

**EU-Bosnia and Herzegovina**  
**Stabilisation and Association Agreement**  
**1st SUBCOMMITTEE ON JUSTICE, FREEDOM AND SECURITY**  
**Sarajevo, 1-2 December 2016**

**European Commission's**  
**RECOMMENDATIONS AND OPERATIONAL CONCLUSIONS**

<b>Functioning of the judiciary</b>
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**Strategic framework**

- BiH authorities are urged to adopt the **Action Plan** accompanying the 2014-2018 countrywide justice sector reform strategy (JSRS) and are expected to convene by February 2017 the second **Ministerial Conference overseeing the JSRS implementation** with the view of adopting the Ministerial Conference Rules of Procedure. BiH authorities are invited to indicate which activities of the JSRS Action Plan require budgetary allocations and which ones are budget-neutral.
- BiH authorities are encouraged to continue to implement, pending the adoption of the Action Plan, measures in the areas of integrity, professionalism, accountability and efficiency of the justice system in accordance with the relevant guidelines issued by the High Judicial and Prosecutorial Council (HJPC).
- BiH authorities are invited to continue with preparatory works, initiated within the HJPC, on the **draft Law on High Judicial and Prosecutorial Council**. Such preliminary baselines shall be consolidated by the BiH Ministry of Justice with a view to starting a discussion within the EU-BiH Structured Dialogue on Justice in the 1<sup>st</sup> half of 2017. The process of drafting shall take into consideration the relevant recommendations of the 2016 European Commission Report on BiH and the opinion of the Venice Commission of March 2014 on the 2014 version of the draft Law on HJPC.
- HJPC, and other concerned authorities whenever relevant, are invited to give an appropriate follow-up on the recommendations of the **Peer Review on HJPC Rules of Procedure** (notably regarding transparency of HJPC sessions, strengthening of voting procedure and disqualification and relocation of judges and prosecutors). A review meeting with the European Commission on this matter will be held by March 2017.

**Independence, impartiality and professionalism**

- BiH authorities are urged to take steps towards completing the legal framework in line with European standards on independence of the judiciary, in particular through identifying mechanisms that ensure sufficient protection against unlawful pressure on the independence and impartiality of judges and prosecutors.
- BiH authorities and HJPC are invited to follow up on recommendations of the **Peer Review on procedures and criteria for appointments of judges and prosecutors**, with a view to ensuring that the appointment and career management of judges and prosecutors become more

transparent, efficient and professional, notably by making a distinction between the procedures for the first entrance in the judiciary and the procedures to grant transfer and promotion to judicial office holders. A review meeting with the European Commission on this matter will be held by March 2017.

- A **Peer Review on performance appraisal of judges and prosecutors** should take place in the first half of 2017.

### **Accountability**

- BiH authorities and HJPC are invited to follow up on recommendations of the **Peer Review on disciplinary procedures** in the judiciary, notably with a view to increasing effectiveness and credibility of the disciplinary system, and to take further measures to improve accountability of judicial and prosecutorial office holders. A review meeting with the European Commission on this matter will be held by March 2017.
- BiH authorities and HJPC are urged to improve the legislative and regulatory framework regarding **declarations of assets of judges and prosecutors** with a view to establishing a control and oversight mechanism. In this regard, a Peer Review should take place in the first half of 2017.
- Relevant judicial institutions are expected to implement the **guidelines on integrity and conflict of interest** in judiciary, adopted by the HJPC in July 2016.

### **Efficiency and effectiveness**

- BiH authorities are urged to take further measures to reduce the **backlog** of cases in courts throughout the country, paying particular attention to the **unpaid utility bills and small value cases**, notably by reforming the system of enforcement of court decisions, in particular in the Federation of BiH, including through more comprehensive legislative and institutional measures. These may follow, but are not limited to, the example of the revised Enforcement Procedure Law in Republika Srpska and give the unpaid utility bills the status of *exequatur*, or engage private entities for the delivery of court orders.
- A **dedicated roundtable** with all relevant stakeholders, including utility companies and respective governments shall be organised in first half of 2017 in order to come up with concrete action plan for reducing the utility case backlog and progressively removing this type of cases from the courts. EU Member States experts shall also be invited to review progress and help identify solution in line with EU best practices.

