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# **Support to the Judiciary in Bosnia and Herzegovina – Strengthening prosecutors in the criminal justice system**

## **External Evaluation – Final Report**

Basel, 6 November 2013

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External Evaluation – Final Report

*(Draft final report submitted on 23 October 2013)*

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## Content

<b>Content.....</b>	<b>ii</b>
<b>Abbreviations .....</b>	<b>iii</b>
<b>Management Summary .....</b>	<b>iv</b>
<b>1. Introduction.....</b>	<b>1</b>
<b>2. Approach and Method.....</b>	<b>1</b>
<b>3. Project context.....</b>	<b>2</b>
3.1. Project description .....	3
3.2. Related interventions .....	4
<b>4. Project Organisation.....</b>	<b>7</b>
4.1. Project Set-up.....	7
4.2. Project Management .....	8
<b>5. Project Performance.....</b>	<b>10</b>
5.1. Relevance.....	10
5.2. Effectiveness .....	12
5.3. Efficiency.....	18
5.4. Impact .....	20
5.5. Sustainability .....	22
5.6. Additional Considerations .....	24
<b>6. Recommendations .....</b>	<b>25</b>
6.1. Overall recommendation.....	25
6.2. Specific recommendations .....	28
6.3. Other recommendations .....	31
<b>Annex 1: Terms of Reference.....</b>	<b>i</b>
<b>Annex 2: Mission Schedule .....</b>	<b>vii</b>
<b>Annex 3: Possible future Project Set-up .....</b>	<b>xi</b>
<b>Annex 4: Literature .....</b>	<b>xiv</b>

## Abbreviations

BAM	Bosnian Mark
BiH	Bosnia and Herzegovina
CHF	Swiss Francs
DAC	Development Assistance Committee
EC	European Commission
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
HJPC	High Judicial and Prosecutorial Council
IPA	Instrument for Pre-Accession Assistance
JSDP	Judicial Sector Development Project
MPOI	Model Prosecution Office Initiative
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
PMU	Project Management Unit
PO	Prosecution Office
RS	Republika Srpska
SD	Structured Dialogue on Justice
SDC	Swiss Agency for Development and Cooperation
TCMS	Tužiteljstvo / Tužilaštvo Case Management System
ToR	Terms of Reference

## Management Summary

### *Background*

The project “*Support to the Judiciary in Bosnia and Herzegovina – Strengthening prosecutors in the criminal justice system*” is financed by the Swiss Agency for Development and Cooperation (SDC) and implemented by the High Judicial and Prosecutorial Council (HJPC). The project started in October 2010 and is scheduled to end in March 2014. It aims at achieving improvements in four areas: the methods and capacities of prosecutors to conduct criminal investigations; the coordination with the police authorities; the public perception of the prosecution service; and the capacities of the HJPC to monitor and supervise prosecutorial performance.

### *Purpose and Methods*

The main objective of the evaluation is to assess the overall relevance, performance and achievements of the current phase and to provide recommendations for a possible project follow-up. The evaluation is based on the OECD-DAC methodological framework and uses methods of qualitative research (in-depth document review, semi-structured interviews with more than 45 respondents, debriefing workshops).

### *Findings*

The evaluators generally conclude that this has been an effective and efficient project despite a few adverse external factors. The project was overall well managed, most output indicators will be achieved by the end of the project and it enjoys good reputation among the interviewed persons. The factors we believe contributed to this success include the project’s concern with technical rather than political topics of prosecutorial reform, the position in and good backing from the HJPC, the relevance of its activities and the good interplay between the credible and authoritative project stakeholders. In all four project components several intermediary outcomes were already achieved. The most prominent ones relate to better frameworks for institutional cooperation between prosecutors and police authorities, strategic management in prosecution offices as well as technical capacity to monitor and evaluate performance of prosecution offices and prosecutors. Behavioural change is observed as regards enhanced awareness for greater transparency of prosecutors.

Some criticism was voiced regarding the project’s approach to capacity building: the activities were generally relevant but not always appropriate in relation to e.g. duration, target audience, complexity, and method of delivery as well as at times scope of the project.

*Recommendations*

The main recommendation of the evaluators is to invest into a second phase during which the project should build up on the results of the past three years. Contributing to prosecutorial efficiency should be the leading principle of the next phase and to this end it should primarily focus on assisting the newly established Strategic Body in the HJPC and supporting prosecutors' offices in translating their strategic plans into action.

More specifically we recommend maintaining the current project set-up with a project management unit within the HJPC, the "switching centre" of judicial reform. In comparison to the current phase backstopping should be slightly reduced and Swiss expert support should be provided in a select number of issues but on a longer-term basis. With a view to ensure full integration of the project towards the end of the second phase, the HJPC should gradually internalise project functions and (a part of) the project team.

Capacity building and training should be provided in a more practical and solution-oriented manner: it should bring together selected, fewer prosecutors working on a specific subject matter to jointly learn, share experience and find solution to a given problem.

Other recommendations refer to coordination with other donors in the design phase of a follow-up; the content of future training activities (developing skills in areas such as organised crime and corruption have repeatedly been cited by the interviewees as being very relevant); the focus and administration of eventual procurement of supplies, works and services; and the mitigation of external risk factors.

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## 1. Introduction

This report contains the findings of the external evaluation of the project “*Support to the Judiciary in Bosnia and Herzegovina – Strengthening prosecutors in the criminal justice system*” (the project), which was carried out in the period of September-October 2013.

The project, financed by the Swiss Agency for Development and Cooperation (SDC) and implemented by the High Judicial and Prosecutorial Council (HJPC), aims at improving performance and overall credibility of the prosecution system in Bosnia and Herzegovina in accordance with the country’s Justice Sector Reform Strategy (JSRS) 2008-2012. The project commenced in October 2010 and will end in March 2014. Against this background the SDC commissioned two evaluators to assess the performance of the project hitherto and to propose recommendations for an eventual next project phase.

The report is structured as follows: Chapter 1 provides a short introduction, Chapter 2 summarises the purpose of the evaluation, the approach and the methods that we employed and Chapter 3 describes the project background. Chapters 4 (project organisation) and 5 (project performance) contain our main findings and recommendations that we draw on the basis of the desk study and the field mission. They constitute the core of the evaluation report and directly respond to the evaluation questions in the terms of reference (ToR). Finally, we summarise our recommendations in Chapter 6. Annexes to the report provide additional pertinent information.

## 2. Approach and Method

The main objective of this external evaluation is „*to assess the overall relevance, quality performance, management and achievements (major outcomes) of the project.*”<sup>1</sup> In addition, the evaluation provides recommendations that help SDC in deciding upon a continuation of the project. The evaluation therefore contains summative as well as formative elements.

The evaluation is governed by the OECD-DAC evaluation framework. With a view to respond to the specific evaluation questions we applied methods of qualitative research, including a comprehensive review of various project related and other background documents and a series of open ended, semi-structured interviews. Most of them were carried out during a field mission that lasted from 9 to

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<sup>1</sup> Terms of Reference, p. 3.

17 September 2013.<sup>2</sup> They were supplemented by additional (phone) interviews prior and after the mission. Overall, the inputs of 30 interviews and from more than 45 respondents form the basis of this report.<sup>3</sup>

In order to eliminate eventual distortions we interviewed a variety of project stakeholders, including SDC and HJPC representatives, prosecutors at federal, cantonal and district levels, representatives of respective ministries of justice and interior, police agencies, judicial training centres as well as civil society representatives and representatives of other donor organisations. The interviews were discursive and yielded qualitative information about the relevance and effectiveness of the project as well as its management.<sup>4</sup> Furthermore, with a view to increase the validity of our report, we triangulated the responses, information and data that we collected by comparing them with other reports and contextual documentation (e.g. European Commission Progress Reports).

Despite these measures it must still be noted that the evaluation is based on a comparatively small, non-representative sample of interviews. As agreed with the contracting agency, the report contains only few quantitative data on the performance of the prosecution service before and after the project (i.e. data regarding backlog of cases, on length of procedures or on reversal rates) due to general difficulties of establishing a strong causal link between the project and changes in overall performance data. Furthermore, neither the content nor the quality of the actual outputs (e.g. training material, handbooks and guidelines, study visit programs, analytical reports) are assessed in detail due to limitation in time and scope of the assignment.

The findings and recommendations were shared and discussed in debriefings in Sarajevo and Zurich respectively. The feedback we received at these occasions was directly considered in this evaluation report.

### 3. Project context

Efforts to reform the judicial system in Bosnia and Herzegovina have been going on for more than a decade. Most of them have been directed to the courts and only little attention has been paid to help the prosecution – despite the necessity to man-

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<sup>2</sup> The annexes contain e.g. a selection of the documents we reviewed, a list of persons interviewed during the evaluation and the schedule of the field mission.

<sup>3</sup> We take the opportunity and particularly thank Ms Alma Zukorlić and Ms Amila Rahić and their teams for the organisation of the field mission as well as all persons who took the time to share their opinions and ideas regarding the project with us.

<sup>4</sup> Some of the prosecutors interviewed in the context of this evaluation received a comprehensive briefing note from the project management unit prior to the interviews. The note contained factual information of the structure, the current status and the deliverables of the project.

age the fundamental change from an inquisitorial to an accusatorial (adversarial) criminal justice system. Notwithstanding the many improvements that were undeniably achieved,<sup>5</sup> there is a common notion that the goal of making the “*judicial system fully capable of upholding the principles of the rule of law remains distant*” (OSCE, 2013).

The reasons frequently cited for this are manifold. To mention just a few: the justice system mirrors the fragmented institutional structure of the entire country resulting in obstacles such as the application of different substantive and procedural laws in the criminal justice sector at different levels of government (state, entities, cantons and Brčko District), budgetary fragmentation affecting the independence of judiciary, lack of sufficient financial means to ensure a modern and efficient judicial administration, backlog of cases, and poor coordination among the judicial institutions as well as with other institutions.

Complex administrative structures, continued political attacks on the State-level judiciary and judicial independence, political disagreements and diverging opinions, financial restrictions and poor financial sustainability are just some of the characteristics that can be used to describe the project environment within which the projects operates. Overall public perception on prosecution remains negative primarily due the (perceived) non-prosecution of perpetrators associated with organised crimes and corruption, little awareness of the responsibilities and competences of the prosecution and prosecution inefficiency in general.

### 3.1. Project description

SDC decided to launch the project in response to a request by the government of Bosnia and Herzegovina in 2008. Following a careful analysis and comprehensive and participatory design phase the project commenced in October 2010 with a planned duration of 3.5 years.

The project aims at addressing many of the above mentioned shortfalls with a diverse set of activities that are implemented partly at the strategic and partly at the operational level. The intervention strategy comprises four areas: prosecutors’ individual skills and working methods in the prosecution (Component A); cooperation and communication between prosecutors and police (Component B); public information, public awareness and public perception (Component C); management, support and supervisory functions of the HJPC (Component D). In light of the competencies and role of the HJPC it was decided to cover the prosecution system

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<sup>5</sup> Reference is made to the most recent European Commission Progress Reports that repeatedly observed, albeit at times limited, improvements in the justice system over the past years. The reports are accessible at: [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm).

in the entire country and to define the project stakeholders broadly: beneficiaries are professionals in the prosecutorial system and law enforcement officials (and their respective organisations), the judicial training providers, ministries of justice and interior as well as the NGO and media sector.

The project budget amounts to 3'356'000 CHF of which approximately 1'950'000 CHF (3'087'184 BAM) are earmarked for the HJPC. The in-kind contribution of the HJPC is estimated to be 120'000 CHF (236'847 BAM) and includes the provision of office and conference rooms and human resource cost for a seconded prosecutor, senior management, legal advisors and the ICT help desk.<sup>6</sup>

### **3.2. Related interventions**

Apart from SDC also other organisations attend to the issue of judicial and prosecutorial reform. As stated above, donor interventions focused traditionally on supporting the court system. This gradually changed over the past 4-5 years and particularly the European Commission shows a growing interest in directing its funds towards the prosecution.

In the following table we summarise and provide a snapshot of projects that are most relevant for this evaluation (and also for an eventual follow-up phase). The table is not exhaustive as it does not contain projects and support provided by e.g. the Organisation for Security and Cooperation in Europe (OSCE), the Venice Commission of the Council of Europe and bilateral funding of governmental and non-governmental sources.

