination on religious grounds continued to occur, as well as incidents targeting religious sites.

South East Europe 2020

Key strategy issues are:

- i) Improve efficiency and competence: review the quality, efficiency and competence of judges and the courts,
- ii) Improve judicial cooperation in free access to information, cross-border enforcement and cross-border proceedings and take-over and mergers and
- iii) Support alternative dispute resolution (ADR): Introduce or improve the legislation on ADR and enable proper legal and institutional cooperation with judiciary and the enforcement system.

The EU Justice Agenda for 2020 – Strengthening Trust, Mobility and Growth within the Union

The key issues are set as political priorities that should be pursued in order to make further progress towards a fully functioning common European area of justice oriented towards trust, mobility and growth by 2020.

Areas in focus of the EU Justice Agenda for 2020 are: Enhancing mutual trust, Justice for Growth, Justice for citizens and Protecting Fundamental rights.

PART TWO – SECTOR SUPPORT

4. FINANCIAL ASSISTANCE CONTEXT

4.1 Relevance with the IPA II Indicative Strategy Paper

The Indicative Strategy Paper 2014-2020 for BiH (the Strategy Paper) sets out the priorities for EU financial assistance for the period 2014-2020 to support BiH on its path to EU accession. It describes that in the Justice and Fundamental Rights sector support will focus on increasing the efficiency, effectiveness, accountability and professionalism of the judiciary. IPA II is also supporting the process of searching for missing persons as a result of the conflicts of the 1990s, as well as the improvement of material capacity for the execution of criminal sanctions. Document of ISP for BiH has undergone process of revision during second half 2016 and beginning of 2017. Its final adoption is expected in May 2018.

4.2 Lessons learned from past and on-going assistance

As there have been a number of interventions through development assistance in the respective sector, there are several important key messages and lessons learnt for the more successful implementation of future sector measures. They can be summarized as follows:

- ✓ it is important that programme interventions are mature enough for implementation;
- ✓ existence of administrative structures to implement strategic priorities and commitment of policy decision-makers to pursue the agreed reforms is crucial;
- ✓ given the complexity of the sector scope and the underlying institutional setup – the number and the variety of stakeholders which are the carriers of sub-sector policies - the success of any intervention is directly proportionate to the extent to which institutions cooperate, share and exchange information;
- ✓ availability of up-to-date sector assessments and targeted analyses is essential as well as the awareness of sector stakeholders of the data and statistics contained therein.

Finally, lesson learned from the programming and implementation of previous and on-going EU assistance is that political commitment and ownership of the reform process is an indispensable precondition for the success of EU interventions.

Overall, the recent implementation of these projects provide a quite considerable platform for IPA to build on with new support and more tailored assistance.

More over on the previously implemented projects can be found in the Annex 4, table 1 of this document.

5. PURPOSE OF IPA II SECTOR SUPPORT AND DESCRIPTION OF THE PRIORITIES FOR ASSISTANCE

5.1 Description of the sector priorities for assistance

Overall and specific objective

The overall sector assessment, extensively developed in the first Section of this document and summarised in a SWOT overview, clearly recognises the efforts made and indicates the direction of the future assistance. The overall objective is **to ensure that judiciary is independent, impartial, efficient and accountable, the law enforcement agencies are capable in fighting corruption and organised crime and that the legal uncertainty is eliminated, fundamental rights ensured for vulnerable groups and justice for all citizens provided.**

As extensively treated in the previous section of this Sector Planning Document, the IPA assistance will have two main priority areas, such as:

- *The Justice sector reform processes,*
- *The Fundamental rights protection.*

The specific objective is to attain the following results included for the area of Rule of law in the Indicative Strategy Paper for BiH 2014 – 2020 (Part IV):

- **Improved judicial efficiency, in particular through the reduction of the backlog of civil and criminal cases;**
- **Improved accountability and independence of the judiciary;**
- **Provided access to justice for every citizen, and in particular free access to justice for the vulnerable groups;**
- **Improved capacity and the quality of the execution of criminal sanctions;**
- **Increased efficiency and cooperation between law enforcement agencies and prosecution services;**
- **Developed track record of investigations, prosecutions and final convictions in organised crime and corruption cases;**
- **Enhanced protection of fundamental rights.**

In the priority area of Justice sector, IPA assistance will mainly be addressed to improvements of the capacity and the quality of the execution of criminal sanctions and efficiency, effectiveness, accountability, integrity of judicial system (courts and prosecutors' offices), access to justice, improvements of the capacities of coordinating institutions (HJPC, MoJs throughout BiH).

This priority includes IPA support envisaged to the models of enhanced cooperation between law enforcement agencies (police) and prosecution in detecting, investigating and processing corruption and organised crime cases, including war crime cases. Additionally, IPA support will foster capacities for an accountable and open justice sector able to provide access to justice for citizens in a transparent and professional manner using modern technology.

The specific objectives will be achieved through four actions, namely:

- *ACTION 1.1 - Judiciary,*
- *ACTION 1.2 – Execution of criminal sanctions,,*
- *ACTION 1.3 – Access to Justice,*
- *ACTION 1.4 – Fundamental rights.*

Priority area: Justice

<i>Action title</i>	1. Support to further strengthening of the Judiciary.
<i>Specific objective</i>	Further improve the efficiency, effectiveness, integrity, quality and professionalism of the judiciary.
<i>Expected results</i>	<p>R1. Increased efficiency, effectiveness and quality of justice</p> <p>R2. Improved material and technical capacity of the court police and the authorities responsible for the managing assets confiscated in the criminal proceedings</p> <p>R3. Increased rate of integrity, independence and accountability of the judiciary</p>
<i>Indicative activities to fulfil the results</i>	<p>R1:</p> <ol style="list-style-type: none"> 1.1. Develop and implement action plans to resolve the court cases (within reasonable limits), to reduce the backlog of non-utility cases and improve the work quality of the judges and expert associates (2019) 1.2. Provide material and technical capacities of the judicial institutions (reconstruction and construction of priority facilities judicial institutions at all levels of government) (2018, 2019, 2020) 1.3. Upgrade infrastructure of judicial institutions and information system, towards ensuring compliance with relevant European standards in the field of security of information systems and data (including GDPR) (2019) 1.4. Improve the current system of reporting and decision making support, in order to ensure transparent monitoring and evaluation of the impact of judicial institutions (2019) 1.5. Improve judicial information system and its subsystems (CMS / TCMS, HRMIS, etc.), in order to meet the obligations under the pre-accession process, in the area of efficiency, accountability and transparency of the judiciary (2019) 1.6. Establish automated Justice services to provide the necessary services to citizens and legal entities, such as online payment of court fees (2019) 1.7. Development and implementation of a new version of the CSD database and web portals with supporting web and mobile services for citizens (2019) 1.8. Sequential support to prosecution of the war crime cases (2018, 2019, 2020) 1.9. Support to the body for monitoring of the case law, and to the establishment of sections for recordkeeping of the case-law on the second instance courts (2018, 2019) 1.10. Modernisation of initial training for newly appointed holders of judicial office (2018, 2019)