### **Quality of justice**

- BiH authorities are invited to upgrade **multiannual training programmes** for judges and prosecutors as well as an independent monitoring and assessment system.
- BiH authorities are invited to improve the system of **initial education** of newly appointed judges and prosecutors. A **Peer Review on the educational activities** of the Judicial and Prosecutorial Training Centres should take place in the first half of 2017.
- BiH authorities are invited to give appropriate follow-up on recommendations of the IPA project on 'Strengthening capacities for judicial reform' (ended in June 2016) and ensure timely needs assessment for the continuation of assistance in this area.
- BiH authorities are urged to ensure **access to selected court decisions** where this is not yet the case and improve the overall access, which is still limited to interested parties and requires payment of a fee.

- BiH authorities, namely the relevant beneficiary institutions, are encouraged to make the best use of the upcoming IPA project supporting **court-annexed mediation** in selected pilot courts (following up on a previous IPA project assessing the use of Alternative Dispute Resolution in BiH).
- BiH authorities are encouraged to develop a legislative framework for allowing protection of **right to judgment within reasonable time**.

#### **Judicial cooperation in civil and criminal matters**

- BiH authorities are invited to take the necessary steps to ensure personal data protection in the judiciary with a view to concluding a cooperation agreement with **Eurojust** as soon as possible.
- BiH authorities are encouraged to elaborate a plan to amend **legislation on international legal assistance and bilateral regional cooperation agreements** to introduce direct court-to-court cooperation and foster ongoing judicial cooperation in criminal matters with EU Member States.
- BiH authorities are encouraged to make further progress on acceding to **international instruments** in the field of judicial cooperation such as the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, and the Protocol of 23 November 2007 on the law applicable to maintenance obligations.
- BiH authorities are invited to ensure that **judges and prosecutors are trained on Council of Europe instruments** in the field of judicial cooperation, particularly on the Mutual Assistance (MLA) Convention (1959) and its two Protocols, the Extradition Convention (1957) and its four Protocols and the Convention on the Transfer of Sentenced Persons (1983) and its Additional Protocol.

#### **Implementation of National War Crimes Strategy**

- BiH authorities are invited to provide a **revised assessment of the capacities of the State-level judiciary** to process the remaining, most complex war crimes cases, and of other levels of jurisdiction for processing less complex cases within reasonable time.
- BiH authorities are urged to establish a working group tasked to draft and propose relevant **amendments to the strategy**, including those reinforcing the role of the **Supervisory Body** to effectively monitor the implementation of the Strategy. The working group is expected to provide draft amendments to the BiH Council of Ministers by March 2017 for a comprehensive review of the National War Crimes Strategy.
- The European Commission will take stock of the progress on this issue in the context of the Ministerial Meeting convened in the framework of the **EU-BiH Structured Dialogue on Justice** in early 2017.

## Anti-money laundering

BiH authorities are expected to:

- Urgently make progress towards implementing the recommendations of the **Financial Action Task Force (FATF) action plan**, particularly on the registration and financial reporting of the non-governmental sector and legislation regarding investment funds and insurance; take all necessary steps to meet FATF action plan deadlines; ensure coordination among all jurisdictions concerned; align the Criminal Code of Republika Srpska in terms of criminal offences of money laundering and terrorism financing with outstanding FATF recommendation.
- Make operational the designated **supervisory bodies** on the prevention of money laundering and terrorism financing.
- Use the expertise of the **IPA Twinning Project** on fight against money laundering to start in early 2017.