Even though the projects differ in term of duration or resources, they commonly implement a variety of interrelated activities that are addressing questions at the operational and strategic levels. It is noteworthy that the HJPC plays a very active role in all of the projects (though still to be seen as regards to most recent EC capacity building project).

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<sup>6</sup> We refrain from a more detailed recount of the project but refer to additional information that is provided in other parts of the report (e.g. Chapters 4 and 5) and in the assignment terms of reference that are annexed to this report.

*Table 1: Overview of relevant projects and programs*

<b>Title</b>	<b>Budget (in CHF)</b>	<b>Duration</b>	<b>Donor(s)</b>	<b>Content</b>	<b>Comments</b>
Justice Sector Development Project II	7.2 million	5 years 2009 – 2014	USAID	Main focus: improve management and administration of courts and prosecutors' to achieve i) strengthened judicial independence, accountability and effectiveness; ii) a better coordinated and more unified justice sector oriented towards EU accession; and iii) increased public confidence in the rule of law.	The pre-runner project was implemented form 2004-2009. USAID already announced its intention to continue funding the justice sector with a new project. There has been close cooperation between the project and JSDP II (more information below).
Improving Judicial Efficiency	14.8 million	5 years 09-2011 - 06-2016	Norway, Sweden, European Commission	Main activities: i) improve court management; ii) faster processing of utility and enforcement cases; iii) support to legislative changes; iv) promotion of the use of an alternative dispute resolution (out of court settlement and mediation); vi) modernisation of court buildings.	The project functions as a separate Department within HJPC and comprises seven units tasked with specific activities. Tailor made assistance is provided to six first instance courts in BiH. Collaboration has been sought specifically as regards the revisions of reporting functions of the TCMS.
Strengthening the BiH Judiciary	1.2 million	1.5 years 10-2012 - 01-2014	European Commission	Main activities: i) development of feasibility study for the establishment of standardised database of legal regulations; ii) development and	This project is implemented mainly through the HJPC ICT Department.

				implementation of software application for distance learning; iii) development and implementation of functionalities and characteristics of case management system (CMS) related to the timeframes for case resolutions; iv) ensuring full implementation of the HJPC Rulebook on Orientation Norms for judges, judicial associates, and other courts' employees; v) monitoring the implementation of the Backlog Resolution Plan.	Component two – Unit for Judicial Efficiency is implemented through the HJPC Improving Judicial Efficiency project.
Capacity Building for Judicial Reform	1.4 million	2 years 10-2013 - 09-2015	European Commission	Main goals: i) improving internal and external organisation and functioning of the Entity Judicial and Prosecutorial Training Centres and Brčko District Judicial Commission; ii) improving training for judges and prosecutors, specifically in targeted areas; iii) elaborating a comprehensive reform framework (policy documents, procedures, curricula, materials etc.) as regards non-judicial staff; iv) improving efficiency and effectiveness of non-judiciary staff.	Project started in October 2013 and is potentially important in a follow up phase in terms of tying strategic plan implementation and training of non-judicial staff and in terms of delivering “solution oriented” training.
Establishment of Enhanced Mechanisms for Cooperation Between Police and Prosecutors	390.000	1 year 04-2008 - 03-2009	United Kingdom	Main goal: Development of documents and instructions which will clearly define rights and responsibilities of police officers and prosecutors in conducting joint investigations; improve joint training programs; enhance the system for harmonisation of data between police and prosecutors; upgrade ICT system.	Forerunner to the SDC funded project. The instruction eventually failed in practice. A new attempt is launched in this phase; the new instruction was adopted in September 2013.

### *Coordination amongst the projects*

Because of the many similarities between the projects of SDC and USAID the management teams have been careful in defining and coordinating their activities (e.g. through participation in steering boards). Three activities that demonstrate the level of coordination are: i) The Strategic Plan and the Communication Strategy for prosecution offices which JSDP elaborated in the *Model Prosecutors Office Initiative* (MPOI)<sup>7</sup> and which the SDC project further developed in terms of content, application and use. ii) The *Matrix of Standards for Prosecutorial Administration*, which includes 17 mandatory and 3 optional standards to be implemented in nine model prosecution offices in BiH.<sup>8</sup> The implementation of the standards has been split between JSDP and the project.<sup>9</sup> iii) The purchase of ICT equipment, office furniture, office equipment and other office supplies was closely coordinated.

## **4. Project Organisation**

This chapter responds specifically to the evaluation questions regarding the management and administration of the project.

### **4.1. Project Set-up**

The project is implemented by the BiH High Judicial and Prosecutorial Council. Continuous professional support is provided by the Cantonal Prosecution Service Zurich whereas a local backstopper extends project management advice.

The fact that the HJPC is entrusted with the management of a large-scale technical assistance project gives it encouragement that– in light of the political attacks against the HJPC in the recent past and given that there are no more international members in the HJPC – should not be underestimated.

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<sup>7</sup> The MPOI, which is based in part on the Model Courts/European Standards programme, has been implemented in all but one prosecution office in BiH. It initiated eight specific reform activities, including change management teams; managing administrative staff of prosecutor offices and additional professional development of prosecutorial staff; drafting of strategic plans; financial and accounting practices of prosecutor offices and program budgeting; public awareness and access to prosecutor offices.

<sup>8</sup> Cantonal and district prosecution offices Sarajevo, East Sarajevo, Zenica, Dobož, Banja Luka, Mostar, Trebinje; entity level prosecution offices of the Republika Srpska and the Federation.

<sup>9</sup> JSDP II was responsible for the standards: 1) access to information; 2) dealing with citizens and other parties; 3) case management; 4) financial management as a part of program budgeting; 5) manual case management system (MRMS); 6) management of archives. Four additional standards including internal organisation, backlog reduction plan, physical and working environment as well as annual reporting are expected to be implemented during the second phase of implementation.

For all interviewees it is clearly an advantage that the project is located at the HJPC: they opine that the current project-set up equipped the project with authority, credibility and legitimacy. We concur with this view but argue at the same time that the position bears the risk that the project is subject to bureaucracy (procurement, recruitment, protocol, hierarchy) and possibly bound to more “traditional” approaches to work.

## 4.2. Project Management

### *Project Management Unit*

A project management unit (PMU) in the HJPC consisting of five professional staff and two assistants is responsible for the management of the project.<sup>10</sup> We assess the quality of the PMU’s work against five typical project management elements (for complementary information reference is made to Chapter 5.3. ):

- *Planning*: was done in accordance with the logical framework (which was slightly modified in the course of the project to respond to changed priorities) and was with the support of the backstopper regularly fine-tuned in a yearly plan of operations; activity planning was realistic and the project unfolded without major problems, albeit some delays in procurement and recruitment processes.
- *Executing*: preparatory and post-preparatory tasks regarding internal and external meetings, working groups, training events, conferences, procurement and delivery of supplies etc. were fully delivered by the project team. Roles and responsibilities appear to be clearly assigned and understood. Both document review and interviews reveal that there is general satisfaction with the execution process among the vast majority of the project stakeholders; some criticism is voiced in terms of repeatedly late communication of the PMU with the project partner in Switzerland and certain aspects of communication with SDC had to be improved as well. In addition we have the impression that the project team focused on following the logical framework / activity plan without at the same time always critically reviewing whether the activities are (still) necessary or whether focus should better be given on other activities. Nonetheless, the project team must be commended for its efforts to deliver the activities as planned and to meet all contractual obligations.

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<sup>10</sup> The position of the international project manager/advisor expired after the first twelve months. The relevance, quantity and quality of her work could not be established.

- *Reporting*: technical and financial reporting is comprehensive; successes but also bottlenecks and challenges are transparently mentioned in the annual reports and annexes.
- *Monitoring*: systems are in place to monitor the project progress as results of activities were tracked in respective monitoring charts and regularly updated output tables<sup>11</sup>; mid-term reviews allowed for a realistic and frank assessment of the *status quo*; the project steering board is well founded and active and continuously backed the project. Expenditure management and monitoring was vigilant (see Chapter 5.3. The logical framework and the monitoring charts do not fully correspond; a single monitoring system that includes e.g. baseline and outcome indicators would make progress and outcome monitoring easier.
- *Motivating*: contacts with project partners and direct as well as indirect beneficiaries suggest that there is a high degree of identification with the project, its tasks and underlying vision. Interviewees stressed the very good working relations that the project team has been able to build up and maintain up to date; the spirit of the team appears to be very good and the few staff changes and delays in recruiting new staff did not have any negative impact on the team's performance.

### *Backstopping*

The project is primarily supported by Lucid Linx, a project management and consulting agency in Sarajevo. Its task is to provide backstopping services to the project team at the HJPC and to SDC. The services range from project planning and management, facilitation of communication amongst the project owners and stakeholders, provision of strategic advice and project monitoring and evaluation. The role of the backstopper and the content of the support services vis-à-vis the project management unit changed over time: as the PMU grew more competent in managing the project Lucid Linx focused more on the activity of strategic planning and reporting, concretely the support to selected prosecutor offices in developing their strategic plans. Interview feedback suggests that Lucid Linx has been a valuable resource for the project, especially as far as activity planning and progress monitoring are concerned. Virtually all interviewees assessed the quality of the inputs and the responsiveness of the backstopper as very high.

### *Technical Support*

A specific feature of this project has been the expert advice that was rendered by the Cantonal Prosecution Service Zurich, which took the form of three to four per-

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11

sonal encounters per year. The Prosecution Service provided expertise in, for instance, the development of selected teaching materials, the organisation of study visits, and in the context of training and conference events. It emanates from the document review and the interviews that the beneficiaries value the role of the Swiss partner highly. However, doubts prevail regarding the delivery modality and the impact that the project inputs of the Swiss experts have had. Particularly the Prosecution Service expressed the wish of possibly fewer but longer project activities. We concur with this view and believe that the current approach does not allow releasing the full potential of the project partnership.

#### *Working Groups*

Working groups consisting of practitioners of relevant institutions and organisations were established and their meetings were facilitated by the project team. The working groups – one for each project component – were able to play the role that the designers of the project foresaw for them: namely to ensure bottom-up participation, to define, consult and verify the project's operations, to find consensual solutions and by this way to contribute to enhancing the quality of the project's work.

**Conclusion:** The project set-up is adequate and contributes to the project's effectiveness and efficiency; overall it benefits from being placed in the HJCP. Back-stopping for project management decreased as competences of the PMU grew. The project reporting is comprehensive, supervisory and monitoring systems are in place and utilised.

## **5. Project Performance**

### **5.1. Relevance**

The project is anchored to the Sub-domain *State and Nation Building Processes*, one of the sub-domains of the thematic domain *Rule and Law and Democracy*, under Switzerland's Cooperation Strategy Bosnia and Herzegovina 2009-2012. With its goal to "*continue contributing to the government and donor efforts to strengthen the central state and its administration and the related nation building process*" (SDC 2009) the project responds to one of the most central needs of Bosnia and Herzegovina, as maintained by a number of reports, studies and policy documents and national and international efforts to consolidate a democratic and self-sustaining country. This is also exemplified by a number of technical assistance projects that have recently commenced or that are in the pipeline (reference is here made to the European Commission IPA national programme justice sector

fiche) and which demonstrate a shared understanding that prosecutorial reform remains an instrumental reform area in BiH.

Most importantly, the project is fully aligned with and directly contributing towards the implementation of the Justice Sector Reform Strategy (JSRS) 2008-2012, which contains five strategic goals to achieve an efficient, effective judiciary, transparent and accessible justice system.

- Along with representatives of the HJPC the project participated in the working groups and two rounds of consultations, convened and arranged by the BiH Ministry of Justice, that were dedicated to the development of the updated JSRS 2014-2018; it is planned that the project will also take part in the elaboration of the corresponding action plan.<sup>12</sup> This way the project undertook to inject its experiences and priorities and at the same time to ensure that its own work is aligned to the government's reform plans.<sup>13</sup> The project (team, outputs and outcomes) has reportedly not only shaped the agenda for the strategy development but also greatly contributed to the shift from courts to the prosecution that can be observed in the new strategy.
- In June 2011 the European Union and BiH entered into the Structured Dialogue on Justice, a mechanism to discuss all reforms that are necessary to allow BiH to progress in the alignment of its judicial system with the *acquis communautaire* and relevant standards.<sup>14</sup> The project participated in the preparation of a baseline document required for the start-up of the Structured Dialogue providing, *inter alia*, essential technical information on both the prosecutorial system and police agencies with particular emphasis on their cooperation; it proposed activities related e.g. to the implementation of the recommendations pertaining to cooperation between police and prosecutors and their joint training and it prepared the reports; and the project prepared the reports on the implementation of selected recommendations on behalf of the HJPC. As a result, the project assisted the

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<sup>12</sup> The forthcoming JSRS 2014-2018 is structured in five pillars: judicial system; execution of criminal sanctions; access to justice; support to economic growth; coordinated, well-managed and accountable sector. While the contents are largely similar to the current one, the new strategy puts, for instance, more attention on improving transparency of the justice system vis-à-vis the media and the general public and on vulnerable and marginalised groups as well as witnesses in all types of proceedings.