	<p>R2:</p> <p>2.1. Replenish material, technical and accommodation capacities of the relevant authorities in charge of managing assets confiscated in the criminal proceedings (2018)</p> <p>2.2. Provide equipment for the court police, in accordance with EU standards, and development of the IT solutions for managing the work (2018)</p> <p>R3:</p> <p>3.1. Analysis of the implementation of integrity plans in the judicial institutions (2018, 2019)</p> <p>3.2. Support to the HJPC with regard of monitoring the implementation of integrity plans (2018, 2019)</p> <p>3.3. Development of IT tools for monitoring of the integrity plans (2019)</p> <p>3.4. Strengthen the capacity of the HJPC for monitoring and controlling financial statements NPF, including the development of the functionality of IT solutions for filing and monitoring reports related to the exchange and verification of data from the external registers (tax administration, banks, etc.) (IPA 2019)</p> <p>3.5. Harmonisation of training programmes on the subject of integrity in the judiciary (2018)</p> <p>3.6. Enhancement of judicial cooperation with the media and the publicity (2018)</p> <p>3.7 Support to operational functioning of the ODC (2019)</p>
	<p>Indicators</p>
Implementation arrangements	<p>Contracting Authority: EU Delegation to BiH</p> <p>Activities under R1:</p> <p>1.1, 1.3, 1.4, 1.5, 1.6, 1.7- Grant HJPC, Supply (2019);</p> <p>1.2 Works and Service (supervision) (2018, 2019, 2020)</p> <p>1.8 Grant to MoFT BiH (2018, 2019, 2020)</p> <p>1.9, 1.10 – TA (2018), Grant HJPC (2019)</p> <p>Activities under R2:</p> <p>2.1 Works, Supply and Service (supervision) contracts (IPA 2018)</p> <p>2.2 Supply and Service (2018)</p> <p>Activities under R3:</p> <p>3.1, 3.2 Technical assistance (IPA 2018), Grant (2019)</p> <p>3.3, 3.4, 3.5, 3.6, 3.7, TA (2018), Grant HJPC and ODC (2019)</p>
Justification for the choice of implementation arrangements	<p>The proposed Grant to HJPC responds to the need of the beneficiary to consolidate its role of guidance and coordination through the strengthening of internal capacities and structures. By choosing this modality the value for money is best ensured. In lieu of the grants for the HJPC a sector budget support modality could as well be very effective.</p>

<i>Action title</i>	2. Support to reforms in prisons
<i>Specific objective</i>	Establishment of an efficient system of execution of criminal sanctions in accordance with international standards.
<i>Expected results</i>	R1. Improved application of international standards R2. Improved working conditions in the institutions responsible for the execution of criminal sanctions
<i>Indicative activities to fulfil the results</i>	R1: 1.1. Develop and implement guidelines (measures) to protect human rights in detention facilities (accommodation, food and health care) (2019), Improve the system of training prison staff in the prisons of Bosnia and Herzegovina in accordance with relevant international and EU standards, 1.3 Support the wider use and application of the alternative sanctions (2019), 1.2. Provide support to the establishment of the probation system (after the adoption of the legislation) (2020) R2: 2.1 Provide equipment with IT system and automate the institutions for execution of criminal sanctions for efficient management (2018, 2019), a) System analysis and preparation of implementation plans (2018), b) Implementation plans (2019). 2.2 Build an architectural plan for the reconstruction of facilities for the accommodation of detained and imprisoned persons (2018), 2.3. Reconstruction of facilities for accommodation of detained and imprisoned persons in accordance with the findings of the architectural plan (2019). Indicators R1: 1. Reduced number of complaints in prisons regarding accommodation of conditions and treatment (Source of verification: The Report of the Ombudsman) R2: 1. The management of prisons in accordance with international standards (Source of verification: The report of the European Commission for the Prevention of Torture) 2. Networking Database of convicted persons and accommodation facilities on the territory of Bosnia and Herzegovina (Source of verification: Reports of the relevant competent institutions)
<i>Implementation arrangements</i>	Contracting Authority: EU Delegation to BiH Activities under R1: 1.1, 1.3 TA (2019) 1.2 TA, 1.4 Twinning, TA (2020) Activities under R2: 1.1 Service (2018), Supply (2019), 1.2 Service (2019) 1.3 Works, Service (2019)
<i>Justification for the choice of implementation arrangements</i>	

<i>Action title</i>	3. Support to provision of access to justice
<i>Specific objective</i>	Further improve access to justice.
<i>Expected results</i>	R1 Improved system of alternative dispute resolution (2020) R2 Improved system of free legal aid (2018)
<i>Indicative activities to fulfil the results</i>	R1: (2020) 1.1. Support improvement of judicial departments organisation regarding the application of court mediation, 1.2. Draft training curricula and facilitate training of judges in the field of mediation, 1.3. Develop a training module for application of court mediation, 1.4. Devise and conduct comprehensive information campaign about the benefits of alternative dispute resolution. R2: (2018) 2.1 Provide further support for the drafting/reviewing of legislation on free legal aid in BiH where needed, 2.2 Support the establishment of the body for providing free legal aid in BiH 2.3 Strengthen the capacity of existing providers of FLA in terms of infrastructure, 2.4 Provide support for development of continuous training system on provision of FLA, 2.5 Provide support to the partnership of public institutions responsible for FLA with service providers, 2.6 Provide support in facilitating developing/improvement of channels of communication of service providers and competent authorities in order to raise public awareness of the services of FLA.
	Indicators: 1. Cases solved within the court mediation system 2016 - 5 % 2020 -11 % 2022- 20 % (Source of verification: Reports of CMS) 2. Requests submitted to the bodies responsible for providing FLA 2016 – 10% 2020-15 % 2022-25% (Source of verification: Annual reports of the competent authorities) 3. Realised requirements of providing FLA 2016 -10 % 2020-15 % 2022-25% (Source of verification: Annual reports of the bodies responsible for FLA)
<i>Implementation arrangements</i>	Contracting Authority: EU Delegation to BiH Activities under R1: 1.1,1.2,1.3,1.4 Grant (A) (2020) Activities under R2: 1.1,1.2,1.3,1.4, 1.5,1.6 TA, Supply (2018)
<i>Justification for the choice of implementation arrangements</i>	

Priority area: Fundamental Rights

<i>Action title</i>	4. Enabling effective protection of Fundamental rights
<i>Specific objective</i>	Improve the promotion and protection of human rights of vulnerable groups
<i>Expected results</i>	<p>R1. Effective application of EU standards of gender and social responsibility (vulnerable category) in policy-making in BiH</p> <p>R2. Gender equality mainstreamed with the process of EU integration and under EU financed projects</p> <p>R3. Effective implementation of the Action Plan on human rights education for journalists and media professionals</p>
<i>Indicative activities to fulfil the results</i>	<p>R1:</p> <ol style="list-style-type: none"> 1.1. Conducting analysis and research to make informed policy in the field of gender equality (ie. European Work Condition Survey - EWCS, Availability of Free Time Survey and other research), 1.2. Strengthening the capacity of the administrative bodies to apply EU standards of gender and social responsibility, the absorption of the EU acquis related to gender and inclusion (mainstreaming) of a gender perspective into sectoral policies and projects of EU. <p>R2:</p> <ol style="list-style-type: none"> 2.1. Support the development of training modules on reporting on vulnerable categories in accordance with the principles of freedom of speech and freedom of access to information and human rights and the implementation of training, 2.2. Support the development of recommendations for reporting from a human rights perspective, 2.3. Support the preparation of the review of legislation on media freedom, the possible limitations to disclosure. <p>Indicators:</p> <ol style="list-style-type: none"> 1. BiH included in GEI (Gender Equality Index) (and achieving visible progress in the Index) 2. Reduced number of complaints about improper reporting of vulnerable categories in the media 3. The guidelines on reporting media of vulnerable categories
<i>Implementation arrangements</i>	<p>Contracting Authority: EU Delegation to BiH</p> <p>Activities under R1:: 1.1,1.2 TA, Supply (2018)</p> <p>Activities under R2: 1.1,1.2,1.3 TA (2018)</p>
<i>Justification for the choice of implementation arrangements</i>	

5.2 Indicator table

Indicator	Description	Baseline (year) (2)	Last available (year) (3)	Milestone 2018(4)	Target 2020 (5)	Source of information
CSP indicator (impact/outcome)....(1)						
This column should provide the NAME/TITLE of the indicator; e.g. Number of xxx (it must be an outcome indicator at sector level)	In this column, a very short description (few words only) of the indicator should be provided (if needed).	The value should be indicated (2)	The last available data/value (and year of reference)	The value expected by the first quarter of 2017 (or end 2016) should be indicated	The value expected by 2020 should be indicated	Include here the source of the information required to measure the indicator.