## Anti-corruption Policy

BiH authorities are encouraged to:

- Adopt consistent **anti-corruption policy documents**, wherever these are still missing (Brčko District BiH, Zenica-Doboj Canton, Herzegovina-Neretva and Western Herzegovina Cantons) and ensure their effective implementation and evaluation in accordance with the corresponding strategic framework at all levels.
- Establish **preventive bodies** at all levels of governance, wherever these are still not in place (Western Herzegovina Canton) with appropriate coordination channels to prevent and fight corruption.
- **Exchange information among prevention bodies**, in particular to notify the Agency for Prevention of Corruption and Coordination of the Fight against Corruption about implementation of the strategic documents in order to enhance coordinated reporting on prevention of corruption.
- Ensure appropriate legislative and institutional follow up to fulfil the outstanding **GRECO Recommendations**, notably on political party financing and conflict of interest and inform thereon the European Commission in writing.
- Complete the legislative framework on **whistle-blowers' protection** at all levels of governance.
- Amend the legislation in order to establish an efficient mechanism for checking the accuracy of **asset declarations** at all levels.
- Develop a solid coordinated methodology of measuring the **track record** of investigation, prosecution and adjudication of corruption cases among all levels of governance.
- Take steps to ensure that law enforcement and prosecution bodies are fully empowered, including through additional professional **training**, to effectively and impartially investigate corruption allegations.
- A **Peer Review on fight against corruption** across the levels of governance in BiH should take place in 2017.

## **Fight against organised crime and Police reform**

BiH authorities are encouraged to:

- Establish an efficient **monitoring mechanism for the implementation of strategy on combating organised crime**.
- Establish an efficient **mechanism to oversee implementation of the high number of action plans** by BiH's various law enforcement agencies.
- Strengthen the framework for **inter-agency cooperation** among law enforcement bodies to allow for the **establishment of specialised multi-agency investigation teams**.
- Introduce structural changes to improve **practical cooperation between prosecutors' offices and the police**, in particular regarding **mutual access to databases**.
- Introduce minimum standards for **asset seizures** into the legislation across the country.
- Regulate the **management of confiscated assets** at the state level.
- Develop a comprehensive overall strategic framework to address the issue of **cybercrime** and cyber security threats.
- Introduce **computer emergency response team (CERT)** at the state level and in F BiH, and enhance them in Republika Srpska.
- Step up implementation of the **Protocol to the Council of Europe Convention on Cybercrime proceeding**.
- Harmonise the legal framework on **human trafficking** with the EU law, notably by adopting the relevant amendments to the Criminal Code of F BiH.
- Complete the activities under the strategy for **controlling small arms and light weapon**.
- Assess the new legislation against the **joint minimum standards on the possession and carrying of weapons by civilians**.
- Implement the **Action Plan on illicit trafficking in firearms** between the EU and the South East Europe region (2015-2019).

## **Cooperation in the field of drugs**

- BiH authorities are encouraged to adopt a **national strategy and action plan** for drug suppression.

## Fight against terrorism

BiH authorities are encouraged to:

- Strengthen the capacities of the **counter-terrorism task force**, taking into account that its operational component is still awaiting rules for its financing and confirmation of the formal status of its members.
- Follow-up on the **EU Council conclusions** on the Integrative and Complementary Approach to Counter-Terrorism and Violent Extremism in the Western Balkans and to the EU- Western Balkan Counter-terrorism Initiative Integrative Plan of Action 2015–2017.
- Keep focusing on **preventing and disrupting the flow of foreign terrorist fighters** (FTFs) travelling to conflict areas such as Iraq and Syria.
- Develop **de-radicalisation** and **prevention of radicalisation** programmes.
- Step up efforts made on the different governance levels and sectors on:
  - **Preventing the spread of violent extremist ideologies and ideas** (in particular in correctional institutions and public schools),
  - **Preventing recidivism** of persons convicted for terrorist offences, and
  - **Supporting re-socialisation and reintegration** of FTFs and other persons convicted for terrorist offences.
- Introduce programmes providing support (psychological, re-integration, economic) to **family members of FTFs**.
- Ratify and implement the **Additional Protocol to the CoE Convention on the Prevention of Terrorism**.