<sup>13</sup> Switzerland supports the elaboration of the JSRS 2014-2018 with a credit of 90'000 CHF granted to the BiH State Ministry of Justice.

<sup>14</sup> The SD consists of a series of meetings and ensuing sets of recommendations related, *inter alia*, to the implementation of the JSRS. Five meetings have been held since the launch meeting in Banja Luka in June 2011.

HJPC in living up to selected commitments that stem from the Structured Dialogue on Justice.

The intervention strategy is adequate to achieve the envisaged systemic changes in the criminal justice system and the project components, the respective activities and associated outcomes address key challenges in terms of prosecution reform in BiH. The mix of activities and outcomes was appropriate for a first project phase where it is necessary to test the waters in different but mutually intertwined reform areas. Nonetheless, a second phase should be more targeted and specific. Given that outcomes are partly already realised, it would also be required to assess their functionality (i.e. use and implementation of strategic plan, cooperation between police and prosecutors). The project's working methods are participatory and make it possible to primarily utilise local expertise. In the interviews criticism was only voiced by a few; it generally related to the project's delivery method of training (for more details see below).

**Conclusion:** Based on the above we conclude that the project is highly relevant and addresses continued needs of prosecution offices. The need to put more attention towards the prosecution services in Bosnia and Herzegovina is confirmed by several of our interlocutors and is reflected in e.g. the increased financial means and technical advice that the European Commission plans to allocate in this regard. Adjustments should be made to the project's training approach.

## 5.2. Effectiveness

In this section we assess the level of achievement of the outputs and outcomes as formulated in the logical framework. Even though the project is still on-going it is safe to say that the project will achieve most output targets by spring 2014; reference is here made to the detailed output achievement table that the PMU produced in August 2013. Given the large number of activities and associated outputs in each of the four project components, we focus on an assessment of what we believe to be the most pertinent achievements at output and outcome levels.

**Component A:** *Working methods in prosecutors' offices and professional skills and performance of prosecutors with respect to leading criminal investigations in accordance with international standards and national legislation are improved*

The most important outputs in this component refer to strategic planning, legal research, legal training and material support to prosecution office.

*Strategic plans:* The project supported the elaboration of Strategic Plans in twelve prosecution offices. Each plan usually required 2-4 inter-office working group sessions. From the feedback we received it appears that there are high hopes about the eventual impact of the strategic plans. But: Only few of the plans have been

adopted so far and, based on our observations, we assume that the ones that are in force have been little used. Implementation is now required. Few of the managers were frank enough to say that they lack the skills to manage the change process. To fully reap the potential gains of the strategic plans we believe that continued support is required; the handbook that complemented the effort will not suffice. Closely related to this point is the revision of the TCMS<sup>15</sup> reporting tool which shall inform managers with pertinent data. Prosecutors stated that the TCMS indeed became better but that more adjustments were needed. At the same time data entry errors reportedly continue to exist and they undermine the validity and integrity of the TCMS reporting.

*Standards for prosecutorial administration:* The project facilitated a working group which developed a set of 20 prosecutorial standards. The standards were adopted in a HJPC decision and became mandatory for nine model prosecution offices. Implementation of these standards is shared with JSDP II, whereas 40% are implemented by the project including: strategic planning; improvement in information dissemination; establishment of functional achieves, crises communication; improvements in use of TCMS. A manual for standards implementation is forthcoming.

*Legal research:* As mentioned above there are several flaws in the criminal laws that prevent more efficient criminal investigations. The elaboration of a report identifying key obstacles was frequently cited to be one of the most important outputs since it lead to the submission of proposals for legislative amendments to the current criminal codes and criminal procedures codes. Members of the working group commended the professional conduct of the entire legal research. According to information we received the proposals were technically sound and many are said to pass the parliamentary process by mid-2014, namely in the context of a comprehensive law amendment – unless political obstruction sets in. Other research outputs relate to leading complex criminal investigations and to training in the criminal justice system.

*Legal training:* The project delivered an impressive set of training and elaborated training material that the interviewees have commonly assessed to be very pertinent. Prosecutors benefited from special training events, conferences and study visits and interaction with Swiss experts; more than 600 attendants were

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<sup>15</sup> TCMS – abbreviation for Tužiteljstvo/Tužilaštvo Case Management System; *sistem za upravljanje predmetima u tužilaštvima/tužiteljstvima* – is an information technology supported, centralised register and filing system. The database contains all cases of the prosecutorial service, links together all documents of a case, ensures that all procedural requirements are met as a case develops etc. TCMS builds up on the existing CMS for the courts; it is continuously improved and attuned to the needs of the prosecutorial service.

counted in all these events.<sup>16</sup> However, whilst the topics of the trainings were considered to be very relevant and up-to-date, the delivery methods of most of the trainings have been criticised by several interviewees in both entities (e.g. too short against the complexity of the subject; too general, failing to go into the depths of the issue; too theoretical and thus not immediately replicable in the daily work).<sup>17</sup> It is indeed debatable how much knowledge a single 4-5 hour course on complex topics such as witness protection of cyber-crimes can bring about (see also below).

*Procurement:* The works and supplies that the project funded in all prosecution offices were highly regarded and “real impact” has most often been associated with material support. Apart from addressing practical obstacles that impede prosecutorial efficiency, the procurement also helped the project to find open doors to prosecutors and to register “quick wins”. As of end of August 2013 more than 95% of the budget for procurement has been committed and about 70% actually spent. Coordination with JSDP II was ensured during the procurement process.

**Component B:** *Mechanisms of cooperation and coordination and channels of communication between police and prosecutors in the conduct of criminal investigations are deepened and broadened at all levels*

Police and prosecution share intertwined responsibilities in the criminal procedure and successful prosecution is ultimately dependent on sound investigation by the police forces. Forging and fostering their collaboration has been the main aspect of this component.

*Institutional cooperation:* Certainly the most significant development and political achievement has been the signing of new instructions on the procedures of cooperation between police officers and prosecutors in obtaining evidence during investigations on 27 September 2013. The instructions (to which also associated forms etc. were developed) are the result of a series of meetings, internal and external consultations and a study tour to Switzerland. Many respondents shared the view that the broad stakeholder inclusion and the iterative process to find a compromise text were exemplary. It was actually interesting to see that the police representatives showed great ownership with regard to this specific activity. It is expected that the new rules are being applied starting November 2013; monitoring how the roll-out unfolds will be critical to ensure sustainability.

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<sup>16</sup> There are currently approximately 320 prosecutors working in BiH. Not all prosecutors attended the events, yet some of them attended more than one event.

<sup>17</sup> It needs to be noted that the project’s training activities were provided by the Entity Judicial Training Centres and therefore their training methodology was applied. The latter is subject to a complete overhaul with support of an EU expert team. The project should seize the opportunity and instil experience and ideas during the its planning process.

*Police-prosecutor training:* The joint training approach not only serves the purpose of educating police officers (220+ attendants participated hitherto); it also helps to establish contact, improve understanding and share mutual expectations between the two institutions. Here the project has been particularly productive with trainings (e.g. on witnesses in criminal proceedings and gender-sensitive criminal investigation, special investigative actions and cyber-crime, money laundering and financial investigations etc.) and the wide distribution of manuals and guidelines (e.g. on digital evidence; 1'500+ copies distributed). Other than isolated feedback from discussions in Banja Luka and Tuzla that the training already shows results (e.g. that calls from police officers to enquire about legal matters became less frequent) we are unable to assess the level of outcome achievement. The project annual reports assess the training efforts critically insofar as systemic changes cannot be achieved with *ad hoc* training.

Other efforts under this component relate to the establishment of forums for cooperation (respective protocols were signed in five cantons) and data and information exchange related to criminal investigations (multi-institutional data exchange commenced in July 2013; the project monitors the process). The forums of cooperation bring together chief prosecutors, police commanders, spokespersons and other relevant staff of both institutions in regular meetings and *ad hoc* in case of crises situation. According to the project's reporting output achievement in this component reaches 50-60% at the time of writing this report.

**Outcome C:** *Prosecutors' communication skills and information policy for providing adequate public information on cases is strengthened and public perception of prosecutors is improved*

It is noteworthy that the interviews related to the activities and results of this component have been very lively and positive and at the same time often fairly candid (which might also have to do with the respondents, who usually hold a PR function in their respective offices). The core elements of this component are:

*Communication strategy, policies and guidelines:* Due to diverging practices in terms of public and media communication the project has undertaken measures of unification and standardisation. Starting point for the Component C working group has been a Communication Strategy that was developed by JSDP. The working group developed an action plan to change public perception, drafted recommendations on the disclosure of information and developed guidelines for police-prosecutor cooperation in media affairs that were put in force in four cantons. Furthermore, coordinating meetings among PR officers were organised and tools developed that facilitate their networking; 13 prosecutors participated in a study visit hosted by the Cantonal Prosecution Service Zurich. Other outputs relate to the web presence of prosecution offices: almost all offices now have a uniform website

layout. Spot checks confirm that the websites are usually updated. Finally, the project also contributed to the HJPC's decision recommending hiring staff for public relations in each prosecution office. Hitherto all but one prosecution office have employed professional PR staff.

*Media training for PR and prosecutors:* In the context of this evaluation training was typically assessed positive when it addressed immediate needs of the respondents. The training to improve communication skills and media relations that was carried out in Sarajevo and Banja Luka is a case in point: All of the training participants we interviewed – managers and PR persons alike – felt an immediate result, acknowledged their change of attitudes and reported that they are more at ease in their work with the media in routine and crisis situations.

*Public perception:* Four leaflets that are available at prosecution offices were prepared to inform about the role and responsibilities of the prosecution; TV documentary about the role and work of the prosecutors are being prepared. Training e.g. on gender equality, human trafficking and free access to information were additional outputs of the project with a view to sensitise prosecutors on topics that receive attention by the public and vocal NGOs.

*NGO sector involvement / grant scheme operation:* The project operated a small-grant scheme (budget: 100'000 CHF) which aimed at tying up the (often critical) non-governmental sector with the prosecution. The entire call for proposal was managed by the project; JSDP II extended support in reaching out to the NGOs. Contracts were signed with 10 organisations, including the Republika Srpska Prosecutors Association as well as women's rights and Roma organisations, nine of which have been completed up until October 2013. Budgets ranged from 10-25'000 KM. Feedback of those we had a chance to talk to was generally positive in terms of the process ("normal bureaucracy") and in their collaboration with the prosecution.

Three of the four interviewees were of the opinion that the projects helped deconstructing certain perceptions of the prosecution, at least on a personal / organisational / local level; one voiced concern that the study that was produced with the grant project was eventually written "for the drawer" since it is not planned to make it public.

Also the evaluators believe that the grant scheme was a fairly isolated project activity, which did not have a country-wide effect on the "perception" of prosecution services. Little was done in terms of promoting the NGO work (with few exceptions such as the legal manual developed by Prosecutors' Association). The outputs of the grant scheme should have been given more visibility, publicity and strategic thought (Which projects were helpful in advancing perception of prosecutors? Which are replicable in other locations in BiH? How can outputs / outcomes

of the project be used to inform the public more broadly about the prosecution service? What can be done to make NGO findings public?). Such a follow-up could have been done by, for instance, the network of spokespersons / PR staff in prosecution offices.