(1) This is the indicator as included in the Indicative Strategy Paper.

(2) The agreed baseline is 2010 (to be inserted in brackets in the top row). If for the chosen indicator, there are no available data for 2010, it is advisable to refer to the following years – 2011, 2012. The year of reference may not be the same either for all indicators selected due to a lack of data availability; in this case, the year should then be inserted in each cell in brackets.

(3) The last available data (and reference year)

(4) The milestone year CANNOT be modified: it refers to the mid-term review of IPA II.

(5) The target year CANNOT be modified.

5.3 Assumptions, preconditions and risks

Assumptions

The assumptions related to the proposed objectives and results are generally associated with the national policy level and include continued political support to reforms in the sector and the commitment of the Government to their fulfilment in line with the EU integration process. On the level of the actions and related activities proposed in this Sector Planning Document, the assumptions are linked with the commitment and smooth coordination among all the sector institutions and objective assessment of their capacities for the implementation of planned interventions.

Preconditions

Preconditions shall demonstrate the maturity and readiness for the implementation of the each individual action, to ensure that the IPA II funds are allocated exclusively for the priorities soundly and formally agreed within the Government coherently with the required sector support. Such guarantees are to be provided notably by the adoption of strategies and legislation underlying the proposed sector interventions. Pre-conditions will therefore consist mostly of requirements that respective strategies and pieces of legislation are adopted before the actual approval of IPA II funding.

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
Budgetary restrictions, potential termination/postponing the assistance due to non-ratification of the agreement		✓	
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		✓	

6. COMPLEMENTARITY WITH OTHER FINANCIAL ASSISTANCE

As in many other sectors in BiH, the EU is by far the biggest donor in providing assistance to the implementation of the sector of Justice and Fundamental Rights. However, it is indeed important to underline how IPA II acts in synergy with other sources of financial assistance in implementing the actions envisaged in this Sector Planning Document.

The assistance provided by the various donors to the sector is very wide and has difficulty to be traced, as the support ranges from collaboration among CSOs to institutional support at the various levels of government, from general budget support to tailored technical assistance. Similarly, the number of institutions involved in the sector, both involved in safeguarding and protecting human rights as well as in the management of justice, is also noticeably wide and varied. On top of that, being this sector crucial, the support has been continuously provided since the immediate post-conflict period.

By monitoring donor activities in the justice sector we may conclude donor assistance is quite broad covering almost all areas of sector reforms. The international community composed of institutions and agencies frequently exchanges information and data on its activities through coordination forum lead by Ministry of finance and treasury. MoJ BiH keeps record track on projects in justice sector updated in accordance with info donor are providing to the MoFT and through donor mapping exercise on donor assistance to the justice sector. In a broad overview main donors apart EU contributing to the development of the sector are USAID, SIDA, Norway, Suisse development agency (SDA), German development agency (GTZ), UK assistance, UNDP, OSCE and CoE without disrespect to numerous other multilateral and bilateral support.

Coordination is run on strategic level via donor coordination forum managed by MoFT where all assistance records are gathered and which serve the purpose of aligning of donor assistance at country level. When it comes to the donor assistance of the EU funds or EU member countries DEI is coordinating institution and communicates on a

strategic level with MoFT. Coordination of IPA support is done mainly through programming exercises which are initiated by DEI and lead by the lead coordinative institutions.

When it comes to larger spectrum of the financial assistance in the regional (Western Balkans) dimension, the complementarity of donor funded actions is more evident, aligned and seemingly more coordinated. As a matter of fact, BiH participates and benefits of a wide array of regional scale operations in fighting against organised crime and in war crime cases.

In annex (*Additional data on Lesson learned from past and ongoing assistance*) one may find table overview of the main contributions on the implementation of various initiatives related to this sector and provided by the donor community in BiH, including the EU.

However, there is a need to establish a stronger mechanism for sectorial donor coordination. The aim of this donor coordination mechanism should be the one to discuss the technical and operational issues and to harmonise the numerous vertical and horizontal interventions. The donor coordination should be improved in a view of more proactive role of the institutions towards donors in communicating their needs, better streamlining supported by cross-sector policy and related budgetary planning coordination (e.g. health, social protection and justice sector). This mechanism will of course guarantee that the complementarity of all financial assistance within is ensured.

7. CROSS-CUTTING ISSUES

Equal opportunities and gender mainstreaming

Gender equality represents a complex issue in any society, requiring long run strategies and commitments, BiH is making steps forward by applying the logic of mainstreaming in a consistent and comprehensive way, and involving a growing number of stakeholders and institutions, while at the same time increasing public awareness on the issues.

When it comes to Fundamental Rights in BiH, gender equality is very much interlinked with the respect and acknowledgement of human rights. Very often gender inequality adds to the discrimination, marginalisation and vulnerability of specific spheres of population, leading to multiple vulnerability based on gender; this applies for example to unemployed women, internal displaced women, Roma women, to end up with extreme situations as for women who are victims of war crimes.

As already mentioned in the above sections, within the Ministry of Human Rights and Refugees of BiH, the Gender Equality Agency has been established and made operational, while at the entity level there are previously established Gender Centre of the FBiH and Gender Equality Centre of the Government of Republika Srpska. The Agency and the entity Gender Centres are the real drivers of the initiatives as well as key implementers of gender mainstreaming activities in BiH. The involvement of these actors via guidance, counselling and advice will be requested and taken into account in the shaping of the activities envisaged in this planning document.

In implementing the actions related to this Sector Planning Document, it is of paramount importance to ensure that women can exercise their fundamental rights. The participation and the equal involvement of women and men in public and political life and, more specifically in the access to justice and in the safeguard of rights it is indeed a substantial pre-requisite for the implementation of the planned actions.

In implementing the planned actions, gender mainstreaming will be focused in:

- enacting non-discriminatory legal and policy frameworks;
- preventing violence against women;
- encouraging women's participation in conflict prevention, crisis management and post-conflict reconstruction;
- thorough analysis of the specific effects the planned action may have on women and men separately;
- sex disaggregation of all data collected and reported in the course of implementation of the planned actions.

In concrete terms, this will occur by ensuring that the implementation of envisaged actions is in line with two key laws in BiH, such as:

- The Law on Gender Equality and

- The Law on the Prohibition of Discrimination.

The planned actions should also be in line with, and contribute to the goals of the following strategic documents in the area of gender equality:

- Gender Action Plan of Bosnia and Herzegovina 2013 – 2017 (the new GAP 2018 – 2022 is currently in development)
- Framework Strategy for Implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in BiH (2015 – 2018), and
- Action plan for implementation of UNSCR 1325 In Bosnia and Herzegovina For the period 2014-2017 (new Action plan for UNSCR 1325 for the period 2018 – 2022 is development).

