

**Plenary meeting of the "Structured Dialogue on Justice and Additional Rule of Law
Matters between the European Union and Bosnia Herzegovina"**

Sarajevo, Bosnia and Herzegovina (13-14 May 2014)

Recommendations by the European Commission

On the Structured Dialogue agenda, the European Commission:

- Mindful of the last set of conclusions on Bosnia and Herzegovina, adopted at the Foreign Affairs Council in Luxembourg, on 14 April 2014, which supported the broadening of the EU agenda and engagement towards the country, including through expansion of the EU-BiH Structured Dialogue on Justice to other rule of law issues;
- Reiterates relevance of a broadened Structured Dialogue agenda, which addresses new priorities as jointly identified with representatives from relevant domestic authorities and the civil society, along the following policy areas: anti-corruption; anti-discrimination; prevention of conflict of interest; measures to strengthen integrity, accountability and efficiency of police forces within the existing legal framework.
- Emphasises that particularly anti-corruption policies remain a cross-cutting priority, which shall be addressed within a holistic approach and assessed through all relevant instruments and platforms, including through the “Compact for Growth”.
- Reiterates that all priorities relevant to the visa liberalisation roadmap will continue to be thoroughly monitored in the context of the Post-Visa Liberalisation Monitoring Mechanism. In this context, maintains its commitment to periodically assess consistency of progress and sustainability of all reforms that were undertaken in relation to benchmarks of visa liberalisation road-map.
- Reiterates its commitment to maintain the reform of the judiciary and issues related to war crimes processing as the main priorities of the Structured Dialogue, which shall continue to be addressed as core matters until domestic authorities guarantee sustainable reforms that will help the consolidation of a truly independent, credible, effective, efficient, impartial and accountable judiciary: there are the cornerstone for the entrenchment of the rule of law throughout Bosnia and Herzegovina.
- Recalls the later shall be developed fully in line with the relevant EU acquis and European standards, whilst mindful of the recommendations issued by the European Commission and the stances adopted by the European Commission for Democracy through Law (the Venice Commission) at the Council of Europe.

On Professionalism of the judiciary, the European Commission:

- Welcomes the introduction of a new system of competitive written examination for all candidates entering judicial careers and the systematisation of structured interviews for all applicants, including internal promotions, with a view to increase the objectivity and transparency of recruitment based on merit and qualifications.
- Expects all judges and prosecutors to fully abide by the rulebooks on performance, including implementation of the quota system introduced over the past years.
- At the same time, welcomes efforts to improve assessment of performance of judges and prosecutors, through readjusting the quotas for those segments of cases that require more attention due to complexity and priority, thus striking an appropriate balance between annual revision of quantitative targets and qualitative features necessary for fair appraisal.
- Further reiterates the importance of efficient and effective disciplinary proceedings and sanctions in case of breach of professional duties by members of the judiciary, through better institutional positioning and empowerment of the Disciplinary Prosecutor.
- Encourages the HJPC to adopt the Book of Rules on Conflicts of Interest of its members, as an initial step towards advancements in this area.
- Encourages the adoption of clear rules and regulations to resolve conflict of interest issues within the broader judicial and prosecutorial services throughout the country, including through functional system for submission and monitoring of assets declaration of judges and prosecutors.

On Independence of the Judiciary and Institutional Reform of the State level Judiciary, the European Commission:

- Reiterates the conclusions of the experts' seminar held in December 2012 through TAIEX support, in the presence of the relevant experts from the Venice Commission.
- In particular, recalls the conclusion that "any structural reform that reintroduces a strong role of the other pillars of the state, the executive and the legislative with regard to the prerogatives of the judiciary, would determine a rollback, especially if specific safeguards are not introduced to prevent overexposure of appointments to influence of political parties".