**Component D:** *HJPC has developed its institutional capacities to monitor the overall performance of the prosecutorial system, provide necessary support to prosecutors to enable the efficient and effective functioning of prosecutors' offices and facilitate the introduction of needed and relevant reforms*

*HJPC Strategic Body:* A particular achievement of the project and its lobbying efforts has been the establishment of an HJCP Prosecutorial Strategic Body consisting of five Council Members mandated specifically with tasks pertaining to prosecutorial efficiency – implying that prosecutorial efficiency is one of the key areas of the HJPC in the upcoming years. By deciding to create the Strategic Body the HJPC acknowledged the need for increased focus on prosecutorial issues. The Strategic Body has the potential to significantly shape the way of future judicial reform – particularly in light of the failing law proposal to create a single prosecution office in the FBiH as well as the HJPC's internal plans to reshape its organisation along the lines of courts and prosecutors.

*Performance measurement:* Much effort went into the definition of performance measurement standards (norms, quotas) for prosecutors, not least because of the consultative process with the prosecution offices. The introduction of norms and quotas with which performance becomes measurable is a novelty. Expecting resistance from some of the prosecutors, the project proposed modest norms for the initial stage of this new measure. However, few interviewees complained that the standards would orient themselves according to the least rather than the best performing offices of Bosnia's prosecution service. The introduction of standards is closely related to the revision of the TCMS.

*TCMS:* Information technology is increasingly used to document all stages of criminal proceedings and there is also a growing understanding that policies to address efficiency problems must be based on corresponding data. However, TCMS has not yet reached the stage of development as in the court system and the system is not considered fully practicable for the prosecution. The project assisted system development with i) a review and ensuing proposals to better attune the system to the needs of managers, ii) the preparation of manuals and iii) the preparation of a HJPC decision declaring the use of TCMS mandatory. TCMS is an important element when it comes to monitoring the new norms for prosecutors (orientation norms), the backlog reduction plan, the performance evaluation of prosecutors, and the foreseeable time frames.

*T-Portal:* By managing three working groups and organising a host of training and other events the project has been accumulating many conclusions and recommendations that are relevant for the prosecution system. They are now accessible in a unified database. This allows for following up and tracking the implementation of such conclusions and recommendations.

**Conclusion:** Overall, we conclude that the project has been performing very well and it is realistic that all outputs in Components A and C will be realised by spring 2014. Against the resources that were invested and the environment in which it operates, the project has produced remarkable results. Outcomes are largely achieved but to which extent is difficult to grasp. Organisationally, the project operates as a separate, yet well integrated department of the HJPC Secretariat, in particular through its cooperation with Judicial Administration Department and ICT. Functionally, the project operates as HJPC's focal point for prosecutorial issues. Through these two project functions, the HJPC is more able to fulfil its legal mandate regarding the prosecution service and its administration.

### 5.3. Efficiency

In general efficiency measures the outputs and results of a project in relation to the inputs that were invested. Key questions to answer are whether the activities were cost efficient, whether the objectives were realised on time and whether the least costly resources possible were used in order to achieve the desired results (OECD 2010). We assess efficiency particularly by illustrating the extent of "cost awareness" of the project. Our assessment is largely based on the document review.

Table 2 shows the breakdown of the project budget and the share of each item of the total budget. More than 2/3 of the funds have been allocated to the HJPC and 20-30% (own estimate) of the funds were spent for the delivery of services by local experts. We assess positively that the project partners continuously sought to employ Swiss expertise only in situations in which there was no local expertise available or where it was beneficial to learn from international (good) practice. Many of the interviewed persons mentioned this as a specific success. Due to reduced staff cost (international vs. local salaries)<sup>18</sup> and administrative overhead (lower travel cost of experts, no need for translation) – and keeping up quality high at the same time – we conclude that this approach enhanced the project's efficiency.

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<sup>18</sup> This can be exemplified by comparing the cost of the international project manager (approx. 126'000 CHF for 12 months) and the cost of the national project manager (approx. 170'000 CHF for three years).

Table 2: Project budget overview

Items	Cost (in CHF)	% of total cost
HJPC Project Management Unit	2'285'372	68.1%
Cantonal Prosecution Service Zurich	629'000	18.7%
Grant scheme for NGOs	100'000	3.0%
Backstopping	200'000	6.0%
Evaluation and Review	51'628	1.5%
Justice Sector Reform Strategy (supplementary credit)	90'000	2.7%
<b>Total</b>	<b>3'356'000</b>	<b>100.0%</b>

Source: SDC

Taking a closer look on the specific budget items in Table 3 reveals that comparatively little funds were spent for outputs that most of the interlocutors consider to have significant weight. For instance: the cost of external experts and working group members accounts for 5.5% of the total budget (*pro-rata* cost for travel, per diems, events, project staff etc. excluded) and studies such as the report on legislative flaws account for less than 1%. Moreover, about 2/3 of the backstopping budget were actually used for consultancy services, primarily for the elaboration of the strategic plans. For a conclusive assessment a more thorough calculation would have to be made, yet, at first glance, we conclude that the allocations were made strategically and in areas that yield most return.

Table 3: Cost of budget items of the HJPC budget allocation

Budget item	Cost (in KM)	% of total cost
Project staff (national)	1'083'640.14	35.1%
Equipment / supplies / works for prosecution offices	626'255.06	20.3%
Events (conferences, training)	386'423.35	12.5%
Publications and printing	232'907.84	7.5%
Project staff (international)	193'696.50	6.3%
Fees for external experts / working group members	170'795.19	5.5%
Other cost	118'289.30	3.8%
Office cost	98'573.83	3.2%
Travel cost	89'655.25	2.9%
Equipment / vehicles for project staff	58'674.90	1.9%
Studies and research	28'272.96	0.9%
<b>Total</b>	<b>3'087'184.32</b>	<b>100.0%</b>

Source: PMU, own calculations. Note: The figures above refer to budgeted costs after the budget reallocation; the table does not show the level of fund disbursement.

Other reasons that indicate efficient resource use: Even though none of the PMU members is a prosecutor, the team is highly regarded for the quality of its work and its ability to draw on internal resources to deliver the project activities. Problems that arose during implementation were transparently reported and the project did not experience significant delays that would have had ramifications on the overall performance of the project, even though some procurement was behind schedule. Information we received suggests that the project has sought to coordinate with other interventions, particularly with the USAID's Justice Sector Development Project (JSDP) II, and shared its own outputs and findings broadly.

A minor reallocation of some 14'000 CHF primarily from the budget for procurement to the training budget, that we believe was comparatively less effective, was likely too small to have an overall effect.

Looking ahead, we note that the project built up competence in all aspects of project management. It is very well acquainted with the content and the *status quo* of the project so that the backstopping function could be reduced in the future. We also argue that no more international project manager is required (which anyway does not seem to be planned).

**Conclusion:** Resulting from the above we conclude that the resources of the project were used strategically with a view to achieving the desired results. Activities have been delivered on time and on budget; quality of the deliverables is considered high. Grave inefficiencies could not be established. In the absence of a valid benchmark against which the project could be measured, the level of effectiveness is the critical factor determining the input-output-ratio. Since we assess the effectiveness to be high and since we believe that the project budget is comparable to other similar type interventions (arguably even less costly), we conclude also in this regard that the project was effective.

## 5.4. Impact

The overall objective of the project is to achieve *“improved performance and credibility of the prosecutorial system ... in line with the BiH judicial reform strategy”*.

Although it is justified to ask for an impact assessment in a final evaluation, i.e. whether and to what extent the project has brought about the desired long-term effects, measuring remains a daunting task: On the one hand the project is still being implemented, some key outputs were only completed in the recent past and overall little time elapsed during which the effects could become perceptible. Change in the field of criminal justice reform requires time and a long-term perspective to implementation. It would thus be unrealistic to expect that there is

significant, measurable impact already in its first phase of implementation. On the other hand it is very difficult to attribute impact to the project since there have been important political initiatives and other project interventions working towards to same goals. However, even though our assessment of impact remains not conclusive for these reasons, it is obvious that there are already several intermediary achievements that bode well for future impact:

First, the European Commission notes a positive trend that “*measures introduced by the HJPC and relevant stakeholders have progressively reduced the backlog of cases*” and that the Structured Dialogue on Justice “*led to a number of concrete positive outcomes*” (EC, 2013). Also *official statistics* suggest that the prosecution has stepped up its capacity to discharge of its work. An indicator often associated with judicial performance is the backlog of cases: Over the past years the HJPC reports a steady decrease of both the number of pending investigations at the end of a given year and the respective relative change. However, the question to what extent the project concretely contributed to an eventual performance increase remains unresolved.

Table 4: Prosecution service end-of-year pending investigations

Pending investigations...	2009	2010	2011	2012
... beginning of year	8'923	7'913	8'879	7'174
... end of year	7'908	7'398	7'148	6'463
Annual Absolute Change	-1'015	-515	-1'731	-711
<b>Annual Relative Change</b>	<b>-13%</b>	<b>-7%</b>	<b>-24%</b>	<b>-11%</b>

Sources: HJPC Annual Report and project PMU; own table.

Second, the presence of the project within the HJPC, its resources and activities have contributed to placing more institutional focus on prosecutorial issues and have enabled the HJPC to fulfil its legal mandate. The *establishment of the “Strategic Body”*, an organ within the HJPC the task of which is, *inter alia*, to raise awareness and lobby for more attention to prosecutorial reform, is an important element in this regard.

Third, involving and reaching out to the most important stakeholders – prosecution service, law enforcement agencies, ministries and civil society organisations at different levels of government – enabled the project to find *broad consensus on a number of products*. For instance: the instruction on prosecutor-police cooperation (Component B), the analytical report on legislative obstacles for efficient criminal proceedings and the ensuing legislative proposals (Component A) or important baseline regulations establishing criteria for monitoring of prosecution office performance (including orientation norms, backlog reduction plan, system for optimal and foreseeable timeframes). Furthermore, this also paved the way to

establish forums for cooperation as a means of more *permanent and institutionalised dialogue* between police and prosecution in six cantons.

Fourth, the introduction of new work processes such as the mandatory use of the TCMS changed the way that performance reporting and data collection unfolds. TCMS reports meanwhile replaced the previous practice of delivering manual reports to the HJPC. Data and reporting quality has reportedly improved over the past two years.

It is difficult to assess, let alone measure, the actual achievements when it comes to the change in public perception of prosecutors. Frankly speaking, it appears safe to say that nothing has changed at all. On the other hand interviewees report that they feel that there is more awareness regarding the information needs of the public and awareness that the prosecution has for too long been reactive and defensive. The managers and spokespersons we contacted repeatedly stated that there is a “*more open attitude*” and the willingness to “*communicate more proactively*”. Furthermore, these activities assisted in the affirmation of the role of PR persons, whose posts and job descriptions are now included into internal organisations of the majority of prosecution offices. This and a more unified appearance of the prosecution service ([www.pravosudje.ba](http://www.pravosudje.ba)) and speaking with a more uniform voice can contribute to building up trust and changing the views of the public. Ultimately, however, we believe that only better performance, particularly the ability to tackle crimes of high-level persons, will eventually lead to the desired result.

**Conclusion:** Improved judicial performance is observed in national and international reports. Offering platforms for dialogue between different stakeholders resulted in consensus in a number of issues (legislative amendments, new ways and means for inter-institutional cooperation, performance measurement, understanding to take communication and information policy seriously) that now need time to be translated into results. Processes and products of the project certainly contributed to the change but in only a few cases can a direct causal link be established. The project aimed at creating the foundations for a robust and substantive prosecution reform, played a pioneering role in this regard and provoked momentum for reform. In order to achieve more tangible impact the project tools, mechanisms, procedures now require full implementation. Overall, too little time elapsed for the project’s result to have more significant impacts.

## 5.5. Sustainability

Sustainability looks at the longer-term effects of the project and assesses the extent to which the effects continue over time after the end of the project. It is by default

difficult to measure *ex-ante*, nonetheless we believe that the project will have sustainable effects for the following reasons:

First, the project proposed changes to primary and secondary legislation. This includes, for instance, the proposals for amendments of criminal legislation that are in the process of adoption and scheduled to pass the parliamentary process within the first half of 2014 as well as the recently adopted instructions for police-prosecutor collaboration. Once entered into force it is unlikely that the legislative changes would be appealed when the project ends; quite to the contrary the changes will be sustainably anchored in the country's legislative body.