Minorities and vulnerable groups

The actions envisaged in this Sector Planning Document will seek to mainstream addressing the issues related to minorities and vulnerable groups as a key obstacle in the BiH EU integration process. Moreover, the principles of the European Convention on Human Rights are entrenched in the Constitution of BiH, which also guarantees the supremacy of this Convention over national legislation.

As regards international human rights instruments, BiH has ratified all major UN and international human rights conventions. Representatives of all minorities in BiH have a seat in the Council for National Minorities at the state and entity levels and a strategy for Roma (with action plan for addressing Roma issues in the areas of employment, housing and health care) was adopted in 2013 with respective budget for its implementation.

However, it has been noticed that BiH, despite having a relatively satisfying legal framework, still has not implemented an efficient system of protection against discrimination and protection of vulnerable groups.

The European Commission in the 2014 Progress Report on BiH, and the UN in their last report of the Universal Periodic Review for Bosnia and Herzegovina (June 2014) have recognized the need for the introduction of a specific public policy that would concentrate on the prevention and struggle against discrimination.

Roma remain the most vulnerable group, subject to widespread discrimination and to live in extreme exposed conditions regarding safeguarding of health, employment and education rights. Internally Displaced Persons are another vulnerable group whose conditions and safeguarding of basic rights still raise concerns, especially when it comes to the ones displaced because of natural hazards (recent floods).

IPA assistance is a key element to support the development and strengthening of adequate capacities as regards minorities and vulnerable groups. Having recognised the lack of activity which hampers efficient protection against discrimination and realisation of equal opportunities, the actions included in this Sector Planning Document would ensure coordinated and proactive approach to the efficient protection against discrimination.

One specific action planned in this document, such as the one focused on the effective implementation of anti-discrimination policy (Action 2.1) will pay particular attention to this very aspect and it is deeply entrenched in the principle of safeguarding vulnerable groups.

Engagement with civil society

The 2007 Memorandum of Understanding 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 new Memorandum has been approved by the Council of Ministers BiH 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 terms of civil society organizations and their involvement in the process of structured dialogue on justice during 2014 was established formal cooperation. This cooperation reflects the fact that has enabled its representatives to attend the sessions of the Structured Dialogue since the seventh meeting. However, by the statement of 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.

Civil society plays a significant role in monitoring of the system of justice thus a numerous groups of CSOs have formed 'Justice Network in BiH'. Monitoring here serves as an instrument for the establishment 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 several organisations, also part of Justice Network, have signed a MoU 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.

When it comes to implement actions envisaged by this 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 and Fundamental Rights, 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 actions 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 this Sector Planning Document will explore methods for facilitating and optimising the contribution of civil society, enable and support CSOs to perform a well-organized lobby for better justice, higher level of democratization and respect of human rights.

Environment and climate change

As such, the actions envisaged in this Sector Planning Document to support the law enforcement agencies, the fight against crime, the border management and asylum policies do not have any direct impact on the environment and the climate change.

Whenever the case, it is clear that all actions envisaged and supported by IPA II assistance will comply in full terms with the respect of environment, security and health.

8. SUSTAINABILITY

The Sector Planning Document envisages a limited amount of actions that, although indicative in their forms of implementation, are deeply rooted in the mainstream of the undergoing reforms of the Rule of Law in BiH. In this sense, the sustainability of the actions is interlinked with the sustainability of the overall reforms in question.

Overall, the Rule of Law reforms in BiH are characterised by certain assets that could be conducive of long term sustainability, such as: a satisfactory level of participation in drafting the relevant strategic framework and an acceptable level in its implementation, an established legal and institutional framework for the observance of human rights and the existence of one independent judicial body.

However, some relevant weaknesses might hamper the sustainability of the interventions planned in this document as well as of the overall ongoing reforms in more general terms.

To be sustainable, reforms will have to face an inadequate organisational structure, lack of competencies and coordination capacities among the stakeholders involved in judiciary and fundamental rights; complexity of multi-layered system with diverse functioning mechanisms, unclear division of powers and competencies and highly fragmented forms of budgeting. All these factors may threaten the successful achievements of the reforms against the significant support provided.

Taking into account the crucial role played by the Rule of Law in the EU integration process (and eventually in the future accession negotiations), the willingness of all involved institutions at all levels of government in optimising and profiting of the IPA II assistance in view to eventually achieve a consolidated, robust and sustainable coordination of all components in the field of the Rule of Law must be assumed and should be taken for granted.

9. SECTOR SUPPORT BUDGET

Programming period: 2018 – 2020

Action 1

	ESTIMATED COSTS (EUR)	COMMENTS
Result 1		
Activity 1.1. Activity 1.3 Activity 1.4 Activity 1.5 Activity 1.6 Activity 1.7	5.800.000 1.000.000	Grant HJPC (IPA 2019) Supply (IPA 2019)
Activity 1.2.	2.180.000 2.100.000 2.050.000	Works and service contracts (IPA 2018) Works and service contracts (IPA 2019) Works and service contracts (IPA 2020)
Activity 1.8.	2.100.000 2.150.000 2.000.000	Grant MoFT BiH (IPA 2018) Grant MoFT BiH (IPA 2019) Grant MoFT BiH (IPA 2020)
Activity 1.9 Activity 1.10	950.000 850.000	TA (2018) Combined with grant for Result 1 (2019)
Total for Result 1	21.180.000	
Result 2		
Activity 2.1.	1.500.000	Works and service contracts (IPA 2018)

Activity 2.1.	1.590.000	Supply and service (IPA 2018)
Total for Result 2	3.090.000	
Result 3		
Activity 3.1	900.000	TA (2018)
Activity 3.2	825.000	Combined with grant for Result 1 (IPA 2019)
Activity 3.3	820.000	Combined with grant for Result 1 (IPA 2019)
Activity 3.4	1.280.000	Combined with grant for Result 1 (IPA 2019)
Activity 3.5	1.100.000	TA (IPA 2018)
Activity 3.6		
Activity 3.7		
Total for Result 3.		
...	4.925.000	
TOTAL FOR SECTOR	29.195.000	

10. CHRONOGRAM FOR PROGRAMMING AND IMPLEMENTATION

<i>JFR</i>	2018				2019				2020				2021				2022			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
PRIORITY 1		I	I	I	I															
Activity 1.1		I	I																	
Activity 1.2		I	I	I	I															
...																				
PRIORITY 2		I	I	I	I	I	I	I	I	I	I	I								
Activity 2.1		I	I	I	I	I	I	I	I	I	I	I								
Activity 2.2		I	I	I	I	I	I	I	I	I	I	I								
...																				

P = Programming (i.e. period when the IPA Action Programme is expected to be adopted)

C = Procurement and grant award procedures (i.e. up to Contracting)

I = Implementation period

Note re. Programming: all planned Activities under a given Action may not necessarily become part of the same IPA Action Programme but spread over successive programmes (e.g. 60% of Action 1 to be part of a Country Action Programme in 2014 and the remaining 40% - i.e. Action 1 part 2 - to feed into a Country Action Programme in 2016).