- Emphasises in particular that the above assessment is valid in relation to the rules regulating both the appointments of the members of the judiciary by the High Judicial and Prosecutorial Council (HJPC), as well as the procedure for the appointment of HJPC members itself.
- Recalls in this regard, the need to prevent overexposure of appointments to the influence of political parties and expects the Ministry of Justice of BiH to carefully review the recommendations adopted at the 98th plenary of the Venice Commission on 21 March 2014 and translate them into concrete amendments to the draft law on the HJPC, particularly looking at the recommendations related to the appointment/dismissal procedure of HJPC members, appointment of prosecutors and the composition, as well as the composition and structure of the council.
- In that context, reminds that the reform of the HJPC must undergo a thorough internal debate, taking into due account the findings and conclusions provided in the Opinion of the Venice Commission on the draft law on the HJPC. The result of the reform must reflect the largest possible consensus, which will help to consolidate the functions of a single state-wide HJPC, in accordance with the Constitution of BiH, and further strengthen its role for entrenching the rule of law throughout BiH.
- Based on these principles, invites the BiH Ministry of Justice to revise the draft law on the HJPC and process it through the Council of Ministers for further legislative procedure.
- On the basis of Art. 17 (§28) of the current Law on the HJPC, based on existing data and in co-operation with the Court of BiH and other relevant judicial instances affected, tasks the HJPC to provide an analytical opinion on the application of the extended criminal jurisdiction of the state level judiciary.
- This opinion shall be completed at the latest by end of June 2014 and shall include:
 - 1) The number of cases adjudicated in application of Art. 7.2 of the Law on Court of BiH since the enforcement of the reform of 2003 to date;
 - 2) Specific indications on the types of criminal offences within Entity/BD jurisdiction that were the matter of adjudication before the Court of BiH;
 - 3) Summary overview of main reasoning provided by the state level judiciary when asserting the extended jurisdiction, as well as information on course of proceedings;

- 4) Statistical overview of the final outcome of proceedings, and all other details relevant for the analysis of that jurisprudence.
- Emphasises that data provided by the Court of BiH, and the findings of the analytical opinion shall be taken into due account by the proponent of the law, and once the analytical opinion is adopted, commits to provide further EU technical assistance to support the legislative drafting exercise.
- Reminds that while processing further the draft Law on Courts of BiH into legislative procedure, the Ministry of Justice of BiH shall secure the widest and most consensual political support to this legislative proposal, in line with the latest comments provided by the Venice Commission on 11 February 2014, namely regarding the Draft Art 15 (Criminal jurisdiction) and other issues of concern.
- In particular, further emphasises the issues raised by the Venice Commission on the new draft art. 15(2)(b), which among other possible adjustments, still require that a reference at crimes committed by individuals be outlined as an additional separate paragraph.
- Further reminds the positions earlier expressed, for which the principle of the extended jurisdiction of the state level judiciary is to be retained through objectivising the relevant parameters, in order to eliminate any possible prejudice to the principle of the natural judge.

On Efficiency of the Judiciary, the European Commission:

- Reminds that reducing the general backlog of cases in courts and prosecutors' offices remains a crucial priority. In addition to existing backlog reduction plans, invites the HJPC to seek further systemic solutions aimed at disburdening the judiciary throughout BiH of the caseloads, including through introducing legislative initiatives particularly regarding the unpaid utility bills.
- Reminds that the specific backlog of war crimes cases also remains an issue of serious concern. In this specific regard, recalls the conclusions adopted at the 3287th Council meeting on General Affairs, held in Brussels on 17 December 2013, in which emphasis is attached to the fact that “proper handling of war crimes cases is a crucial endeavour. Justice needs to be guaranteed for the victims and their families and to support the broader efforts towards reconciling societies within Bosnia and Herzegovina, as well as in the whole region. All individuals suspected of war crimes must be brought to justice”.

- Strongly reminds that effective and timely war crimes cases processing, including those related to sexual and gender based violence, is key to reconciliation.

On the implementation of the National War Crimes Strategy (NWCS), the European Commission:

- Reiterates that, in the context of the strategy, the most complex cases as well as the so called “Category II” cases that the ICTY transferred to the BiH Prosecutor’s Office, shall be tackled without delay. Presenting detailed periodic reports on the processing of these cases shall become a regular task of the BiH Prosecutor’s Office.
- Further reminds the importance of the role of the Supervisory Body for the implementation of the NWCS in overseeing the accomplishment of the targets foreseen in the individual action plans for the resolution of war crimes cases of each Prosecutor’s office in BiH, as well as cases processed by relevant courts.
- Notes the obligation for prosecutor’s offices throughout BiH, and thereafter the courts, to prioritise war crimes cases already transferred, so that the process of referrals can continue to achieve the purpose of helping to decrease the backlog of cases throughout the BiH judiciary.
- Expects that an effective and rigorous management of referred war crimes cases helps to determine final and exact number of cases at each level of authority, in order to assess the capacity of relevant jurisdictions to implement their strategic goals. Invites the Supervisory Body to consolidate these numbers and provide an overview of processing of war crimes cases until the end of terms, as set in the Strategy.

On the strategic framework for Anti-Corruption, the European Commission:

- Emphasises that inclusiveness in the approach of preparing a new anti-corruption strategy 2015-2019 shall be maintained and enhanced.
- In this context, in co-operation with the Agency for prevention of the corruption and co-ordination of the fight against corruption (hereinafter, the Agency), invites the Council of Ministers to establish an adequately representative Working Group at BiH level comprised of members from different fields and jurisdictions, with a view to draft and adopt a result-oriented and realistic new anti-corruption strategy at the BiH level for the period 2015-2019, with the corresponding action plan.