Additionally, the project assisted in the development of a new regulation enabling the monitoring of prosecution and measuring individual prosecutorial performance (orientation norms, new performance evaluation criteria, foreseeable timeframes, backlog reduction plan, etc.). Most of these regulations did not exist before the project or existed in a form that did not allow objective evaluation. Even though they might be revised, modified or updated over time they will remain in the system as permanent tools for the measurement and monitoring of prosecution efficiency. The same we believe holds true with the instruction – product of a comprehensive consultative process and based on consensus between the respective parties – though it still has to prove workable in practice.

Similar to above, it is reasonable to assume that operational practices in different areas (e.g. regarding public information and media contacts or the improved TCMS reporting system but particularly the strategic plans) will remain in place for the foreseeable future.

Secondly, in terms of the political dynamics and policy implementation, the Structured Dialogue on Justice and the forthcoming Justice Sector Reform Strategy contain measures that target the same goals as the project. Implementation of both processes will continue and conceivably be stepped-up in the foreseeable future (EC 2013).

Thirdly, the experiences and competences as well as the networks and contacts the participants to the project were able to build up will have a sustainable effect. A sizable number of practitioners within and beyond the prosecution service have found consensus on issues of prosecutorial reform that is now being applied in practice. Particularly noteworthy in this regard are the members of the Strategic Body and overall the senior management of the HJPC as well of the prosecution offices, who were closely involved in the project's implementation, and their interest in and commitment to future prosecutorial reform.

It is difficult to assess the sustainability of the project's training measures. It is in the nature of training materials or training curricula that they become outdated within a short-period of time ("half-time of knowledge"). More importantly,

however, we conclude from our deliberations with the project participants that the training methods did not allow to bring about sustainable results. As far as the sustainability of the supplies and the infrastructure work is concerned, much will depend on the financial resources available for maintenance. Moreover, as far as the project management unit is concerned, it is momentarily unlikely that it would stay as such in the HJPC. Much of the institutional and operational knowledge rests with the team and would be lost if it is dissolved.

Achieving sustainability is ultimately dependent on several interrelated conditions (political environment, financial resources, and adequate follow up, individual engagement) that are partly beyond the remit of the project.

**Conclusion:** There are several reasons to conclude that the project outputs and (intermediary) impacts are sustainable. This is the case particularly for primary and secondary legislation. Political pressure to continue judicial system reform is an important factor determining sustainability. Sustainability can be greatly enhanced in areas where “intermediary” impact is achieved (training in specific subject matters or the strategic plans are concrete examples).

## 5.6. Additional Considerations

Assessing the project’s performance cannot be done without considering internal and external factors that contributed or limited performance. We take a brief look at some of the factors in the following paragraphs.

Apart from what is mentioned positively above, there is generally a strong public demand for a more efficient, accountable prosecution service, which consequently puts pressure on the HJPC to efficiently respond to public criticism. Reforms in the country’s judiciary, the EU integration process but also developments in the region (corruption charges against high level figures in neighbouring countries etc.) also resulted in the spotlight now being placed on the prosecution services. The project arguably benefited from this increased attention to the prosecution.

However, there are several factors that impacted on the project and prevented it from achieving more tangible outcomes. To mention are the fragmented organisational structures affecting the prosecution and the police, poor coordination between the different levels of government and other diverging political interests as well as budgetary constraints in the prosecution service. With regard to some activities the project is – simply speaking – dependent on the work of other institutions (for instance the ministries of justice and parliaments as far as legislative changes are concerned). Furthermore, acknowledging the need for change and absorbing new approaches and methods (e.g. related to performance measurement and evalu-

ation; increasing use of information technology; related to fast changing media) requires time and often needs time – a feature typical not only for BiH.

Finally, the organisational structure and the resources that the HJPC allocated to prosecutorial reform over the past years are partly inadequate. For instance: the HJPC Secretariat, notably the Judicial Administration and Statistics Department, has no posts tasked specifically for prosecutorial administration.<sup>19</sup> This meant for the project to cover virtually all administrative and professional work alone – a quite sizable workload. Even though the Strategic Body is a very commendable step it does not the “manpower” for prosecutorial reform to the HJPC.

## 6. Recommendations

In this chapter we give recommendations that we formulate as a result of our findings. Some of them stem directly from our interview partners. The recommendations should be understood as a neutral input and options for action than that we deem should be taken into consideration in the planning of a next project phase.

### 6.1. Overall recommendation

The new Cooperation Strategy 2013-2016 (SDC 2012) features the support to the prosecution under the heading of “*other programme elements*” and justifies the project with its relevance and complementarity with other Swiss funded activities. Indeed, several reasons warrant that the project be continued, as it was already envisaged in the Project Document:

- *Better impact and sustainability:* The project has been delivering a broad range of outputs and achieved several “intermediary” impacts and behavioural change; the project built the foundations for substantive reforms. A continuation during which the tools, mechanisms and procedures developed in the first phase are fully implemented would ensure better impact and sustainability.
- *HJPC capacities for reform:* Experiences made by this project and many others in the past years support the view of upholding the HJPC as vehicle for future judicial reform in BiH. However, the newly established Strategic Body (and eventually a separate prosecution department within the HJPC) necessitates external support in setting the agenda of and carrying out the

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<sup>19</sup> We note that we were unable to establish how many staff members (out of seven professionals permanently employed in this department) actually deal with prosecution issues in practice.

necessary actions for prosecutorial reform. At the same time SDC should ensure HJPC's accountability for the project and seek a firm commitment to the reform agenda as well as an assurance that the project functions will be integrated into the HJPC structures (see also below).

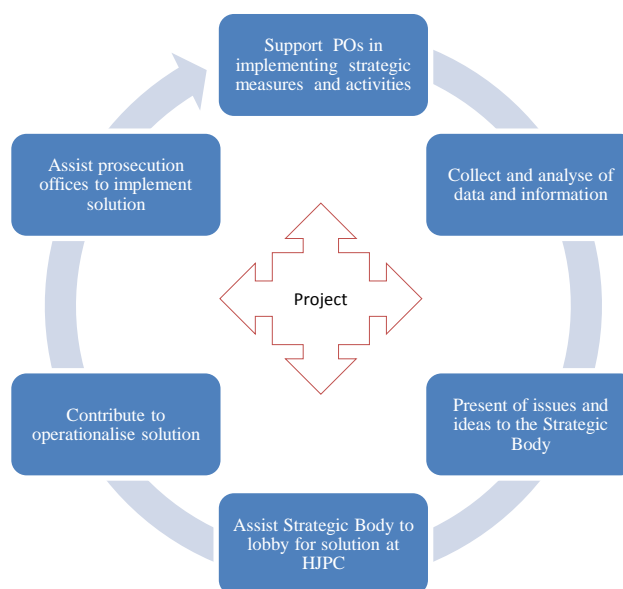
- *Leverage effects:* Since donors show a growing interest in directing funds towards the prosecution in the upcoming years, capacity and ability of the HJPC as competent national institution to absorb, participate and lead reforms would be of a critical importance for the success of other donor initiatives in the justice sector. The project can play a prominent role in this regard.
- *A momentum for change:* Public dissatisfaction with prosecutors' effectiveness and efficiency and the increased expectations for prosecutorial reform both from the country's citizens as well as from international partners are the outside factors that must be taken into consideration: they have created a momentum for change.

The project should build up on the results that were achieved in the past three years (i.e. stronger institutional focus and capacities; existence of regulatory framework and technical capacity to monitor and evaluate performance of prosecution offices and prosecutors; enhanced awareness for greater transparency of prosecutors and solid foundation for PR function; better framework for institutional cooperation; improved legislative framework for criminal investigation; knowledgeable, well established and integrated project staff etc.). At the same time it should seize opportunities that arise from the establishment of the Strategic Body and focus on supporting its mandate, plans and measures. Furthermore, it should assist prosecutors' offices in translating their strategic plans into action and invest into solution oriented and specialised training to prosecutors.

The project ideally becomes the key interface that collects input from the prosecutions offices, analyses this input and helps the Strategic Body to find solutions, which it subsequently assists to roll-out in the prosecution offices across the country.

The project should also include programs and priorities envisioned by the updated JSRS and the Structured Dialogue on Justice and respond to specific activities proposed by the Strategic Body. Finally, the project activities should be complementary to other donors' activities in the justice sector.

Figure 1: Second phase project intervention focus



Source: B,S,S. own illustration

Flexibility in terms of the actual content of the activities will be necessary in the next project phase. Much will depend on the issues that arise as strategic plans are being implemented. They should be regularly updated to reflect i) measures, plans and priorities determined by the Strategic Body, ii) training needs identified and respective trainings delivered, and iii) future policy and organisational developments of the HJPC. This flexibility might also require that the project has a budget retainer at its disposal out of which activities (“quick fixes”) can be swiftly financed without lengthy approval processes. Similarly, a pre-approved “roster of consultants” should help avoid protracted hiring processes.

Furthermore, in order to live and breathe issues in prosecution offices, to identify options for change and to help with additional resources to implement solutions more presence of the project team on-site will likely be required. At present the project team spends some 20-30% of its working time in the field. Depending on the needs, it might be required to complement the project team with economists, management or business (process) consultant. Persons with experiences and skills other than legal may also stimulate innovative ideas, encourage out-of-the-box thinking and more sweeping approaches to reform.

The entire project earned itself an excellent reputation amongst its clients. The interviewees repeatedly stressed their utmost satisfaction with the services that were provided and the European Commission notes a growing political commitment to implement the 2014-2018 JSRS and associated action plan (EC, 2013); both should bode well for the implementation of a next project phase.

## 6.2. Specific recommendations

*Maintain the current project set-up:* It is recommended that the current project set-up is upheld, namely that the HJPC assumes responsibility for the project's implementation, with a PMU at the "switching centre" of judicial reform. Entrusting the HJPC not only strengthens the organisation internally but also sends an important signal externally of support and confidence into the organisation. The project team, which we understand remains unchanged for the foreseeable future, has proved itself capable of delivering a technical assistance project – though backstopping should be maintained, albeit on a limited scale.

*Gradual integration into HJPC structures:* The project has hitherto been fully financed by SDC. With a view to enhance the sustainability of the project, there should be a gradual internalisation of project functions and (a part of) the PMU team into the HJPC (likely the Department for Judicial Administration). This will necessitate that the HJPC commits itself to undertake the necessary preparatory work (systematisation and budget allocation to finance the new positions) with a view to ensure that full integration of the project can be achieved towards the end of the second phase.

*Contribute to improvements of prosecutorial efficiency:* Prosecutorial inefficiency has been the main reason for criticism and negative public perception of the prosecution and the HJPC over the past decades. This particularly applies to the cases of organised crime, corruption, war crimes and sexual crimes. The importance and relevance prosecutorial efficiency is best illustrated with the fact that around 40% of the tasks of the HJPC Strategic Body are dedicated to this topic. The project should assist in developing analysis of inefficient prosecution offices and focus on these "sensitive" types of cases to determine the main causes for inefficiency and backlog. Furthermore, the project should monitor and evaluate the new "quota system" and propose changes as necessary. The HJPC "Improving Judicial Efficiency" project (see Table 1) has significantly improved the situation of backlog in courts so their expertise could potentially be utilised in similar activities for the prosecution. Recent EU Progress Reports for BiH have acknowledged this achievement.

*Contribute to strategic plan implementation at prosecution offices:* Following the adoption of strategic plans assistance should be provided to the prosecution offices in terms of their implementation (organise, facilitate, monitor, analyse). In this way the project will be able to identify problems (isolated and systemic ones) that prosecution offices face in terms of achieving their goals and to which the project will have to help finding an appropriate solution (e.g. procure necessary items, deliver targeted training, undertake research, prepare a legislative amendment or

instruction, issue guidelines). The same way it will learn about best practices that can be applied in other offices.

The role of the project would have to change over time from a more active moderation role at the beginning to a more passive facilitation and advisory role towards the end of the project. Such an approach should also help improve management competencies in the prosecution offices, a competence that many of the senior staff we interviewed frankly said to not possess.

While all prosecution offices should directly or indirectly benefit from the project's assistance (this also implies that support is extended to those offices that do not have a strategic plan as of yet) the intensity and depth thereof must differ from one location to the other. This is to say that – assuming that the size of the team and the project budget remain similar to the current phase – it would be unrealistic to expect that project with its multiple tasks and roles can assist all prosecution offices in the same intensity.