LIST OF ANNEXES

1. Road map for Sector Approach
2. Sector specific document(s)
3. Additional data for rationale

DRAFT

ANNEX 1

Road map for Sector Approach

Sector: Justice and Fundamental Rights

MAIN CRITERIA

CRITERIA	BASELINE		2017	2018	2019	2020	2021
Sector policy and strategy	<ul style="list-style-type: none"> JSRS in BiH and its AP 2014-2018 adopted Political leadership is in the process of approving the monitoring of the implementation mechanism Deadlines for solving the most complex war crimes cases envisaged by the State Strategy for War Crimes Prosecution (SSWCP) have expired The sectoral approach policy is not sufficiently developed HJPC Strategic Plan 2014-2018 and Mid-term Plan of HJPC BiH 2017-2019 The State Strategy for Combating Corruption (SSCC) from 2015 to 2019 in force ⁸⁹ 	STEPS	<p>1.1 Perform an analysis of the implementation of the JSRS in BiH AP for the period 2014-2017</p> <p>1.2 Make a conclusion to the MC on the need to revise / postpone the strategic framework of the JSRS in BiH 2014-2018 to 2020</p> <p>3.1 Based on the decision of the CoM BiH, to appoint members to the Working Group for the Review of the SSWCP</p> <p>4.1. Preparations for consolidation of strategic and midterm planning along with finalization and adoption of HJPC BiH Medium Term Plan 2018-2020</p> <p>5.1 Review the development of sectoral approaches and policies within the FRG 5 - Well-coordinated and guided by sector and develop a plan for next steps</p>	<p>1.3 Make a decision on the revision of the JSRS (define key roles and steps in the revision)</p> <p>1.4 Make the conclusion of MC to support to the Decision on Revision / Prolongation of the JSRS in BiH 2014-2018 to 2020 and submit it to the procedure for adoption of the CoM BiH</p> <p>2.1 Pursuant to the Decision of the CoM BiH and the analysis for the implementation of the JSRS in Bosnia and Herzegovina, make the preliminary draft of JSRS in BiH AP 2019-2020</p> <p>2.2. Implement round of consultation for the drafting of JSRS in BiH AP 2019-2020</p> <p>2.3. Draft the JSRS AP 2019-2020 and refer to the procedures for the adoption of the CoM</p> <p>3.2 Develop a revised version of the SSWCP</p> <p>4.2 Consolidation of HJPC's strategic and midterm planning (including amendments to the legal framework)</p> <p>5.2 Develop a plan for the development of sectoral approaches</p> <p>5.3 Explore the possibilities of financing the implementation of the sectoral approach development plan</p>	<p>6.</p> <p>6.1. Form a team for the project documentation</p> <p>6.2. Develop the project documentation</p> <p>6.3. Conduct consultations within FWG 5 of the JSRS</p> <p>6.4. Refer to the approval of the MC</p> <p>6.5. Refer to the procedure for receiving donor assistance</p> <p>7.</p> <p>7.1. Develop a methodology and plan for drafting the JSRS in BiH 2021-2025</p> <p>7.2. Make a stakeholder analysis</p> <p>7.3. Establish a working group for drafting the JSRS in BiH 2021-2025</p> <p>7.4. Conduct consultations for preliminary draft of the JSRS in BH 2021-2025</p> <p>7.5. Involve CSOs in the consultation process</p>	<p>7.6. Develop preliminary draft of the JSRS in BiH 2021-2025, which includes the elements of cross-cutting strategies as SSWCP and SSCC</p> <p>7.7. Conduct the consultation of the draft JSRS in BiH 2021-2025</p> <p>8.1 Based on the methodology and plan of making JSRS draw up preliminary draft JSRS AP 2021-2025</p> <p>8.2 Conduct round of consultations on draft JSRS AP 2021-2025</p> <p>8.3 Involve CSOs in the consultation process</p> <p>7.8. Draft JSRS in BiH 2021-2025 and refer to adoption procedures</p> <p>8.4 Draft AP JSRS and refer to the adoption procedure</p>	

⁸⁹ State Strategy for Combating Corruption 2015-2019 Is subject to security policy. Due to its comprehensiveness, elements are the same in the area of justice and fundamental rights.