## Asylum and migration

BiH authorities are encouraged to:

- Increase the **reaction capacities** of BiH authorities in case of sudden mass influx of migrants into BiH.
- Intensify **international and/or regional cooperation** in the area of migration management.
- Make progress on the status of the comprehensive **Housing Policy** that includes provisions for social inclusion of **IDPs and returnees**.
- Strengthen existing mechanisms for collecting, sharing and analysing **data on migration**.

## Border management and visa policy, including post-visa liberalisation monitoring

BiH authorities are encouraged to foster **cooperation with neighbouring countries** on border management.

## Fundamental rights

BiH authorities are encouraged to:

- Finalise and adopt a country-wide **human rights strategy** with the accompanying action plan.
- Adopt a revised Action Plan for the implementation of the **Sejdić-Finci and related rulings** in Zornic, Slaku and Pilav cases.
- Implement the activities envisaged by the revised Action Plan and provide to the Commission a regular update on its implementation.
- Take steps to eliminate the issue of **anti-discrimination in schools** such as "two schools under one roof" to comply with the 2014 FBiH Supreme Court ruling on this matter.
- Adopt an improved **Ombudsman Law** in line with best EU and international standards including the Paris Principles particularly addressing issues related to the Ombudsman Institution's structural financial independence, a more formalised appointment procedure, enhanced involvement of civil society and extension of its mandate to the National Preventive Mechanism.
- Increase the current budget and staffing of the **Ombudsman office**.
- Develop and adopt **anti-discrimination** strategy with the accompanying Action Plan.
- Implement the **Law on anti-discrimination**; take necessary steps to promote the Law and anti-discrimination practices through awareness rising campaigns toward the wider public as well as targeted groups, and develop trainings for the legal professions.
- Develop guidance on **informing the BiH citizens** on their rights and possibilities to address discrimination cases before the Ombudsperson and competent Courts.
- Establish adequate and reliable **statistical data collection** and ensure efficient use of the same for overall analyses and assessment of discriminatory occurrences.
- Ensure adequate follow up and investigation of hate crimes targeting the **LGBTI** community.
- Simplify the procedure of **legal sex change**.
- Revise the **Roma** Action Plans on employment, housing and healthcare in line with the operational conclusions from the 2015 Roma seminar, as well as the completion of the civil registration process for those at risk of statelessness; continue with the implementation of the Roma Action Plans and start with the more concrete implementation of 2015 Roma seminar Operational Conclusions.
- Allocate specific budget to implement the 2015-2018 action plan on **children**; promote the use of foster care and alternative solutions.
- Promote in an effective and fair manner the rights of **persons with disabilities**.
- Continue with the implementation of the **Gender Action Plan** and allocate adequate funding.
- Ensure a harmonised, consistent, non-discriminatory, effective **free legal aid** system across the country on the basis of minimum common standards, notably by adopting outstanding laws on free legal aid on relevant levels of governance while ensuring sound implementation of all adopted laws on free legal aid.

<b>Financial assistance and donor coordination in the JHA area</b>
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BiH authorities are encouraged to:

- Whenever new IPA assistance is requested, provide information on BiH's **budget plans** for the justice and home affairs sector, in order to ensure the added value of EU assistance which should not replace but complement domestic funding.
- In the context of ongoing preparations of possible IPA Sector Budget Support to Bosnia and Herzegovina, bear in mind that the existence of country-wide strategies is one of the pre-conditions to receive such IPA Sector Budget Support in a given sector, and that such strategies and/or their action plans need to include cost assessment of the foreseen activities.

**ADDITIONAL INFORMATION**

BiH authorities are expected to provide, **by March 2017**, written submissions on the following areas:

- Main activities envisaged for 2017 concerning **migration and asylum**.
- Main challenges as regards **readmission of BiH citizens** and measures to address them.
- Main activities envisaged for 2017 in implementing the **IBM strategy**.
- **Cooperation with Frontex**, including participation in specialised training.
- **Cooperation with Europol**.
- **Break-down of statistics on cases dealt by the Ombudsman** according to the various discrimination grounds.
- Strategy for the implementation of the **Istanbul Convention and related Action Plan**, as well as the **implementation of the legislation on gender equality**.