With a view to achieve more leverage effect we therefore argue that relatively more efforts should be invested into the most important prosecution offices in both entities as well as the Brčko District. The term “important” should be defined in different ways such as the number of cases, the political and strategic importance of the office, best-/worst performing offices, the willingness to engage in a change effort etc. The project could perhaps assist some of those that already have strategic plan and that are selected by applying other criteria such as successful and less successful performers, those with significant numbers of “sensitive cases” such as organised crime and corruption; or good and poor management. Whatever the selection, care must be given that offices that receive relatively less support do not undermine the overall acceptance of the project. It is in this regard important to closely involve the FBiH and RS prosecution offices so as to enable them to act as multipliers of good strategic plan implementation practice.

*Assist the Strategic Body to realise its full potential:* The newly established Strategic Body has the potential to play a critical role within the HJPC. With a view to make the Strategic Body fully operational the project should act as a “cabinet” that provides operational (i.e. organise meetings, set the agenda, coordinate and facilitate communication) and strategic support, where inputs would primarily stem from i) the strategic plan implementation, ii) the training measures at prosecution offices and iii) the analysis of TCMS data. In other words the project should feed specific and common problems and successes bottom-up into the Strategic Body.

*Contribute to further develop the TCMS based on user experience:* The TCMS is constantly evolving and should – as for the courts – become an important tool to manage the prosecution system in the future (not least to monitor quotas, norms

and standards). Prosecutors regularly responded that the TCMS improved over the past years but that it still necessitates better adaptation to the prosecutorial practice. One recommendation in this regard refers to better linking factual and legal findings in the TCMS.

*Deliver practical training that goes beyond “traditional” approaches:* Capacity building and training should continue in the forthcoming project phase, yet in a more practical and solution-oriented manner. Analysing the feedback we received during the interviews it appears that training is highly regarded when it contributes to solving a specific problem of prosecutors in a selected legal field or of an actual case and when it helps building up pertinent, practical and specialised competencies.

We recommend exploring the possibility of organising training that brings together selected, fewer prosecutors working on a specific subject matter to jointly learn, share experience and find solution to a given problem. The training events would be organised by the project, yet hosted by different prosecution offices on a rotating basis. Training of this kind would have several advantages at one go as it would contribute to:

- solving a specific question or practical problem or case of a given prosecutor, i.e. having a real, direct impact on the prosecutor’s work
- harmonising inter-entity (particularly relevant in the Federation) and intra-entity legal practice of prosecutors
- fostering communication between prosecutors within and across the entities and thus building up professional networks
- building up a pool of specialised prosecutors with in-depth knowledge of a given legal subject who could act as trainers or otherwise as resource persons in their respective prosecution offices
- (with their attendance being ensured) contributing to the oversight function of the F BiH and/or RS prosecutors
- informing participating cantonal prosecution authorities as well as the project in issues of practical relevance in prosecution offices, whereas the project would collect and analyse the issues so that it can be brought to the attention of e.g. the Strategic Body for remedial action

How (workshop, seminar, study visit, case work or theoretical input, model-like training for beginners / advanced practitioners etc.) and by who (members of the judiciary or the academia, Swiss experts etc.) such capacity building would have to be delivered depends on the actual problem or case for which solutions are sought.

We are mindful that care must be taken not to undermine the competencies and efforts of the Judicial Training Centres and that participation in such trainings might possibly not count for the mandatory four days of training at which prosecutors need to participate annually. In this regard we see great potential to collaborate with the recently started EC funded project on Capacity building (see Table 1) that aims at reforming the training approaches of the Judicial Training Centres, which themselves expressed interest in further modernising their methodological toolbox (e.g. by expanding the offer of distance learning courses).

Themes that were repeatedly mentioned include: economic crime, organised crime, sexual crimes, and cybercrime and special investigations. It appears feasible that the project could build up on the material and initial training of the current project phase.

*Longer term deployment of Swiss expertise:* A recommendation specifically expressed by the Cantonal Prosecution Office Zurich is to consider options that Swiss experts analyse and provide support to prosecutors on-site and on a longer term basis.

### **6.3. Other recommendations**

*Coordinate closely with USAID, the European Commission and other donors while designing the follow-up phase:* JSDP II has entered into its final (fifth) year of implementation and is scheduled to complete its activities by mid-2014. USAID has announced its intention to continue funding the justice sector reform initiatives in the upcoming years through a new project. The European Commission also plans to pledge considerable funds for justice sector reform as outlined in the IPA national programme (justice sub-sector measures 1-5). While donor coordination in the justice sector is generally considered strong, we still recommend that these and other donors are consulted for the design of the upcoming phase.

*Procurement according to Swiss procedures:* The project has been supporting more than 20 prosecution offices with minor infrastructure work or supply of different equipment (cars, audio and video recording devices, computers, scanners etc.). Since the respective funds were administered by the HJPC it was required to apply national procurement procedures, which turned out not only to require considerable resources from the PMU but also to slow down the procurement process. At the same time the delays did not seem to have significant negative, long-term consequences – neither on the efficiency nor the reputation of the project. To the extent feasible it is recommended that future procurement is channelled through Swiss procedures.

*Procurement should be closely tied to implementation of strategic plans and/or training:* Addressing the factual problems that prosecution offices face when it comes to material equipment does have direct positive impact on the work of

prosecutors. It also helps the project to realise some quick wins which over time add to the profile of the project.

*Grant schemes and NGO involvement:* To the extent that the designers of the next phase foresee a grant scheme operation – nothing speaks against it at this point – it is recommended that the projects work towards raising the accountability, responsibility and better responsiveness of the prosecution service in addition to projects that strengthen the prosecution service. Also, more attention should be paid to involve the prosecutors' associations. Assistance could take the form of grants for which the associations need to apply with relevant project proposals (e.g. expansion of the manual on criminal acts for prosecutors and police). Whether the associations have the capacities to play a more prominent role in the project delivery would have to be assessed separately.

*Mitigation of external factors that have the potential to impede or limit the project's performance:* In Chapter 5.6. we mentioned some of external factors that characterised the environment within which the project operated. Focusing in a second phase on the strategic plan implementation and capacity building of the Strategic Body should already circumvent some external risks (e.g. those associated with the adoption of legislation). Obtaining a firm commitment of the HJPC to orient its focus and resources more towards prosecutorial reform and a pledge for funds to finance the gradual incorporation of project functions over the next 3-5 years can positively influence sustainability of the project's outcomes.

*Interviewee recommendations:* During the interviews we collected a couple of recommendations that are on the "wish list" for a next phase: *Training topics:* use and handling of audio-video material, organised-, economic-, sexual-, corruption- and cyber-crime, financial investigations, international cooperation in legal matters, training through case studies of "real cases", provide longer-term training to prosecutors, assist Judicial Training Centres in modernising training curricula, educate journalists; *Standards and guidelines:* for data protection and special investigative activities; expand the "legal manual" for police; *Other:* strengthen professional associations, provide equipment to / improve infrastructure of prosecutor offices, improve the usability of TCMS. In a brief effort during the debriefing in Sarajevo the following items were prioritised: specialisation of prosecutors / provide specialised training; monitor the implementation of police-prosecutor instructions; establishment of specialised police-prosecutor (case) teams; assess current internal organisation of POs and propose improvements.

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## Annex 1: Terms of Reference

### Support to the Judiciary in BiH – Strengthening prosecutors in the criminal justice system, Bosnia and Herzegovina

#### 1 Introduction and Background

##### 1.1 Historical background and challenges of the judiciary

The reform of the judicial system in Bosnia and Herzegovina (BiH) is a main focus of BiH and international efforts to consolidate a democratic and self-sustaining country. Affected by both, the transition process and a recent war, the task ahead of Bosnia and Herzegovina (BiH) in the judiciary is very challenging in terms of creating an effective and efficient judicial system.

The structure of the judicial system in BiH reflects the complex internal structure of the country as a result of the constitutional arrangements of the country contributing to a considerable institutional fragmentation of the judiciary. The country has sixteen judicial jurisdictions, 14 ministries of justice, with almost no communication and interaction amongst each other. The prosecution and court systems are divided into four main jurisdictions (state, entities and Brčko District) and four sets of procedural codes, which differ to a certain extent. The country has no common Supreme Court, which would harmonize practices and make all citizens equal before law.

A judicial reform in BiH has been initiated in 2002 and since then noteworthy progress has been achieved by focusing mostly on areas such as: creating conditions for independent appointment of judges and prosecutors, free of political influence, downsizing courts and prosecutors' offices, reform of procedural codes to introduce mechanisms for speedier resolving of cases and improved respect for human rights, reform of court administration practices. In this fragmented context and as part of the judicial reform, the establishment of the single High Judicial and Prosecutorial Council (HJPC) of BiH was a big achievement for a more harmonized judiciary system. The HJPC is an independent and autonomous state-wide body with legal personality, with the task of ensuring and maintaining an independent, impartial and professional judiciary. Also the BiH Ministry of Justice has been created in 2003, and serves among others as a coordinating body for judicial institutions at state level. The Court of BiH, also established in 2003, has broad jurisdiction that includes the most serious crimes threatening social peace and security, such as war crimes, organized crime and terrorism. Furthermore, a Justice Sector Reform Strategy (JSRS) has been adopted in 2008 and provides a common reform framework for all institutions in the BiH justice sector and includes agreed priorities for the future development of the sector as a whole. The strategic vision is to establish an effective and coordinated justice system in BiH that is accountable to citizens and fully compliant with EU standards and best practices guaranteeing the rule of law.

However, the goal of a BiH justice system fully capable of upholding the principles of rule of law still remains distant, due in large part to a fragmented institutional structure and a resulting lack of coordination among the numerous levels of government and relevant judicial institutions. Overall, the development of an impartial, independent, effective and accountable judiciary in line with EU standards is at an early stage. The Structured Dialogue on Justice has had a positive effect on the implementation of the JSRS, but the implementation of the JSRS and the National War Crimes Strategy needs to be further stepped up. The fragmented legal framework across all jurisdictions places significant legislative and financial burdens to the judiciary. The lack of streamlined budgetary responsibilities continues to affect the independence and effectiveness of the judiciary. The frequent political attacks on the judiciary and the backlog of cases (2 million cases still pending) remain causes for serious concern. Despite noteworthy progress, still much needs to be done, therefore, the completion of judicial reforms is fundamental to BiH securing its place in Euro-Atlantic institutions.

##### 1.2 Prosecution

The focus of the reform and donor assistance till 2010 has been primarily directed towards the courts, police and partially prison systems, while the prosecutorial offices remained mainly neglected. Given their increased role in the overall criminal justice system as a result of the reforms, the consequences of this neglect would soon become obvious. To this day prosecutors still function mainly within poorly equipped facilities, without having sufficiently developed the needed skills to manage and coordinate complex investigations and with insufficient technical and expert staff to support them. Despite the fact that the overall reform process was initiated years ago, the work of the prosecution service still fails to satisfy the needs of the citizens. The prosecutors' work and criminal procedures in many cases lack transparency for the clients as well as for a broader public who is not yet aware of the new roles of prosecutors. Capacities in areas such as case management, leading special investigations, human

resource management, planning and performance evaluation and monitoring are also deficient and in much need for the effective and efficient functioning of prosecutors. The persisting lack of political consensus to resolve some of the issues that underpin the sustainability of the rule of law in BiH risk undermining measures to increase the effectiveness and independence of the prosecutorial function in BiH.

### 1.3 Project overview

Switzerland is, with the exception of the USAID-funded Justice Sector Development Project (JSDP II), the only major donor currently providing assistance to the underdeveloped prosecutorial function in BiH. The support to the justice sector came on explicit request of the State Ministry of Justice for assistance of development priorities in the area of prosecution defined by the JSRS.

The project “Strengthening prosecutors in the criminal justice system” has been launched in October 2010. The project is implemented within the framework of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina for the purpose of strengthening the prosecutorial service in BiH. The project acts on both, the strategic and operational level, utilizing the latest instruments for improving the conduct of criminal investigations in BiH. The overall goal of the project is to improve the performance and credibility of the judicial system in BiH in line with the BiH judicial reform system by building the capacity of prosecutors to lead criminal investigations in accordance with international standards and supporting the HJPC in its supervisory and monitoring role. The key target groups and direct beneficiaries of the project are all prosecutors’ offices in BiH, ministries of internal affairs, the entity Judicial Training Centres as well as the entity Ministries of justice. In addition, the Project closely cooperates with a number of non-governmental organisations, as well as professional associations that are also direct beneficiaries of the Project through the small grants programme. Continual Swiss expert support from the Canton Zurich Prosecutors’ Office is an important and integral part of the project. Backstopping is provided by a local consultant agency. An additional component to the project has been added in 2013 with the aim of providing technical support to the development of the new JSRS 2014-2018.