		TARGET		<p>1. Decisions made of the relevant authorities on the Revision/ Extension of a strategic framework for JSRS in BiH 2014-2018 to 2020</p> <p>2. Developed and approved JSRS in BiH AP 2019-2020</p> <p>3. Revised and approved SSWCP</p> <p>4. The process of strategic and medium-term planning of the HJPC unified</p> <p>5. Developed a plan for the development of sectoral approaches and mapped financial support</p>	<p>6. Developed and approved description of project tasks to assist in the establishment and development of the sectoral approach, referred to the procedure for seeking assistance</p>	<p>7. Developed and approved draft of the strategic framework of the JSRS in BiH 2021-2025</p> <p>8. Developed and approved draft AP JSRS in BiH 2021-2025</p> <p>9. Revised State Anti-Corruption Strategy 2020-2024 (targets of this type opt for Security SPD)</p>	
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Institutional setting and capacity	<ul style="list-style-type: none"> The current implementation of the JSRS in BiH indicates the need for greater institutional coherence both in drafting and adopting policies, in the functionality of coordination mechanisms and in capacity The capacity analysis so far has not been done, but with regard to the requirements of the activities related to the coordination and communication of the use of IPA II indicates to numerous shortcomings The mission and role of the MoJ BiH, as a coordinating institution, is not precisely defined Although the adopted Justice Sector Reform Strategy does not have a clear framework for communication and coordination in the sector, which indicates to the need for development of mechanisms The stress analysis of the competent institutions for implementing their competencies and the capacity of key sectoral institutions were not performed HJPC BiH is an independent institution whose mandate is to establish and preserve an independent, efficient and responsible judiciary in BiH Lack of HJPC BiH support, political interference in the judiciary 	STEPS	<p>1.1. Explore options for financing the analysis on human resource capacities and the workload of relevant institutions in exercising their authority, as well the capacity of key sector institutions for communication and coordination in the Justice (sub)sector</p> <p>3.1 Strengthening the capacities of HJPC BiH and the judiciary in terms of reporting and proactive management</p> <p>3.2 Strengthening the capacities of HJPC BiH for prevention and detection of corruption and conflict of interest in the BiH judiciary</p>	<p>1.2. Prepare Terms of Reference (ToR) for the analysis on human resource capacities and the workload of relevant institutions in exercising their authority, as well the capacity of key sector institutions for communication and coordination in the Justice (sub)sector</p> <p>1.3. Conduct tender procedure</p> <p>3.3 Strengthening the capacities of HJPC BiH for prevention and detection of corruption and conflict of interest in the BiH judiciary</p>	<p>2. Provide logistical/technical assistance to experts performing the analysis on human resource capacities and the workload of relevant institutions in exercising their authority, as well the capacity of key sector institutions for communication and coordination in the Justice (sub)sector</p> <p>2.1. Prepare the draft analysis</p> <p>2.2. Provide comments to the draft analysis on human resource capacities and the workload of relevant institutions in exercising their authority, as well the capacity of key sector institutions for communication and coordination in the Justice (sub)sector</p> <p>2.3. Strengthening the capacities of HJPC BiH and the judiciary for effective fight against corruption, organised and financial crime</p>	<p>4. Provide adequate capacities at all levels of authority based on the conducted analysis</p> <p>4.1. Prepare and approve the capacity building programme</p> <p>4.2. Conduct capacity building in accordance with the plan</p> <p>4.3. Report on implementation of capacity building programme</p> <p>4.4. Assure continual training of human resources</p> <p>4.5. Assure the application of prescribed model of communication and coordination among the sector institutions</p> <p>3.5 Strengthening the capacities of HJPC BiH and the judiciary for effective fight against corruption, organised and financial crime</p>	<p>4.7. Conduct capacity building in accordance with the plan</p> <p>4.8. Report on implementation of capacity building programme</p>
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		TARGET		<ul style="list-style-type: none"> Developed draft proposal for assistance for the development of capacity and stress analysis of the competent institutions for implementing their responsibilities, as well as the capacity of key sectoral institutions for communication and co-ordination of the justice sector 	<ul style="list-style-type: none"> Developed capacity and stress analysis of competent institutions for implementing their responsibilities as well as the capacity of key sectoral institutions for communication and co-ordination of justice sector Strengthened capacities of the HJPC BiH for prevention and detection of corruption and conflict of interest in the BiH judiciary 	<p>1. Strengthened capacities of the HJPC BiH and the BiH judiciary for effective fight against corruption, organised and financial crime</p>	<p>2. An efficient mechanism for coordination between sectoral institutions has been established and capacities strengthened</p>
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Sector and donor coordination	<ul style="list-style-type: none"> Unclearly defined organizational structure and competencies of stakeholders included in the (sub) sector of Justice Coordination in the (sub) sector of Justice with regard to sectoral policies, as well as Assistance Programming is organised by the MoJ in partnership with HJPC, Entity ministries and JC BD as agreed in JSRS in BiH The JSRS in BiH foresees as steering and monitoring mechanism establishment of the five functional working groups, of which FWG 5 is for the sector co-ordination The decision on the system of coordination of the EU integration process has entered into force and means of coordination between the authorities when it comes to EU issues including the sectoral policies of justice and fundamental rights The database on assistance projects in the form of information system is run by the Ministry of Finance and Treasury of BiH, while the MoJ BiH collects data and organizes them into the basic (Excel) database for the (sub) sector of Justice MFT publishes annual donor assistance reviews The MFT organizes donor coordination meetings twice a year The system of informing donors in the (sub) sector of Justice is 	STEPS	<p>1.1. Submit a memo for the appointment of local donor assistance coordinators</p> <p>1.2. Organise a bi-monthly meeting of the sectoral coordination</p> <p>2.1. Update Financial Plan for Implementation of JSRS in BiH from Donor Assistance based on available data</p> <p>2.2. Conduct consultation with key stakeholders</p> <p>2.3. Refer to the approval and adoption</p> <p>3.</p> <p>3.1. Collect information on the projects in the (sub) sector of Justice</p> <p>3.2. Update project database</p> <p>2.1. Develop a preliminary draft report on the monitoring and evaluation of donor aid effectiveness</p> <p>7.</p> <p>7.1. Organise at least one donor information meeting involving key loyal coordinators</p> <p>7.2. Organise a coordination meeting with donors active in the BiH judiciary</p>	<p>1.3. Organise a bi-monthly meeting of the sectoral coordination</p> <p>3.3. Collect information on the projects in the (sub) sector of Justice</p> <p>3.4. Update project database</p> <p>2.2. Conduct consultation with key stakeholders</p> <p>2.3. Develop the draft Report and refer it for approval and adoption</p> <p>2.4. Develop a preliminary draft report on the monitoring and evaluation of donor aid effectiveness</p> <p>5.</p> <p>5.1. Draft a donor coordination plan</p> <p>5.2. Conduct consultation with key stakeholders</p> <p>5.3. Refer it to the procedure of approval</p> <p>7.3. Organise at least one donor information meeting involving key loyal coordinators</p> <p>7.4. Organise a coordination meeting with donors active in the BiH judiciary</p>	<p>1.4. Organise a bi-monthly meeting of the sectoral coordination</p> <p>3.5. Collect information on the projects in the (sub) sector of Justice</p> <p>3.6. Update project database</p> <p>2.5. Conduct consultation with key stakeholders</p> <p>2.6. Develop the draft Report and refer it for approval and adoption</p> <p>2.7. Develop a preliminary draft report on the monitoring and evaluation of donor aid effectiveness</p> <p>7.5. Organise at least one donor information meeting involving key loyal coordinators</p> <p>7.6. Organise at least one coordination meeting with donors active in the (sub) sector of Justice</p> <p>7.7. Organise a coordination meeting with donors active in the BiH judiciary</p>	<p>1.5. Organise a bi-monthly meeting of the sectoral coordination</p> <p>3.7. Collect information on the projects in the (sub) sector of Justice</p> <p>3.8. Update project database</p> <p>2.8. Conduct consultation with key stakeholders</p> <p>2.9. Develop the draft Report and refer it for approval and adoption</p> <p>2.10. Develop a preliminary draft report on the monitoring and evaluation of donor aid effectiveness</p> <p>2</p> <p>2.4. Develop draft Financial Plan for Implementation of JSRS in BiH from Donor Assistance 2021-2024</p> <p>2.5. Conduct consultation with key stakeholders</p> <p>2.6. Refer draft Financial plan for approval</p> <p>7.8. Organise at least one donor information meeting involving key loyal coordinators</p> <p>7.9. Organise at least one coordination meeting with donors active in the (sub) sector of Justice</p> <p>8. Provide donor support for the draft JSRS in BiH</p> <p>9. Organise a coordination meeting with donors active in the BiH judiciary</p>	
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	<p>based on the publication of annual reports on the monitoring and evaluation of aid effectiveness in the justice sector</p> <ul style="list-style-type: none"> • Donor information meetings in the (sub) sector of Justice, established in the period 2008-2012, due to lack of political support for the sectoral coordination mechanism, are currently not being held • No comprehensive donor coordination plan in the sector has been developed • The exchange of data on donor projects is at an unsatisfactory level • HJPC regularly communicates with donors • The financial plan for the implementation of the JSRS in BiH from donor assistance has not been updated 						
		TARGET	<p>1. Financial Plan for Implementation of JSRS in BiH from Donor Assistance 2014-2018 updated</p> <p>2. Updated database of projects in the (sub) sector of Justice</p>	<p>3. Updated database of projects in the (sub) sector of Justice</p> <p>4. Updated annual report on monitoring and evaluation of donor aid effectiveness in the (sub) sector of Justice</p> <p>5. Adopted donor coordination plan in the (sub) sector of Justice</p>	<p>3. Updated database of projects in the (sub) sector of Justice</p> <p>4. Updated annual report on monitoring and evaluation of donor aid effectiveness in the (sub) sector of Justice</p>	<p>1. Assured system of sector and donor coordination in the sub-sector</p> <p>3. Updated database of projects in the (sub) sector of Justice</p> <p>4. Updated annual report on monitoring and evaluation of donor aid effectiveness in the (sub) sector of Justice</p> <p>6. Developed Financial Plan for Implementation of JSRS in BiH from Donor Assistance 2021-2024</p> <p>7. Co-ordination of donors in the (sub) sector of Justice is ongoing</p> <p>8. Provided donor support for the measures covered by the JSRS in BiH</p>	

Sector budget	<ul style="list-style-type: none"> • By Public Finance Reform Program budgeting is not yet implemented for all levels of government • The sector budget planning process has not been established • Estimating the cost of strategies, as well as the JSRS in BiH, were not made • Budgets for judicial institutions are approved and secured at 14 levels of government in BiH • Domestic investment in judicial infrastructure is at an extremely low level • The HJPC BiH has an advisory role in the preparation and adoption of the budget of judicial institutions in BiH 	STEPS		2.2 Conduct an analysis of budgets, employees in the judiciary and performance of the judicial institutions in BiH	1.1. Develop methodology and plan for the development of the Plan of costing JSRS in BiH 2021-2025 1.2. Conduct round of consultation on the Plan of costing within scope of working groups for the development of JSRS in BiH 1.3. Involve CSOs in the process of consultations 2.3 Design the proposal of the system for preparation of budget proposals based on their workload and the complexity of cases	2.4 Develop preliminary draft of the Plan of costing JSRS in BiH 2021-2025 2.5 Conduct round of consultation on the draft Plan of costing JSRS in BiH 2021-2025 within scope of working groups for the development of JSRS in BiH 2.6 Refer the Plan in the procedure of approval and adoption 2.7 Devise recommendations for the system for preparation of budget proposals based on their workload and the complexity of cases	2.8 Implement recommendations for improving the effectiveness of budget planning of judicial institutions in BiH
		TARGET		2. Analysis of budgets, employees in the judiciary and performance of the judicial institutions in BiH completed	2. Proposal for the system for preparation of budget proposals based on their workload and the complexity of cases prepared	1. Developed draft plan costing of the JSRS in BiH 2021-2025 2. System for preparation of budget proposals based on their workload and the complexity of cases prepared implemented in several pilot institutions 2. Coordination of different levels of authority in the process of judicial budget preparation is strengthened with a HJPC's coordination	2. Improved efficiency of judiciary in terms of achieving results compared to financial input