- Stresses that priority setting for the new strategy should stem from a comprehensive qualitative analysis of the implementation of the current strategy, a thorough corruption risk assessment, as well as available sector research. In this regard, shares the concerns expressed by representatives from civil society organisations, as emerged in the context of the Structured Dialogue plenary debate.
- Reminds that consistency of measures envisaged in strategies at all levels of authority should be ensured, taking into account distribution of responsibilities between State and other jurisdictions.
- Invites all relevant authorities to provide necessary resources for the implementation of their respective strategies and action plans, including, but not limited, to proper budget earmarking of adopted measures.

On Public Procurement legislation, the European Commission:

- Stresses that an efficient spending of public funds and reducing potential for fraud and corruption remains a key challenge that shall be addressed with all possible legal instruments and strategic means.
- Takes note of the adoption of the new Public Procurement Law by the Parliamentary Assembly of BiH, in an effort to approximate to the relevant EU acquis and European standards.
- Reiterates the need for its appropriate enforcement and for further consolidation of rigorous and fully transparent public procurement procedures.

On the Regulation of Whistleblowers Protection, the European Commission:

- Reminds the stance adopted in the Progress Report 2013, highlighting that the BiH legal regime does not provide for appropriate protection for whistleblowers, which is a key aspect of anti-corruption activities.
- Considers that the adoption of the relevant legislation at the state level is a very positive development that needs to be capitalized with its swift implementation, also in terms of increased reporting on corruption.

- Emphasises that adoption of adequate and harmonized protection measures at entity, cantonal and Brčko District levels must be considered as priority. In this regard, calls on competent authorities to duly take into account the set of recommendations on the protection of whistleblowers, Recommendation CM/Rec(2014)7, adopted in Strasbourg on 30 April 2014 by the Committee of Ministers at the Council of Europe.

On regulations governing Conflict of Interest, Asset Declaration, Law on Freedom to Access to Information, Political Party financing and Money Laundering, the European Commission:

- Stresses that the legislative framework regulating issues of prevention of corruption must be fully aligned with relevant international standards (e.g. GRECO, MONEYVAL, FATF, OSCE/ODIHR, UNCAC, etc.), as a prerequisite to deter corruption and establish effective and sustainable control mechanisms.
- Stresses the need to monitor and report on regular bases to the relevant authorities and to the general public about the level of compliance with those standards, with a view to constantly review the adequate legislation.
- Expresses concern that, in many instances, legislative authorities appear to have reversed the efforts towards achieving higher anti-corruption standards, particularly in the delicate area of conflict of interest.
- Calls upon relevant authorities to prepare, in co-operation with the Agency, adequate strategic measures for the future Anti-corruption Strategy and Action plan, which shall address all identified shortcomings.
- Urges, in particular, relevant authorities at all levels to comply with the GRECO recommendations in the area of financing political parties, issued in November 2013.
- Invites authorities in the Federation of BiH and the Brčko District to complete the legislative framework in the area of conflict of interest, following the re-location of the conflict of interest competence from the Central Election Commission to Parliamentary Assembly of BiH.
- Underscores the importance of asset declarations, to be used in a systematic and proactive way, as a specific tool in the fight against corruption. In particular, the accuracy of asset declarations should be constantly checked and current legal vacuum must be filled.

- In this regard, commends the initiative of the authorities in Republika Srpska to include the broad range of non-governmental actors in the implementation of the new anti-corruption action plan, and asks to ensure continuous commitment with further involving CSOs in this respect.

On the revision of the Anti-Discrimination Law, the Strengthening of Prevention Measures and the further Collection and Exchange of relevant information and statistics, the European Commission:

- Welcomes the initiative of the Ministry of Human Rights and Refugees (MHRR) to set up an informal Working Group tasked to draft proposed procedural amendments to the 2009 Law on Prevention of Discrimination (LPD).
- Further underlines that procedural amendments are needed to ensure harmonized application and interpretation of the law by judges adjudicating discrimination cases throughout the country and to ultimately enhance legal certainty for potential litigants.
- Expects the MHRR to also consider the inclusion of more substantial amendments to further harmonise the law with the EU acquis, particularly looking at disabilities and age as grounds of discrimination, as well as including a definition of sexual orientation and gender identity in line with internationally agreed terminology. Further expects provisions of the LPD to be adequately reflected into labour law and higher education laws at both State and Entity levels.
- Strongly encourages the MHRR to consult civil society organisations, including representatives of law professions, in a systemic and inclusive manner on the draft amendments to the LPD.
- Considering the low number of LPD related court cases adjudicated and the obvious low awareness of existing legal remedies amongst judges, prosecutors, legal professionals and citizens, reminds that efforts should be dedicated to increase awareness through public information, targeted trainings for judges, prosecutors and legal professionals and the progressive inclusion of LPD in civil service entry exams.
- Further urges establishing a uniform data collection and sharing system on discriminatory practices, at all levels of authority following the adoption of the rulebook on collection of data.