The prosecutors project focuses on four major areas identified by project partners as necessary to address some of the weaknesses in the prosecutorial system:

**Outcome 1:** Working methods in prosecutors’ offices and professional skills and performance of prosecutors with respect to leading criminal investigations are developed in accordance with international standards and national legislation.

**Outcome 2:** Mechanisms of cooperation and coordination and channels of communication between police and prosecutors in the conduct of criminal investigations are strengthened at all levels.

**Outcome 3:** Prosecutors’ communication skills and information policy for providing adequate public information on cases is strengthened and public perception of prosecutors is improved.

**Outcome 4:** HJPC has developed its institutional capacities to monitor the overall performance of the prosecutorial system, provide necessary support to prosecutors to enable the efficient and effective functioning of prosecutors’ offices and facilitate the introduction of needed and relevant reforms.

A significant advantage of the project is that it operates within the framework of the HJPC. All partners acknowledge in the meanwhile the project as the key initiator and voice of reform processes in the criminal justice system as regards to the prosecution service.

## 2 External Review 2013 of the Justice project

### 2.1 External Project Review

The purpose of the External Review is to assess the overall relevance, quality performance, management and achievements (major outcomes) of the project. Furthermore, based on the overall findings related to the project implementation and considering the wider country context relevant to the justice/prosecutors reform, make strategic recommendations towards the potential direction and a forward-looking project evolving concept. The external review will be performed by an External Project Review team consisting of one international evaluation consultant (team leader) and one national expert/consultant.

### 2.2 Objectives and scope

The External Review will identify and assess a number of elements to determine the project’s

achievements and constraints, performance, results (major outcomes), impact (as far as clear tendencies can be observed), relevance and sustainability. Conclusions and recommendations will serve as relevant elements for decision making and setting up a second project phase. Thus, the External Review is also future oriented. The principal objectives of the external review are to:

- A. Assess the importance and effectiveness of the project and evaluate the overall achievement (mainly outcomes oriented) of the project in relation to its objectives and the quality of performance and management.
- B. Identify what was successful and, therefore, may be sustained in the upcoming phase; what didn't work at the level of main beneficiaries and processes, and therefore should be redesigned, complemented (with what) or dropped.
- C. Assess the ownership and sustainability of the project's investments.
- D. Recommend changes that may be required, to improve the project's performance in the upcoming phase.
- E. Assess the role and value of HJPC as implementer and beneficiary with a special view at the current project set-up.
- F. Recommend strategic directions, a possible adaptation of the project's design and approaches, of the cooperation partners setting and the implementation structures to be applied hence forward (possible scenarios with core elements for the forward-looking Strategic Outline).

The review will take a broad overview of the project area by gathering perceptions, aspirations, feedbacks and data from relevant partners and stakeholders:

The review will pay specific attention to the overall performance and impact of project component 1 – "Working methods and skills of prosecutors", project component 2 "Communication between prosecutors and the police", project component 3 "Communication and public access to information on cases", project component D "Institutional capacities of HJPC".

Additionally, the External Review will also address in a horizontal manner the importance and effectiveness of the Swiss support provided by the Canton Zürich, as well as of the support provided by the local backstopping organization.

With regard to SDC's intent to finance a second phase, the review will specifically look at:

1. The overall project relevance and approach:
  - Review of the degree to which the project's main concepts, objectives and outcomes/outputs are appropriate, relevant and strategic to the needs of the country.
  - Review of the degree to which the project's implementation approach is aligned with its outcomes/outputs and enables impactful achievements.
  - Assessment of the sustainability of the project and its deliverables; assessment of the possibility of outcomes/outputs leading to benefits beyond the lifespan of the project. The levels of the project's institutional anchoring, vertical integration and country-wide application.
2. The performance of the project (project management, organization and approach) :
  - Assessment of the implementation progress, the efficiency and effectiveness in the mobilization and use of project resources, the validity of its internal monitoring and evaluation scheme, in realizing its deliverables and towards reaching accomplishment of the objectives and outcomes.
  - Assessment of the project's management quality, including the team organization and interaction.
  - Assessment of the results' significance for the main beneficiaries, also enumerating any unintended effects.
  - Assessment of the stakeholders' participation/ownership, as well as the quality and involvement of project partners and beneficiaries.

- Assessment of the functionality and effectiveness of the project's institutional set up and implementing structure (with special focus on the effectiveness of the Swiss support provided by the Canton of Zürich and the support provided by the local backstopping).
- 1. Future-oriented projections - assessing and drafting strategic recommendations on the projection and expansion of sustainable project results (for second project phase):
  - Analyze and assess the potential projection of the current project concept from the viewpoint of logical and needed areas of intervention, which will sustain and expand the project's results; at the same time foresee additional scope of actions, while taking into consideration the broader prosecutors (justice) reform processes as well as other donor-related interventions (EU accession funds, USAID/JSDP, etc.).

## 2.2 Methodology of the Review

The external Review will be based on SDC evaluation standards and general evaluation principles. A fair knowledge and understanding of the projects context as well as of the area of Judiciary will be prerequisites to make a realistic appraisal of achievements and to elaborate future oriented recommendations. The external consultants are expected to develop the methodology for this review, which could include the following steps:

- Studies of relevant reference documentation (list to be proposed by SDC and the HJPC project team).
- Conduct field visits, structured interviews, consultations and discussions with main stakeholders, and meeting partners/institutions such as: High Judiciary and Prosecutorial Council, Ministry of Justice BiH, Prosecutors offices, entity Centers for education of Judges and Prosecutors, Police Ministries/Agencies, civil society representatives, Delegation of the European Union, USAID/JSDP II, selected prosecutors, members of working groups,.
- Structured interviews with representatives of SDC (briefing), of the Project Implementation Unit, with the project local backstopping Lucid Linx and with members of the project's steering board. Interview/telephone conference with the Prosecution of Zürich.
- In addition, the Consultants may conduct focus group discussion with key beneficiaries (to be decided by the consultants in consultation with SDC and HJPC Project Team).
- Prepare for and share information during a de-briefing meeting with HJPC, Lucid Linx and SDC. The de-briefing will be part of a half-day HJPC team-workshop at the end of the mission, where recommendations for future-oriented strategic directions will be discussed and verified.

## 2.3 Deliverables of the Review

The evaluation team will deliver the following:

- A **draft external review report of maximum 20 pages, Arial 11** (plus annexes) on the findings and recommendations, featuring a specific chapter on projections and scenarios for a second project phase to be supported by SDC. An analysis of the reform related judiciary context in which the project is working and its relevance in fulfilling a role in that context should be also included. The report shall be written in English and submitted to SDC in electronic form. The report will be structured and formatted in accordance to the document "SDC External Evaluations – Formatting Instructions".
- A final external review report (under the same conditions as for the draft report). The final report shall include, but will not be limited to:
  - Executive summary;
  - Introduction to the external project review;
  - Description of the intervention;
  - Review scope and objectives;
  - Evaluation of approach and methods;
  - Findings and conclusions (including on the project relevance and quality of project performance);

- Recommendations/scenarios for the formulation of potential forward-looking interventions.

## 2.2 Review Team

The evaluation team will be composed by:

An international consultant, with knowledge of the general context of judiciary in BiH, with profound and up dated skills on justice and related topics; with a strong analytical ability to conceptualize complex and multi-faceted aspects of an issue into a concise and clear-cut assessment conclusion; solid knowledge in the implementation and/or evaluation of justice projects; as well as with good writing skills in English (to prepare a report in a easily understandable language).

A local consultant, with excellent knowledge of the judiciary reform process and context in BiH (incl. donor community involvement); with strong analytical ability to produce strategic and practice oriented projections in the area of justice; as well as with good writing skills in English. If necessary, additional (part time) national expertise on justice can be sub-contracted.

The team will be complemented by local assistants for logistics and translations.

## 2.3 Proposed Review Plan

The mandate will have to be carried out between September and October 2013 in accordance with the timetable below.

Activities	Dates	Duration
<b>Preparation phase</b>		
Preparation for the review / consultations with SDC BiH / briefing with Prosecutors Office Zürich / reading of reference documents /	September	3 days
<b>Mission</b>		
Travel to and from BiH	September	2 days
Revision of project documentation and reports / briefing SDC BiH / interviews with key stakeholders / field visit	2 <sup>nd</sup> week of September	5 days
Systematization of findings / verification and discussion in a half-day workshop (incl. debriefing) / writing of first elements of the draft report	3 <sup>rd</sup> week of September	2 days
<b>Finalization phase</b>		
Writing and submission of the draft report to SDC	26 <sup>th</sup> of September	3 days
Systematization of feed-backs and writing of the final report	14 <sup>th</sup> of October	1 day
De-briefing at Berne or Zürich	4 <sup>th</sup> week October	1 day
<b>Total</b>	<b>17 days</b>	

## 2.7 Roles and Responsibilities

Evaluation Team:

- Preparation and realization of the review in accordance with the present ToR;
- Systematization of all information collected, and regular communication on intermediate results, findings and conclusions with the SDC BiH contact persons;
- Organization and moderation of the workshop at the end of the review mission;
- Elaboration, consultation and timely delivery of the draft and the final review report.

**Evaluation Team Leader:**

- Responsible for the coordination of the whole review program; for the coordination of the evaluation team (including for sub-contracting the other members of the team);
- Responsible for the quality of the review (including the designing of the detailed review concept, the definition of relevant key questions as well as the delivery of well processed findings and recommendations);
- Responsible for a smooth and efficient communication with all parties involved or addressed in the course of the review;
- Responsible for a timely delivery of the review report.

**SDC:**

- Overall follow up of the review; regular communication with the team leader through a specifically assigned contact person of SDC BiH;
- Facilitation of reference documents and information related to SDC's strategic focus;
- Elaboration of a management response to the review report.

Results, conclusions and recommendations of the evaluation team may be accepted or not by SDC. In no case SDC will influence the systematization of facts and findings as well as the opinion making of the evaluation team.

**2.8 Documents to be consulted for the mission purposes include:**

Supporting Documents	
<ul style="list-style-type: none"> <li>• Justice Project Documents</li> <li>• Project Mid-term evaluation report</li> <li>• Yearly and Half-Yearly Reports</li> <li>• Justice Sector Reform Strategy</li> <li>• EU-Progress Report 2012</li> <li>• Justice Reports</li> </ul>	To be delivered in advance

## Annex 2: Mission Schedule



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

**External Review of the project “Support to the Judiciary in BiH –  
Strengthening prosecutors in the criminal justice system”  
Program 08 – 17 September 2013  
Harald Meier and Elmira Pasagic**

**Sunday, 08 September 2013**

Place	Time	Program	Participants
Sarajevo	22.50	Arrival	Harald Meier

**Monday, 09 September 2013**

Place	Time	Program	Participants
Sarajevo	08.00	Briefing Swiss Embassy	GUJ, ZAL
	09.30	HJPC Project Team (Kraljice Jelene 88 – small meeting room 2)	Project Team
	12.30	Lunch	
	13.00	HJPC Presidency and Secretariat (Kraljice Jelene 88 – large meeting room 1)	Milorad Novković, President of HJPC and Admir Suljagić, Director of Secretariat
	14.30	Ministry of interior of Canton Sarajevo (La Benevolencije 16)	Hana Korać, MI CS, Mensur Basić, Po. Commander, N. Lagumdžija, Advisor, Irfan Nefic, Spokesperson
		Travel to and overnight in Banja Luka	Hotel Vidovic

**Tuesday, 10 September 2013**

Place	Time	Program	Participants
Banja Luka	8.00	District Prosecutors Office Banja Luka (Vladike Platona bb)	Zoran Bulatović, Deputy Chief Prosecutor Mira Miletić, Secretar
	09.30	Prosecutors Office of Republic of Srpska (Vladike Platona bb)	Svetlana Brković, Republic Prosecutor and Member of HJPC
	11.00	Special PO of Republic of Srpska (Ulica Ban dr Teodor Lazarević 15)	Živana Bajić, Deputy Chief Prosecutor and Member of Working Group of Component A
	13.00	Lunch	
	13.30	Police of RS	Stanislav Vranješević, Police of RS and member