Sector monitoring system	<ul style="list-style-type: none"> Monitoring Mechanisms for the implementation of the JSRS BiH and AP 2014-2018 are in the process of being established A Memorandum on the Establishment of a Mechanism to Monitor the Implementation of the JSRS by CSOs has not yet been initiated The Information and Documentation System for Monitoring the Implementation of the JSRS in BiH is insufficiently elaborated and has poor functionalities The JSRS in BiH does not have a detailed framework for monitoring and evaluation of implementation instead uses a simplified model Mechanisms for Monitoring and Evaluation of SP of HJPC 2014-2018 established Courts and prosecutors' offices in BiH use the Case Management System (CMS / TCMS) in daily operations HJPC BiH continuously monitors the work of the judiciary on the basis of data from the CMS / TCMS and the System for Reporting and Support to Decision Making 	STEPS	<p>1.1. Draft decisions on appointing members of the working groups / monitoring bodies of the JSRS</p> <p>1.2. Establish working groups and bodies responsible for monitoring the implementation of AP JSRSP</p> <p>1.3. Identify CSOs to monitor implementation of reform measures</p> <p>1.1. Sign the Memorandum on Establishing a Mechanism for Monitoring the Implementation of the JSRS with identified CSOs</p> <p>3.1. Implementation of the System for reporting and decision-making support in all judicial institutions in BiH</p> <p>4.</p> <p>4.1. Organize at least one meeting of the FWG's and TS JSRS as a body for monitoring</p> <p>4.2. Draft the Report on the Implementation of the JSRS in BiH for the current year, including the elements of SSWCP and SSCC</p> <p>4.3. Refer the Report for approval</p> <p>5.</p> <p>5.1. Organise at least one MC meeting as a political monitoring and evaluation body</p> <p>5.2. Approve the Report, refer to the adoption and make recommendations</p> <p>7.1 Draft Terms of Reference for Info.-doc. system for monitoring the implementation of the JSRS in BiH</p> <p>7.2 Conduct tendering procedure</p> <p>7.3 Provide support to the development of Info.-doc. system</p>	<p>1.2. Involve CSOs in the process of monitoring and assessing the implementation of sectoral measures</p> <p>4.4 Organise at least two FWG and TS SRSP meetings as monitoring bodies</p> <p>4.5 Draft the Report on the Implementation of the JSRS in BiH for the current year, including the elements of SSWCP and SSCC</p> <p>4.6 Refer the Report for approval</p> <p>5.3. Organise at least two MC meetings as a political monitoring and evaluation body</p> <p>5.4. Approve the Report, refer to the adoption and make recommendations</p> <p>6.</p> <p>6.1 OCDs produce reports on monitoring the implementation of the JSRS in BiH</p>	<p>4.7 Organise at least two FWG and TS SRSP meetings as monitoring bodies</p> <p>4.8 Draft the Report on the Implementation of the JSRS in BiH for the current year, including the elements of SSWCP and SSCC</p> <p>4.9 Refer the Report for approval</p> <p>5.5 Organise at least two MC meetings as a political monitoring and evaluation body</p> <p>5.6 Approve the Report, refer to the adoption and make recommendations</p> <p>6.2 OCDs produce reports on monitoring the implementation of the JSRS in BiH</p>	<p>4.10 Organise at least two FWG and TS SRSP meetings as monitoring bodies</p> <p>4.11 Draft the Report on the Implementation of the JSRS in BiH for the current year, including the elements of SSWCP and SSCC</p> <p>4.12 Refer the Report for approval</p> <p>5.7 Organise at least two MC meetings as a political monitoring and evaluation body</p> <p>5.8 Approve the Report, refer to the adoption and make recommendations</p> <p>6.3 OCDs produce reports on monitoring the implementation of the JSRS in BiH</p>	<p>8.1. Establish a mechanism for monitoring the implementation of the JSRS in BiH by drafting implementing acts (Rules of Procedure)</p> <p>8.2. Draft decisions on appointing members of working groups / bodies for monitoring the implementation of the JSRS in BiH and AP</p> <p>8.3. Establish working groups and bodies in charge of monitoring the implementation of the JSRS in BiH and AP</p> <p>8.4. Review the possibility of continuing to monitor implementation with CSOs</p> <p>8.5. Define Implementation Act (Memorandum)</p> <p>8.6. Organise meetings of working and political bodies</p> <p>8.7. Draft reports on the implementation for the current year</p>
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		TARGET	<p>1. A mechanism for monitoring the implementation of AP JSRS in BiH 2014-2018 has been established</p> <p>2. Increased engagement of NGOs in activities (sub) sector of justice</p>	<p>3. Based on the data from the System for Reporting and Support to Decision Making, the HJPC BiH and the relevant ministries of justice monitor the work of the judiciary</p> <p>7. Drafted Project Proposal of the Information Documentation System for monitoring of the JSRS in BiH and submitted for funding, and the system in function</p>		<p>4. Monitoring in the (sub) sector of Justice is continually conducted</p> <p>5. Political leadership has been provided for reforms in the (sub) sector of Justice</p> <p>6. OCDs are continually involved in the reform monitoring process</p>	<p>8. Provided continued follow-up to reform in the (sub) sector of Justice</p>
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ADDITIONAL CRITERIA

CRITERIA	BASELINE		2017	2018	2019	2020	2021
90Public finance management (incl. budget transparency)	<ul style="list-style-type: none">lack of fully adequate internal controls (especially in public procurement) make the PFM systems in BiH still remarkably vulnerable to inefficiency and wastefiscal system in BiH is highly decentralized. A Fiscal Council was created in 2008, to coordinate fiscal policies in BiH in order to ensure macroeconomic stability and fiscal sustainability of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District.	STEPS	<ul style="list-style-type: none">BiH Institutions and Entity governments have planned a number of improvements of PFM system	<ul style="list-style-type: none">BiH Institutions and Entity governments have planned a number of improvements of PFM systemPreparation of PFM strategy/programme	<ul style="list-style-type: none">Work on the improvement of the system of financial management in the public sectorPFM strategy/programme	<ul style="list-style-type: none">Work on the improvement of the system of financial management in the public sector, in line with the PFM strategy/programme	<ul style="list-style-type: none">Work on the improvement of the system of financial management in the public sector, in line with the PFM strategy/programme
		TARGETS	<ul style="list-style-type: none">signing of a Memorandum of Understanding by the four tax administrations on the exchange of taxpayer information (with a view to facilitating the permanent, unfettered, and automated sharing of taxpayer records);continued expansion of treasury systems in both Entities to cover all cantons, local self-governance units, and EBFs;the implementation of the measures envisaged in the National Economic Reform Programme ongoing	(DEI with MFT assistance ?)		(DEI with MFT assistance ?)	
Macro-economic context	<ul style="list-style-type: none">the Government debt (domestic and external) is constantly growing during the last few years and in 2013 it reached 46.2% of GDP, according to national data	STEPS	The government undertakes measures to improve the macroeconomic policy				
		TARGETS	<ul style="list-style-type: none">IMF studies confirm the government is pursuing stability oriented macro-economic policies(DEI with MFT assistance ?)				