- Invites the MHRR to seek for an expert level seminar, using the TAIEX instrument, on substantial aspects of LPD and on anti-discrimination data collection.

On Police/Prosecutors Cooperation at all relevant levels, the European Commission:

- Stresses the need for a coherent approach in improvement of work efficiency and performance evaluation, including improvement of legal framework and enhanced cooperation mechanisms between prosecutors and police officials.
- Emphasises the importance of joint strategic planning exercises (i.e. prosecution-led investigations and priority-based operations).
- Requests to establish precise data on number of indictments whose confirmation was refused by the competent courts on the ground of illegally collected evidence. Tasks the HJPC to coordinate this preparation of this quantitative overview, to be complemented, where relevant, with a targeted qualitative assessment of the key issues at stake in police/prosecutors cooperation.
- Calls for strengthening the strategic approach to prosecutorial work; i.e. by more regular meetings of Chief Prosecutors to define, for example, common criteria to approach high level corruption cases or complex investigations against organised criminal networks.
- Stresses the need to improve the prosecution case management system, case oversight, and accountability structures within prosecutor's offices, in particular by revising the internal rulebooks on internal organisation, strengthening qualitative data collection.
- Further stresses the need to enhance of the professional integrity of prosecutors and police officials, clear and transparent accountability procedures and measures, including the assessment of the role and performance of the Office of the Disciplinary Prosecutor. Strengthen result orientation in appraisal system.
- Reiterates that exchange of information and best practices amongst all relevant actors is a very important issue. Emphasises the utmost significance of maintaining and developing the Police-Prosecution Data Exchange System, as well as other forms of national and international cooperation (i.e. criminal intelligence sharing for purpose of planning of the joint activities, EUROPOL and EUROJUST channels, etc.). Also to consider the creation of multi-disciplinary teams on the case/offence basis.

- Reminds that in the process of referral of investigations and cases between different levels of authority the needs of the respective law enforcement agencies must be taken into account, including the right to be duly and timely informed, as already stressed in conclusion to the Structured Dialogue plenary held in Brčko in April 2013.
- Emphasises the necessity of continued professional training, including joint programmes for prosecutors and police officials, focused on provisions related to corruption and organized crime and supports the requests put forward by members of the judiciary for advanced trainings on provisions related to asset seizure and expanded confiscations.
- Welcomes the efforts at the level of Federation of BiH to address the issue of confiscation and management of assets confiscated through criminal proceedings in the recently developed legislation, taking into account relevant international and European standards.
- Urges the BiH Ministry of Justice to pursue finding a solution so that the state level of BiH has its own structure responsible for confiscation and managing the assets confiscated through criminal proceedings before the Court of BiH.

On measures related to Integrity and Accountability of Police Forces, the European Commission:

- Reiterates the need for high level of integrity in the police, including merit-based recruitment and promotion procedure.
- Emphasises the need for effective internal prevention mechanisms to curb corruption within the police and increase accountability (such as the adoption of code of ethics and the adoption and actual implementation of integrity plans).
- Further highlights that improving accountability in the police can be achieved, among others, also by reviewing the legislation governing control institutions (such as the Independent Boards, the public Complaint Bureaus and the Professional Standard Units).

On measures related to Efficiency and Coordination of Police Forces within the existing legislative framework, the European Commission:

- Reminds that an effective and enhanced cooperation between all relevant law enforcement bodies in the public security sector is a necessary precondition for the

entrenchment of the rule of law and each level of authority shall therefore act in a most transparent and objective manner, in respect with its competences as defined by the law.

- Stresses that a fully functioning security sector, irrelevant of its fragmented structure, is a key element for the development and entrenchment of the rule of law, which in turn is fundamental for the process of integration into the EU.
- More specifically, emphasises the need for common strategic goals to be elaborated and implemented by relevant police bodies according to their respective competencies, in areas such as forensic, drug suppression, illicit arms trafficking and other matters of common concerns (such as asset seizure, EU compliant personal data protection legislation in police) which can benefit from a holistic approach and consolidated coordination mechanisms.
- Stresses the need for increased efficiency in information exchange, including through a single point of contact for efficient international police cooperation.

On follow up to the plenary meeting of the Structured Dialogue, the European Commission:

- Reminds that all the previous sets of recommendations that still require implementation remain valid, and must be duly followed-up, without further delays.