		<i>(Bulevar Desanke Maksimović 4)</i>	of Working group of Component B; Gojko Vasić, Director RS Police
	15.00	Judicial Training Center of RS <i>(Bulevar Stepe Stepanovića 60)</i>	Drago Ševa, Director of JTC
		Travel to and overnight in Tuzla	Hotel Tuzla

**Wednesday, 11 September 2013**

Place	Time	Program	Participants
Tuzla	08.00	Internal meeting evaluators	HM, EP,
	10.00	Cantonal Prosecutors Office Tuzla <i>(Ul. Maršala Tita broj 137)</i>	Dragan Radovanović, Deputy Chief Prosecutor Admir Arnautović, PR Tomislav Ljubić, new Chief prosecutor
	11.30	Meeting with previous Director of Secretariat (beginning of the Project - January 2013) <i>(Ul. Maršala Tita broj 137)</i>	Muhamed Tulumović, Court President of Municipal Court Tuzla
	12.30	Lunch	
	13.00	Travel to Brcko	
	14.30	Prosecutors Office BD <i>(Trg pravde 10)</i>	Goran Lujčić BD Police Samir Beganović, Prosecutors Office BD
		Travel to Sarajevo	

**Thursday, 12 September 2013**

Place	Time	Program	Participants
Sarajevo	08:00	HJPC/Prosecutors Office BiH <i>(Kraljice Jelene 88)</i>	Jadranka Lokmic Misiraca, deputy chief prosecutor and deputy vice president HJPC
	10.00	Federal Prosecutors Office of FBiH <i>(Valtera Perića 15)</i>	Zdravko Knežević, Chief Prosecutor, Slavo Lakić, Federal Prosecutor, PO of FBiH
	12.00	Ministry of Justice FBiH <i>(Valtera Perića 15)</i>	Sanjin Pacariz, Adviser
	13.00	Lunch	

	14.00	Cantonal Prosecutors Office Sarajevo (Radićeva 6)	<b>Nives Kanevcev, CP;</b> <b>Enes Kamenica, Dep. CP;</b> <b>Jasmina Iftić, PR;</b> <b>Alen Šarčević,</b> Secretary
	15.30	Meeting with representatives of NGOs (related to the activities from the Comp. C) (Kraljice Jelene 88, small conference room 2)	<b>Selma Babić,</b> Center of legal assistance for women; <b>Dragan Joković,</b> <b>OTAHARIN;</b> <b>Ljiljana</b> <b>Zurovac ,</b> Press Council
	18:00	Meeting with Sven Urke, Former HJPC Member (Hotel Europa Sarajevo)	<b>HM, EP</b>

**Friday, 13 September 2013**

Place	Time	Program	Participants
Sarajevo	08.00	HJPC Project Team	HM, EP, Project Team
	10.00	USAID Justice Sector Development Project II, HJPC Premises (Kraljice Jelene 88, small meeting room 1)	<b>Zlatko Osmančević,</b> Chief JSDP II, <b>Kenan Henda,</b> Activity coordinator JSDP II
	12.00	District Prosecutors Office East Sarajevo (Ulica Karadordjeva broj 5)	<b>Rajko Čolović,</b> Chief Prosecutor; <b>Neven Kramer,</b> Secretary; <b>Džermin Pašić,</b> Prosecutor and Member of WG of Component C
	14.00	Lunch	<b>Sead Traljić,</b> Lucid Linx
	15.00	Lucid Linx (Avde Jabučice 12)	

**Monday, 16 September 2013**

Place	Time	Program	Participants
Sarajevo	8.00	Preparation of WKS	HM, EP
	12.00	Internal Workshop (preliminary findings + future projections) (Zmaja od Bosne 11 – SDC premises)	<b>SDC,</b> <b>Amila Rahić,</b> <b>Sead</b> <b>Traljić</b>

**Tuesday, 17 September 2013**

Place	Time	Program	Participants
Zenica	8.00	Cantonal Prosecution Office Zenica	HM <b>Vesna Kaknjo,</b> Chief Prosecutor
	11.30	Departure to airport	HM

**Additional interview prior / after the mission:**

**HM**

22.08.2013: S. Traljić, Lucid Linx, Backstopper

05.09.2013 + 26.09.2013: U. Pajarola, U. Arbenz, ZH Prosecution Service

24.09.2013: Una Kelly, Senior Program Manager for Justice Sector, EU Delegation BiH

25.10.2013: U. Pajarola, ZH Prosecution Service; S. Guha, SDC Bern

**EP**

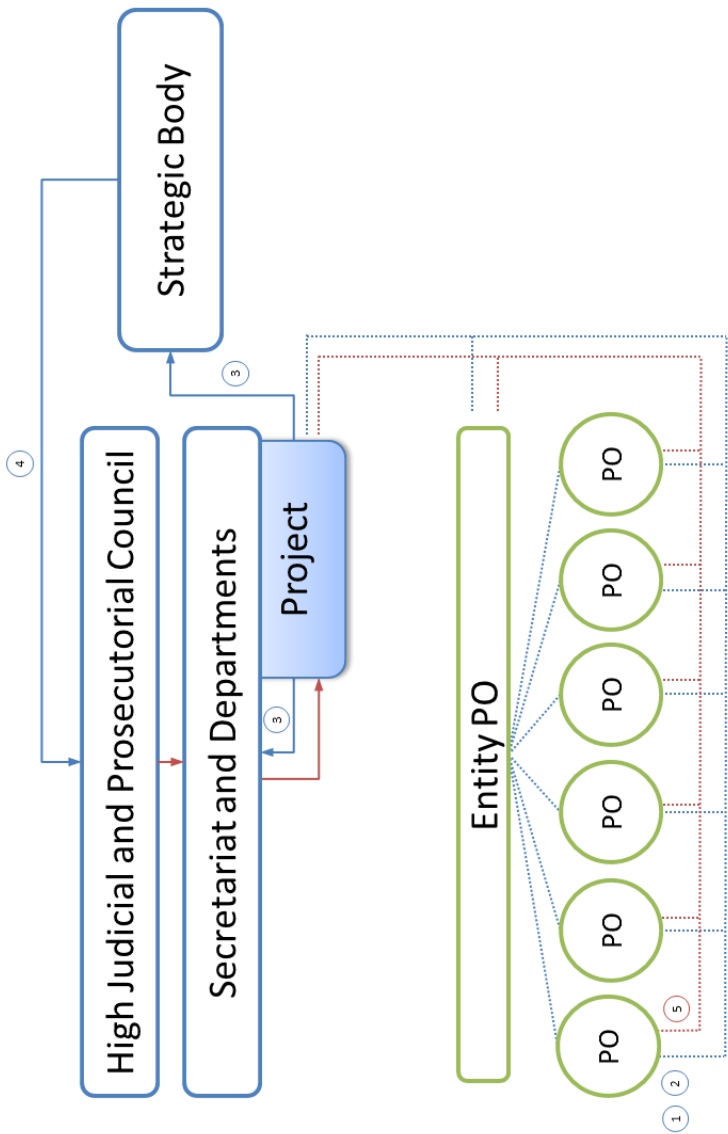
26.09.2013

Ana Bilić, Head of the HJPC Project "Improvements of the Judicial Efficiency"

Amer Demirović, Deputy Head of the HJPC Department for Judicial Administration and Statistics

Esmin Berhamović, Head of the HJPC ICT Department

Annex 3: Possible future Project Set-up



1. Project supports prosecution in the implementation of the strategic plans – gradual shift from moderation to facilitation and advisory role during the implementation process
2. Project facilitates selected training – partly in collaboration with the Judicial Training Centres – where each PO once hosts a training at which colleagues from other offices participate
3. Data and information gathered at operational level will be analysed and provided primarily to the Strategic Body – entity prosecution, HJPC secretariat and departments will be involved as appropriate
4. Project acts as secretariat of and supports Strategic Body in putting issues on the agenda of the HJPC for remedial action (legal amendment, decision, budgetary allocation, request for donor assistance etc.)
5. Project supports HJPC, secretariat and departments and entity prosecution in implementing solution at prosecution offices through (1) or (2)

Legend: PO = prosecution office; ..... = project assistance top-down; ..... = project assistance bottom-up

**Explanatory note to the possible future project set-up** (partly also reflecting the discussions during the debriefing on 16 September 2013 in Sarajevo):

- Project primary focus on improving efficiency of the prosecution service in BiH.<sup>20</sup>
- Project operates on strategic level (primarily in collaboration with the Strategic Body) and on the operational level (primarily in collaboration with prosecution offices and entity level prosecution offices); furthermore, project acts as “cabinet” for the Strategic Body.
- As far as the coverage of prosecution offices is concerned different options are to be discussed:
  - *Option 1:* project focuses on a selection of prosecution offices (e.g. the ones that already have a strategic plan) → project invests solely into assisting these offices.
  - *Option 2:* project assists prosecution offices without strategic plan to develop and assists others in the implementation of strategic plans: project goal that all prosecution offices have a strategic plan and are assisted by the project in translating the plans into practice → project invests into all prosecution offices in BiH.

*Note:* A choice needs to be made between on the one hand the coverage of prosecution offices and on the other hand the resources that will be at the disposal to assist a prosecution office in the implementation of its strategic plan.

  - *Option 3:* project assists all prosecution offices but most important ones are identified for stronger intervention and supported by a full time project staff → project invests comparatively more resources into the selected offices, comparatively less to the others. The Strategic Body and/or entity level prosecution offices would be used for transfer of good practises from selected interventions to other prosecutor offices [*preferred option for the evaluators, see also Chapter 6*].

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<sup>20</sup> Note on the project components: We do not want to pre-empt the design of the next phase in too much detail but note that the goals of the (current) Components A and D should carry most prominence. Monitoring and follow up activities stemming from the current Components B (due to its importance for efficient investigation and prosecution) and C (due to JSRS requirement for more transparency of judicial institutions) will remain relevant. However, whether they should be separate components or fit under the umbrella of other components needs further discussion.

- Project intervention should be seen in terms of a circle (see also the description below the graphic shown above):
  - *bottom up*: project provides support in terms of strategic plan implementation; analysis problems and bottlenecks in prosecution offices and feeds information and solutions into the Strategic Body.
  - *top-down*: project supports implementation of solutions / new policies / new practices that also respond to identified problems and bottlenecks or that otherwise improves efficiency.
- Project activities largely depend on strategic plan implementation and requirements of the Strategic Body → necessitates flexibility and sound project planning.
- Project management unit within the HJPC; gradual integration of functions and positions into HJPC structures.
- Project team is supported by a backstopper and Swiss experts of the Cantonal Prosecution Office in Zurich.

## Annex 4: Literature

### *Project related documents:*

Project document “Support to the Judiciary in Bosnia and Herzegovina – Strengthening prosecutors in the criminal justice system, Phase 1”, SDC, Final Version (undated) [including Annexes]

Mid-term review report “Support to the Judiciary in Bosnia and Herzegovina – Strengthening Prosecutors in the Criminal Justice System”, HJPC / SDC, November 2012

Annex 1: Pre-end Progress Monitoring Chart, HJPC, August 2013

Concept paper for a SDC funded support project “Making justice work for transition: Strengthening prosecutors in the criminal justice system of BiH” (undated)

Other documents: Annual reports and annexes; Component A legal report; Project budget execution report as of 31 August 2013;

### *Other pertinent documents:*

(SDC 2009): Cooperation Strategy Bosnia and Herzegovina 2009-2012, State Secretariat for Economic Affairs and Swiss Agency for Development and Cooperation, Bern, May 2009

(SDC 2012): Cooperation Strategy Bosnia and Herzegovina 2013-2016, State Secretariat for Economic Affairs and Swiss Agency for Development and Cooperation, Bern, November 2012

(EC 2013): Bosnia and Herzegovina Progress Report 2013, {COM(2013) 700 final}, European Commission, Brussels, 16.10.2013

(EC 2012): Bosnia and Herzegovina Progress Report 2012, {COM(2012) 600 final}, European Commission, Brussels, 10.10.2013

(OSCE 2013): Strengthening the Justice Sector, Fact Sheet, OSCE Mission to Bosnia and Herzegovina, Sarajevo (undated)

(OECD 2010): Evaluating Development Co-operation: Summary of key norms and standards, Organisation for Economic Development, Paris, June 2010