90 The activities regarding this PFM are elaborated in SPD Governance and are a part of the respective ADs within this sector

ANNEX 2

Sector specific document(s)

Justice	
Country-wide strategies	Strategy on Justice Sector Reform in BiH (JSRS) 2014 - 2018
	National War Crime Strategy (2008)
	Mid-term developmental plan of the Court of BiH and BiH Prosecutor's Office 2012–14
	Mid-term developmental strategic plan of the Court of Bosnia-Herzegovina 2014 – 16
	Mid-term strategic plan of the BiH Ministry of Justice 2012-2015 , 2016-2018, 2017-2019
	Strategic Plan of the HJPC (2014 – 2018)
	The National Anti-Corruption Strategy and Action Plan 2009 – 14
FBiH Strategies ⁹¹	Justice Sector Reform Strategy of BiH -2014-2018
	National War Crimes Strategy of BiH
	Ministry of Justice's anti-corruption programme (based on the FBiH Government's general anti-corruption plan) 2012-2014
	Regulatory reform strategy (2013–2016) ⁹²
RS strategies ⁹³	Anti-Corruption Strategy 2013–2017
	Juvenile delinquency strategy 2013–2017
	Action Plan for the implementation of the Juvenile delinquency strategy 2013 – 2017 ⁹⁴
Brčko District ⁹⁵	No justice strategies
Home Affairs	
Country-wide strategies	Strategy to prevent and fight terrorism (2009-13; a revision is planned during 2013 for the period 2012-17)
	Strategy and action plan to fight human trafficking
	Strategy and Action Plan for integrated border management (2011-14)
	Strategy and Action Plan for the control of small arms and light weapons (2008-12; revision for 2013-16)
	National Strategy and Action for fighting the abuse of illicit drugs (2009-13)
	Strategy for the fight against Cybercrime (planned)
	Strategy and Action Plan to fight Organised Crime (2009-12)
	New Organized Crime Strategy is drafted 2014-18 and sent to the Council of Ministers for approval
	Strategy to prevent and fight terrorism (2009-13; a revision is planned during 2013 for the period 2012-17)
Fundamental rights	
Country-wide strategies	
FBiH Strategies	
RS strategies	
Brčko District	

⁹¹ Overview prepared based on the list of strategies sent by FBiH to the NIPAC office in March 2013. Verified with the entity authorities that there were no major changes to the list since March 2013.

⁹² Source: NIPAC Office (Overview prepared based on the list of strategies sent by FBiH to the NIPAC Office)

⁹³ Overview prepared based on the list of strategies sent by RS to the NIPAC office in March 2013

⁹⁴ Source: NIPAC Office (Overview prepared based on the list of strategies sent by RS to the NIPAC Office)

⁹⁵ Overview prepared based on the list of strategies sent by Brcko District to the NIPAC office in March 2013

ANNEX 3

Additional data for problem analysis:

Tables 1a: Assessment of the rule of law in BiH

Area	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Judicial Framework and independence	4.25	4.00	4.00	4.00	4.00	4.00	4.25	4.25	4.25	4.25
Corruption	4.5	4.25	4.25	4.25	4.5	4.5	4.5	4.5	4.75	4.75
Independent Media	4.0	4.0	4.0	4.25	4.5	4.5	4.75	4.75	4.75	4.75

Source: Freedom House⁹⁶

Table 1b: Assessment of the rule of law in BiH

Area	2010	2011	2012	2013	2014
CPIA transparency, accountability and corruption	3.0	3.0	3.0	3.0	-
CPIA public administration	3.0	3.0	3.0	3.0	-
CPIA public sector management and institution cluster average	3.3	3.3	3.3	3.3	-
CPIA gender equality	4.5	4.0	4.0	4.0	-

Source: World Bank data⁹⁷ (1-the best; 6-the worst)

Table 2: Courts in BiH

State level		Entity levels				Brčko District	
		Federation BiH		Republika Srpska			
Court	No	Court	No	Court	No	Court	No
Constitutional	1	Constitutional	1	Constitutional	1	Basic	1
Court of BiH	1	Supreme	1	Supreme	1	Appeal	1
		Cantonal	10	Basic	20		
				District	6		
		Municipal	32	District Commercial	6		
				High Commercial	1		
Subtotal	2	Subtotal	44	Subtotal	35	Subtotal	2

Source: HJPC

Table 2: Number judges and prosecutors in BiH⁹⁸

Level profile	State	Entity: FBIH	Entity: RS	Cantonal	District	High Commercial	Municipal	Basic	BD	TOTAL
Judges	53	42	22	150	110	7	566	224	20+8 ⁹⁹	1202
Prosecutors	59	12	13	201	85	-	-	-	9	379

Source: HJPC

Table 3: Disciplinary cases in BiH

2014			2015			2016		
Number of registered complaints:	1.129		Number of registered complaints:	1.163		Number of registered complaints:	919	
	1.138		Number of resolved cases:	1.008		Number of resolved cases :	922	
Number of resolved cases:	18		Number of disciplinary proceedings:	28		Number of disciplinary proceedings:	32	
Number of disciplinary proceedings:	17		Completed disciplinary proceedings:	26		Completed disciplinary proceedings:	28	
	18		Number of sanctions :	26		Number of sanctions :	27	
Completed disciplinary proceedings:	(13 judges, 4 prosecutors)		(15 judges, 10 prosecutors, 1 legal associate)			(20 judges, 5 prosecutors, 2 legal associates)		
Number of sanctions:								

Source: HJPC

⁹⁶ <https://freedomhouse.org/report/nations-transit/2014/bosnia-and-herzegovina>

⁹⁷ <http://data.worldbank.org/indicator/all>

⁹⁸ HJPC BiH Judicial Office Holders database (on July 5, 2017)

⁹⁹ Basic and Appellate Court

Table 4: Cases of corruption in judicial system in BiH

2015		2016	
Registered complaints	1182	Registered complaints	1268
Investigations initiated	479	Investigations initiated	451
Indictments	257	Indictments	200
Judgments	113	Judgments	192
Verdict	96	Verdicts	166
Dismissal	2	Dismissal	4
Acquittal	15	Acquittal	22

Source: HJPC

Table 5: Judicial and prosecutorial training centres in BiH

Judicial and prosecutorial training centre in RS (2013)	Judicial and prosecutorial training centres in FBiH (2013)
<ul style="list-style-type: none"> - 2375 days of training per participant – (judges – 361 = 1907 days of training, prosecutors – 92 = 468 days of training) - 107 training activities (out of which in 52 events acted as co-organiser) covering criminal law (30), civil law (27), misdemeanour law (3), commercial (3), administrative law (1), non-contentious areas (1), enforcement (1), labour law (2) and 25 trainings on other areas, induction courses (14) for new employees 	<ul style="list-style-type: none"> - 105 training activities covering European Convention on HR (10), EU Law (2), criminal law (46); civil law (22); family law (2), non-contentious areas (1); administrative law (3); labour law (2); enforcement (2); commercial law (3);misdemeanour law (1); trainings for court and prosecutors management (2);ethics and professional standards (1);IT (4) Train-the-trainers (4), Induction courses for future judges and prosecutors (16)

Source: JPTCs Annual Reports